



Law and Justice Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOHN ESP
GREG HINKLE
LARRY JENT
CAROL JUNEAU
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

September 10, 2010

Room 152, Capitol Building
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. RON STOKER, Vice Chair
SEN. JOHN ESP
SEN. GREG HINKLE
SEN. LARRY JENT
SEN. CAROL JUNEAU
SEN. LYNDA MOSS
SEN. JIM SHOCKLEY
REP. BOB EBINGER
REP. MIKE MENAHAN
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. SHANNON AUGARE, Chair
REP. DAVID HOWARD

STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Law and Justice Interim Committee:

- approved Office of State Public Defender proposed legislation for drafting;
- approved LC lj01 -- drivers' license sanctions for youthful drug or alcohol offenders;
- approved LC lj02 -- allow game wardens to issue drug or alcohol citations to youth;
- approved LC lj03 -- mandatory alcohol server and sales training;
- approved LC lj04 -- on-call judge for blood alcohol test search warrant;
- approved LC lj05 -- any amount of dangerous drug is impaired driving per se;
- approved LC lj06A -- revising probationary drivers' licenses to provide DUI Court participation incentives;
- approved LC lj06B -- revising jail sentence for misdemeanor DUI/BAC offenses and providing DUI Court participation incentives;
- approved LC lj07 -- allow cities to establish court of record;
- approved LC lj08 -- strengthen chemical dependency Assessment, Court, and Treatment provisions;
- approved LC lj10 -- one-year jurisdiction for misdemeanor DUI/BAC offenses;
- approved LC lj11 -- eliminate the 5-year "look-back";
- approved LC lj14 -- create misdemeanor crime of aggravated DUI;
- approved LC lj15 -- authorize social host ordinance;
- did not approve LC lj16 -- increase penalties for refusal to submit to breath or blood alcohol test; and
- approved LC lj17 -- revise implied consent laws.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. STOKER reconvened the Law and Justice Interim Committee (LJIC) at 9:03 a.m. The secretary noted the roll, REP. AUGARE and REP. HOWARD were excused (Attachment 3).
- 00:03:29 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, discussed oversight of the Public Defender's Office being attached to the State Administration and Veterans' Affairs Interim Committee (SAVA).

AGENCY PROPOSED LEGISLATION

Office of State Public Defender

Budget and report on reference book subcommittee discussion

- 00:05:23 **Pat Gervais, Legislative Fiscal Analyst, Legislative Fiscal Division (LFD)**, gave an update of the Budget Reference Book as it relates to the Office of State Public Defender.

Committee questions and discussion

- 00:08:41 REP. MENAHAN asked if the Office of State Public Defender (OPD) has enough staff attorneys to deal with the work load, if the contract attorneys were eliminated, as has been discussed. Ms. Gervais said she could not say because she doesn't have enough information on the OPD's caseload, nor has she done a detailed analysis.

- 00:12:39 SEN. SHOCKLEY said that because of the conflict of interest case currently before the Supreme Court, the OPD may have to hire even more contract attorneys than it has now. He asked if the Budget Subcommittee took that into consideration. Ms. Gervais said she is watching the court case and agreed that if the Court rules that the current process is not adequate, it would create even more pressure on the OPD budget.
- 00:14:08 REP. PETERSON asked what the proposed FTEs are for fiscal years 2012 and 2013 and a dollar amount for present law adjustment. Ms. Gervais said that the OPD's budget request for the 2013 biennium includes 217.5 FTE and a total budget of just over \$49 million. The requested present law adjustment totals about \$5 million. REP. PETERSON asked if additional FTEs were requested. Ms. Gervais said an additional 11 FTEs were requested.
- 00:16:13 In response to a question from SEN. JENT, Ms. Gervais said the OPD's \$49 million budget request is an increase from \$30 million and includes new proposals.
- 00:17:00 SEN. JENT asked if it is known how much Montana was spending on public defense before the public defender system was created. Ms. Gervais said that based upon the data collection at the time of the bill draft to create the OPD, the fiscal note called for funding of about \$14 million a year.
- 00:18:03 SEN. JENT asked several additional questions about available data on the number of defendants represented by a public defender. Ms. Gervais said there is little data available from the past but that current data indicates that about 75 to 80 percent of District Court defendants receive a public defender.
- 00:19:12 SEN. SHOCKLEY asked Ms. Gervais to look into what the State was spending on felonies prior to the public defender program. He said that because of the lack of data, it was difficult to determine exactly what the need was when creating the public defender system.

Public Defender's Office's proposed legislation

- 00:21:44 **Randi Hood, Chief Public Defender, OPD**, distributed and discussed the Office of the State Public Defender's proposed legislation (**Exhibit 11**).

Committee questions and discussion

- 00:36:50 SEN. SHOCKLEY asked Ms. Hood to clarify the change requested for section 47-1-205, MCA. Ms. Hood said the change is intended to ensure that conflict of interest claims can not be made.
- 00:38:18 REP. PETERSON asked, regarding section 47-1-110, MCA (recovery of public defender costs), how the recovered money is handled. Ms. Hood said recovered fees are deposited into a state special revenue account.
- 00:39:31 Regarding the proposed changes to eliminate or reduce jail time, REP. PETERSON asked what kind of "enforcement stick" the courts will have if the jail time is removed. Ms. Hood said significant fines will remain in place and that the

courts don't give jail time for most of the offenses anyway. REP. PETERSON asked several additional questions about what charges the public defender would defend. Ms. Hood explained the OPD's criteria for representation.

- 00:43:56 REP. EBINGER asked, regarding the proposed change to section 47-1-110, MCA, why a private attorney would not be employed to begin with. Ms. Hood explained that even though a private attorney may bring an action in a guardianship case, the court frequently appoints a public defender to represent the incapacitated person.
- 00:44:38 REP. MENAHAN said that public defenders also represent respondents in petitions for involuntary mental commitment cases and asked if the OPD has considered collecting those costs. Ms. Hood said that because the person is incapacitated and because those types of cases happen so quickly, it would be difficult to determine indigency in order to collect costs.
- Referring to the proposed change to section 61-6-304, MCA (no insurance), REP. MENAHAN said the proposal would be more palatable to the Legislature if it eliminated the provision that "stacks" convictions and allows only the violations in the last five years to be counted.
- 00:46:38 Regarding the proposed change to section 47-1-104, MCA (access to jails), REP. MENAHAN discussed his concern that once an attorney asserts representation, the attorney is stuck with the client until excused by a judge, regardless of if the person qualifies for a public defender. He wondered if this had the potential of an added work load for the public defender. Ms. Hood explained what measures are taken to avoid this, saying that the defendant is asked if he or she plans to request a public defender and if they think they will qualify. Additionally, the Justice of Peace is then advised that the attorney is there for the initial first hearing only.
- 00:50:07 SEN. SHOCKLEY asked how much it would cost the OPD to set up a billing system. Ms. Hood said that hours are tracked for each individual case, which the judge could use in determining how much the client needs to pay to the OPD.
- 00:52:58 SEN. JUNEAU asked what the impact could be if the proposed change to section 47-1-104, MCA, (access to jails) is not adopted. Ms. Hood said that it would likely result in more people sitting in jail for longer periods of time and would increase the number of cases going to the public defender system.
- 00:54:43 SEN. JUNEAU asked, regarding the proposed change to section 47-1-110, MCA (recovery of costs), for a definition of "sufficient funds". Ms. Hood said the term would probably be determined through policy or administrative rule but that if the defendant has liquid assets, they would be expected to pay some amount so long as the payment did not impinge upon the incapacitated person's care.
- 00:55:43 REP. STOKER made several general comments regarding the OPD proposals.

00:57:18 SEN. SHOCKLEY asked for update on the American University report and how the OPD has responded.

Update on implementing American University recommendations

00:58:46 **Richard "Fritz" Gillespie, Chairman, Public Defender Commission,** distributed a list the AU recommendations and the status of each recommendation (**Exhibit 12**). He emphasized that the recommendations were taken seriously and that many of them have been dealt with.

Committee questions and discussion

01:01:49 SEN. SHOCKLEY asked if the concerns about the OPD's ability to budget have been addressed. Mr. Gillespie said that work is still in process but by the end of September, reliable and verifiable information will be available, which will be used to back up the OPD's budget request.

01:06:17 SEN. SHOCKLEY asked if the Commission has considered reducing the scope of public defender services, in order to reduce costs and operate more efficiently. Mr. Gillespie said yes, that all programs are being looked at but that no final decision has been made.

Public comment

01:10:28 **David Carter, Yellowstone County Attorney's Office,** discussed his concerns regarding the OPD's limited resources and that when spread too broadly, the system suffers.

01:11:54 **Mark Murphy, Montana County Attorneys Association,** discussed his concerns regarding revenue and the issue of decriminalization.

01:15:22 **Niki Zupanic, American Civil Liberties Union of Montana (ACLU),** said that the ACLU is pleased with the Commission's response to the AU report. She also commented on the OPD's bill proposals and agreed that the scope of the mandates for the OPD should cover 6th amendment issues.

01:21:17 SEN. SHOCKLEY and Ms. Zupanic discussed some of the ACLU's remaining concerns regarding the scope and operation of the OPD.

01:23:53 REP. PETERSON and Ms. Hood discussed his concerns regarding the OPD's request for separation of the appellate defender.

BREAK REP. STOKER recessed the LJIC for a 15-minute break.

01:46:22 The meeting reconvened at 10:49 a.m.

Action item: Office of Public Defender's proposed legislation

01:46:52 **SEN. SHOCKLEY moved to approve drafting of the OPD's proposed legislation.** A brief discussion on the motion was held. **The motion passed unanimously on a voice vote, REP. AUGARE (Juneau) and REP. HOWARD (Peterson) voted yes by proxy.**

SJR 39 - DUI LAWS

Committee review and discussion on revised committee bills

LC lj01 -- Driver's license sanctions for youthful drug or alcohol offenders (Exhibit 13)

- 01:49:39 SEN. SHOCKLEY reviewed the provisions of the bill draft on behalf of SEN. HINKLE, who will sponsor the bill draft.
- 01:50:45 **Valencia Lane, Staff Attorney, LSD**, said a minor revision was to reword the title to include "generally revising".
- 01:51:17 REP. EBINGER said he has concerns that a minor at a party but not consuming alcohol could be charged with possession. SEN. SHOCKLEY said that issue is beyond the scope of LC lj01. REP. MENAHAN said that the Legislature addressed this issue in the late 1990s and explained current statute.

LC lj02 -- Allow game wardens to issue drug or alcohol citations to youth (Exhibit 14)

- 01:53:59 SEN. SHOCKLEY reviewed the provisions of the bill draft.
- 01:55:26 Ms. Lane explained the revisions made at the June meeting.

LC lj03 -- Mandatory alcohol server and sales training (Exhibit 15)

- 01:57:31 SEN. JUNEAU reviewed the provisions of the bill draft and asked that the LJIC fully support it.
- 02:00:25 Ms. Heffelfinger commented on the revisions.

LC lj04 -- On-call judge for blood alcohol test search warrant (Exhibit 16)

- 02:02:06 SEN. SHOCKLEY reviewed the provisions of the bill draft.
- 02:04:46 Ms. Lane discussed the revisions made at the June meeting.
- 02:07:07 SEN. JUNEAU asked several questions regarding her concerns about the bill draft, including about how much a standing master is paid, who will be responsible for paying the standing master, and where the tests would be administered.

Public comment on LC lj01

- 02:10:30 **Bailey Dueck, Raise Expectations and Acknowledge the Legacy Impacting Today's Youth (REALITY) ✓, Whitehall**, testified in support of LC lj01. Ms. Dueck also provided a document explaining the purpose and mission of REALITY ✓ (EXHIBIT 17).

Public comment on LC lj02

- 02:12:15 **Kris Minard, self**, testified in support of LC lj02.

Public comment on LC lj03

- 02:13:12 **Elizabeth Larson, REALITY ✓, Whitehall**, testified in support of LC lj03.

- 02:14:48 Kris Minard, self, discussed several concerns regarding LC lj03.
- 02:15:36 **Ali Bovingdon, Department of Justice**, testified in support of LC lj03.
- 02:16:55 **Rebecca Sturdevant, Mothers Against Drunk Driving (MADD)**, testified in support of LC lj03.
- 02:18:05 **Mark Staples, Montana Tavern Association**, said that his association supports the concept of server training and supports effective and efficient ways to combat DUIs.

Public comment on LC lj04

- 02:21:04 David Carter, Yellowstone County Attorney's Office, testified in support of LC lj04.

ACTION ITEM: Approval of proposed LJIC bill drafts LC lj01 - LC lj04

Motion on LC lj01 - Drivers' license sanctions for youthful drug or alcohol offenders

- 02:22:26 **SEN. SHOCKLEY moved to approve LC lj01 as a committee bill.** SEN. MOSS, SEN. JENT, and REP. PETERSON all stated their support for LC lj01. **The motion passed on an 11-1 roll call vote. REP. HOWARD (Peterson), REP. AUGARE (Juneau) and SEN. HINKLE (Shockley) voted yes by proxy. SEN. ESP voted no (Attachment 4).**

Motion on LC lj02 - Allow game wardens to issue drug or alcohol citations to youth

- 02:29:04 **SEN. SHOCKLEY moved to approve LC lj02 as a committee bill.** SEN. JENT, SEN. PETERSON, SEN. SHOCKLEY, and SEN. ESP commented on the bill draft. **The motion passed on an 11-1 roll call vote. REP. HOWARD (Peterson), REP. AUGARE (Juneau) and SEN. HINKLE (Shockley) voted yes by proxy. SEN. ESP voted no (Attachment 5).**

Motion on LC lj03 - Mandatory alcohol server and sales training

- 02:32:42 **SEN. JUNEAU moved to approve LC lj03 as a committee bill.** REP. MENAHAN, SEN. JENT, REP. EBINGER and SEN. ESP commented on the bill draft. **The motion passed on a unanimous voice vote. REP. HOWARD (Peterson), REP. AUGARE (Juneau) and SEN. HINKLE (Shockley) voted yes by proxy.**

Motion on LC lj04 - Mandatory alcohol server and sales training

- 02:39:18 **SEN. SHOCKLEY moved to approve LC lj04 as a committee bill.** REP. PETERSON, SEN. ESP, and SEN. JUNEAU said they would not support the bill draft. SEN. MOSS and REP. MENAHAN stated their support for LC lj04. **The motion passed on an 8-4 roll call vote. SEN. ESP, SEN. JUNEAU, REP. PETERSON and REP. HOWARD (Peterson proxy) voted no. REP. AUGARE (Juneau) and SEN. HINKLE (Shockley) voted yes by proxy (Attachment 6).**

- 02:52:13 SEN. HINKLE will sponsor LC lj01, SEN. MOSS will sponsor LC lj03, and SEN. SHOCKLEY will sponsor LC lj02 and LC lj04.

Lunch REP. STOKER recessed the LJIC for a one-hour lunch break.

04:00:20 REP. STOKER reconvened the meeting at 1:03 p.m.

Staff review and public hearings on new bills requested at June meeting: LC lj13 - LC lj17

LC lj13 -- Study jail suicide

04:01:31 REP. MENAHAN reviewed the jail suicide issue. He said that he requested LC lj13 (**Exhibit 18**) be drafted as a study resolution at the June meeting but has since learned that there is little support for the bill. He said that while the LJIC recognizes there is a jail suicide problem, the committee's general consensus is that a study bill would not be an effective approach at this time. REP. MENAHAN asked to withdraw LC lj13. REP. STOKER accepted the withdrawal of LC lj13.

No public comment was given

LC lj14 -- Create misdemeanor crime of aggravated DUI

04:05:48 SEN. JENT explained the provisions of the proposed bill draft (**Exhibit 19**). He suggested that the LJIC discuss and possibly strike the property damage language in subsection (1)(f).

Proponents

04:09:51 Mark Murphy, Montana County Attorneys Association, testified in support of LC lj14.

04:15:00 David Carter, Yellowstone County Attorney's Office, testified in support of LC lj14.

04:18:30 Ali Bovingdon, Department of Justice, testified in support of LC lj14.

04:20:40 Rebecca Sturdevant, MADD, testified in support of LC lj14.

No opponents to LC lj14

No informational witnesses

Committee questions and discussion

04:22:16 REP. PETERSON asked for clarification on how the bill would be applied. SEN. JENT said that the focus of the bill is sentencing but that being able to prove the aggravating factor is the first hurdle. REP. PETERSON asked if all of the aggravating factors would have to be met or only one. SEN. JENT said that only one factor would have to be proven.

04:24:29 SEN. SHOCKLEY said he is concerned about turning this into a felony because of the length of the sentence. SEN. JENT said the language could be tweaked to address SEN. SHOCKLEY's concerns. SEN. SHOCKLEY said he would like to do that.

LC Ij15 -- authorize social host ordinances

04:27:56 REP. EBINGER reviewed the provisions of LC Ij15 (**Exhibit 20**).

Proponents to LC Ij15

04:28:40 **Kiana Cox, Time for Change, Superior, Montana**, testified in support of LC Ij15.

04:30:03 Elizabeth Larson, REALITY ✓, Whitehall, testified in support of LC Ij15.

04:30:43 Bailey Duek, REALITY ✓, Whitehall, testified in support of LC Ij15.

04:31:16 **Renee Sinclair, Sanders County**, testified in support of LC Ij15.

04:32:42 Kris Minard, self, testified in support of LC Ij15.

04:34:49 **Denyse Traeder, Time for Change**, testified in support for LC Ij15. She distributed an information packet on social host statistics; it was not discussed. (**Exhibit 21**).

No opponents

Informational witness

04:36:36 Ali Bovingdon, DOJ, testified in support of LC Ij15.

04:37:50 **Frank Smith, Fort Peck Tribe**, said that the Fort Peck Tribe is working on passage of a "no host" bill.

Committee questions and discussion

04:39:28 SEN. JUNEAU asked if city or county would take precedence in filing charges if both the city and county have social host ordinances. Ms. Heffelfinger said the city ordinance would be the authority for an event within the city boundary. SEN. JUNEAU also discussed her concern about what the statutory definition of "person" includes and the potential for lack of uniformity in ordinances and penalties within neighboring counties. She said that having a common definition of person and more parameters for penalties may be advisable. REP. MENAHAN said that in committee discussion of the bill draft in June, the consensus seemed to be that these decisions would best be left to local governments.

04:47:29 SEN. ESP, SEN. JENT, SEN. SHOCKLEY, REP. MENAHAN and REP. PETERSON, discussed civil versus criminal penalties and which would be more appropriate.

04:52:32 **Karla Gray, former Chief Justice of the Montana Supreme Court**, briefly addressed the LJIC, saying she was in the Capitol building to visit old friends and to observe the process that she enjoyed being a part of for so many years.

LC Ij16, increase penalties for refusal to submit to breath or blood test

04:53:29 SEN. PETERSON reviewed the provisions of LC Ij16 (**Exhibit 22**).

Proponents of LC Ij16

- 04:55:13 Bailey Duek, REALITY ✓, testified in support of LC Ij16.
- 04:55:40 David Carter, Yellowstone Deputy County Attorney, testified in support of LC Ij16.
- 04:57:14 **Rep. Edith McCluskey, Butte**, testified in support of LC Ij16.
- 04:58:26 Rebecca Sturdevant, MADD, testified in support of LC Ij16.
- 04:59:02 **Jenna Caplette, Gallatin Valley DUI Task Force Coordinator**, testified in support of LC Ij16.

Opponents of LC Ij16

- 05:00:03 Niki Zupanic, ACLU of Montana, testified against LC Ij16.

Informational witness

- 05:02:21 Ali Bovingdon, DOJ, said this issue of great concern to law enforcement officials and that an official position will be determined later.

Committee questions and discussion

- 05:03:05 SEN. JUNEAU said the big jump in the number of years suspended is of concern. SEN. SHOCKLEY agreed that it seems severe. David Carter, Yellowstone County Deputy Attorney, explained why the Yellowstone County Attorney's Office suggested the language and said it could be tweaked, either by the LJIC or in the 2011 session.
- 05:10:47 REP. PETERSON asked if the language stricken on page 5 concerning the look back period was put back in, if that would address the concerns. Mr. Carter said yes, but asked that the number of years for the look back be modified in order to capture repeat offenders.

LC Ij17 -- split from LC Ij04 to revise implied consent to allow warrant for BAC

- 05:14:57 SEN. SHOCKLEY discussed the provisions of LC Ij17 (**Exhibit 23**).

Proponents for LC Ij17

- 05:19:21 Mark Murphy, Montana County Attorney's Association, said he requested that the bills be split. He discussed the staffing needs of administering the program.
- 05:26:43 Rebecca Sturdevant, MADD, testified in support of LC Ij17.

There were no opponents or informational witnesses

Committee questions and discussion

- 05:28:08 REP. PETERSON asked if existing District Court judges could be used to get a warrant. Mr. Murphy said that almost any judge could issue a warrant.
- 05:31:53 SEN. JUNEAU asked how the presence of prescription drugs will be handled. SEN. SHOCKLEY said that if the drug affects the ability to drive the law will apply, regardless of the fact that the person was legally prescribed the drug.

05:33:41 SEN. JUNEAU said the intent of the bill is to make sure get impaired drivers off the road and to have the proof to do so. She said this could result in larger numbers of people being jailed and tried and asked if projections have been made on the potential impact. REP. MENAHAN responded, saying that the bill wouldn't add additional defendants but would result in more convictions. SEN. JUNEAU said that more people will be in jail as a result of the bill. REP. MENAHAN said conversely, the person's constitutional rights are being protected by requiring the use a search warrant in order to obtain proof.

05:38:11 REP. PETERSON said he supports the bill.

05:39:21 REP. STOKER discussed a conversation he had with a physician regarding pharmaceutical products and the effective level of prescription drugs.

BREAK

05:58:43 REP. STOKER reconvened the meeting at 3:02 p.m.

ACTION ITEM: Approval of proposed LJIC bill drafts LC Ij13 - LC Ij17

Motion on LC Ij14 - create misdemeanor crime of aggravated DUI

05:59:28 SEN. JENT moved to approve LC Ij14 as a committee bill. The motion passed on a unanimous voice vote. REP. AUGARE (Juneau), REP. HOWARD (Peterson) and SEN. HINKLE (Shockley) voted yes by proxy. SEN. ESP did not vote.

Motion on LC Ij15 - authorize social host ordinance

06:03:00 REP. EBINGER moved to approve LC Ij15 as a committee bill. The motion passed on a unanimous voice vote. REP. AUGARE (Juneau), REP. HOWARD (Peterson) and SEN. HINKLE (Shockley) voted yes by proxy. SEN. ESP did not vote.

Motion on LC Ij16 - increase penalties for refusal to submit to breath or blood test

06:04:49 SEN. PETERSON moved to approve LC Ij16 as a committee bill.

06:05:02 REP. EBINGER said the bill needs work and that he won't vote for it. SEN. SHOCKLEY said he would vote for the bill with the understanding that it will be tweaked. REP. PETERSON said that he supports the bill. REP. MENAHAN said he will vote against the bill because it won't reduce the number of people operating a motor vehicle while under the influence.

06:08:55 The motion failed on a 5-6 roll call vote. SEN. HINKLE (Shockley proxy), SEN. SHOCKLEY, REP. HOWARD (Peterson proxy), REP. PETERSON, and REP. STOKER voted yes. SEN. JENT, SEN. JUNEAU, SEN. MOSS, REP. EBINGER, REP. MENAHAN and REP. AUGARE (Juneau proxy) voted no. SEN. ESP did not vote (Attachment 7).

Motion on LC Ij17 -- revise implied consent laws to allow warrant for BAC

06:11:13 SEN. SHOCKLEY moved to approve LC Ij17 as a committee bill. REP. PETERSON said he supports the proposed bill. The motion passed on a 10-2

roll call vote. **SEN. HINKLE** voted yes by proxy (Shockley) and **SEN. JUNEAU** and **REP. AUGARE** (Juneau proxy) voted no (Attachment 8).

Public Comment on Bills Previously Approved Without Amendment:

- **LC lj05** - any amount of dangerous drug is impaired driving per se;
- **LC lj06A** - revising probationary drivers' licenses to provide DUI court participation incentive;
- **LC lj06B** - revising jail sentence for misdemeanor DUI/BAC offenses and providing for DUI court participation incentive;
- **LC lj07** - allow cities to establish court of record;
- **LC lj08** - strengthen chemical dependency Assessment, Course, and Treatment provisions;
- **LC lj10** - one-year jurisdiction for misdemeanor DUI/BAC offenses; and
- **LC lj11** - eliminate the 5-year "look back"

06:15:53 Niki Zupanic, ACLU, testified against LC lj05.

06:16:15 Ali Bovingdon, DOJ, testified in support of LC lj05 and LC lj11.

06:16:52 Rebecca Sturdevant, MADD, said that she supports of all the proposed bill drafts and thanked the LJIC for its work.

06:18:41 **Mona Jamison, Boyd Andrews Community Services**, testified in support of LC lj08. She asked the LJIC to consider changing the assessment period from 10 to 20 days because the longer period is a more realistic and workable time frame for getting a proper assessment.

06:20:39 **Pat Keim, Alternatives Inc.**, concurred that 10 days is too short and he urged the LJIC to consider lengthening the number of days from 10 to 20.

ACTION ITEM: Approval of proposed LJIC bill drafts LC lj05 - LC lj11

Motion on LC lj05, LC lj06A and 06B and LC lj07

06:22:55 **SEN. ESP** moved to approve **LC lj05 - any amount of dangerous drug is impaired driving per se, LC lj06A - revising probationary drivers' licenses to provide DUI court participation incentive, LC lj06B - revising jail sentence for misdemeanor DUI/BAC offenses and providing for DUI court participation incentive, and LC lj07 - allow cities to establish court of record; as committee bills.**

06:23:24 **SEN. JENT** said he would not support LC lj05 and asked **SEN. ESP** to modify his motion to exclude it. **SEN. ESP** agreed.

06:23:54 **The motion to approve LC lj06A, LC lj06B and LC lj07 as committee bills passed on a unanimous voice vote. SEN. HINKLE (Shockley), REP. AUGARE (Juneau) and REP. HOWARD (Peterson) voted yes by proxy.**

Motion on LC lj05 - any amount of dangerous drug is impaired driving per se

- 06:25:28 **REP. PETERSON moved to approve LC lj05 as a committee bill.**
- 06:25:48 SEN. JENT said that the language is not clear and discussed his concerns. He said he would vote against the proposed bill. REP. MENAHAN said that he reluctantly opposed the bill and explained his objections. REP. STOKER said that he has certain concerns regarding the "per se" language but will still vote for LC lj05. REP. PETERSON said that action is needed.
- 06:32:54 SEN. JENT agreed that action is necessary and proposed a separate per se statute to address driving with drugs which would include a table listing the drug and set a dangerous level for each drug listed. He thought the Attorney General's Office should request the bill and do further research the dangerous drug issue in order to "do this right".
- 06:34:22 Ali Bovingdon, DOJ, said that the idea for this bill came from the Highway Patrol because of the increase in the number of people driving under the influence of drugs. She discussed the intent of the bill and urged the LJIC to move it forward.
- 06:37:50 REP. MENAHAN said the current law making driving under the influence a crime would cover a lot of what is seen. He said that if a per se charge for drugs is created, he wants to make sure it is fair.
- 06:39:23 REP. PETERSON asked Ms. Lane to comment on her basis for drafting the bill as she did. Ms. Lane said she drafted it as she did because there was objection to going into drug schedules and matrixes. She also addressed REP. MENAHAN's concerns about the proposed bill's title. Ms. Bovingdon agreed with Ms. Lane's interpretation of the title and said that concerns can be fixed. She said that the proposed bill targets illegal drugs because there are exceptions in the language for prescription and over-the-counter drugs. She said that it is very complicated to use a drug matrix in this type of law, which is why other states have used a per se/zero tolerance approach, as used in LC lj05.
- 06:43:20 **The motion to approve LC lj05 for drafting as a committee bill passed on a 7-5 roll call vote. SEN. ESP, SEN. JENT, REP. EBINGER, REP. PETERSON, REP. STOKER, SEN. HINKLE (Shockley proxy) and REP. HOWARD (Peterson proxy) voted yes. SEN. JUNEAU, SEN. MOSS, SEN. SHOCKLEY, REP. MENAHAN, and REP. AUGARE (Juneau proxy) voted no (Attachment 9).**

Motion on LC lj08 - strengthen chemical dependency Assessment, Course, and Treatment provisions

- 06:44:57 **REP. MENAHAN moved to approve LC lj08 as a committee bill.** He said the purpose of the bill is to have people convicted of DUI get into treatment as soon as possible but that treatment providers have expressed concern about the 10-day time period for getting an assessment. He moved to amend the bill to change the time period from 10 to 20 days and to strike the added language on page 1, lines 21 and 22.
- 06:49:06 **The motion to amend LC lj08 passed on a voice vote. SEN. ESP voted no.**

06:49:50 **REP. MENAHAN** moved to approve LC Ij08 as amended. The motion passed unanimously. **REP. AUGARE (Juneau), REP. HOWARD (Peterson) and SEN. HINKLE (Shockley)** voted yes by proxy.

Motion on LC Ij10 - one-year jurisdiction for misdemeanor DUI/BAC offenses

06:51:00 **REP. MENAHAN** moved to approve LC Ij10 as a committee bill. He reviewed the provisions of the proposed bill draft. **REP. PETERSON** asked if the proposed bill draft will allow the courts to extend jurisdiction beyond one year. **REP. MENAHAN** responded.

06:55:30 The motion passed on a 11-1 voice vote. **REP. AUGARE** voted no by proxy (**Juneau**) and **REP. HOWARD (Peterson) and SEN. HINKLE (Shockley)** voted yes by proxy.

Motion on LC Ij11 - eliminate the 5-year "look back"

06:56:48 **REP. MENAHAN** moved to approve LC Ij11 as a committee bill. The motion passed on a 10-2 voice vote. **SEN. JUNEAU** and **REP. AUGARE (Juneau proxy)** voted no . **REP. HOWARD (Peterson) and SEN. HINKLE (Shockley)** voted yes by proxy.

FINAL REPORT OUTLINE AND PROCESS

06:59:34 Ms. Heffelfinger discussed the status of the LJIC Final Report and asked the committee members for their comments or input. She said that draft copies will be sent out for review prior to finalizing the report. **REP. PETERSON** asked that the report include the vote totals for each bills.

CLOSING REMARKS AND ADJOURNMENT

07:01:17 **SEN. ESP** thanked **REP. STOKER** and **SEN. JUNEAU** for their service to the State of Montana. **REP. STOKER** thanked the LJIC for its work.

07:02:36 **REP. STOKER** adjourned the final meeting of the Law and Justice Interim Committee meeting at 4:06 p.m. CI0429 0316dfxa.