

**BUSINESS REPORT**  
**MONTANA SENATE**  
**62nd LEGISLATURE - REGULAR SESSION**

**SENATE JUDICIARY COMMITTEE**

**Date:** Monday, February 14, 2011  
**Place:** Capitol

**Time:** 9:00 AM  
**Room:** 405

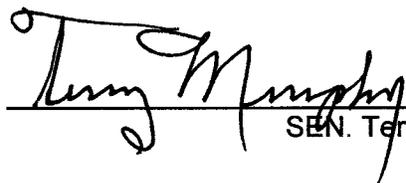
**BILLS and RESOLUTIONS HEARD:**

SB 262 - Generally revise elder abuse law

**EXECUTIVE ACTION TAKEN:**

SB 42-Do Pass As Amended  
SB 97-Do Pass  
SB 268-Do Pass  
SB 169-Withdrew Motion-Do Pass As Amended

**Comments:**

  
SEN. Terry Murphy, Chair

# MONTANA STATE SENATE

## ROLL CALL

### 2011 JUDICIARY COMMITTEE

DATE: 2/14/11

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, TERRY MURPHY	/	
VICE CHAIRMAN, JIM SHOCKLEY	/	
SENATOR JEFF ESSMANN	/	
SENATOR SHANNON AUGARE	/	
SENATOR ANDERS BLEWETT	/	
SENATOR GREG HINKLE	/	
SENATOR ROWLIE HUTTON	/	
SENATOR LARRY JENT	.	/
SENATOR CLIFF LARSEN	/	
SENATOR LYNDA MOSS	/	
SENATOR JIM PETERSON	/	
SENATOR CHAS VINCENT	/	



## SENATE STANDING COMMITTEE REPORT

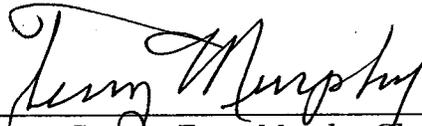
February 14, 2011

Page 1 of 3

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 42** (first reading copy -- white) **do pass as amended.**

Signed:

  
Senator Terry Murphy, Chair

**And, that such amendments read:**

1. Title, line 7.

**Following:** "SAMPLES"

**Insert:** "IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE"

2. Title, line 8 through line 9.

**Following:** "TESTING" on line 8

**Strike:** remainder of line 8 through "TESTING" on line 9

3. Title, line 10.

**Following:** "61-8-404,"

**Strike:** "AND"

**Following:** "61-8-405,"

**Insert:** "AND 61-8-409,"

4. Page 1, line 24 through page 2, line 8.

**Strike:** section 2 in its entirety

**ReNUMBER:** subsequent sections

5. Page 3, line 1 through line 2.

**Following:** "~~but~~" on line 1

**Strike:** remainder of line 1 through "refusal,"

**Insert:** "except as provided in subsection (5), but"

6. Page 3, line 7.

**Strike:** "(6)"

**Committee Vote:**

**Yes 9, No 3**

Fiscal Note Required

**Insert:** "(7)"

7. Page 3, line 8.

**Insert:** "(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may obtain a search warrant to collect a sample of the person's blood for testing."

**Renumber:** subsequent subsections

8. Page 3, line 12.

**Following:** "subsection"

**Strike:** "(6) (b)"

**Insert:** "(7) (b)"

9. Page 3, line 25.

**Following:** "subsection"

**Strike:** "(6) (b)"

**Insert:** "(7) (b)"

10. Page 6, line 8.

**Insert:** "**Section 5.** Section 61-8-409, MCA, is amended to read:

**"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized

suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

**Renumber:** subsequent sections

11. Page 6, line 9 through line 10.

**Strike:** section 6 in its entirety

**Renumber:** subsequent sections

- END -

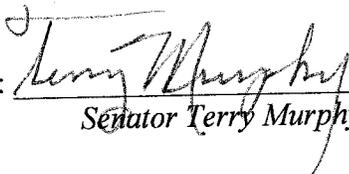


**SENATE STANDING COMMITTEE REPORT**

**February 14, 2011**  
**Page 1 of 1**

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 97** (first reading copy -- white) **do pass.**

Signed:   
*Senator Terry Murphy, Chair*

- END -

**Committee Vote:**  
**Yes 7, No 5**  
Fiscal Note Required

SB0097001SC.sdr

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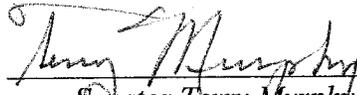


**SENATE STANDING COMMITTEE REPORT**

**February 14, 2011**  
**Page 1 of 1**

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 268** (first reading copy -- white) **do pass.**

Signed:   
*Senator Terry Murphy, Chair*

- END -

**Committee Vote:**  
**Yes 7, No 5**  
Fiscal Note Required

SB0268001SC.sdr

DR

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB42 MOTION NO. 1

MOTION: Remove Clemente

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	/		
SENATOR LYNDA MOSS	/		
SENATOR CHAS VINCENT	/		
SENATOR LARRY JENT	/		/
SENATOR ANDERS BLEWETT	/		
SENATOR SHANNON AUGARE	/		
SENATOR CLIFF LARSEN	/		
SENATOR ROWLIE HUTTON	/		
SENATOR JIM PETERSON	/		/
VICE CHAIRMAN SHOCKLEY	/		
SENATOR JEFF ESSMANN	/		
CHAIRMAN MURPHY	/		

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB42 MOTION NO. 2

MOTION: amend 004203.cwl

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	/		
SENATOR LYNDA MOSS	/		
SENATOR CHAS VINCENT	/		
SENATOR LARRY JENT	/		
SENATOR ANDERS BLEWETT	/		
SENATOR SHANNON AUGARE	/		
SENATOR CLIFF LARSEN	/		
SENATOR ROWLIE HUTTON	/		
SENATOR JIM PETERSON	/		/
VICE CHAIRMAN SHOCKLEY	/		
SENATOR JEFF ESSMANN	/		
CHAIRMAN MURPHY	/		

12/0

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO. SB42 MOTION NO. \_\_\_\_\_

MOTION: Do Pass as Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	.	—	
SENATOR LYNDA MOSS	—		
SENATOR CHAS VINCENT		—	
SENATOR LARRY JENT	—		—
SENATOR ANDERS BLEWETT	—		
SENATOR SHANNON AUGARE	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY		—	

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# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB97 MOTION NO. 2

MOTION: Amend 97.02

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	/		
SENATOR LYNDA MOSS		/	
SENATOR CHAS VINCENT	/		
SENATOR LARRY JENT		/	/
SENATOR ANDERS BLEWETT		/	
SENATOR SHANNON AUGARE		/	
SENATOR CLIFF LARSEN		/	
SENATOR ROWLIE HUTTON	/		
SENATOR JIM PETERSON	/		/
VICE CHAIRMAN SHOCKLEY	/		
SENATOR JEFF ESSMANN		/	
CHAIRMAN MURPHY	/		

6/6

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB 97 MOTION NO. 1/3  
 MOTION: Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	—		
SENATOR LYNDA MOSS		—	
SENATOR CHAS VINCENT	—		
SENATOR LARRY JENT		—	—
SENATOR ANDERS BLEWETT		—	
SENATOR SHANNON AUGARE		—	
SENATOR CLIFF LARSEN		—	
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY	—		

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# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB169 MOTION NO. \_\_\_\_\_

MOTION: amend 169-02 and  
(hinkle)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	—		
SENATOR LYNDA MOSS	—		
SENATOR CHAS VINCENT	—		
SENATOR LARRY JENT	—		—
SENATOR ANDERS BLEWETT	—		
SENATOR SHANNON AUGARE	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY	—		

*12/0*

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB 169 MOTION NO. 3

MOTION: amendment 00169.01 (MOSS)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE		/	
SENATOR LYNDA MOSS	/		
SENATOR CHAS VINCENT		/	
SENATOR LARRY JENT	/		/
SENATOR ANDERS BLEWETT	/		
SENATOR SHANNON AUGARE	/		
SENATOR CLIFF LARSEN	/		
SENATOR ROWLIE HUTTON		/	
SENATOR JIM PETERSON		/	/
VICE CHAIRMAN SHOCKLEY		/	
SENATOR JEFF ESSMANN		/	
CHAIRMAN MURPHY		/	

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# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO SB 169 MOTION NO. 4

MOTION: \_\_\_\_\_

*conceptual (Shockley)*  
p 29 line 2 - strike all after 2nd comma

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	/		
SENATOR LYNDA MOSS	/		
SENATOR CHAS VINCENT	/		
SENATOR LARRY JENT	/		/
SENATOR ANDERS BLEWETT	/		
SENATOR SHANNON AUGARE		/	
SENATOR CLIFF LARSEN	/		
SENATOR ROWLIE HUTTON	/		
SENATOR JIM PETERSON	/		/
VICE CHAIRMAN SHOCKLEY	/		
SENATOR JEFF ESSMANN	/		
CHAIRMAN MURPHY	/		

11/1

# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO. SB 268 MOTION NO. 2

MOTION: amend - strike primary; insert general (Blewett)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE		—	
SENATOR LYNDA MOSS	—		
SENATOR CHAS VINCENT		—	
SENATOR LARRY JENT	—		—
SENATOR ANDERS BLEWETT	—		
SENATOR SHANNON AUGARE	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROWLIE HUTTON		—	
SENATOR JIM PETERSON		—	—
VICE CHAIRMAN SHOCKLEY		—	
SENATOR JEFF ESSMANN		—	
CHAIRMAN MURPHY		—	

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# MONTANA STATE SENATE

## ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 2/14/11 BILL NO. SB268 MOTION NO. 1

MOTION: Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE	/		
SENATOR LYNDA MOSS		/	
SENATOR CHAS VINCENT	/		
SENATOR LARRY JENT		/	/
SENATOR ANDERS BLEWETT		/	
SENATOR SHANNON AUGARE		/	
SENATOR CLIFF LARSEN		/	
SENATOR ROWLIE HUTTON	/		
SENATOR JIM PETERSON	/		/
VICE CHAIRMAN SHOCKLEY	/		/
SENATOR JEFF ESSMANN	/		
CHAIRMAN MURPHY	/		

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# AUTHORIZED SENATE COMMITTEE PROXY

I, Senator Larry Jent, request to be excused from the  
**Judiciary COMMITTEE**  
due to my other commitment. I desire to leave my proxy vote with:

Sen. Moss

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.

BILL/AMENDMENT	AYE	NO	BILL/AMENDMENT	AYE	NO
3/16/11 SB 185 - Dotaw	X		2/14/11 SB 268 Dotaw		X
SB 167 - Dotaw	X				
SB 167 - Talbe		X			
1/14/11 SB 42 Removal/Amend	X				
SB 42 Amend 42.03	X				
SB Dotaw Amend	X				
SB 97 Amend 97.02		X			
SB 97 Dotaw		X			
SB 169 amend 169.02	X				
SB 169 amend 169.01	X				
SB 169 amend concep.	X				
SB 268 amend					
primary/general	X				

Sen. Larry Jent  
(Signature)

Date \_\_\_\_\_

# AUTHORIZED SENATE COMMITTEE PROXY

I, Senator Jim Peterson, request to be excused from the  
**Judiciary COMMITTEE**

due to my other commitment. I desire to leave my proxy vote with:

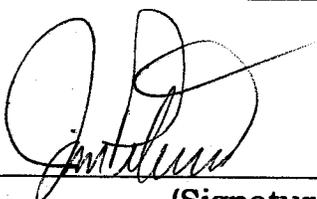
Vice Chair Terry Murphy

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.

BILL/AMENDMENT                      AYE      NO

BILL/AMENDMENT                      AYE      NO

2/14/11 SB 42 Remove Comd	Y	
SB 42 Amend 42.03	Y	
SB 42 Dotans Comd	Y	
SB 97 Amend 97.02	X	
SB 97 Dotans	X	
SB 169 amend 169.02	X	
SB 169 amend 169.01		X
SB 169 amend concept.	X	
SB 268 amend Remain general		X
SB 268 Dotans	X	


Sen.   
(Signature)

Date \_\_\_\_\_



