

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 14, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 327, SB 316, SB 333
Executive Action:	SB 63 BE CONCURRED IN
	SB 109 BE CONCURRED IN
	SB 229 BE CONCURRED IN AS AMENDED
	SB 340 BE CONCURRED IN AS AMENDED

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{Tape: 1; Side: A}HEARING ON SB'S 237, 316, 333Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, introduced SB's 237, 316, and 333 as a result of a State DUI Task Force appointed by the Governor and the Attorney General. Montana is known as a "hard-drinking" state and he said that it currently ranks second or third in the United States in alcohol consumption. SB 237, commonly known as the open container bill, would make unlawful the drinking, possession or storage of open containers of alcoholic beverages in motor vehicles. It would provide that open containers could be in motor vehicles if they were not in the passenger area and other exceptions included for-hire vehicles, recreational vehicles and campers. The jurisdiction would encompass areas outside incorporated city limits.

SB 316, he said, would be covered by proponents' testimonies.

SB 333 would provide for a first-time DUI offender to receive chemical dependency treatment after being evaluated by a counselor.

Proponents' Testimony:

Attorney General Joe Mazurek appeared as a proponent of the three bills. He related statistics involving traffic accidents and the percentages of alcohol-related accidents as evidence of the need for these bills. He summarized the package of legislation as having an impact on teenagers who experiment with alcohol, on social drinkers and a significant affect on repeat offenders. He said the percentage of multiple DUI offenders has increased from 23% - 30% over the last several years. The percentage of second-time offenders has gone from 19% - 23% and the percentage of third-time or more offenders has gone from 4% - 8%.

Joe Roberts, DUI Task Force, spoke on behalf of the Governor's office to say that the bills had been reviewed and were supported by him.

Mike Schultz presented written testimony as a father of a victim of a DUI offender. **EXHIBIT 1**

{Tape: 1; Side: A; Approx. Counter: 23.8}

Harold Hanser, DUI Task Force Chairman, spoke in support of these bills. He said drinking and driving can no longer be considered a social indiscretion and it is the most serious crime in Montana from the standpoint of impact on lives. In all other states the statistics regarding DUI deaths have gone down. In Montana, they have stayed the same. He said the question in the open container

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law was one of maturity. He said the open container law would be a message as much as anything else to the youth. He urged the committee to accept the DUI legislation package in an effort to save lives and affect the economic impact of drinking and driving.

Tom Huddleston, City of Helena, spoke in favor of the three bills. He proposed that enacting these bills would be serving the community as well as the offenders. He testified about his personal problem with drinking and how having been arrested and having had the law enforced had changed his life.

Mike McGrath, Lewis and Clark County Attorney, Montana County Attorneys Association, addressed SB 316 in particular. He said this provision would make the fourth DUI offense a felony and would address the problem with repeat offenders by giving more options in prosecution.

Ellycia Taapken, DUI Task Force, supported passage of all three of the bills. She said that these bills were not as strong as statutes in some other states, but that these were steps in the right direction. She referred to national statistics regarding DUI offenses.

Peter Funk, DUI Task Force, said he had worked with motor vehicle laws in the state when he was with the Department of Justice and had drafted the language of the bills. He "walked" the committee through each of the bills.

He said that SB 237 was patterned after the Washington State statute and that it was fairly straightforward. He pointed out the distinction which had been drawn between moving and nonmoving vehicles in the changes made in the Senate. The prohibitions on moving vehicles were made broader than those for not in motion.

SB 316 would provide for numerous changes in how the law would treat drinking and driving offenders. Under current law, law enforcement officers have no ability to obtain blood alcohol information until after the arrest. This section would authorize a pre-arrest test for the purpose of determining whether there is probable cause to continue with that type of investigation. He said it was designed to mirror the implied consent scheme and various sanctions. A safeguard is that officers are not authorized to implement the scheme until both the officers and the devices are certified by the department.

Section 2 of the bill would create a new offense which would deal with a person under the age of 21 driving with a blood alcohol concentration of .02 or more. Section 3 of the bill addressed the forfeiture of vehicles and transfer of licenses in DUI charges. Section 4 would outlaw deferred prosecutions of DUI offenses. Section 5 dealt with suspended or revoked licenses and Section 6 amended the existing implied consent scheme. Section 8 would change the DUI sentencing statute and was considered the

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heart of the bill as it defined the sentencing as a felony on the fourth offense, it dealt with how gaps in convictions are added up in the state for sentencing purposes and dealt with deferred sentencing. Section 9 made the same three changes in the blood alcohol content to mirror the DUI statute as in Section 8.

SB 333 dealt with the treatment aspect of DUI offenders and would make it discretionary with the judge for first-time offenders. It would require certified chemical dependency counselors to use a recognized set of standards in evaluation of DUI offenders. It would also change the handling of multiple offenders. The court would have the discretion in choosing the recommendation for a counselor.

Jill Campbell provided written testimony in support of the bills.
EXHIBIT 2

{Tape: 1; Side: B; Approximate Counter: 5.1.}

Colonel Craig Reap, Montana Highway Patrol, stood in support of the bills. He discussed the frustrations faced by law enforcement officers in dealing with drunk drivers and how he believed these proposed statutes would alleviate some of the problems.

Mike Rupert, Boyd Andrew Chemical Dependency Care Center, supported all three bills, but specifically addressed SB 333.

Norma Jean Boles, Department of Corrections and Human Services (DCHS), appeared in support of HB 333 which would encourage treatment. She said that 40% of the population of first time offenders is chemically dependent and in need of treatment. Currently they are not required to have treatment and this bill would require it, therefore they were in favor of it.

Nancy Jovin, Ravalli County DUI Task Force Coordinator, presented written testimony in support of the bills. She shared her testimony as a victim of a DUI accident where her husband was killed on their wedding day and she was injured. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 17.1}

George Bonini, Montana Traffic Education Association, expressed support for the passage of the three bills.

Peggy Wheeler gave testimony of her experience with a DUI offender in the loss of her daughter. **EXHIBIT 4**

Mark Cady, Billings Police Officer, spoke on behalf of his experience as a police officer as well as having been a multiple victim of the DUI offense. He said this package of bills was important in positively affecting Montana.

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Mike Bloom, Assistant Helena Police Chief supported the bills.
EXHIBIT 5

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 6 is a letter in support of SB's 316 and 333.

EXHIBIT 7 is amendments submitted to DUI-related HB 256 which was presented for the committee's consideration.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Counter: 24.5.}

REP. DUANE GRIMES asked the sponsor if he would be supportive of changing the bill to coordinate it with other legislation. This would give it the most strength by striking subsection 4 which made it a fourth offense felony and which would automatically make it a third offense felony if the other bill which addressed this issue passed. The sponsor agreed.

REP. DEB KOTTEL asked if money which funds chemical dependency treatment programs comes out of taxes on the sale of liquor.

SEN. BISHOP did not believe that was the case, but that each treatment center in each county is paid for by the offenders.

Albert Goke, Montana Traffic Safety, said there are numerous ways the costs of treatment are paid. There is a tax on liquor which supports treatment centers for those who are unable to pay. The system which seems to work includes the offender paying for the costs of their alcohol information course as a first offender.

REP. KOTTEL asked what happens when the offender cannot afford to pay.

Mr. Goke was unaware of an instance where someone lacking the ability to pay did not receive treatment.

Mr. Rupert said they attempt to collect payment for court school regardless, but charges for treatment are based on the ability to pay. If someone is unable to pay for any part of it, they still receive treatment.

REP. KOTTEL said section 3 of SB 316 seemed to be an alienation of the sale of property whether or not it was transferred to a bona fide purchaser. She was concerned about the legitimate need to sell the car in order to support the family of the convicted DUI offender, for treatment of the offender or for transferring ownership to that lending institution or to a buyer who would

assume payments. She felt it was written so broadly as to prohibit legitimate transfers in an attempt to stop fraudulent transfers.

Mr. Funk said she was reading the bill accurately and that it was drafted in this manner primarily in order to make the harshest type of statement which could be made in regard to those types of transfers. He said it would not be a significant task to build in some exceptions for bona fide purchasers.

REP. DANIEL MC GEE asked if treatment should be characterized as a cure.

Mr. Rupert said that people who succeed are not cured. They believe the best they can do is arrest the problem.

REP. MC GEE asked how that would translate into treatment at a potential cost to taxpayers in that if a person did not want treatment, they would not recover.

Mr. Rupert said that was not necessarily the case. In a study comparing those who enter treatment voluntarily versus those who are forced into treatment, it was shown that the recovery rate in the two groups was identical. The treatment can work on people who initially do not believe they have a problem, but to succeed they must believe they have a problem by the end of it.

REP. MC GEE and **Mr. Rupert** discussed the length and content of the programs available. And the question was what the state's role should be in treatment for stopping DUI repeat offenses. **REP. MC GEE** wondered if incarceration as a deterrent was a better solution but questioned having the state mandate treatment and asked if he felt that was a viable solution.

Mr. Rupert believed it was because there were two groups of people--those who were chemically dependent and those who commit the offense. The ones who are not chemically dependent benefit from jail time as a deterrent. But he said there is a percentage who can be reached by treatment so they are no longer a threat to society on the road.

REP. MC GEE quoted, "Treatment is discovery and long-term things are recovery." He asked how the state could extend the treatment concept over the long term so that they would not re-offend.

Mr. Rupert said that they could adopt a system for multiple offenders where they would be under the supervision of a treatment program and after care with a monitoring phase up to one full year. This suggestion was modeled after the amendment in **EXHIBIT 7** referenced above.

REP. MC GEE asked the sponsor if he would agree to this amendment and he said he would not commit to it until he had a chance to review it.

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{Tape: 1; Side: B; Approx. Counter: 43.3}

REP. GRIMES asked the chairman of the task force for information regarding the findings on deferral of sentences. He wanted to know in what cases they had found that it was a frequent occurrence that sentences are being deferred and how frequently that was happening.

Mr. Hanser said the concerns before the task force were that when sentencing was deferred on the DUI it caused the record to be lost as well as the impact of trying to enforce the law. They found it was frequent enough that the task force had to take some action.

REP. GRIMES asked if the legislature were to take the actions which were proposed in the bill and on the previous legislation which had passed, what role the open container bill would play in it and whether it was more of a social corrective measure or if it was a deterrent.

Mr. Hanser believed a person's first inclination was to follow the law and that it would be preventive from that standpoint. The open container law was a message important for youth. He felt it was a conflicting message to have a law against drinking under the age of 21 while not having an open container law. He said it was a contradiction to say people can drive while drinking while being opposed to drinking drivers.

REP. GRIMES redirected his first question.

Mr. McGrath expanded on the explanation regarding deferred sentencing. Between 1983 and 1991 a DUI sentence could not be deferred. In Lewis and Clark County they cannot be deferred currently. He said the reason is that it establishes a record. A deferred sentence in the traffic area precludes the state maintaining those records. In 1991 there was an inadvertent change made in a general sentencing bill. He did not think it would have a huge impact to pass that portion of this bill because in his county as well as most of the other counties of the state, sentences are not deferred.

There was a negative response from other witnesses in the audience and **REP. GRIMES** requested testimony from other witnesses on this subject.

Mr. Schultz said he had reviewed the court system in his area (Chouteau County) for 1993 and 1994 and discovered that out of 67 cases, 87% were deferred or pled-off.

REP. DEBBIE SHEA spoke to SB 333 as a very positive piece of legislation and asked what specific exposure to rehabilitation was given to a repeat offender who was discussed in testimony.

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Mr. McGrath shared which rehabilitation programs were included in that particular person's case. He added that the most significant problem which law enforcement faces is the repeat offender. Many do recognize their need for treatment and accept it, but there are some who continue to drink and drive despite all efforts to the contrary including rehabilitation programs and punishment. His experience has been that without the persuasion toward treatment, they will continue to drink.

REP. SHEA asked if there is a stipulation that they must successfully complete the program.

Mr. McGrath said it depended on the court. Some require successful completion of a chemical dependence evaluation and they are ordered to follow the recommendation, and if found chemically dependent, to go into a successful completion of a treatment program. The problem is in the definition of success as well as the time frame for success.

REP. JOAN HURDLE asked if there were statistics on how well treatment works.

Mr. Rupert said they had statistics on those who had done all that was asked of them, which they call successful completion of treatment, and statewide the average was about 60%.

REP. KOTTEL asked if there would ever be justice across counties when some law enforcement personnel who themselves are chemically dependent and when judges and lawyers are themselves chemically dependent and this affects how they sentence others. She asked what the task force did in the way of bringing some light on those issues as well as uniformity in sentencing.

Mr. Rupert replied that there are loopholes exploited by judges and law enforcement officers, but they could try to close those loopholes. The portion in SB 333 which dealt with everyone using the same standards and rules was in response to that. Treatment is more than the service they provide and whether or not treatment works is dependent upon whether the courts are willing to enforce a penalty if it doesn't and it also depends somewhat on employers in some instances as well as families.

REP. MC GEE said that in Yellowstone County certain justices of the peace sentence people to AA and that the people in AA struggle with that since they are not a governmental agency. He asked if that kind of practice would expand.

Mr. Rupert said that it was a problem for people being sentenced to those types of programs. In sentencing to AA and other private programs there was a problem with monitoring compliance to the sentencing.

REP. MC GEE asked **Mr. Funk** to respond to the information about people being sentenced to AA.

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Mr. Funk said he was not aware of that practice.

REP. MC GEE asked if he saw that SB 333 would expand the potential practice of sentencing persons to AA.

Mr. Funk did not think SB 333 would. In the criminal procedure code which has generic statutes dealing with sentencing and a judge's general policy concerning sentencing, there is language which would allow a judge the freedom to impose sentencing to related programs. He said there was nothing in SB 333 as drafted or as contemplated that was intended to have any interaction with an AA-type program.

{Tape: 2; Side: A}

Mr. McGrath expanded on the answer by saying that the district court has broader sentencing authority than a justice or city court. The provision in the bill that would allow for a fourth offense to be treated as a felony was designed to give a judge broader authority in terms of sentencing and also broader authority in terms of monitoring.

REP. MC GEE stated that AA is an all-volunteer program and asked how the court would have the discretion to sentence someone to a nongovernmental entity.

Mr. McGrath said the sentence does not apply to the AA program, but it applies to the defendant and if the court determines that it is appropriate for the particular defendant to be required to attend AA, AA has open doors and welcomes all comers.

REP. HURDLE asked for an explanation of a .02 blood level.

Mr. McGrath said that provision stated that it is a zero-tolerance provision for minors.

REP. HURDLE requested information about the 60% success rate.

Mr. Rupert said that people are included who had done everything they had been asked to do and there is a six-month follow up and then follow up in one-year and two-year increments. He said that the follow ups are done over the telephone and therefore are not done as well as they could be. It depends upon people telling the truth. The organization he represents plans to hire an outside organization to do their follow ups which would include methods of verification of success. He said they believe that about one half of the people who get into treatment will make it.

REP. KOTTEL asked if .02 could be registered with alcohol-based mouth wash or cough medicine.

Mr. Rupert said he did not know the answer to that.

Mr. Goke answered that there were five states in the nation with what is called zero-tolerance with their laws written at zero. He said that all five states were not having problems with the testing at zero. Most of the youth being tested are never near zero. The valid concern is that mouth wash and some other items can test when they are dealing at zero-tolerance level and the task force chose .02 because they have confidence that the machine they currently have would be accurate enough to measure true consumption.

REP. KOTTEL asked if there was any consideration in the Senate to take her trial de novo bill off the table because of how it would relate to the anticipated increase in DUI sentencing.

SEN. BISHOP said he could only respond for himself and that it would not change his vote.

{Tape: 2; Side: A; Approx. Counter: 10.2}

Closing by Sponsor:

SEN. BISHOP believed this was a big first step for the state in developing an approach to life and death situations. He particularly pointed to the open container bill as being important in sending a positive message to the people of Montana.

EXECUTIVE ACTION ON SB 229

Motion: REP. LOREN SOFT MOVED SB 229 BE CONCURRED IN.

Motion/Vote: REP. KOTTEL MOVED TO AMEND SB 229 BY STRIKING "KNOWINGLY" ON PAGE 1, LINE 13 AND TO INSERT "WHEN THE PERSON KNOWS" FOLLOWING "KNOWS" AND FOLLOWING "THAT" TO INSERT "IT" ON LINE 14. The motion carried unanimously.

Motion/Vote: REP. SHIELL ANDERSON MOVED SB 229 BE CONCURRED IN AS AMENDED.

Discussion: REP. HURDLE requested an explanation of page 2, lines 14 through 16 in response to her concern that a spouse would be forced to sell their property if the portion of it which belonged to the offender was subject to seizure.

CHAIRMAN CLARK said this bill dealt with seizure of property upon conviction. REP. KOTTEL discussed ways the concern could be addressed.

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Motion: REP. HURDLE MOVED A CONCEPTUAL AMENDMENT WHICH WOULD LEAN THE EQUITY VALUE OF THE OFFENDER'S SHARE OF THE PROPERTY AND THE STATE WOULD RECEIVE THE MONEY AT THE TIME OF THE SALE WHILE ALLOWING THE SPOUSE AND CHILDREN TO LIVE IN THE HOUSE UNTIL A LATER SALE.

Discussion: REP. CLIFF TREXLER suggested that amendment would require changing the title and intent of the bill.

CHAIRMAN CLARK suggested that they keep in mind that this was property bought from the proceeds of drug money.

REP. HURDLE asked if the property was purchased before the involvement with drug trafficking, would it be subject to seizure.

CHAIRMAN CLARK said his understanding was that the property had to have been purchased with the proceeds from drug transactions.

REP. ANDERSON said that it had to be purchased by or maintained by proceeds from drug transactions. He said that there is latitude for considerable prosecutorial discretion, but if they limit it too much as through this amendment it would hinder situations involving major drug dealers. To have a deterrent effect, he thought they needed to allow them to go after the property.

REP. HURDLE said that she felt they were presuming the spouse and children guilty [of knowing involvement] before trial and CHAIRMAN CLARK reminded the committee that it was "still after conviction." The committee continued to debate the issue. REP. ANDERSON clarified the intent of the language of the bill.

REP. HURDLE withdrew her motion.

Vote: The motion to concur carried 18 - 1, REP. HURDLE voted no.

EXECUTIVE ACTION ON SB 63

Motion: REP. WILLIAM BOHARSKI MOVED SB 63 BE CONCURRED IN.

Motion: REP. KOTTEL MOVED TO AMEND SB 63. EXHIBIT 8

Discussion: REP. KOTTEL discussed her amendment and provided rebuttal to the sponsor's closing arguments.

{Tape: 2; Side: A; Approx. Counter: 48.7}

REP. ELLEN BERGMAN responded to the point that the corporations like to go where there is specialized representation and asked why it would bring them to Billings or Great Falls from out of state.

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REP. KOTTEL said there were two issues, one being the barring of out-of-state corporations and out-of-state plaintiffs suing in Montana. She said she had a problem with Montana residents who would choose to bring their lawsuit in Cascade County. She believed those people should have their choice of venue.

REP. ANDERSON urged the committee to vote against the amendment. He explained that he felt the amendment muddied the bill and his reasons for that opinion. He did not think there was sufficient reason to treat railroad cases differently than other state corporation cases. He said he was baffled by defense in allowing forum shopping when those trials would continue to be placed in Cascade County if people can elect where they can bring suit. Cascade County residents could still do so. He said the cost to the county taxpayers is significant for the concentration of these cases being brought in that county from outside the county.

REP. BOHARSKI expressed his opinion that in general persons ought not to be allowed to venue shop. He did not think it was a proper use of the justice system. He said that there were five different places where these tort claims can be filed. He felt they all should be treated the same. He refuted the arguments given regarding experts who would give testimony being concentrated in Cascade County.

REP. KOTTEL responded by comparing the distances between Havre to Great Falls versus Havre to Missoula [where it had been stated there were more experts for testimony].

Vote: The motion (on the Kottel Amendment) failed by roll call vote 6 - 13.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 1, LINE 24 TO DELETE THE WORD, "FIRST," AND INSERT "EIGHTH."

Discussion: **REP. KOTTEL** explained that the reason for the amendment was to enhance the choice of venue to be in a location free from the influence of the railroad. She recalled that testimony from a Lewis and Clark County commissioner included the request that they not enact the law for the First Judicial Circuit. The Eighth Judicial Circuit in Cascade County is where the majority of lawsuits now take place and no one objected to that. It made sense to her to leave it there.

REP. BOHARSKI said that though there was no one from that judicial district for this hearing, in every session in which he had served, someone from the Cascade delegation had asked for more money because the courts in that county are overly full. He recalled hours of floor debate to deal with the overloaded court system in Cascade County. He felt this was one of the big reasons for that.

REP. ANDERSON asked the committee to vote against this amendment and submitted that the organized labor influence might be greater

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than the taxpayer influence in Great Falls. But the taxpayers were bearing the brunt of the significant court costs involved. He said that the First Judicial District is used in a number of statutes as the alternate forum for it and if it proved to be a problem it could be corrected in the future.

REP. DIANA WYATT discussed the economic impact to her community (Great Falls) in this bill. She also discussed the positive influence of organized labor in her community. She asked the committee to return to a proper focus in the debate.

REP. BRAD MOLNAR asked if there had been a great deal of financial support for campaigns for judges from organized labor in Great Falls.

REP. KOTTEL objected to the question.

{Tape: 2; Side: B}

REP. MOLNAR said this issue had been raised in the thirteenth judicial race where attorneys were funding judges campaigns in large amounts and wondered if there was a correlation in this case.

CHAIRMAN CLARK said he thought the question bordered on being inappropriate and that the information was public record for someone to explore if they wanted to.

Vote: The motion on the second amendment failed by voice vote.

Discussion: **REP. TREXLER** said that perhaps the fairness pendulum had shifted in finding a venue. He said that many people on the list who live in Flathead County go to Cascade County to file these cases while there are many experts and good medical care available in Missoula. He said if they were concerned about convenience instead of perhaps the attorney being located outside Cascade County, they would go to Fort Benton to make it even more convenient to those living in Hill County.

Vote: The motion to concur carried 12 - 7 by roll call vote.

EXECUTIVE ACTION ON SB 109

Motion/Vote: **REP. ANDERSON** MOVED SB 109 BE CONCURRED IN. The motion carried 14 - 5, REPS. WYATT, KOTTEL, SHEA, CAREY and MC CULLOCH voted no.

EXECUTIVE ACTION ON SB 340

Motion: **REP. BOHARSKI** MOVED SB 340 BE CONCURRED IN.

Motion: **REP. BOHARSKI** MOVED THE SPONSOR'S AMENDMENTS.

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Discussion: John MacMaster discussed further amendments to make it clear that it provided for the partner of limited liability partnerships. He said that the sponsor's amendments covered it in only one place and he pointed out the other places in the bill where that clarification needed to be made.

REP. BOHARSKI considered that a friendly amendment to be included in his original motion for the technical amendments.

The committee continued to clarify the amendments. Without objection from the committee, Garth Jacobson from the Secretary of State's office offered clarification of the amendments to the committee. Mr. MacMaster finalized the explanation of the amendments and their placement in the bill.

{Tape: 2; Side: B; Approx. Counter: 19.0}

Vote: The motion carried unanimously by voice vote.

Motion: REP. LIZ SMITH MOVED THAT SB 340 BE CONCURRED IN AS AMENDED.

Discussion: REP. KOTTEL asked for explanation of the provision on page 5, lines 9 through 11 and 12 through 14 because they seemed in contradiction to one another. She asked if it resulted in relieving limited partners of a limited liability partnership from liability from the actions of their employees.

REP. ANDERSON explained that they were not in conflict because there would be situations where a limited liability partner would not have general supervision or any control over most of the employees. However, there might be one agent or employee within that partnership whom the partner did supervise directly who then operated within the structure of the partnership. He believed that subsection (b) referred to those employees with whom the partner had no day-to-day contact or general control.

REP. KOTTEL asked if a manager was in place and the partners chose not to take any control, were they relieved of liability if within the normal exercise of business they would be in direct control.

REP. ANDERSON answered that in that situation, they would have a corporation piercing the veil if they had no one minding the shop and would be operating outside of this provision and therefore be held liable.

Discussion: REP. HURDLE asked for an explanation of the Department of Labor amendments.

REP. KOTTEL responded that she thought partners ought to be jointly and severally liable and that what they were doing was saying that taxes were above other people injured by the partnership.

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Motion/Vote: REP. HURDLE MOVED THE DEPARTMENT OF LABOR AMENDMENTS. The motion failed by voice vote.

Vote: The motion to concur carried unanimously by voice vote.

Motion: REP. ANDERSON MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

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ADJOURNMENT

Adjournment: The meeting was adjourned at 12 Noon.

Bob Clark

BOB CLARK, Chairman

Joanne Gunderson

JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ 10:20	✗	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Judiciary report that Senate Bill 229 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Soft

And, that such amendments read:

1. Page 1, line 13.

Strike: "KNOWINGLY"

2. Page 1, line 14.

Following: "knows"

Insert: "when the person knows"

Following: "it"

Insert: "it"

-END-

Committee Vote:

Yes 18, No 1.

591528SC.Hbk



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Mr. Speaker: We, the committee on Judiciary report that Senate Bill 63 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Anderson

Committee Vote:

Yes 12 No 7

591249SC.Hbk



HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Judiciary report that Senate Bill 109 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Tash

Committee Vote:
Yes 14, No 5.

591259SC.Hbk

mm 2/14



HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 340 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Royal Johnson

And, that such amendments read:

1. Title, line 6.

Following: "30-13-206,"

Insert: "30-13-209,"

2. Page 2, line 19.

Insert: "Section 4. Section 30-13-209, MCA, is amended to read:

"30-13-209. Amendment. An amendment to registration of an assumed business name shall must be filed with the secretary of state within ~~60 days~~ 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name."

3. Page 3, line 23.

Strike: "17"

Insert: "18"

Committee Vote:

Yes 19, No 0.

591530SC.Hbk

4. Page 4, line 22.

Strike: "17"

Insert: "18"

5. Page 4, line 28.

Strike: "20"

Insert: "21"

6. Page 5, line 5.

Following: "of a"

Insert: "limited liability"

7. Page 5, line 8.

Following: "partner"

Insert: "of the limited liability partnership"

8. Page 5, line 11.

Strike: "17"

Insert: "18"

9. Page 5, line 15.

Following: "partner"

Insert: "of a limited liability partnership"

10. Page 5, lines 17 and 18.

Following: "of a"

Insert: "limited liability"

11. Page 7.

Following: line 2

Insert: "(a) the partner is personally liable for the liability of the partnership under 35-10-307 or 35-10-629; and
(b) one of the following conditions is satisfied:"

12. Page 7, line 3.

Strike: "(a)"

Insert: "(i)"

Renumber: subsequent subsections

13. Page 7, line 5.

Strike: "(b)(i)"

Insert: "(ii)(A)"

Renumber: subsequent subsections

14. Page 8, line 2.

Strike: "indemnification only to the extent that the partner would be personally liable under"

Insert: "charges as provided in"

March 14, 1995
Page 3 of 4

15. Page 8, line 6.

Following: "is"

Insert: "not"

16. Page 8, line 7.

Following: "indemnification"

Strike: "only"

Insert: "obligation of the partnership, except"

Strike: "and"

Insert: "or"

17. Page 8, line 8.

Following: "35-10-629"

Insert: "for the liabilities incurred by the indemnified partner"

18. Page 12, lines 22, 24, and 30.

Strike: "17"

Insert: "18"

19. Page 13, line 2.

Following: "must"

Insert: "be considered continued and must"

20. Page 13, line 8.

Following: "must"

Insert: "be considered continued and must"

21. Page 13, lines 14 and 15.

Following: "partnership"" on line 14

Strike: remainder of line 14 through "partnership" or" on line 15

Insert: ","

22. Page 13, line 16.

Following: ""l.l.p.""

Strike: ","

Insert: "or"

Following: ""llp", "

Insert: "or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation"

Following: ""p.l.l.p."""

Strike: ","

Following: ""pllp""

Strike: "as the last words or letters of its name"

23. Page 14, line 4.

Strike: "17"

March 14, 1995
Page 4 of 4

Insert: "18"

24. Page 14, lines 12 and 14.

Strike: "17 through 20"

Insert: "18 through 21"

-END-

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

March 15/1995

I request to be excused from the

Judiciary

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Diana Wachtel or Linda McWilliam.

and all amendments

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
229	X	
SB 63	X	X
109		X
340	X	
113	X	
169		
13	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep.

Debbie Aler

(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3/14/95

I request to be excused from the House Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Bob Clark.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Sarah

HOUSE BILL/AMENDMENT	AYE	NO
<u>SB 58 - And</u>	✓	
<u>And to re-instate orig. language</u>	✓	
<u>SB 113</u>	✓	
<u>SB 77 (w/Anderson)</u>		
<u>SB 66</u>	✓	
<u>SB 64</u>	✓	
<u>SB 63</u>	✓	
<u>SB 13 (w/Clark)</u>		
<u>HB 517</u>	✓	

SENATE BILL/AMENDMENT	AYE	NO
<u>SB 10</u>	✓	
<u>SB 372</u>	✓	
<u>SB 353 (w/Anderson)</u>		
<u>SB 340</u>	✓	
<u>SB 297</u>		✓
<u>SB 272</u>	✓	
<u>SB 283</u>	✓	
<u>SB 218</u>	✓	
<u>SB 192</u> <small>should be cood. w/ other 05/11</small>		
<u>SB 174</u>		✓
<u>SB 109</u>	✓	

Rep. *Douglas J. M. Clark*
(Signature)

HR:1993
WP/PROXY

**HOUSE OF REPRESENTATIVES
COMMITTEE PROXY**

DATE 3/19/95

I request to be excused from the Ind

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with CH- CLK

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Vote with Chas.

Rep. *Anthony Parker*
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE:

3-14-95

I request to be excused from the jud

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with S. McCulloch.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
SB 229	✓	
SB 63		✓
SB 109	✓	✓
SB 340	✓	

SENATE BILL/AMENDMENT	AYE	NO

And all amendments

Rep. Bill Lacy
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

March 14/95

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
340	<input checked="" type="checkbox"/>	
Amendment 1	<input checked="" type="checkbox"/>	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Diana W. Geet
(Signature)

HR:1993
WP/PROXY

**HOUSE OF REPRESENTATIVES
COMMITTEE PROXY**

DATE 3-14-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Cliff Trexler.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Rep

Rep. _____
(Signature)

Wm E Boharski

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

314(a)

DATE

I request to be excused from the House Judiciary

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Shirley Anderson.

On all House & Senate Bills and amendments.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

SENATE BILL/AMENDMENT	AYE	NO
All		
63	✓	
Kottel And 1	✓	
Kottel And 2	✓	
109	✓	
340+ Ands	✓	

Pen

(Signature)

HR:1993
WP/PROXY

**HOUSE OF REPRESENTATIVES
COMMITTEE PROXY**

DATE 3/14/95

I request to be excused from the

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Rcp. Anderson.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Rep. J. A. Sh
(Signature)

HR:1993
WP/PROXY

**HOUSE OF REPRESENTATIVES
COMMITTEE PROXY**

DATE 3/14/95

I request to be excused from the

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with *Louis Smit*

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Rep. C. C. Collier
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/14/95 BILL NO. SB 63 NUMBER _____MOTION: Kattil Amendment #1 (Exhibit 8)

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/14/95 BILL NO. SB 63 NUMBER _____MOTION: Be Concurred In

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar		✓
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

Statement to the Judicial Committee, 1995 Legislature

Thank you Mr. Chairman and committee members for allowing me time to address this committee on a very important issue that effects all or our lives in one way or another. I'm going to be blunt right at the start because I feel there is no other way to express my point. Notice the front of my T-Shirt and this blank ghosted out spot. This is where my son used to be in our family picture. He graduated from Fort Benton High School on May 22 1994 he was to enter the United States Army on July 6 1994. Our son was very involved in school including Student Council, Band, Chorus, B club, Key Club, Basketball, Track, Football and loved the outdoors especially fly fishing in Montana. He was a true lover of Montana, and what it had to offer. He was to be the fifth Generation Farmer of our family farm and destined to be a citizen of Montana. But a man on June 30th 1994 made a choice and I want to emphasize the word CHOICE to get into a vehicle while legally drunk and proceed down the highway with No Drivers License, No insurance, expired plates on the vehicle with impaired vision to the point that he lost his job and crossed the yellow line to slam directly into the side of my sons pickup causing it to spin with such force that it broke his neck and caused enough head injuries to kill him. Now my wife and I and my sole remaining child, my daughter Lacey stand here and say is the Law strong enough?? Is the judicial system serving the public and enforcing the laws that we have at this time to ensure yours and my safety when we travel our highways?

The man who murdered my son died two days later from burns sustained basically because he was to drunk to get himself to safety. This mans past driving and criminal history starts at age 18 and progresses over 18 more years. I would like to tell you at this time a brief run down of his record. This is as much as we can piece together from our findings. Now I hope you realize that these people who are habitual offenders are in my opinion coddled as we found out when trying to attain records of this person who killed my son. In Canada he compiled a record over a 18 year period of 30 computer pages long, was arrested on approximately 30 different occasions for high speed driving and DUI offenses sometimes was in high speed chase situations and most of the cases had drug and drug paraphernalia implications. He served time in Canada for a crime in 1991 and 1992. Now I do not have specifics on any of these cases as I as the common citizen do not have the right to viewing them other than the five year driving history in the U.S.. He had approximately 100 alias names as we can ascertain. As if that was not enough for Canada to lock him up he also compiled a 18 year history in the United States. From going through our local Justice of the Peace files we found only one file which was a theft, DUI charge, but his 5 year history shows another theft in our county for which there is no file. After talking to

other people in different communities and other states we also found 1 dangerous Drug charge, at least two probation violations, five theft charges, two false report charges, three criminal contempt charges, and two contempt of court charges. All that said do you think this man deserved to be out in society at any capacity? Well he was and he took my son's life one month later from his last arrest in Havre on May 29th for Contempt of Court. There's plenty more offenders out on our roads to take you or one of your family members lives at any time if we continue to treat DUI's and habitual offenders with such ease and candor. So take a look at your last family picture album and choose which one you want to eliminate from your own life so as to rid these people of driving our highways. Believe me it can happen just as the front of my t-shirt depicts. That's reality!! It's a reality my family faces every morning, and will continue to face for the rest of our lives.

In Loving Memory Of: *Aaron Michael Schultz*

Tuesday April 22, 1975 - Thursday, June 30, 1994

FOOTPRINTS

One night a man had a dream. He dreamed he was walking along the beach with the Lord. Across the sky flashed scenes from his life. For each scene, he noticed two sets of footprints in the sand, one belonging to him, and the other to the Lord.

When the last scene of his life flashed before him, he looked back at the footprints in the sand. He noticed that many times along the path of his life there was only one set of footprints. He also noticed that it happened at the very lowest and saddest times in his life.

This really bothered him, and he questioned the Lord about it. 'Lord, you said that once I decided to follow you, you'd walk with me all the way; but I have noticed that during the most troubled times in my life, there is only one set of footprints. I don't understand why you would leave me when I needed you the most.'

The Lord replied, 'My precious child, I love you and I would never leave you. During your times of trial and suffering, when you see only one set of footprints, it was then that I carried you.'



Aaron was everyone's "little buddy." No matter what he was up to, he always had that sparkle in his eye. Aaron has touched each one of our lives and will always be a part of us. Just remember....

Aaron, we love you.



Do not stand at my grave and weep.
I am not there, I do not sleep.
Do not stand by my grave and mourn.
I am not there, I have been born.
I am a thousand winds that blow.
I am the diamond glint on snow.
I am the sunlight on ripened grain.
I am the gentle autumn rain.
When you wake in the morning hush,
I am the swift uplifting rush,
Of quiet birds in circling flight;
I am the soft star light at night
Do not stand at my grave and weep.
I am not there, I do not sleep.
-An Anonymous Indian Prayer



Part two

With that statistical scenario in mind I would bring your attention to some clippings I have been keeping just in the last six months out of our local newspaper and some magazines that show the same problems nation wide. On this poster is a small portion of the DUI problem as perceived by a handful of writers and citizens expressing their anger and frustrations to the Judiciary System as it stands. I'm not going to go in to all of them, I'm sure your aware of the public outcry for Justice. I am constantly bombarded by angered people who are fed up with the status Quo of the Judiciary System. To emphasize my point I have here in this box letters of support we have compiled from angry voters through out the state the letter reads as follows: (read letter). We had no trouble getting people to sign these letters and in our own Chouteau County we have collected 250 letters of support at this time with more coming in, state wide we have 655 letters from five counties. And this was done by a handful of people. I know we reached only a sampling of Montana citizens with the same concerns. We have letters from students not yet voters but future voters with the same concerns. The Law Enforcement people are doing a very commendable job and we have their letters of support in this box also. I hope some of you have been out with or talked to some of these Law enforcement officers to see what they deal with on a every day basis with these habitual offenders and ask yourself how you would feel to see these people get off with a Deferred sentence or a plea bargain? A perfect story told to me by a Law Enforcement Officer just a couple months ago illustrates my point. He stopped two individuals one night heading toward Great Falls in Chouteau County he ran a check on them and found out they were both felons with prior felony charges, one of them had served ten years for manslaughter, in the car was drugs on the seat and a envelope of money, he arrested them and took them in to the County Attorney who gave them a plea bargain which lowered all charges to a misdemeanor and let them pay their fines out of the money that they had in the car on the seat. As the disgusted officer was leaving the Attorneys Office one of the men said: You were lucky, we were waiting for you to make a mistake and we were going to take you out. Now put yourself in that scenario and tell me how would you keep your moral up and how frustrated would you get about your job? pause This is one incident but the ramifications of what could of happened is plain disgusting. What we are here to ask all of you is Where is the justice?? When killing an elk out of season has a stiffer penalty than taking a car which is no different than a loaded gun and pointing it at a innocent person and taking their life. We have as a society who through negligent laws has totally turned priorities backward of what they should be. Montana is noticeably behind the rest of the nation on how it handles DUI

Drug and Criminal offenses. These people who signed our letters are telling you something and you better react. The last election in this state and this nation wasn't about Democrats or Republicans it was about being fed up with government in general and how it is not listening to the people and if you don't get in touch with what they are saying to you next election will be another learning experience for you that you may not like. Believe me when I tell you that a large percentage of the people in this state and Country are saying enough is enough. I strongly urge you to support any and all legislation that will help to stop the atrocities that are being allowed at this time in our state. Please help us and I mean us as letter signers and citizens of Montana to stop this feel good system and install some fear in people who chose to disobey the law and hopefully from your actions maybe some family out there on the roads or on the streets won't have to experience what our family has gone through do to the neglect of the system. As my wife Lorri says My son did in one moment what two countries failed to do in 18 years, and that's to take one habitual offending drunk off the roads of Montana. Not by choice he laid his life down to make safer roads for Montanans. So I stand here today to try to get people to face a reality I face every day not by choice but by the choice of a drunk driver who over and over again laughed at our Judicial System and used it to his advantage. Is it not time to stand up and be accountable as Representatives of your constituents and of the State of Montana and make the system work again for the people whom you owe allegiance to by their vote of confidence in you? Please do your duty and support efforts to correct these laws for the safety of all our loved ones. Don't let another family go through what we have gone through, no one should have to face what we face every day. By making it a felony to drive and drink it will go along ways toward putting fear back into these habitual offenders of DUI laws. In the future I would hope the Judicial system also would close the loop holes in the law that makes Deferred Imposition of sentence and Plea Bargaining the mainstay of our court systems today. Common sense dictates that if you disobey a law you should have to pay the consequences. I believe that if some fear is established in the law that we can save some people from living the life my family is now living. And please don't put a dollar value on human life by trying to ascertain a way out by saying there's not enough prison space. When you get some fear into the people towards the law we will save money and above all we will save families and communities a lot of grief. That's why my family and I and all these friends of ours are here, we want to make a difference for all Montanans. Thank You for your time and consideration.

EXHIBIT 2
DATE 3/14/85
SB 316, 333, 287

My name is Jill Campbell. I am here to give my support to House Bills 237-316-333. I feel if our drunk driving laws were different, I would not have to be here right now.

Because of a drunk driver my hole family lives have been turned upside down. Last Aug. on her way home from a rodeo in Kalispell my 16 year old daughter and her good friend Anita were killed by a drunk driver. Dr. Miller passed on a double double yellow line and hit our truck head on. Anita was killed instantly, Jana was unconscious and life flighted back into Kalispell. Unless you are a parent and received one of those midnight phone calls, you will never know the fear that grips your heart. I keep thinking, this is not happening to us. We are supposed to leave on vacation in the morning. Instead we are heading to the hospital in Kalispell. I can still see all those flashing lights ahead. I do not want to drive by the accident scene, but we had too. I did not look but I can still hear my 14 year old son saying NO WAY. When we got to the hospital and the doctor finally came in to tell us what was happening, he said she was still unconscious. The CAT scan showed on internal injuries, no broken bones but... she had sustained major head trauma. She was bleeding inside her brain and there is nothing you can do for that except pray it will stop and the swelling will go down. He told us we could go in and see her in a minute. It took all my strength just to walk in that emergency room.

I can not begin to tell you how hard it was to see her hooked up to all those machines. I just wanted to take her into my arms, but I could not. I did manage to tell her how much I loved her and that she was strong and could fight this. The next 2 days were a living hell. My hole family was there to give there love and support. We all took turns sitting by her side, talking to her and praying for her. I would sit there and hope she could here me tell her how much I loved her and needed her to wake up. Even after the doctor came in and told us it would take a miracle to pull her through, I still would not gibe up hope. It all seemed like a bad dream and I just wanted to wake up.

Then the hospital Chaplain came in and told me I needed to let her go. That I had to tell her it was ok. If she was to go in peace she needed to here me tell her that I would be ok with out her. I told him I could not say that. I was not ready to give up. They say miracles happen every day. I wanted one. Finally I did tell her, but I added that if it was not her time she did not have to go. We still had concerts and rodeos to go too. she died the next afternoon.

I made a promise to myself that I would try to get our drunk driving laws changed. The DUI Task Force has made a good start.

On House Bill 333, I believe treatment in the early stages can be a very important part in controlling this crime. In DR. Millers case he realized treatment was important only after killing 2 innocent people.

I think not giving a person a probationary license, until they complete a treatment program is a very good idea. We make it to

easy for a person to drive again so soon after there ticket. They just broke the law and do not deserve to drive again so soon. We need to make it a lot harder on drunk drivers. Let them have to walk to work or ride a bike for a while, maybe they will think twice before they drink and drive again.

House Bill 316. In 1984, if officers were to have used a hand held testing device, Dr. Miller might not have gotten his DUI reduced to a reckless driving ticket. Plus in 1988 and 1991 his careless driving tickets could have been DUI'S. Even the Judge said so last week when he was finally sentenced. If he would have been previously tested he might not have been driving drunk that night on our roads. We need to remember that passage of this bill will not mean a financial burden for the people of Montana. The device can be used at the discretion of each Police Department. My husband and I have already found funding for 3 of these devices if the bill is passed. I think you would be amazed at how many civic organizations would support a idea like this. Not to mention the State DUI Task Force or local Task Forces.

Making the third or forth DUI a felony is long over due. Every week in Lake County alone paper you read time after time about repeat offenders. The use of a hand held testing device could have convicted Dr. Miller and made him have 3 DUI'S. Then my daughter and her friends death would have been a felony and he would not be getting out of prison in as little a 15 months.

House Bill 237 that deals with open container. In Dr. Millers own words, he bought a 6 pack of beer and took off for Hamilton. Takeing the back roads to stay away from traffic. The 6 pack he drank while driving was not enough, he had to stop for drinks in Charlo then in Pablo. They found open containers in his truck after the crash. If people can drink legally going down our highways who is there to tell them when they have had enough. How is a police officer going to judge who has had a little to drink and who has had alot. Are there any of us that can not wait until our dentation to have that drink.

In my mind there is nothing you can do today to make things too hard on drunk drivers. For to long we have dealt with this as a social problem. When actually it is a criminal act. Give the Police Officers the tools to do there job.

J. Engle

EXHIBIT 3
DATE 3/14/95
SB 237, 316 333

Nancy K. H Jovin Ravalli County DUI Task Force Coordinator
402 N. 2nd
Hamilton MT. 59840

SB 237- Open Container Law

1-3- On a way of the State open to the public
Motor vehicle in transport.

My feeling on this bill and the ones to follow are long overdue. Montana seems to have "The Good ole Boy" additude. "Well maybe Joe has a drink now and then." Well that's fine for Joe as long as he does not get behind the wheel of a automobile. Drinking and driving should be thought of as a CRIME..not a social problem. Being impaired and driving is a crime. We are losing our neighbors, friends, and families because of this casual additude. Let's show the people of this state that we care. We care enough to be tough on drinking and driving. That means that it will be treated like the crime that it is, not just somebody's recreational time turned bad. This is a crime and should be treated as such. Joe can wait until he is out of his car to have a cold one. With the exceptions, (i.e. chartered, for-hire vehicles, motorhomes and RV's.) Joe may still enjoy recreation, but not while endangering others.

SB 316 Section 1

I am in agreement with the preliminary testing to help determine "probable cause" My questions come in Section 1 Subsection 8. that requires the department to certify both the devices and the operators before preliminary tests may be conducted. First, do we have such certified devices and the operators. Before we pass Laws that will require these things maybe we should investigate that. Second how often will devices and officers need to be recertified? Are we putting the horse before the cart? As I have said I am in favor of this as soon as these questions have been answered and adhered to.

SB 316 sec. 2

I am adamantly for this section of this bill. Youth and alcohol do not mix. That's why it is already a law. They drink, they drive, they injure themselves and others if they are lucky, or they die. They lack experience just driving, let alone add a drink or two. This part of the bill directly relates to SB 237. The open container law. The place where youth drink most frequently is in a car. Both these two bills are a great deterrent to our drinking and driving problems.

SB 316 sec. 3

In 993, the legislature provided for the forfeiture of vehicles driven by people who are three-time offenders. When it comes time to enforce this law the offender no longer owns a car. This law is a must if we are realistically going to enforce a law already in place. Subsection 3 Making a transfer in violation of the section a felony offense with hefty fines and jail time should be significant enough to stop this practice.

SB 316 sec. 4

Great.. Lets eliminate the possibility of deferred prosecution. The victims of these offenders have lost their choice, why should offenders have more rights than their victims?

SB 316 Sec. 5

As there is no deterrent to not drive while a persons drivers license is suspended or revoked, we have got to get stiffer laws that would stop the problem we have now with multiple offenders. In Ravalli County Jail right now we have three multiple DUI offenders. They don't seem to mind our penalties as they are now. However our law enforcement ,and our judges are reluctant, to say the least, about enforcing this law already. This section also states to "render inoperable" and that will be more easily enforceed. Subsection 5 Joint ownership is also addressed in regard to seizures and is not a bar to such actions,with an "out" for the truly innocent joint owner similar language is already found in the existing forfeiture procedure. Subsection 7 is again a must. Suspending or deffered penalties are used to give the multiple offender another chance to kill or injure others, costing all of us more then any of us can imagine. Why make a law if it is not going to be enforced?

SB 316 Sec. 6

This is simple to me. Finally something that is really logical. Why would a person not refuse if the penalty is only 90 days compared to 6 months? They can plead not guilty, have their day in Justice Court, then appeal and have another day in District Court. This refusal thing has gotten way out of hand.

SB 316 Sec.7

Consistency is not only important but easy to practice. Let's amend the generic forfeiture provision to be consistant with section 5 and be subject to the same existing procedures.

Sec. 8 Multiple offenders are truly our biggest problem. When it comes to risking lives. Remember driving while empaired is a crime. Let's make the laws show we are serious about this problem, not social but criminal. DUI's are a violent crime. Three strikes and you are out. Subsection 6 Forth time offenders, whether or not it happened 5 years or ten years apart should be a felony offence. Once the offender has shown society that they refuse to take DUI laws seriously they are a dangerous offender, and not safe to society. Subsection 9 Why did 1991 Legislation change or fix something that was not broken? Slow year I guess. No deffered sentences.

SB 316 Sec. 9

There really is no reason why the department should destroy such criminal records. The information is not publicly available but is still to prosecutors and the courts. It is confidential criminal justice information. If a person has a track record that is going to put us all in danger, shouldn't we keep track? Subsection 8 has two conviction that are almost identical. The only difference being, alcohol concentration level from testing is generally present in excessive concentration offenses. They are identical offenses and should be treated as such.

SB 333 Subsection 4 section 2

Treatment is critical in dealing with DUI offenders. A judge is not certified to make recommendations concerning treatment. In my personal experience drunks are about the best liars and cons around. Only a person trained in chemical dependancy can get the truth.

SB333 cont.

Councilors can determine the best recommendations. Also in section 4 if, on the second or subsequent offence two councilors can't agree on treatment, a judge could, after seeing all the evidence, make recommendation.

SB 333 Sec 1 & 3

It states that probationary drivers licenses will not be issued until the course of treatment is completed. This only makes sense to me. Why reward an offender and give them back the privilege to drive if they are not willing to complete treatment? What would the incentive be? Why even take away the privilege in the first place?

This bill, in the way that it is^{seems} seems to treat excessive alcohol concentration sentencing differently. What do prosecutors know about chemical dependency that qualifies them to recommend different treatment? In my experience an alcoholic is alcholic and treatment does work in many cases. That is our primary purpose isn't it? To stop drinking and driving in return we have safe highways, and the huge losses that we are experiencing now to decline?

Hi my name is Peggy Wheeler
I lost my only daughter to
a drunk driver on Aug 19, 1994
The driver of the truck that
hit my daughter and her
friend Jane wanted to
know ^{why} our children were
in the wrong side of the
road. He was the one on
the wrong side. This man
had 4 Reckless & careless
driving tickets before this.

* He was an emergency room
physician at a local hospital.
That worked on DUI victims
everyday so he knew what
drinking & driving would do
to a person. My daughter
died instantly but her

friend lived 2 more days after. On that day I not only lost my only child I lost any future for my part of family the family tree. I don't get to see her go to college or get married. To share her getting pregnant and having my first or any grandchildren. Her father past away in 1982. So this drives also wiped out the only thing precious I had left of that man and marriage. It only exists in pictures and memories.

For the last 6 months I have picked up area papers

EXHIBIT 4
DATE 3/14/95
SB 237, 316, 333

and seen either a picture
of my daughter or the
doctor. That is really
tough on holidays when
you going through the
motions but really don't
have any heart for any
of it.

I my self and a recovering
alcoholic for almost 6 years
I thank god everyday for
that sobriety. And because
of my alcoholism my daughter
had made the choose she
didn't need to drink. I was
very proud of that decision.
Please pass these laws so
other people don't have to
go through this.

EXHIBIT 5
DATE 3/14/95
SB 237, 316, 333

HOUSE OF REPRESENTATIVES

SB 237, SB 316, SB 333 - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME MICHAEL K. Bloom BUDGET _____

ADDRESS 221 BEEKEFRIDGE DATE 3/14/95

WHOM DO YOU REPRESENT? Montana Assn. of Chiefs of Police

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: IT'S THE RIGHT THING TO DO,

After all the effort to get the middle
part of the slide right it is finally
possible to see the main thing that
happened. The first part of the
experiment was to see if the
magnetic field affected the
magnetization of the sample.
This was done by putting the
sample in a magnetic field and
then measuring its magnetization
and comparing it to the magnetization
of a sample that was not in a
magnetic field. The results showed
that the sample in the magnetic field
had a higher magnetization than
the sample that was not in a
magnetic field. This is a clear
indication that the magnetic field
affects the magnetization of the
sample. The next part of the
experiment was to see if the
magnetic field affected the
magnetization of the sample.
This was done by putting the
sample in a magnetic field and
then measuring its magnetization
and comparing it to the magnetization
of a sample that was not in a
magnetic field. The results showed
that the sample in the magnetic field
had a higher magnetization than
the sample that was not in a
magnetic field. This is a clear
indication that the magnetic field
affects the magnetization of the
sample.

~~Address~~ ~~Telephone~~ ~~Comments~~

$$S_2 = b_1 = S$$

EXHIBIT C

DATE 3/14/95
SB 316,383

~~Attention~~

Remember, we're still a rural society
placed on "restrictions" & most of us have no
education on this, or any other
"disease", has not, cannot, and never will
be an acceptable alternative to proper
treatment. Too often, the symptoms of the
ailment are being quenched while the
disease continues unchecked.

I speak at this out of my own
experience and observation of many, many
others. Please, listen to the voice of the
and us who see this problem from the inside.

I will continue to be available to
any discussion of this, or any other
matter, at any time.

Thank you all for your time and
consideration.

Sincerely,

George Gallagher
6718 Roberts Rd
Clark, MT 59824

Secretary -

Please see that each
Committee member receives a copy
of this letter. Thank you.

C. E. T.

EXHIBIT 71
DATE 2/13/95
HB 256

**Amendments to House Bill 256
Introduction Reading Copy**

**Prepared by David L. Nielsen
2/13/95 8:05am**

REASON FOR AMENDMENT: This amendment increases the minimum imprisonment on DUI convictions. It increases the maximum sentence on a first offense to 6 months. It permits the suspension or deferral of imprisonment if the defendant completes an approved chemical dependency treatment. It requires community service as a condition of a deferred or suspended sentence.

1. Title, line 4.

Following: "THE"

Strike: "PENALTY"

Insert: "PENALTIES"

Following: "ON"

Strike: "THE FOURTH OR SUBSEQUENT"

Insert: "A"

2. Page 1, line 16.

Following: "less than"

Strike: "24"

Insert: "48"

Following: "more than"

Strike: "60 days"

Insert: "6 months"

3. Page 1, line 19.

Following: "well-being"

Insert: ", or the defendant voluntarily enrolls in and successfully completes a chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall perform community service."

4. Page 1, line 21.

Following: "less than"

Strike: "7"

Insert: "30"

5. Page 1, line 22.

Following: line 21

Strike: "48"

Insert: "72"

Following: "more than"

Strike: "6 months"
Insert: "1 year"

6. Page 1, line 23.
Following: "8,"
Strike: "3"
Insert: "30"

7. Page 1, line 24.
Following: "well-being"
Insert: ", or the defendant voluntarily enrolls in and successfully completes an inpatient chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall perform community service."

8. Page 1, line 25.
Following: "third"
Strike: "~~or subsequent~~"
Insert: "or subsequent"

9. Page 1, line 26.
Following: "less than"
Strike: "30 days, at least 48 hours of which must be served consecutively,"
Insert: "6 months"

10. Page 1, line 27.
Following: "consecutively, or more than"
Strike: "1 year"
Insert: "10 years"
Following: "less than"
Strike: "\$500"
Insert: "\$1,000"
Following: "\$500 or more than"
Strike: "\$1,000"
Insert: "\$50,000"

11. Page 1, line 30.
Following: "first"
Strike: "10"
Insert: "60"

12. Page 2, line 1.
Following: "suspended."
Insert: "The remainder of the minimum 6 month imprisonment may only be suspended or deferred on the condition that the defendant successfully completes an inpatient chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall

perform community service."

13. Page 2, lines 14 through 18.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

EXHIBIT 8
DATE 3/14/85
SB 63

SUGGESTED AMENDMENT FOR #1
SENATE BILL 63

At line 19, after "Montana," add:

and is not an interstate railroad corporation.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/14/91BILL NO. SB 237SPONSOR(S) Sen Bishop

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
POBOK 77 JEFFERSON CITY <u>ELLYCIA TAAPKEN</u> 59638	Jefferson Co. DUI TASK FORCE	X	
MARK Ody P.O.B. 1554 Billings, MT 59103	Yellowstone Co. DUI Task Force Billings Police	X	
MIKE, LORRI, LACEY SCHWYZ RT, Box 6, Loma, MT. 59460	Chouteau County Citizens	X	
Nancy Hanford Box 1293 Ft. Benton 59442	Chouteau Co. Citizens	X	
Dat Henke Box 566 Ft. Benton, 59442	Chouteau County	X	
Selma Hardeland 218 S. Maryland Centro, MT.		X	
Elizabeth & Mark McFone Centro, MT.		X	
JEANETTE & JAIME SNODGRASS	GREAT FACES LTD	X	
Albert Boe	Hgh. Traffic Safety	X	
Craig T Reap	1H 1P	X	
Harold Houser	state DUI Task Force	X	
Mike Ruppert McHuddleston	Boyd and New Inc. City of Helena	X	-

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NAME AND ADDRESS	REPRESENTING	Support	Oppos
George Bonini	MTEA	X	
Mary K. Tamm	Rivalli City DUI T.F.	X	
Karen Longer	Dui Task Force Inc. C.	X	
Laurene Kastrik	O.C. of MT	X	
Charles R. Brooks	Yellowstone County ✓		
Peter Funk	State DUI Task Force ✓		

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BILL NO. SB 316 SPONSOR(S) Sen Bishop

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Assist Go Be	Highway Traffic Safety	X	
ELLYCIA TARPKEN PO Box 77 Jefferson City Mike, Lorri, Lacy Schutte Rt. Box 6, Loma, MT. 59460	Jefferson Co. DUI Task Force	X	
Nancy Hanford Box 1293 Ft Benton 59442 BOKS06	Chouteau County	X	
Pat Henke Ft.Benton	Chouteau Co	X	
Craig & Reap	MHP	X	
Harold Hansen	State DUI Task Force	X	
Joe Roberts	DUI Task Force	X	
Mike Ruppert Ime Middleston	Boyd Andrew CDCC City of Helena	X	
George Bonini	Mountain Traffic Ed.	X	
Mary K. Town	Rawalli City DUI Taskforce	X	
Lance Longen	DUI Task Force Lolo	X	

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NAME AND ADDRESS	REPRESENTING	Support	Oppos.
Laurie Korthik	C.C. of MT	✓	
Charles R. Brooks	Yellowstone County	✓	
Peter Funk	State DUI Task Force	✓	

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DATE 3/14/95BILL NO. SB 333 SPONSOR(S) Sen Bishop

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Asker & Goke Mike, Lorri, Lacy Schulz RR, Box 6, Loma, MT 59460 ELLYCIA TAAPKEN JEFFERSON CITY 59658	Night Traffic Safety Chouteau County Jefferson Co. DUI Task Force	X	
Pox 1293 Ft Benton Nancy Hafner 59442	Chouteau Co. Citizens	X	
Dick Henke Box 586 Ft. Benton	Chouteau Co.	X	
Craig Reag	MHP	X	
Harold Hansen	state DUI Task Force	X	
Mike Rymer	Bridg ANDREW CO	X	
Tom Kudlak	City of Helena	-	
George Bonini	MTEA	X	
Jerry Brummet	DCHS / ADHS	V	
Nancy K. Join	DUI Task Force Ravalli City	X	
Loren Conner	DUI Task Force Tolson ^{Linky}	X	

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MSPOA

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X

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Diane Kunk	C City Mr	✓	
MICHAEL K Bloom	Chiefs of Police	✓	
Nancy Jean Boles	DC HIS - ADAD	✓	
Charles R Brooks	Follows for County	✓	
Peter Funk	State DUI Task Force	✓	

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