

SENATE JUDICIARY  
COMMITTEE NO. 4  
DATE 4/3/13  
CASE NO. HB233

STATE OF MONTANA  
**DEPARTMENT OF JUSTICE**  
MONTANA HIGHWAY PATROL DIVISION

Tim Fox  
Attorney General



2550 Prospect  
PO Box 201419  
Helena, MT 59620-1419

March 28, 2013

Chairman Murphy  
Senate Judiciary Committee

RE: Additional Information for HB 233

To the Members of the Senate Judiciary Committee,

The purpose of this letter is threefold: one, to provide some background, history and perspective of the 24/7 Program and how it came into being; two, to address some of the questions and comments that were raised in the hearing on HB 233; and three, to provide some additional information the Committee requested.

### **24/7 HISTORICAL INFORMATION**

The factual background that led to the adoption of the 24/7 Sobriety Program can be traced to the three tragic losses of Montana Troopers in the line of duty, all of which involved individuals who were under the influence of alcohol. Prior to those tragic events, we hadn't lost a trooper in nearly 30 years.

The Highway Patrol and its leadership felt compelled to do something real about Montana's culture of drinking and driving. To that end, Senate Joint Resolution 39 in 2009 was drafted by the Patrol, adopted by the Legislature, and assigned to the Law and Justice Interim Committee to study the DUI problem we were facing. The Patrol leadership then began evaluating programs adopted by other states which, through data analytics supported positive changes in the behavior of those offenders who abused alcohol and/or drugs.

It was during that exercise that the Patrol came across South Dakota's program which was initiated by then Attorney General Larry Long. In an effort to make sure that 24/7 was a good fit for Montana, the Patrol, in concert with the Law and Justice Interim Committee, decided to undertake a pilot project in Lewis and Clark County. During the pilot project, the Interim Committee moved forward with the legislation that ultimately became HB 106. HB 106 provided for the statewide implementation of the 24/7 Sobriety Program.

The goals of that legislation were fourfold. First, prior to 24/7, when a judge ordered people to not use alcohol or drugs as a condition of bond or sentence, there was no timely or standardized enforcement mechanism being utilized to ensure compliance with that order. The 24/7 Program was meant to establish a statewide program to ensure consistency and application of the program components. Second, there was no "portability" aspect to alcohol monitoring programs, meaning individuals who had certain sentencing restrictions, would be unable to travel – HB 106 created that portability.

Third, the 24/7 program changed state law to provide a "carrot" for those who participated in the program. That carrot, at least as applied to the DUI offenders, was a probationary driver license. DUI offenders were now able to maintain a driver license so that they could continue to be functioning members of society (versus driving illegally, without insurance, and perhaps under the influence of alcohol or drugs). Finally, this is a money saving program – 24/7 is an entirely offender pay program, not to mention the significant savings to those counties because they do not have to pay for these nonviolent offenders to spend time in jail. Instead, the offenders who participate in 24/7 are productive members of their communities – they remain with their families, they keep their jobs, they pay taxes, and they are held accountable for their decisions.

### **QUESTIONS & COMMENTS FROM THE COMMITTEE**

Statistics don't lie. Whether it's the findings from the RAND study or our own Montana statistics, this Program has exceeded our wildest expectations. It is keeping repeat DUI offenders sober and keeping them working in the community.

From October 1, 2011 to February 28, 2013, the statewide 24/7 Program has yielded the following statistics:

- 184,849 tests were administered during this period;
- Of those 184,237 were clean (stated differently, 99.7% of the tests administered were clean);
- When "no shows" are added to hot tests, the success rate of the Program statewide is 97.8%. In other words, 97.8% of the time, offenders show up and provide a clean test; and
- Just over 3.3 million SCRAM readings have been taken (the readings are taken on average every 30 minutes), with the overwhelming majority showing no violations (99.4%). These percentages have remained relatively constant throughout the life of the Program.

In addition, Judge Miller gave his own compelling statistical information, including that his county has saved over \$400,000 keeping offenders out of jail.

When the Patrol brought forward 24/7 in the 2011 Session, we told the Legislature that we were adopting a crawl, walk, run implementation strategy. The "crawl" was the pilot

project in Lewis and Clark County. The “walk” was the adoption of HB 106 in the 2011 Session and its application to DUI and dangerous drug offenders. Of some interest to the Committee, there were legislative members in 2011 who wanted to apply 24/7 to additional offenses, but we didn’t want to do so until the sheriffs were comfortable with the program, and we could begin measuring its beneficial impacts in earnest.

Now that we have this experience, the “run” is the logical expansion of the 24/7 Program to apply to other crimes where there is a nexus to alcohol or drug abuse. This is exactly what South Dakota did which led to the favorable review and findings by the RAND Corporation. We expect to see further reductions in crime and more money saved for the taxpayers.

While the changes to the program spelled out in HB 233 might appear vast, they largely harmonize the statutory language with current practice and allow for the expansion into other crimes beyond repeat DUI offense. Every stakeholder group that testified for the bill had a hand in crafting the language, using the varying expertise that they bring to the table. As the unofficial chair of the Advisory Council, I can also assure you that these changes are necessary to maintain the desired level of consistency across the State. Right now, there have been varying interpretations of the 24/7 program, in part caused by confusion associated with codification instructions from the 2011 Session. I am happy to provide the Committee with examples of those decisions. In addition, and at the request of local sheriff departments, we wanted to give them the ability to hand-off the program to the local police department if that best fit that particular community’s needs.

We heard the Committee members on objections to perceived lesser offenses. To that end, we have agreed to narrowly tailor the program expansion to: (1) not apply to first time DUI offenders (striking the 24/7 reference in Section 8, page 9, lines 8-9 of the bill); and (2) only expand the program to crimes for which there is a maximum jail penalty of 6 months or greater (multiple references throughout the bill). This is consistent with the notion that we want to keep people out of jail, sober, and functioning members of society for all the previously stated reasons.

Additional amendments we are proposing based upon your feedback include: (1) to limit the twice a day testing to just that (even though we have had program participants who actually wanted to be tested more than twice per day); (2) address the parole board issue; and (3) create a survey mechanism for program participants and administrators to ensure program integrity.

### **INFORMATION REQUESTED**

Committee members requested information pertaining to vendors who are eligible to provide testing methodologies. Montana is an open source, meaning no one vendor has a particular advantage over any other vendor. The following is a list of companies who occupy this space based upon my quick research:

#### **ALCOHOL TESTING - Suppliers of Handheld Breath Test Instruments in the USA**

- CMI, Inc.
- Drager Safety
- Intoximeters, Inc.
- LifeLoc

**ALCOHOL TESTING - Suppliers of Transdermal Alcohol Monitoring Systems**

- BI, Inc
- Alcohol Monitoring Systems, Inc.

Given the technologies prove out through a pilot program, the following Alcohol Testing Technologies might be able to participate.

- **Home Monitoring** - ElmoTech / 3M, Soberlink, and Emerge
- **Ignition Interlock** - Alcohol Countermeasure Systems, CST, Inc., Drager Safety, Guardian Interlock, LifeSafer, Inc., SmartStart, Inc.

**DRUG TESTING: urine kits - there are hundreds of private labelers of these products the largest suppliers include.**

- Alere
- iScreen

**DRUG TESTING: sweat testing**

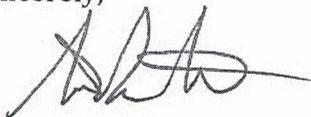
- Pharmchem

In conclusion, I view HB 233 as a freedom bill. In addition to keeping people out of jail, it is pro-personal responsibility and accountability, pro-family, pro-small business employer, and pro-taxpayer. HB 233 is good public policy from the perspective of the Montana Highway Patrol and those who testified in support of the bill.

In my mind, HB 233 turns into a threshold question of whether the Legislature wants an offender (as opposed to a taxpayer) funded program in a program that has proven, documentable results and benefits to society versus incarceration.

I will make myself available and be happy to discuss this with any members of the Committee further.

Sincerely,



**Thomas Butler**

*Lieutenant Colonel*

Montana Highway Patrol

444-3588

[tobutler@mt.gov](mailto:tobutler@mt.gov)