



Billings Municipal Court

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Municipal Court Judge

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Representative Shannon Augere, Chairman
Law and Justice Interim Committee
Montana State Legislature

Dear Chairman Augere and Committee Members:

I write this letter in reference to SJR 39 and the study being conducted by your committee regarding possible legislative change to, or augmentation of, Montana's current DUI/DWI statutes. Having been the Billings Municipal Court judge for 12 years, and a prosecuting attorney for the City of Billings for 8 years prior to assuming the bench, I believe that I have a unique perspective as to the realities of the drunk driving in our state.

For the last 5 years, as I have had the distinct pleasure of presiding over three adult misdemeanor treatment courts, one of which deals exclusively with offenders convicted with driving while under the influence of alcohol or other drugs. This experience has led me to believe, without hesitation, that courts such as these are the single greatest tool that can be used to halt multiple DUI offenses.

It is no secret that drug- and alcohol-related driving offenses continue to plague our state, despite efforts to educate Montanans as to the dangers thereof, as well as increased efforts on behalf of law enforcement to keep those who are under the influence off of our roadways. A recent study from the University of Montana shows that alcohol abuse costs this state over half a billion dollars each year. But that economic cost pales in comparison to the loss of life. Alcohol-related driving deaths are, sadly, not an unfamiliar topic in news stories across the state.

While it is frequently the felony DUI's which make headlines, the problem begins long before a fatal accident or a fourth or subsequent offense. For instance, of the DUI arrests made by the Billings Police Department in 2008, 603--or 93.93%--were charged as misdemeanor offenses. And it is sobering to note that while only 16 were charged as third or subsequent offenses under Montana law, in 46 cases the defendant had been charged with an alcohol-related driving offense three or more times in their lifetime.

Under the law as it is now written, individuals who are convicted of alcohol-related driving offenses in Billings Municipal Court are required to complete an alcohol assessment course and treatment pursuant to M.C.A. § 61-8-732. A licensed addiction counselor at a state-approved treatment program must conduct this statutorily required course. Billings has only two qualified programs and, because of the case volume, defendants face lengthy waiting lists.

As a result, many offenders do not complete the course or enter into recommended treatment in less than five months from their sentencing date. Even if the offender does enter into treatment, most cannot complete it prior to the expiration of the court's jurisdiction. In other words, the very offenders who have the most need for treatment often escape compliance and accountability because the assessment and treatment resources have not been readily available.

Research shows that those who are in need of treatment, but do not receive it, are highly likely to reoffend, committing additional misdemeanor and, eventually, felony offenses. With a recidivism rate historically high (74 percent) many of the court's cases involve second- and third-time offenders sentenced to long-term incarceration. This places a burden on the City, the detention facility, the court and on the defendant. While incarcerated, offenders still go without treatment, and studies show that most are likely to use drugs or alcohol within six hours of release from detention.

Although offenders are punished and temporarily taken off of the street, it is clear that simply building more prisons and increasing the number of law enforcement on the street are not effective, long-term solutions to this "revolving door". In contrast, treatment courts have proven effective in reducing incarceration times, substance abuse and recidivism among its participants when measured against the comparison group.

The City of Billings established the first misdemeanor drug court in Montana, Billings Adult Misdemeanor Treatment Court (BAMDC). A minimum of 25% of active BAMDC participants had an underlying alcohol-related driving offense as the primary reason for their admission to the BAMDC program. Those offenders--particularly those addicted to alcohol in conjunction with other drugs--responded well to a treatment court methodologies. Some difficulties existed however, as research showed that critical distinctions existed between drug offenders and those who abuse alcohol. DUI offenders, it was found, not only tend to be employed and have emotional and financial resources not available to drug addicts, but also frequently do not consider themselves criminals because alcohol is a legal substance.

To address these needs and to promote public safety on roads and highways, in late 2008 the City of Billings established Billings Adult Misdemeanor DUI Court, or BAMDUI, with a grant from the Montana Department of Transportation. The court is also structured to proactively address the relicensing and reinsuring of DUI offenders, seatbelt education, victim notification and payment of restitution. While seeking to halt felony-level offenders by accepting second- and third-time, high-risk offenders, BAMDUI also accepts first-time DUI offenders with BAC's which exceed the legal limit, who meet addiction criteria and who desire to change their behaviors. All participants must require a minimum ASAM II level of care, which includes at least intensive outpatient treatment, as determined by an alcohol dependency or addiction diagnosis.

The difficulty most frequently encountered in accepting individuals who are found to be in need of this program is, quite simply, time. All participants must have offenses which, in their totality, provide Billings Municipal Court at least 12 months of jurisdiction, but optimally have a

minimum of 18-24 months of jurisdiction. First offenses have only a six-month jurisdiction under the current law.

According to his most recent report, data gathered by BAMDUI's independent evaluator reflect that the average BAC of defendants screened for an acceptance into the program is .190—over twice the legal limit. Half of those in the program have been convicted of or pled guilty to a second or third offense DUI.

While in BAMDUI, offenders are not only held accountable for the offense they have committed, they also are required to participate in intensive treatment, including group sessions, individual sessions and self-help programs. They are closely supervised by a licensed probation officer, and submit to frequent, random breath and alcohol testing. Of the thousands of tests administered, less than 2 percent were positive or, in other words, reflected the presence of drug or alcohol use. Since the establishment of BAMDUI, only one individual accepted into the program has reoffended, having been charged with a traffic offense unrelated to either drug or alcohol use. As a result of these outcomes, the establishment of this DUI-specific track has garnered positive coverage in the press, and both public and private support for it is anticipated to continue building.

I cannot stress enough how valuable these types of DUI-specific treatment courts are to reducing recidivism among those who drink and drive. Thus, I urge that any changes to Montana law as it now exists only serve to strengthen these courts, and to place an emphasis on treatment in general. This includes expanding the amount of time that first-time offenders remain under the Court's jurisdiction, focusing on the use of SCRAM units and probation monitoring of those convicted with DUI offenses, making it possible for other Montana courts to establish treatment programs and encouraging both prosecutors and defendants to consider treatment courts attractive plea agreements as an alternative to costly detention.

Thank you for your consideration. Should you have any questions about BAMDUI or treatment courts in general, I would welcome the opportunity to share more information and data with you. I would invite you and your committee to attend a DUI Court session. I assure you a first hand look at how this terrific mechanism is measurably stopping Drunk Driving.

Sincerely,

Mary Jane Kniseley by Donna Fletcher

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