



Karen Armstrong Room # 173

**National
Transportation
Safety Board**

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Safety Information

**WRITTEN TESTIMONY OF
NATIONAL TRANSPORTATION SAFETY BOARD**

BEFORE THE

SENATE AND HOUSE JUDICIARY COMMITTEES

MONTANA LEGISLATURE

ON

IMPAIRED DRIVING LEGISLATION

**SENATE BILLS 15 AND 42
HOUSE BILLS 14, 29, AND 102**

HELENA, MONTANA

JANUARY 19, 2011

Chairman Shockley, Chairman Peterson and members of the Senate and House Judiciary Committees, the National Transportation Safety Board (NTSB) is pleased that your committees are devoting two days to the consideration of important legislative proposals that address impaired driving. Please accept this written statement concerning our recommendations for addressing hard core drinking drivers.

The NTSB is an independent federal agency charged by Congress to investigate transportation accidents, determine their probable cause, and make safety recommendations to prevent their recurrence. The recommendations that arise from our investigations and safety studies are our most important product.

The Alcohol-Highway Safety Problem

The NTSB has recognized for many years that more deaths result from motor vehicle crashes than from crashes in all other transportation modes combined. Almost 95 percent of all transportation related deaths each year result from highway crashes. And each year, more than 30 percent of highway deaths nationwide involve an alcohol-impaired driver. In Montana, in 2009, the number was closer to 37 percent.

While the personal, emotional toll it can take on individuals and families is staggering and incalculable, impaired driving also has a dramatic and measurable financial impact. According to estimates by the National Highway Traffic Safety Administration (NHTSA), alcohol-impaired driver-related crashes cost our nation billions of dollars. While the affected individuals cover some of these costs, overall, people *not* directly involved in crashes pay for nearly three-quarters of all crash costs, primarily through insurance premiums, taxes, and travel delay. The lifetime cost to society for each fatality is more than \$977,000. Clearly, much needs to be done to reduce this ongoing tragedy.

The Hard Core Drinking Driver

The NTSB is particularly concerned with hard core drinking drivers, who are involved in about 70 percent of alcohol-impaired-driver-related fatalities (more than 75 percent in Montana). The NTSB defines hard core drinking drivers as individuals who drive with a blood alcohol concentration (BAC) of 0.15 percent or greater, or who are arrested for driving while intoxicated within 10 years of a prior driving while impaired (DWI) arrest. Since 1982, more than 250,000 people died in crashes involving hard core drinking drivers. Most experts agree that impaired

drivers persist in their behavior because these drivers believe that they will not be caught and/or convicted. Unfortunately, that perception is based on reality. NHTSA estimates that by the time an individual is arrested for DWI, he or she will have made 772 trips with any alcohol in the system and 88 trips legally impaired by alcohol.

After completing the safety study in 1984, the NTSB issued recommendations to curtail the problem of repeat DWI offenders. Since then, all 50 states have made efforts to address impaired driving, making considerable progress in detecting, arresting, and adjudicating drinking drivers. However, the specific measures taken and the degree of implementation of the NTSB's 1984 recommendations have not been uniform, and alcohol-impaired-driver-related crashes continue to claim thousands of lives.

In 2000, the NTSB re-examined the impaired driver problem and issued new recommendations. In the 2000 report, the NTSB examined a variety of state programs and their effectiveness, and recommended a model program (attached) to reduce hard core drinking driving. The problem is complex; no single countermeasure by itself appears to reduce recidivism and crashes sufficiently. We need a comprehensive system of prevention, apprehension, sanction, and treatment to reduce the danger posed by these drivers.

BAC Testing

Every year, states commit substantial resources to implementing DWI countermeasures and preventing alcohol-related crashes. To appropriately allocate resources and evaluate and support DWI laws and programs, each state needs to know the full scope of alcohol involvement in its highway crashes. Complete and accurate information is essential. The NTSB recognized this fact more than 25 years ago, when it recommended that Montana and the other states require alcohol testing of all drivers involved in fatal highway crashes.

In 1982, only about 41 percent of drivers involved in fatal crashes in the U.S. were administered BAC tests. As of 2009, the testing rate was still under 50 percent, and only 31 percent for surviving drivers involved in fatal crashes. Montana's testing rate is substantially higher than the national average, but still 20 percent of drivers involved in fatal crashes (and more than 31 percent of those drivers who survived the crash) are not tested for alcohol. It is difficult to identify the full magnitude of the impaired driving problem when such a significant proportion of drivers are not given BAC tests. The scope of the problem may well be larger than we know.

Repeat offenders especially – those familiar with the system, whether previously convicted or diverted – are more likely to refuse a test than are first-time offenders. These offenders know that convictions are harder to obtain without a BAC test result, and the penalties for test refusal are not sufficiently severe for such offenders to volunteer a breath test. Other common reasons for failing to test drivers include lack of expertise, personal reluctance of those in the “testing system” (such as police officers and physicians), and absence of resources. The lack of a valid test result denies the state valuable information in identifying those most in need of a significant intervention and substantially weakens the system for preventing alcohol-impaired-driver-related fatalities.

By establishing procedures for obtaining a search warrant in the event of test refusal, Senate Bill 42 demonstrates the legislature’s commitment to obtaining accurate and reliable data, which will encourage law enforcement programs to devote resources to this issue.

Drivers with High Blood Alcohol Concentration

Drivers with a high BAC, 0.15 percent or greater, require strong intervention similar to that ordinarily prescribed for repeat DWI offenders. Those who reach this high BAC level have consumed large amounts of alcohol, much more than is generally considered to be social or responsible drinking. High-BAC offenders are also likely to be repeat drinking drivers. Research has found that drivers with a high BAC are at a substantially greater risk of being involved in a fatal crash. The Insurance Institute for Highway Safety (IIHS) has estimated that the relative fatality risk for drivers in single-vehicle crashes with a high BAC is 385 times that of a zero-BAC driver. For male drivers the risk is 607 times that of a sober driver.

Senate Bill 15 demonstrates that Montana recognizes the need to establish special programs and sanctions for high-BAC offenders. At least 46 states and the District of Columbia have laws providing for an “extreme” or “aggravated” DWI offense and 35 states define the extreme DWI offense as the drivers having a BAC of 0.15 percent.

Repeat Offenders

The NTSB defines repeat offenders as individuals who are arrested for a DWI offense within 10 years of a prior DWI arrest. The NTSB specifies arrest, not just conviction, because DWI offenders are not always convicted of DWI violations. Their charges may be reduced to a lesser, non-alcohol-related offense, erased, or not used for penalty enhancement after the driver has participated in a diversion program.

A diversion system eases the judicial caseload by offering incentives for a guilty plea. As noted earlier, however, an impaired driver has likely driven impaired on many occasions before being arrested once for DWI, let alone arrested twice. Not only can that first arrest and guilty plea not be used for penalty enhancement after diversion, often times the courts may not have any information about the prior offense when the offender is arrested again. Using diversion and erasing an offender's record after successful completion makes it that much harder to identify hard core drinking drivers. Moreover, NHTSA reviewed diversion programs in New York and California and found no evidence that diversion impacts recidivism.

Although Montana does not allow diversion for impaired driving offenses, it does not appear that Montana imposes any restrictions on the use of plea bargaining, the effect of which is similar to diversion – a subsequent DWI conviction may not place an individual in the repeat offender category. Yet, the American Psychological Association Diagnostic and Statistical Manual (DSM-IV) states that even one DWI offense is indicative of a substance problem. A high-BAC or repeat DWI arrest, therefore, supports the conclusion that the individual has an alcohol abuse problem and will continue to engage in dangerous driving practices unless significant countermeasures are imposed. Given the low likelihood of arrest and the need for long-term measures to change the behavior of hard core drinking drivers, the NTSB recommends that record-retention and look-back periods last at least 10 years. Currently, 27 states and the District of Columbia have a 10-year or longer look-back period. House Bill 14 addresses this issue by eliminating Montana's current 5-year look-back period.

Individualized Sanction Programs

DWI offenders, particularly hard core drinking drivers, do not respond to traditional punishment. Ordering fines, suspending licenses, and incarcerating hard core drinking drivers is not sufficient to get these DWI offenders to alter their

behavior; they are either unwilling or unable to do so without additional motivation. In recent years, individual courts have attempted to address the unique nature of hard core drinking drivers by sanctioning them uniquely.

In 1992, Rockdale County, Georgia, started imposing individual sanctions, based on the offense, history, and degree of the offender's drinking problem. All offenders received jail, while some were also ordered into Alcoholics Anonymous, periodic breath testing, and home detention. The Rockdale County program participants had a 6 percent recidivism rate after 1 year and a 13.8 percent recidivism rate after 4 years, compared to an 11 percent rate after 1 year and a 24.7 percent rate after 4 years for a neighboring jurisdiction.

Another program, implemented in Oregon in 1998, took aim at repeat offenders. DUI Intensive Supervision Program (DISP) is a 3-year program with close monitoring of second time offenders and built-in punishments and rewards. Components of DISP, in addition to an initial short jail sentence, include electronic monitoring and breath testing over phone lines, sale of all vehicles, mandated treatment, weekly attendance at Alcoholics Anonymous meetings, attendance at a victim impact panel, full-time employment or school attendance, frequent follow-up by a probation officer, regular court appearances, polygraph test, and additional jail time for non-compliance. An initial analysis done in 2006 indicates that in DISP, rather than the more traditional court adjudication of repeat DUI offenders, is associated with a 48 percent reduction in re-arrests for impaired-driving, a 54 percent reduction in re-arrests for driving while revoked or suspended, and a 39 percent decrease in all other traffic convictions.

In other jurisdictions, additional special programs, such as DWI Courts, incorporate treatment programs to help reduce the number of repeat offenders. The aim is to treat rather than merely punish. DWI Courts conduct substance-abuse interventions with defendants who plead guilty to DWI. Judge Hoffman, a judge from Michigan who has implemented a DWI court, says his recidivism rates have fallen to 13.5 percent from about 45 percent. In Idaho's Kootenai County DWI Court, which has also had success, it is estimated that the economic impact was about \$5.1 million saved while the cost of the program was only \$150,000.

House Bills 69 and 102 will strengthen Montana's impaired driving countermeasures by encouraging the use of DWI Courts.

Conclusion

Convening the Law and Justice Interim Committee demonstrates Montana's commitment to addressing impaired driving and the preventable crashes, injuries, and deaths that result. Montana's legislature is considering several proposals designed to improve its impaired driving countermeasure system. The NTSB specifically supports and encourages enactment of Senate Bills 15 and 42 and House Bills 14, 69, and 102. In addition, other elements of the NTSB's model program that the legislature should consider include facilitating the use of sobriety checkpoints; strengthening administrative license revocation; expanding the use of vehicle sanctions, such as vehicle immobilization and impoundment; and establishing a zero BAC limit for convicted DWI offenders. Thank you again for your consideration of this important issue.

NATIONAL TRANSPORTATION SAFETY BOARD HARD CORE DRINKING DRIVER MODEL PROGRAM

- Sobriety checkpoints (frequent, statewide)
- Vehicle sanctions
 - License plate actions (impoundment, confiscation, etc.)
 - Vehicle immobilization
 - Vehicle impoundment
 - Vehicle forfeiture
 - Ignition interlocks (court-ordered and administrative)
- State and community cooperative enforcement programs for driving while suspended/revoked/unlicensed
- Zero BAC for DWI offenders
- Aggravated offense for high BAC (0.15 or greater)
- Alternatives to confinement
 - Home detention with electronic monitoring
 - Intensive supervision probation
 - Jail-treatment facilities (for multiple DWI offenders)
 - Eliminate community service (does not reduce recidivism)
- Plea bargaining restrictions
 - Prohibit lessening of DWI offense to non-alcohol-related offense
 - Require reasons for DWI charge reduction to be entered into public record
- Eliminate diversion programs that allow erasing, deferring, or otherwise purging the DWI offense record, or that allow the offender to avoid license suspension
- Administrative license revocation for BAC test failure and refusal
- 10 year DWI record retention and offense enhancement period
- Individualized court-based sanction programs with frequent offender contact, unannounced testing, mandatory assessment, treatment, and long-term follow-up

"Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver," June, 2000