

Mr. Chairman and Member of the Committee

My name is Jeff Kushner; I am the statewide drug court coordinator for the Montana Supreme Court-Office of the Court Administrator.

Thanks to all of you for taking the time to consider one of Montana's most serious problems....driving under the influence of intoxicants.

In the past 20 years, one of the most dramatic developments in the movement to reduce alcohol and other drug abuse problems within the criminal justice population have been the implementation of drug courts across the country. General Barry McCaffery, past director of the Office of National Drug Control Policy stated, "The establishment of drug courts, coupled with judicial leadership constitutes one of the most monumental changes in social justice in this country since World War II."

The first drug court was established in Florida in 1989 with the help of past U.S. Attorney General, Janet Reno. There are now well over 2300 drug courts operating in all 50 states, the District of Columbia, Puerto Rico and Guam. The purpose of drug courts is to guide offenders identified as alcohol and drug-addicted into treatment so they can control their drug dependence and improve their quality of life, their family's and the rest of us.

In drug court, offenders are held intensely accountable for their actions while at the same time provided the tools they need through alcohol and drug treatment to break the pattern of alcohol and other drug abuse and dependence. In the typical drug court program, a judge who is supported by a team that operates outside of their traditional adversarial roles, closely supervises participants. The judge, a drug court coordinator, a prosecuting attorney, a public defender, an addiction treatment provider, and a probation officer, all work together as the drug court team to make sure the drug court participant receives the services they need.

Today, there is irrefutable evidence that drug courts work exceedingly well with the alcohol and drug abusing offender population. The evaluation data concludes that:

1. Drug Courts are better at engaging and retaining offenders in treatment services.

Retention rates for drug courts are much greater than the retention rates typically observed for criminal justice offenders. American University research estimates that about 60% of those who enter drug courts are still in treatment after one year. This compares to general treatment retention studies showing 10-30% retention rates after one year. Treatment retention is one of the key predictors of positive post-treatment outcomes.

2. Drug Courts provide closer, more comprehensive supervision than other forms of community supervision.

For example, fifty-five percent (55%) of drug courts require at least two drug tests per week. Under regular probation supervision, generally, 52% of jurisdictions reported only monthly testing. Additionally 74% of drug courts hold status hearing at least bi-weekly and 88% require weekly contact with a treatment provider.

3. Drug Courts save money.

Evaluations completed to date demonstrate that drug courts generate savings in jail costs, especially for pretrial detention, probation supervision, police overtime and other criminal justice system costs. Additional savings occur in reduced victimization, theft, food stamps, public assistance and medical claims costs. One study indicated that 43% of drug court clients would have been incarcerated in the absence of the drug court.

4. Drug Court client drug use is substantially lower.

A recent survey by American University found that on average 10% of drug court client drug tests were positive. In contrast, in the same jurisdictions the average percentage of positive tests for similar defendants not in the drug court but under probation supervision was 31%. Studies have also shown that post-program drug use is lower for drug court participants than for comparison group cases.

5. Drug Court clients have lower recidivism rates.

Evaluations show that criminal behavior was substantially reduced during participation in a drug court program as well as post-program recidivism for drug court graduates when compared with matched groups.

6. Drug Court clients are employed.

Evaluation data indicate that drug court participants are employed longer and at higher wages while participating and upon graduation than comparison groups. Drug courts require participants to be employed full-time or full time in an educational process in order to graduate.

7. Drug Court graduation rates remain high compared to other programs. Consistently, drug court graduation rates remain high at between 50-60 percent of admissions.

Next I refer you to the 2nd page of my handout, a map that shows where existing drug courts are located as well as those that are pending DUI courts.

Following the map is a list of three pages -- In Montana, the 2007 Legislature provided the Court Administrator's Office \$1.345 million specifically to support drug courts as well as \$1.291 in 2009. Twelve courts are funded with these general funds and are so indicated on the list with an asterisk.

3 **juvenile** drug courts in District 8-Great Falls, District 4-Missoula and Superior, and District 7-Sidney

3 **family** drug courts are in Missoula, Butte-Silver Bow and Yellowstone County

5 **adult** drug courts in Mineral County, Gallatin County, Billings Municipal Court, District 8-Great Falls, and District 16- Miles City.

And 1 **Co-occurring** court in Missoula for people with both an addiction and mental illness.

I will now proceed to your page 5 of the handout...entitled, **“Montana Drug Courts”**

There are twenty-two drug courts currently operating in Montana. Beyond the 12 funded by general funds, these 12 and the balance of drug courts are funded from various sources including federal grants, local government, private donations and fees.

We have initiated a statewide data collection system, and contracted with a researcher from the University of Montana for an initial evaluation that was presented in a report to the 2009 Legislature.

Results for Montana Drug Courts are not dissimilar to those at the national level. In a study conducted by Dr. Timothy Conley of the University of Montana entitled, “Measuring the Performance of Montana Drug Courts, (Attachment # 4), Conley draws the following conclusions:

- Montana Drug Courts’ retention rates are 94.6 percent after one month, 73.2 percent at one year after entry.
- Nearly 47% successfully complete drug court on par with national averages.
- There was a 30 percent increase in employment for drug court participants.
- Participation in drug court is associated with an increase in educational level.
- Seven babies were born drug free during fiscal year 2008
- 43% of participants eligible for driver’s licenses achieved them while in drug court.
- 78% of adult participants were attending self-help meetings at discharge.
- Nearly 84% of those who graduated had resolved all prior charges.
- The recidivism rate for Montana Drug Court participants was 24.1% for all cases discharged between July, 2007 and February 2009. The reoffense rate for graduates was only 9.8%. Nearly 73% of the reoffenses were misdemeanors. Twelve family court cases had been discharged for between six months and a year; none of these cases had new substantiated referrals to CFSD.

“DUI Courts”

Let me talk a little bit about DWI courts, sometimes called DUI court, sobriety court, treatment court or accountability court. DWI courts have proven effective in reducing drunk driving offenses. Evidence indicates that the recidivism or failure rate of DWI court participants appears to be very low not unlike drug courts. According to the National Drug Court Institute, there are now 166 DWI courts and over 340 hybrid DUI/Drug Courts operating in the country.

DWI Courts reduce multiple drunk driving offenses by improving repeat offenders’ compliance with treatment and other supervision.

Modeled after Drug Courts, DUI Courts require participants to do what I call “The Big Five” 1. Frequently attend formal court, 2. Complete an intensive regimen of treatment, 3. Undergo random and continuous alcohol and other drug testing, 4. Undergo intensive supervision/case management including home visits and 5. Attend self-help meetings like Alcoholics Anonymous.

Participants receive negative sanctions for program infractions and positive recognition for their achievements. Most DWI Courts are post-adjudication and require participants to serve some portion of a jail sentence, with the remainder of detention being suspended pending completion of the DWI Court process. Failure to graduate successfully from the DWI Court ordinarily results in a return to custody to complete the full sentence.

In January of 1997, a group of drug court professionals came together under the leadership of the Department of Justice and developed what we call the 10 Key Components (you have a copy in your handout). We have found that if a jurisdiction initiates a drug court and adheres to these 10 key components, the results are fairly astounding compared to traditional processing of drug cases.

Out of these 10 key components grew the Ten Guiding Principles of DWI Courts. These principles have a strong resemblance to the 10 Key Components. If a DUI court follows these principles, they, too, will be much more successful with particularly repeat offenders than traditional court.

These 10 key components and guiding principles are based in research and we monitor programs with these protocols.

DUI Courts do include a little different emphasis than do traditional drug courts. Most multiple DWI offenders have lost their license, and it is the DWI courts responsibility to require participants to solve their transportation problems by developing a transportation plan focusing on: how to get to work, treatment, and self help meetings.

Additionally, because multiple DWI offenders pose a greater risk of immediate public safety, a more intensive system of offender monitoring is utilized including: home visits, scam units, interlock devices, and more frequent alcohol and drug testing.

So, how good are DWI courts?

Early studies have shown very successful results. Numerous individual courts have evaluated their program to find a significant reduction in recidivism.

Two states have had very thorough research studies completed of local DWI Courts.

Michigan Data

A three-county evaluation in Michigan completed by an independent research firm out of Portland Oregon found:

- DWI Court participants were re-arrested significantly less often than a matched comparison group of offenders in the traditional court process were.
- The comparison group of offenders was nineteen times more likely to be rearrested for a DWI charge than the DWI Court participants.
- DWI Court participants spent considerably more time in treatment and in the program than those sentenced in traditional court. The longer the time spent in the program predicted success both in completing the program and in reducing recidivism.
- The number of days spent in jail prior to program or probation start and the total time in jail for the DWI case was also significantly reduced, thus saving the criminal justice system time and money.

Georgia Data

In the State of Georgia, an independent contractor, i.e. the Pacific Institute for Research and Evaluation found similar results to the Michigan study. In three Georgia counties funded to implement DUI Courts through the Byrne Grant Program, the following results were achieved:

- After 4 years, the DUI Court graduates displayed a recidivism rate of 9 percent compared to two other matched groups with a 24 percent and 35 percent recidivism rate.
- The evaluator estimates that the DUI courts prevented between 47 and 112 repeat DUI arrests due to the significant reduction in recidivism.

Sheri Heffelfinger has the summaries of both of these studies if you would care to review them.

“Montana Drug Courts”

Lastly, in Montana, we have two specific DWI Courts operating with federal funding through the Montana Department of Transportation. These specialized dockets are in Billings and Kalispell (Judge Ulbricht) and have been operational for a little over a year. Other communities have had teams trained and will be starting DUI Courts shortly including District 7/Sidney, Missoula, Butte and Fort Peck. Other communities have what we call hybrid courts in that they are drug courts that also include DUI offenders, for example, the Gallatin County Drug Court, Custer County Treatment Court, Great Falls Drug Court, the Mineral County Drug Court and the Glacier County Adult Treatment Court.

Cost to implement a DUI court docket includes: case management and coordination, probation services, assessment and treatment (as the state treatment capacity is already over utilized), monitoring for alcohol and other drug use, and SCRAM and Ignition Interlock devices.

Currently the only funding for DUI Courts comes from federal funds through the MDOT and only as seed money for up to 3 years. No general funds are available for new DUI Courts or to sustain existing courts.

Some of the issues that would make it easier to implement a DUI court in Montana will be covered by other members of this panel.

I might add that resolutions in support of DUI Courts have been passed by:
Governor's Highway Safety Association
International Association of Chiefs of Police: Highway Safety Committee
Mothers Against Drunk Drivers
National Alcohol Beverage Control Association
National District Attorneys Association and
The National Sheriff's Association

Thank you, Mr. Chairman and members of the committee for this opportunity.