



Law and Justice Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOHN ESP
GREG HINKLE
CAROL JUNEAU
JESSE LASLOVICH
LYNDA MOSS
JIM SHOCKLEY

HOUSE MEMBERS

SHANNON AUGARE--Chair
RON STOKER--Vice Chair
BOB EBINGER
DAVID HOWARD
MIKE MENAHAN
KEN PETERSON

COMMITTEE STAFF

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

February 9, 2010

Room 137, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

REP. SHANNON AUGARE, Chair

SEN. JOHN ESP
SEN. GREG HINKLE
SEN. CAROL JUNEAU
SEN. JESSE LASLOVICH
SEN. JIM SHOCKLEY

REP. MIKE MENAHAN
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED

REP. RON STOKER, Vice Chair
SEN. LYNDA MOSS (February 9)
REP. BOB EBINGER
REP. DAVID HOWARD

STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Law and Justice Interim Committee:

- requested that a preliminary bill draft be prepared revising how long local law enforcement agencies must preserve biological evidence for DNA evidence in felony cases;
- approved the following bill draft concepts related to DUIs:
 - ▶ to provide driver's license sanctions for youthful drug or alcohol offenders;
 - ▶ to allow game wardens to issue drug or alcohol citations to youth;
 - ▶ for mandatory alcohol server and sales training;
 - ▶ to create an on-call judge for a blood alcohol test search warrant;
 - ▶ to provide that any amount of a dangerous drug in the blood stream is impaired driving per se;
 - ▶ to provide support and funding for DUI courts;
 - ▶ to provide that cities may establish courts of record;
 - ▶ to strengthen substance abuse, assessment course, and treatment (A.C.T.) program;
 - ▶ to allow more judicial discretion to mandate residential treatment;
 - ▶ to extend court jurisdiction for misdemeanor drunk driving offenses to one year;
 - ▶ to eliminate the 5-year "look-back" for prior misdemeanor drunk driving convictions;
- did not approve the following bill draft concepts:
 - ▶ to criminalize refusal of blood alcohol testing;
 - ▶ to create graduated driver's license suspension penalties;
 - ▶ to revoke drinking privilege after 2nd DUI - special ID card or license;
 - ▶ to establish purveyor liability;
 - ▶ to establish social host liability;
 - ▶ to allow prior DUI convictions; and
 - ▶ for a constitutional referendum - no trial de novo in DUI cases.

CALL TO ORDER AND ROLL CALL

00:00:01 REP. AUGARE reconvened the Law and Justice Interim Committee (LJIC) meeting at 8:00 a.m. on February 9, 2010. The Secretary noted the roll (ATTACHMENT #3).

SJR 29 - PRESERVATION AND STORAGE OF BIOLOGICAL EVIDENCE

00:00:14 **Dave Bohyer, Research Director, Office of Research and Policy Analysis, Legislative Services Division (LSD)**, presented the survey results of the SJR 29 - study of the preservation of biological evidence (EXHIBIT #23). The purpose of the survey was to identify current storage practices and challenges facing state and local law enforcement agencies in handling and preserving biological evidence.

Committee Questions

- 00:19:18 REP. PETERSON asked if any of the entities that responded to the survey described the procedure used to dispose of evidence. Mr. Bohyer said he did not receive any copies of written policy. REP. PETERSON asked if there are legal concerns regarding retaining evidence in a criminal case with no felony conviction. Mr. Bohyer said that question was not on the survey but that LSD legal staff could look into it.
- 00:22:49 SEN. JUNEAU referred to evidence storage and retention procedures (page 3 and 4 of EXHIBIT #23) and asked if there are some cases in which evidence is not being retained at all. Mr. Bohyer said it wasn't always clear why evidence was not retained and stored. SEN. JUNEAU referred to adequacy and standards for storage (page 7 of EXHIBIT #23) and asked if this category applied to all evidence and not just DNA evidence. Mr. Bohyer said yes, all space for all types of evidence. SEN. JUNEAU expressed concern that the responses may not be valid, due to the lack of representation of more agencies. She asked what could have been done to get a higher response. Mr. Bohyer said he did not know why agencies did not respond and that law enforcement agencies were invited to participate through several different venues.
- 00:28:08 SEN. SHOCKLEY asked if the larger counties responded. Mr. Bohyer said that six of the seven large counties responded.
- 00:29:03 **Jessie McQuillan, Montana Innocence Project**, discussed "*Preservation of Crime Scene Biological Evidence -- the National Picture*" (EXHIBIT #24). Ms. McQuillan's discussion points included how long other states preserve biological evidence from crime scenes, how evidence from unsolved or cold cases is preserved, ideas for new standards for preserving biological evidence, and examples of others states' statutory requirements for preservation of biological evidence).
- 00:41:54 **Sheri Heffelfinger, Research Analyst, LSD**, provided copies of section 46-21-111, MCA, current statutory language for the preservation and disposal of biological evidence obtained in criminal proceeding (EXHIBIT #25).
- 00:42:27 **Kelsen Young, Montana Coalition Against Domestic and Sexual Violence**, clarified her written comments given at the December meeting and discussion regarding the forensic rape examination payment program (FREPP). She said that the Coalition fully supports the program as it is being operated, that the program is maintaining the kits for much longer than the 60 days required, and that she also understands the concerns about victim notification for when kits are to be destroyed. Ms. Young said the remainder of her comment at this meeting would be directed toward rape victims who have undergone a rape examination and who wish to proceed with charges. She said that the survey has shed light

on current practices in Montana and that while it is good to learn that most jurisdictions are maintaining evidence, a statewide standard would be very helpful. She said there is much information available on current practices from her providers and other states. Ms. Young also discussed issues related to tribal lands and clarified that FREPP or other programs are not always available on tribal lands due to different jurisdictional requirements or federal law. She encouraged the LJIC to include all evidence - preconviction and unsolved cases - in statutory language, as well as notification for offenders and victims when evidence is to be destroyed.

Committee Questions

- 00:49:50 REP. MENAHAN discussed his concerns regarding the national backlog of DNA evidence that needs to be processed and the potential for valuable evidence to be left unprocessed and sitting on store room shelves. He said that if processed, DNA evidence in rape kits could be matched and crimes could be solved. REP. MENAHAN said that he believes many crime victims think that evidence collected in their case automatically is processed and are unaware that in many cases, it is not. He wondered if there should be a requirement to test all kits, regardless of if the victim wishes to proceed with charges or if there is a suspect in the crime.
- 00:56:05 SEN. JUNEAU asked Ms. Young to provide suggestions to the LJIC. Ms. Young said that she supports those provided by Ms. McQuillan and would work with her to provide best practices for both solved and unsolved cases. She said that the most important thing is to establish written guidelines that will provide clear procedure for all agencies. SEN. JUNEAU asked, regarding rape kits, at what points do different agencies get involved in the process, and who, if anyone is advocating for the victim. Ms. Young explained the process and said her concern is what happens to these kits long term. SEN. JUNEAU asked if processes are in place to deal with children or minors who have been raped. Ms. Young said that the process for gathering evidence for youth is different but that the preservation requirements are the same. She said that youth cases are automatically reported to the State Crime Lab.
- 01:03:16 In response to a question from REP. PETERSON about FREPP kits, Ms. Young said that the kit is very comprehensive and includes swabs, photos, hair samples, a full assessment of the person's body and clothing, samples from clothing, and full documentation of injuries.

Public Comment

- 01:04:58 **Jim Smith, Montana Sheriff's and Peace Officers Association**, apologized for the lack of response to the SJR 29 survey and said that if additional responses are needed, he would make certain that more agencies complete the survey. He said that, in spite of the low response, he thought the results were solid and a good cross-section of agencies. He agreed that there is a lack of consistency

among law enforcement agencies and that many of the 56 counties have their own processes and procedures in place. Mr. Smith said that funding, physical space, training, and personnel are all concerns but that the law enforcement agencies are willing to work with the committee to create standards and procedures.

01:10:17 **Mark Murphy, Chief Criminal Prosecutor, Deputy County Attorney, Yellowstone County**, passed around photographs of the evidence facility in Billings (EXHIBIT #26). He said that the Billings SJR 29 survey results would be sent in very soon. Mr. Murphy discussed several cases involving DNA evidence. He said that his opinion is that sections 46-21-111 and 46-21-110, MCA, passed together in 2003, and must also be interpreted together. Mr. Murphy said that the handling of evidence is dictated by the court, not law enforcement, and that it is important to remember that the vast majority of evidence belonged to someone before it was seized. He said that the 2009 Legislature made specific recommendations on what evidence is to be maintained. Mr. Murphy distributed copies of the Billings Police Department's 2008 Annual Report (EXHIBIT #27) and referred to crime statistics for Billings. He said that his county strives to return property seized as evidence to its rightful owner as quickly as possible, as required by law but that the changes made in 2009 have significantly slowed that process down. Mr. Murphy also discussed how DNA testing methods have been refined due to technology, resulting in a tremendous expansion of available DNA sources, further complicating the issue.

01:20:19 **Dr. Phil Kinsey, Supervisor, Montana State Crime Lab, Missoula**, provided information on sex assault evidence kits and how they are processed in the crime lab. He said that there is very little backlog in Montana and that as many as 60-70 cases are being worked on at any one time. Regarding kits being stored by law enforcement agencies, Mr. Kinsey said that because of the benefits of the CODIS system, there really shouldn't be any cases just sitting on shelves because of no known suspect. Dr. Kinsey agreed that consent cases riding solely on consent may not need to be processed because, if the prosecution results in a conviction, the profile will end up in the system anyway. Dr. Kinsey said that federal legislation has been proposed to require that all sexual assault kits be processed in a crime lab. Personally, he said, he would rather have the legislation mandate more thorough processing guidelines because there are many kits collected that shouldn't be processed in laboratory, based on information gathered by law enforcement.

01:24:39 **Ali Bovingdon, Attorney General Office**, said that the Montana Highway Patrol was left out of the initial survey mailing, but it is completing the survey and will get it to Ms. Heffelfinger very soon. Ms. Bovingdon discussed several concerns regarding preservation and storage of biological evidence, saying that storage of bulky evidence creates significant burdens to agencies. She said that a protocol for allowing clippings, cuttings, and samples of DNA evidence from bulky items

would be helpful. Ms. Bovingdon also discussed FREPP kit storage and reported that after researching best practices across the country, the decision was made to amend the rules to maintain and store the kits for one year, instead of 60 days. She said that would give victims adequate time to decide how they wish to proceed with their cases.

Committee discussion and action

- 01:28:46 SEN. ESP said he is concerned about the lack of survey respondents and is not convinced that mandating standards is necessary. He said, if standards are created, that they must be very clear and not subject to rule making authority.
- 01:30:34 REP. MENAHAN discussed Montana's current statutory scheme regarding preservation and storage of DNA evidence and suggested that requiring a set number of years would be helpful.
- 01:34:15 SEN. JUNEAU asked to consider the recommendations made by Ms. McQuillan (EXHIBIT #24). She said Mr. Smith's reassurances that the SJR 29 survey results are a good cross-section convinced her that the survey data is reliable and useful. She noted that most agencies agreed that standards would be a good idea.
- 01:39:15 SEN. SHOCKLEY agreed that additional rules are needed but thought that the Attorney General's Office should be directed to create them, considering its knowledge and expertise on the handling of evidence.
- 01:40:14 REP. PETERSON said that some direction should be given to the Attorney General if that office is to be given the task. He also discussed the need for a process to allow evidence to be returned to its owner in certain cases. He said that the right to petition for retention of evidence provides a safeguard for agencies, should it feel that the evidence should not be returned to the owner.
- 01:41:59 REP. AUGARE directed staff to include interested stakeholders in preparing a bill draft outlining preservation and storage standards, to be reviewed at the April LJIC meeting.
- 01:42:38 **BREAK** until 10 a.m.

SJR 39 - STUDY OF DUI LAWS

- 01:55:24 REP. AUGARE called the meeting back to order at 10:02 a.m.
- 01:55:53 **The Honorable Mike McGrath, Chief Justice, Montana Supreme Court**, said he would address the LJIC as a private citizen, not as the Chief Justice or as a representative of Montana's courts. Chief Justice McGrath announced the formation of the Coalition for Drug and Alcohol Prevention, saying that citizens are outraged by the weekly headlines announcing another repeat DUI offender

and the senseless deaths of more DUI victims. He said that the coalition is committed to developing workable and affordable solutions in the form of a ballot initiative that will shift \$5 million of alcohol tax dollars to pay for education, treatment, and programs for DUI offenders. Chief Justice McGrath discussed details of the initiative proposal and introduced several coalition members in attendance. He said that he is available for questions and that the coalition would appreciate the committee's support (EXHIBIT #28).

02:01:18 **John Parker, Cascade County Attorney**, said it is important make sure that the money is targeted and focused on programs that will most effectively help people to break them away from their addictions that lead to other crimes. Mr. Parker said that will benefit public safety in many different ways.

02:02:30 **Judge Kurt Krueger, Butte**, said that his family drug court takes a team approach to treating parents with substance abuse problems. He said that the collaborative approach allows children to be returned to their parents and parents to work on their parenting skills and to become productive members of society. He said that his court has had great success and that many of the individuals treated have completed their education and successfully integrated back into their community. Judge Krueger said that substance abuse is a national epidemic and that alternative courts, such as his, are the answer. He said that the initiative would provide much needed funding for his court and others in order to continue to meet the needs of Montana families.

02:05:29 **Jason Miller** said he will staff the effort and will keep the LJIC informed.

Committee Questions

02:06:02 REP. PETERSON said that the LJIC has discussed the possibility of giving judges options to send people for treatment earlier in process. He said that the biggest obstacle is lack of funding. He asked if the money from the initiative could be used to allow judges that discretion to order treatment. Chief Justice McGrath said DUI focused programs could receive funding and agreed that more intervention is needed earlier in the process.

02:09:28 SEN. ESP asked if the fiscal impact has been figured. Chief Justice McGrath said yes, that the \$5 million to be deferred would likely come out of the Department of Corrections (DOC) budget with the expectation that a similar amount would result in savings because of decreased cost to the Department. SEN. ESP asked if the amount will be capped at \$5 million. Chief Justice McGrath said it would be capped at \$5 million. SEN. ESP asked if the \$5 million could be taken out of the DPHHS budget. Chief Justice McGrath said he hoped it would not be taken from DPHHS and that the language of the initiative was written specifically to prevent that from happening. SEN. ESP said that the DOC is already short of money and that there will be even less to go around in the future. He asked what the legislature should do to cover all of the expenses,

should the initiative be approved. Chief Justice McGrath said that he is aware of those concerns but that it is obvious that the current approach isn't working and changes have to be made. SEN. ESP said he thought it was disingenuous for the coalition to say that the proposal won't affect DPHHS funding because it is the legislature that has to prioritize spending. Chief Justice McGrath said that provisions were written into the initiative to ensure that DPHHS programs would not be affected.

02:15:07 REP. MENAHAN said that it appeared that the initiative would not divert any funding from DPHHS but that it would affect funding for drug treatment courts. He asked, with the \$5 million, if more drug and DUI courts could be established and funded in part by the initiative funding. Chief Justice McGrath said that is the intent of the initiative and that the funding would also be used to apply for match grants for additional funding.

02:19:03 Judge Krueger said that Butte is going to start a DUI court this spring using a three-year federal grant available through the Montana Department of Transportation. He said that there is no state money to expand the alternative courts and that the initiative would allow additional courts to come on line.

02:20:57 SEN. ESP asked Mr. Miller to explain how the cap amount is determined. Mr. Miller said that it is the percentage diverted from each of the fees that is capped and that amount will total approximately \$5 million. SEN. ESP noted that the initiative announcement was a public announcement of a political nature. He asked if the public employees testifying before the LJIC were being paid by the State or if they were appearing on their own time. Mr. Miller said that all who appeared did so on their own time.

BREAK

02:22:41 REP. AUGARE recessed the LJIC for a 15 minute break.

02:39:26 REP. AUGARE called the meeting back to order and said that Mr. LaDue had been moved up on the agenda.

02:40:56 **Ron LaDue, Program Officer, Blackfeet Environmental Prevention Project to Reduce Binge Drinking and Drinking and Driving**, said that the project he works for is administered through the Montana Community Change Project administered by the Addictive and Mental Disorders Division (AMDD), DPHHS. He said his discussion points will address the activities and possible recommendations based on Native American culture, norms, and ways of life that may be more effective in treating substance abuse problems. He provided a handout of data gathered from the assessment needs survey from Glacier County (EXHIBIT #29). Mr. LaDue discussed each table in the handout and said that drinking has a significant impact on the Blackfeet Nation. He noted that not all of the data was as accurate as he would like and said that better research and analysis is needed in order to get more accurate and useful information.

Committee questions

02:53:28 SEN. JUNEAU asked Mr. LaDue if he had specific recommendations on what laws should be strengthened or changed that would benefit tribes that have agreements with local law enforcement. Mr. LaDue said that he is working to establish a DUI court with the Blackfeet Tribal Court and that funding is needed. He said that cross-deputization with Glacier County and the Blackfeet nation would also help and that models are available to work from. He said he would be willing to discuss additional ideas.

02:58:43 REP. AUGARE said he was often told by state agencies that they would like to work with tribal government to gather data. He asked if the Montana Community Change Project is working on every tribal community. Mr. LaDue said that the Blackfeet Nation is the only tribe to have the Montana Community Change Project and that more programs like the M CCP are needed.

Public Comment

03:00:48 **Matt Kuntz, Executive Director, National Alliance of the Mentally Ill (NAMI)**, said that alcohol and drug issues are intrinsically tied to mental illness issues and that access to a psychiatrist is essential to treating co-occurring disorders. Mr. Kuntz agreed that treatment courts are very effective and said that he supports raising beer and alcohol taxes to support treatment programs. Regarding commitment laws, Mr. Kuntz passed out copies of a story about a mentally ill woman in Portland, Oregon who was reunited with her family thanks to the strong programs in Oregon (EXHIBIT #30). He said that the story could not have happened in Montana because of its commitment laws.

03:05:30 **Jack Pollari, Bozeman**, read aloud a recent article from the Bozeman Chronicle newspaper. He said that DUI is becoming more and more problematic and is costing communities more and more. He asked the LJIC to look at DUI costs to community hospitals and to be aware of the long waiting lists for treatment programs. He noted that there are few options available to indigent people because of the high costs of treatment.

Tribal Leaders

03:09:17 **Peter Tatsy, Vice Chair, Black Feet Tribe**, said that the strongest challenge of growing up on a reservation is to resist alcohol. He said that he has known many who have struggled with alcohol and drug addiction problems and that he will support whatever action is taken by the LJIC to battle the problem. He said that jurisdiction issues can cause conflicts but that the safety of the people should always be first and foremost.

03:13:55 REP. MENAHAN asked Mr. Tatsy to explain the efforts made to adopt a local agreement with Glacier County and what is to be gained by an agreement. Mr.

Tatsy said cross-deputization is a good idea because the increased visibility of law enforcement will act as a deterrent.

03:17:49 REP. PETERSON asked if any effort was made to work with Pondera County. Mr. Tatsy said the Pondera County law enforcement is not as visible on the reservation and that most of the reservation is in Glacier County. He said that problems have been encountered because of the reservation being divided between two counties.

LUNCH BREAK

03:19:18 REP. AUGARE recessed the LJIC for lunch. SEN. SHOCKLEY announced that he has written a letter to Monica Lindeen, State Auditor, regarding the Hardin jail situation. He said that it was available for signatures, if any committee members wished to sign it.

04:59:57 REP. AUGARE reconvened the meeting at 1:05 p.m. He said the LJIC would begin its discussion of SJR 39.

05:00:19 Ms. Heffelfinger briefly reviewed agenda items for the April meeting (EXHIBIT #31):

- further discussion of 24/7 South Dakota sobriety program and other states;
- fiscal information on DUI court funding and license fees, the 50-50- split of court fines from license reinstatements, and information on the DUI Courts-on-a-Dime program;
- A.C.T. program training; and
- the Primed for Life program.

05:02:16 SEN. LASLOVICH said he would prefer one big bill draft with all of the proposals and that individual bills could be broken off later, if needed. SEN. SHOCKLEY said that funding must be considered, given the current budget forecast.

05:03:29 REP. PETERSON suggested putting the less controversial proposals in one bill and the more controversial proposals in separate bills.

05:04:36 SEN. ESP agreed that the committee must be realistic about the budget problem.

The LJIC members agreed that it would begin the process by listing their bill draft ideas, that the list would be refined through discussion and recorded on posters, and that the committee would vote on the finalized list of proposals later in the meeting.

05:05:35 SEN. SHOCKLEY asked to allow city courts to become courts of record and to allow game wardens to issue minor-in-possession (MIP) citations. He said that they would be of little cost to implement but result in effective changes.

- 05:07:18 SEN. JUNEAU discussed data for youth drinking in Montana and said that youth must be targeted because of the high risk behavior shown in that age group. She said that she and SEN. MOSS both propose to strongly promote prevention and awareness in communities and try to stop behavior before it gets to the court level. She said it will be costly but is what is needed. She asked that the LJIC also consider the culture of drinking in Montana and said that little will change until that mind set does. She said that as leaders, the legislators must confront the problem, set examples, and take a firm position against drinking and driving.
- 05:14:19 SEN. LASLOVICH listed his ideas: allow prior DUI convictions as evidenced, extend court jurisdiction to one year, eliminate the 5-year window in statute for DUI charges, and expand the ignition interlock statute or add the SCRAM device, which could be self-funded by participants.
- 05:18:25 REP. PETERSON discussed resolving conflicts within existing statute, include drugs in impairment statutes, getting impaired drivers off the road, increase DRE training, lengthening jurisdiction for DUIs, giving courts additional discretion to mandate residential treatment, revoking the privilege to drink while under DUI jurisdiction, ID cards or special license plates for DUI offenders, establishing a misdemeanor penalty for drinking while the privilege was suspended, imposing penalties on servers and liability for owners, social host liability, an habitual offender crime, and criminalization of refusal to blow.
- 05:29:20 SEN. HINKLE said that youth education programs are where efforts must begin and that penalties need to be severe enough to be a deterrent. He suggested that if a minor is cited for a MIP, that the minor's driver's license should be frozen until the MIP violation period ends. He said that if the minor is cited again, the license should be taken away until the age of 18 is reached.
- 05:32:09 SEN. JUNEAU asked to list penalties on bar owners and servers, and store owners who serve intoxicated patrons. REP. PETERSON asked to change the wording to include "purveyor" to make it more broad. SEN. JUNEAU said that requiring training would be part of the equation. She asked for information on what types of charges can be filed against those who supply alcohol to youth.
- 05:35:08 REP. MENAHAN suggested a graduated system of license suspension for those who refuse alcohol screening tests, and also for DUI offenders. He said he would like to look into requiring DUI courts to be established and to look at models to do it.
- 05:37:00 SEN. SHOCKLEY asked to list the central magistrate idea for law enforcement to call a judge to get a search warrant for alcohol screening tests. He said at some point, these drivers need to be taken off the road and that it will be expensive, but necessary.

AGENCY OVERSIGHT AND MONITORING

- 05:41:36 **Anna Whiting Sorrell, Director, Department of Public Health and Human Services (DPHHS)**, updated the LJIC on the implementation of HBs 130, 131, and 132. She reviewed the history of the bills and said it was difficult to not reduce services and that efforts were made to start no new services due to sustainability concerns (EXHIBIT #32).
- 05:47:14 REP. PETERSON expressed his concerns and displeasure at how the money appropriated for the bills is being allocated. He said it was his, and others, understanding that the Billings Crisis Center would receive more funding than it did. He invited Ms. Whiting Sorrell to come to Billings to meet with interested stakeholders to resolve the situation. Ms. Whiting Sorrell said that she has met with Pete Conway in Billings twice to explore strategies and to clarify how the funding was divided. She said that she understands that there has been concern at how the funding has been divided but that she has been advised by legal staff that the law has been followed.
- 05:54:01 SEN. ESP referred to the budget information provided by Ms. Whiting Sorrell (EXHIBIT #32) and asked how funding will be allocated and if it is the intention to fund similarly in the next biennium. Ms. Whiting Sorrell said the intention is to fund the programs for the entire biennium in order to find true data.
- 05:56:34 SEN. LASLOVICH said that the last LJIC dedicated much time and effort to these bills and he urged Ms. Whiting Sorrell and the Governor to implement the bills to the fullest extent possible as soon as possible.
- 05:57:46 REP. MENAHAN stated that it was never the intention of the legislature to direct the majority of the funding to the Billings Crisis Center, that the intent was to reduce commitments to Montana State Hospital at Warm Springs. SEN. ESP said that the intent of the bill was changed in the Senate to reward existing programs that are doing a good job. SEN. JUNEAU said that Ms. Whiting Sorrell's information clarified how programs are funded. She said that she was also concerned that the majority of the funding not go to just one program. She asked how many proposals have been funded. Ms. Whiting Sorrell said that only one contract has been released so far but that others are in the process.

Work session - DUI bill draft proposals

- 06:00:50 The Law and Justice Interim Committee voted on 18 proposals to revise DUI laws. Proxy votes were cast for five absent members: SEN. HINKLE (Rep. Peterson), SEN. MOSS (Sen. Juneau), REP. EBINGER (Sen. Laslovich), REP. HOWARD (Rep. Peterson), and REP. STOKER (Sen. Shockley). Each proposal was briefly discussed before voting. The votes were recorded as follows:
- 06:01:58 REP. PETERSON'S bill draft concept to provide that a driver's refusal to submit to a blood alcohol test is a crime punishable either by making test refusal

equivalent to a drunk driving offense or by making the refusal a separate crime failed on a 7-5 vote (EXHIBIT #33).

- 06:06:44 SEN. HINKLE'S bill draft concept to provide that if a young person does not yet have a drivers' license and is found guilty of any type of drug or alcohol offense, the young person may not obtain a driver's license until 18 years of age; and that if the young person is under the age of 18 and already has a driver's license, then the young person's driver's license must be suspended at least until the person reaches 18 years of age passed on an 11-1 vote (EXHIBIT #34).
- 06:07:18 SEN. JUNEAU'S bill draft concept to provide that all persons who sell or serve alcohol must complete the responsible alcohol sales and service training program provided for by the Liquor Control Division of the Department of Revenue passed on a 8-4 vote (EXHIBIT #35).
- 06:09:00 REP. MENAHAN'S bill draft concept to provide that driver's license suspension penalties increase with the number of a person's prior drunk driving offenses failed on a 4-8 vote (EXHIBIT #36).
- 06:10:39 REP. MENAHAN'S bill draft concept to provide support for DUI courts and a guaranteed funding stream, such as the fines collected for drunk driving offenses, passed on a 9-3 vote (EXHIBIT #37).
- 06:12:58 SEN. SHOCKLEY'S bill draft concept to provide that a law enforcement official may contact an "on call" judge to request a search warrant to obtain a blood alcohol test from a driver who has refused to submit to a test passed on a 7-5 vote (EXHIBIT #38).
- 06:15:06 SEN. LASLOVICH moved to instruct staff to work with interested stakeholders to develop a discussion bill draft that would strengthen current laws concerning substance abuse assessment, an education course, and treatment for drunk driving offenders. The motion passed on a 10-2 vote (EXHIBIT #39).
- 06:21:31 REP. PETERSON'S bill draft concept to provide that any dangerous drug in a driver's system is considered drunk driving per se passed on a 9-3 vote (EXHIBIT #40).
- 06:26:48 REP. PETERSON'S bill draft concept to provide that when sentencing for a second or third drunk driving offense, judges may mandate residential treatment passed on a 10-2 vote (EXHIBIT #41).
- 06:27:16 REP. PETERSON'S bill draft concept to provide that a person convicted of a second or third drunk driving offense must be identified as a drunk driving offender on the person's identification card or driver's license and that alcohol may not be sold or served to that person failed on a 3-9 vote (EXHIBIT #42).

- 06:27:50 REP. PETERSON'S bill draft concept to provide that any purveyor of alcohol who is responsible for providing alcohol to a person who then commits a second or subsequent drunk driving offense may be held strictly liable for any injury or property damage caused by that driver and that there could be a presumption that providing the alcohol to the person was a substantial cause of the accident failed on a 4-8 vote (EXHIBIT #43).
- 06:28:31 REP. PETERSON'S bill draft concept to provide that anyone hosting a party in which alcohol is consumed is liable for the actions of a person who leaves the party and then commits a drunk driving offense failed on a 4-8 vote (EXHIBIT #44).
- 06:30:54 SEN. SHOCKLEY'S bill draft concept to provide that cities may establish courts of record passed on an 11-1 vote (EXHIBIT #45).
- 06:32:00 SEN. SHOCKLEY'S bill draft concept to allow game wardens to issue citations to youth under 21 years of age for illegal possession of drugs or alcohol passed on an 11-1 vote (EXHIBIT #46).
- 06:32:24 REP. MENAHAN'S bill draft concept to provide that a person's prior drunk driving convictions are admissible evidence if the person is charged with a new drunk driving offense failed on a 4-8 vote (EXHIBIT #47).
- 06:34:00 No action was taken on Sen. Juneau's bill draft idea for prevention and education for youth. Sen. Juneau said she would bring a more specific proposal if she was able to get more information for the LJIC.
- 06:35:18 SEN. LASLOVICH'S bill draft concept to extend court jurisdiction for misdemeanor drunk driving to one year passed on a 12-0 vote (EXHIBIT #48).
- 06:35:49 SEN. LASLOVICH'S bill draft concept to eliminate the 5-year "look-back" restriction on counting prior misdemeanor drunk driving convictions so that all prior misdemeanor convictions count for the purposes of sentencing a drunk driving offender who has less than four prior drunk driving convictions passed on a 7-5 vote (EXHIBIT #49).
- 06:37:20 No action was taken on Sen. Laslovich's idea regarding use of a SCRAM bracelet or interlock device. Sen. Laslovich said he would make a more specific proposal if he could gather more information for the LJIC.
- 06:38:07 SEN. SHOCKLEY'S bill draft concept to draft a referendum for a constitutional amendment that will eliminate the right to a new trial for drunk driving offenders failed on an 1-11 vote (EXHIBIT #50).

Public Comment

- 06:41:27 Ms. Heffelfinger pointed out public comment in the meeting packet. Written public comments were submitted by Jan Morris of Belgrade related to her family members killed in an alcohol-related car accident (EXHIBIT #51A). Written public comments were also submitted by Mr. Thomas Mosser of Bozeman expressing his concern that the Montana Supreme Court is sanctioning fraudulent contracts (EXHIBIT #51B).
- 06:41:43 **Robert Kennedy, citizen**, discussed problems he is experiencing in dealing with his former girl friend in a domestic situation in which restraining orders were misused as a leverage tool in domestic disputes.
- 06:50:20 REP. AUGARE requested that staff research reciprocal bench orders for discussion at the next LJIC meeting.
- 06:50:41 **Doug Lowney** spoke in support of Mr. Kennedy and said that, in his experience in working in a prison ministry, he has seen people having to pay consequences well beyond what they should have to. He discussed how restraining orders can be abused to punish someone and details specific to Mr. Kennedy's case.
- 06:54:05 **Matt Kuntz, NAMI-Montana**, thanked the LJIC for its assistance in fighting mental illness. He asked the committee members to consider boosting the alcohol tax as a viable funding source for HB 131 and HB 132. Mr. Kuntz said that treatment and education are expensive and that he doesn't want to see the past good work disappear because of the difficult economic times.
- 06:55:46 REP. PETERSON referred back to Mr. Kennedy's testimony and suggested Mr. Kennedy pursue an order to show cause and a hearing. Ms. Lane responded, saying that the requirement for a hearing is within 20 days and that restraining orders are prohibited from being mutually effective. She provided additional explanation.

RULE REVIEW

- 06:58:31 Ms. Lane noted that a February 5, 2010, rule review on uniform fire code, fire safety, and fireworks is in the meeting packet (EXHIBIT #52).
- 06:59:28 Ms. Heffelfinger distributed a letter regarding the March 3, 2010, budget training for legislators (EXHIBIT #53).
- 07:00:15 REP. AUGARE said that the next meeting will be on April 5, 2010, in Helena and passed out a draft agenda. He said he would prefer a two-day meeting. After a brief discussion, it was agreed that it would be a two-day meeting.

Meeting materials not discussed during the meeting: a MERLIN system update from Brenda Nordlund, Department of Justice (EXHIBIT #54) and model DUI law, provided by Mark Murphy, Deputy County Attorney, Yellowstone County (EXHIBIT #55).

ADJOURNMENT

07:01:34 With no further business before the LJIC, REP. AUGARE adjourned the meeting at 3:08 p.m. The next meeting will be on April 5 and 6, 2010, in Helena.

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