

ISSUES AND OPTIONS #1
SJR 39: Revising Montana's Drinking and Driving Laws

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for the Law and Justice Interim Committee
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Purpose

This paper is offered as a decision tool for the Law and Justice Interim Committee's work session to determine what areas the committee is most interested in examining further as it moves closer to developing recommendations on how to revise Montana's drinking and driving laws.

Overview of decision-making process

The committee's work session offers an opportunity to continue to move forward through a systematic decision-making process. A systematic decision-making process is a step-by-step process that involves the following activities:

1. Gather information - understand current laws and policies
2. Identify problems - define and agree on what the problems are
3. Analyze the problems - what are the underlying causes
4. Identify options - what will address the underlying causes of the identified problems
5. Analyze each option - pros and cons, i.e., the policy and cost implications
6. Select options that are viable enough to move forward as preliminary recommendations
7. Finalize recommendations - request bill drafts and finalize funding proposals
8. Implement recommendations - carry the recommendations through the legislative session

At this December 18 meeting, the committee's work session is to lay the ground work for staff to move forward on Step 5, analyze the options. Because not every option can be analyzed within the time and resources provided to the committee, it is necessary for the committee to narrow its focus and select only those areas of interest that are of highest priority to the committee as a whole. Then, staff can focus on those priorities in gathering information and data necessary for the committee to determine which options should move forward as committee recommendations and actual bill drafts.

First identify problems: Before selecting an option for further analysis, members should clarify and define the following key questions:

- **What is the problem you want to solve?**
- **What are the underlying causes of that problem?**
- **Is the option a committee priority worth further time and attention?**

I. ISSUE AREA #1 - Prevention and Education

Some statistics:

- According to a 2006 survey of Montana's conducted by the Montana Highway Patrol, 94% of Montana adults agree that impaired driving is a crucial issue in Montana.
- According to a study cited by the National Highway Transportation Safety Administration (NHTSA), drinking and driving is common and there is less than one arrest for every 50 trips made by a person with a BAC over 0.08.
- According to the 2009 Montana Youth Risk Behavior Survey, nearly 45% of highschool seniors have engaged in binge drinking; and nearly 34% say they received the alcohol from someone else.
- According to one study:
 - The average age when youth first try alcohol is 11 years for boys and 13 years for girls. By age 14, 41% of children have had least one drink.
 - The average age at which Americans begin drinking regularly is 15.9 years old.
 - Teens who begin drinking before age 15 are five times more likely to develop alcohol dependence than those who begin drinking at age 21.
- According to a nationwide survey by the Substance Abuse and Mental Health Services Administration (SAMHSA):
 - More than 40% of underage drinkers in the past month got their alcohol free from adults
 - The vast majority of current underage drinkers (80.9%) reported being with two or more people the last time they drank. Those who were with two or more people consumed an average of 4.9 drinks on that occasion, compared with 3.1 drinks for those who were with another person and 2.9 drinks for those who were alone.
 - More than half (53.4%) of underage current alcohol users were at someone else's home when they had their last drink, and 30.3% were in their own home; 9.4% were at a restaurant, bar or club.
 - Rates of binge drinking are significantly higher among young people living with a parent who engaged in binge drinking within the past year.

Possible options (select which ones are worthy of further evaluation):

- A. Mandate sales and service training
- B. Stiffen penalties for server and sales non-compliance
- C. Increase the cost of alcohol (e.g., increasing costs through tax increases and/or laws prohibiting certain discount practices, such as a number of drinks at one price, or free drinks if gambling, happy hour discounts, or drink specials, etc.)
- D. Strengthen state regulation and reduce social availability (e.g., regulate happy hours and number of drinks served, encourage local ordinances or establish statewide laws concerning social host liability, keg registration, prohibit sale of alcohol at public events or locations, other?)
- E. Provide state funding to encourage school-based curriculum and education programs targeting young people and college students
- F. Provide state funding to encourage community coalitions and prevention efforts.
- G. Provide state funding to enhance the efforts of the local DUI task forces
- H. Others?

II. ISSUE AREA #2 - DUI Penalties, Treatment, and Supervision

Problems/perceptions:

- SJR 39 states that Montana's drinking and driving laws are a complex patchwork of overlapping and sometimes confusing statutes
- Information presented during panel discussions have suggested that certain complexities in the DUI laws create "loop holes" and unintended consequences, such as providing an incentive for offenders to refuse a BAC test, plea to other non-DUI offenses in exchange for avoiding a DUI charge, or to opt for incarceration rather than treatment.
- Hard core drunk drivers who continue to re-offend and/or drive with very high BAC
- Offenders drive with suspended licenses
- Although interlock devices may be ordered for first-time DUI offenders, many judges decide not to require them because of the expense and perceived lack of availability
- Offenders avoid using interlock systems by driving another car

Possible options (select which ones are worthy of further evaluation):

- A. Revise the overarching statutory scheme
 - 1. Combine definition of a DUI violation versus a *per se* DUI (or what can be termed a BAC violation)
 - 2. Draft a general revision bill to consolidate and simplify overlapping statutes
- B. Stiffen administrative and correctional penalties
 - 1. Higher penalties for higher BAC
 - 2. Increase or revise lengths of incarceration
 - 3. Increase or revise drivers license sanctions
 - 4. Stiffen the penalty for or "criminalize" refusal of BAC testing
 - 5. Mandate interlock devices after first offense
- C. Enhance treatment components of penalty provisions
 - 1. Examine and enhance Assessment, Course, Treatment (ACT) provisions
 - 2. Enhance incentives for offenders to participate in DUI courts and treatment programs
 - 3. Expand access to DPHHS Chemical Dependency programs
 - a. Inpatient treatment, including MCDC
 - b. Outpatient treatment
 - 4. Expand the Department of Corrections WATCh program
- D. Revise probationary supervision
 - 1. Enhance use of SCRAM
 - 2. Consider enacting a 24/7 sobriety program similar to SD and other states
- E. Provide for special identification of offenders
 - 1. Special license plates for DUI
 - 2. Special drivers' license or ID cards

3. Special community service provisions

III. Issue Area #3 - Enforcement

- A. Revise traffic safety check statutes to allow the highway patrol to establish sobriety check points.
- B. Strengthen and provide more funding for compliance checks (checks on retail stores and bars/taverns to enforce server and sales restrictions)
- C. Others?

Funding

Of course, some options may have fiscal implications. So, part of the committee's work session could include a discussion of possible funding sources, if the committee is interested in including a funding source as part of its recommendation.

Some ideas that have been suggested include:

1. Alcohol taxes
2. Drivers' license fees
3. Others?

Fiscal decision points:

- Is the committee interested making recommendations that include a funding source?
- If so, which funding sources would the committee like to consider for further analysis?