



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

September 28, 2009

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. LYNDA MOSS
SEN. JIM SHOCKLEY

REP. BOB EBINGER
REP. MIKE MENAHAN
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. RON STOKER, Vice Chair
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 approved the August 3, 2009, written meeting minutes.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. AUGARE called the meeting to order at 8:06 a.m. The Secretary took roll, REP. STOKER and REP. HOWARD were excused (ATTACHMENT #3).
- 00:02:11 **SEN. SHOCKLEY moved to adopt the August 3, written minutes, as written. The motion passed on a unanimous voice vote.**
- 00:02:31 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD),** reviewed the panels, the procedure to be used for presentation of information, and meeting goals.

SJR 39 - STUDY OF DUI LAWS

Overview and inventory of existing DUI-related programs and partnerships

- 00:03:35 **Jim Lynch, Director, Montana Department of Transportation (MDT),** used a PowerPoint presentation (EXHIBIT #1) to review statistical information on alcohol-related fatalities, current programs, and partnerships whose purposes are to combat driving under the influence.

Committee Questions

- 00:26:40 SEN. HINKLE asked Director Lynch to discuss data regarding the percentage of accidents involving both alcohol and marijuana. He said he has been given conflicting numbers on this issue. Director Lynch explained how there could be discrepancies in statistics and also discussed how difficult it is to detect drugs. He said that it is important to recognize that there are many influences on driving behavior besides alcohol.
- 00:29:26 SEN. SHOCKLEY asked about 2009 traffic fatality numbers and said that it doesn't look like statistics have improved from years past. Director Lynch said that motorcycle fatalities have decreased significantly and that auto fatality numbers are down also. He said that the MDT is trying to establish a base line in order to determine where prevention efforts are needed. He agreed that there is still a long ways to go in solving the problem.
- 00:32:47 SEN. JUNEAU referred to page 11 of EXHIBIT #1, and asked why not all areas have an active DUI task force. Director Lynch said that all counties should have an active task force and explained factors as to why certain areas don't, saying it is mainly due to lack of financial resources.
- 00:34:18 SEN. MOSS referred to page 18 of EXHIBIT #1, and asked if there is map available showing the location of the high crash corridors. Director Lynch said that there is a map and that he would provide it.

00:35:41 SEN. ESP asked for a map showing the location of all traffic fatalities in the state. Director Lynch said he would provide a map.

00:36:18 REP. PETERSON asked what elements create a high crash corridor. Director Lynch said that there are many contributing factors, such as traffic volume, road conditions, speed, lack of seat belt use, alcohol and drug use, and more. He explained how the MTD analyzes the data and uses it to compare sections of roadway. REP. PETERSON asked where corridors are located. Director Lynch referred him to a map in EXHIBIT #1 and pointed out several.

Panel #1: Prevention and education - what are we doing to prevent, educate, and change the culture? Is it working? What more can we do?

Panelists prepared their comments and discussion points based on a pre-meeting information packet on prevention and education decision points to be considered by the LJIC (EXHIBIT #2).

00:39:21 **Vicki Turner, Prevention Resource Center (PRC), Department of Public Health and Human Services (DPHHS)**, explained the duties and programs carried out under the Interagency Coordinating Council and Prevention Resource Center (PRC) (EXHIBIT #3). She discussed the elements of effective prevention efforts and state-funded education and prevention programs (EXHIBIT #4). Ms. Turner also provided copies of *The Prevention Connection* newsletter (EXHIBIT #5). She emphasized that a multi-faceted approach is best and that one strategy alone will not work. At the request of REP. AUGARE, Ms. Turner provided a list of policy recommendations (EXHIBIT #6).

00:51:35 SEN. ESP asked how the PRC programs can affect cultural change. Ms. Turner said that the PRC doesn't have resources that go directly to schools but that the VISTA programs are very useful and helpful.

00:53:01 SEN. JUNEAU asked about a legislative change made in 2009 regarding an increase in the alcohol content of beer, specifically if the higher alcohol content beers would be available everywhere or just in certain venues. Ms. Turner discussed the provisions of HB 400, and agreed that decreasing availability and accessibility are critical to youth.

00:54:59 **Shauna Helfert, Department of Revenue (DOR)**, discussed the provisions of HB 400, which allowed the alcohol content of certain types of beer to be increased to 14% by volume. She said it is too soon to tell what the impact of the bill will be.

00:57:29 **Cathy Kendall, Safe and Drug Free Schools, Office of Public Instruction (OPI)**, discussed funding for alcohol and drug use prevention programs, the formula used to determine amount of funding, statistical data relating to youth behaviors involving drug and alcohol use, and other information (EXHIBIT #7).

01:05:55 REP. PETERSON asked about drivers training laws. Ms. Kendall said driver training allows a youth to get a license at an earlier age but that a youth can get a license at 17 years of age without taking the training. REP. PETERSON asked about the availability of driver training programs outside of schools. Ms. Kendall said that there are one or two private programs available.

- 01:07:36 REP. PETERSON asked if schools have to offer driver training and what is included in the curriculum. Ms. Kendall said that schools are not required to offer it and that the curriculum covers laws, good driving practices, road conditions, and included a certain number of required supervised driving hours and restrictions on driving for first six months.
- 01:09:05 SEN. MOSS asked about a program that the MDT offered at summer fairs in which kids went into "the cage" in order to experience a simulated an accident. Director Lynch said the program is new and that he plans to bring it to schools.
- 01:11:19 SEN. ESP asked about the Youth Risk Behavior Survey (YRBS) information in EXHIBIT #7. Ms. Kendall said that the survey is offered to Montana youth every other year and she explained how the data is collected and analyzed.
- 01:13:10 **Shauna Helfert, Liquor Control Division Administrator, DOR**, provided an overview of liquor control activities (EXHIBIT #8). Ms. Helfert's discussion points included how DOR focuses on prevention through regulatory efforts, significant control benefits, and liquor education training programs and opportunities.
- 01:26:49 REP. PETERSON asked what is being done regarding training and education for alcohol servers. Ms. Helfert said training includes identification of intoxicated persons and what steps to take, such as limiting consumption, keeping the person at the location, calling a taxi, or providing food. REP. PETERSON asked if data is available on the effectiveness of the training. Ms. Helfert said that it is a new program and that there is not a lot of data yet.
- 01:30:13 SEN. JUNEAU referred to page 5 of EXHIBIT #8 (distribution of money for liquor revenues) and asked where the money goes. Ms. Helfert explained that a portion of the tax revenues are allocated to the DPHHS and that the remainder of the tax revenues are deposited into the general fund; and that the net profits from the markup are deposited into the general fund also.
- 01:31:42 SEN. JUNEAU asked if tribal communities can increase alcohol taxes sold on reservations and keep that additional tax for themselves. Ms. Helfert said that she did not know but noted that there are revenue sharing agreements with tribes. REP. AUGARE asked Valencia Lane, LJIC staff attorney, to research that.
- 01:34:16 SEN. MOSS said she has observed situations at concerts at which identification of young people was not being checked as thoroughly as it should have been. She suggested that the DOR consider training or requirements to improve this. Ms. Helfert said that any organization or business that sells alcohol must have a special permit and that the DOR encourages training along with issuing that permit.
- 01:35:39 REP. MENAHAN said that Montana leads the nation in per capita consumption of beer and has the highest number of DUIs per capita of any state in the nation. He said that Montana's consumption is out of balance and that creating high taxes on alcohol does not seem to have resulted in positive public policy outcomes.

Ms. Helfert explained how Montana rates are figured and agreed that Montana's consumption is high.

- 01:38:20 **Ron Ladue, Project Officer, Pikani Action Team, Blackfeet Nation, Browning**, discussed prevention and education in Indian Country. He explained a Montana funded DUI prevention project, funded by the state through the Department of Public Health and Human Services (DPHHS) and also discussed his work with Brenda Simmons, of the Institute for Public Strategies. Mr. Ladue said the definition of "cultural" is important because of the differences that exist between mainstream and Native American cultures. He said it is important to be aware of the differences and to keep them in the proper context when looking at data. Mr. Ladue also discussed the unique political structure of Native American tribes in Montana, as well as cultural differences that exist between tribes. He also explained "wet", "damp", or "dry" reservations regarding alcohol sales, possession, and consumption; and discussed best practices and suggestions for prevention.
- 01:53:42 **Trooper John Spencer, Montana Highway Patrol (MHP)**, discussed the *Alive at 25* program (EXHIBIT #9) and additional information from the Montana Highway Patrol and the National Safety Council regarding young drivers. statistics (EXHIBIT #10).
- 01:59:59 SEN. JUNEAU asked what the cost of the *Alive at 25* program is to high schools or colleges who offer the program. Trooper Spencer said that there is no cost and that currently, the MDT pays all instructor and materials fees. He said that to date, colleges have not been as involved as he would like and that he is working to improve participation.
- 02:03:36 SEN. ESP asked, for example, if the University of Montana wanted to offer the class, if the infrastructure is in place to do that. Trooper Spencer said that additional instructors would have to be trained, but that it could be done. SEN. ESP asked if civilians could be trained to teach the program. Trooper Spencer said no, that only trained MHP officers could conduct the class.
- 02:05:16 Director Lynch discussed additional benefits of the *Alive at 25* program.
- 02:06:53 **Brenda Simmons, Project Director, Community Change Project, Institute for Public Strategies**, said that her organization is a non profit that provides training, support, and more, to prevent and reduce binge drinking. She discussed several effective prevention strategies and said her organization uses a five-pronged approach and is working in twenty-four communities across the state. Ms. Simmons listed four suggestions intended to change cultural perceptions of drinking and driving and to decrease the incidence of drinking and driving: interlocks for first-time DUI offenders, felony charge for a 3rd DUI offense, mandatory responsible alcohol server training, and criminalization for refusal of a Breathalyzer test.
- 02:15:14 REP. PETERSON said that Montana cannot afford a third-time felony conviction for DUI because of the expense and overload that would be placed on the

corrections system. He asked Ms. Simmons to further explain how refusal of a breath test would be criminalized. Ms. Simmons said that if a person refused to provide a breath sample, the person could be charged with refusal as a separate charge from a DUI charge.

02:18:52 SEN. SHOCKLEY commented that in spite of new penalties created every legislative session, Montana remains number one in the nation for DUIs. He said he would prefer more education, rather than more penalties. He said that the Warm Springs Addiction Treatment and Change (WATCh) program is a good example of an effective education program.

02:21:10 REP. MENAHAN asked Ms. Simmons to clarify what penalty she is recommending for a third offense DUI. Ms. Simmons said she would like a "life time" third offense. REP. MENAHAN said his opinion is that intervention programs are lacking. Ms. Simmons said that she would like to see the WATCh program kick in on a third DUI offense.

02:24:31 SEN. JUNEAU said she would like to find out if mandatory sales training and compliance checks are truly effective, particularly regarding underage drinking.

02:27:43 The LJIC viewed a video presentation on *Alive at 25 - Seven Deadly Drives*.

Break

02:38:09 The LJIC was recessed for a short break 10:44 a.m. to 11:03 a.m.

Public Comment

02:57:55 **Cindy Shaw, Butte County Commissioner, DUI task force, Montana Community Change Program in Butte**, said that overcoming cultural obstacles is a problem and provided several examples in her home town, such as no open container law. Commissioner Shaw discussed measures she would like to see implemented and said that a proactive approach using prevention programs is more preferable to her than creating new laws. She said that she strongly supports mandatory server training and the four policy recommendations listed by Ms. Simmons.

03:02:09 **Angelica Caplette, Gallatin Valley DUI Task Force**, said there is a need to legislatively clarify what DUI task forces can and cannot do.

03:03:38 **Chris Minard, citizen**, said that Montana is improving and is no longer at the bottom of the list in highway fatalities. She said that change is slowly coming and congratulated the legislators for moving in the right direction.

03:04:44 **Becky Sturdevant, citizen, and Mothers Against Drink Driving (MADD)**, discussed the difference in perception between medical providers and law enforcement, saying that the medical professionals needs much more training and education on DUI. Regarding funding for student driver training, Ms. Sturdevant said that the use of simulators would be a viable alternative to bring costs down and make the training more affordable for families. Regarding responsible alcohol sales, Ms. Sturdevant said training is critical. She said her

son was killed by a drunk driver and suggested that there should be a criminal penalty imposed on those who continue to serve obviously intoxicated patrons.

Committee work session: what are the legislative issues related to prevention and education that the committee wishes to further examine?

- 03:09:16 Ms. Heffelfinger reviewed the tasks at hand for the committee and asked that the committee provide instruction on what additional information they would like for future meetings and the decision making process.
- 03:10:07 REP. EBINGER asked to research what other states are doing to prohibit or reduce businesses from serving intoxicated clients. He said that those who serve intoxicated people and allow them to drive should be held accountable.
- 03:11:05 REP. PETERSON listed several things he would like to pursue:
- implementing a law against selling, renting, or loaning a vehicle to a person without a drivers license;
 - legislatively mandating that drivers education be offered in all schools, including an alcohol and drug education component;
 - to eliminate "single sales" of alcoholic beverages; and
 - further investigation of the criminalization of refusal, possibly allowing an officer to pull a driver's license at that point.
- 03:14:16 SEN. MOSS said she would like more emphasis on education, such as peer-to-peer networks and advisory committees. She said she had discussed with Trooper Spencer the possibility of using American Recovery and Reinvestment Act (ARRA) funds for training and education, specifically to see how or if other states are using social networking media to reach younger people.
- 03:15:44 SEN. JUNEAU said that she wants to look at mandatory sales training, particularly the cost. She said that she is also interested in compliance check effectiveness and in gathering more information on effective DUI prevention methods being used in other states.
- 03:17:18 SEN. SHOCKLEY said he would like to know what it costs to send one person through the 5 1/2 month-long WATCh program, and how many people in Montana have been ticketed for three DUIs within a five-year period. He commented that there are offenders who cannot be helped because they simply do not care what the consequences are. He asked that the staff look into creating a civil commitment process, rather than a criminal process, that could be used to get this type of hard core offender off the streets.
- 03:20:09 SEN. ESP said he would like information from the youth behavior risk survey on why certain trends are decreasing and others are not and that expert opinions be included in the analysis. He said that he would also like to work on clarifying DUI task force authority language, particularly regarding compliance checks.
- 03:22:19 SEN. HINKLE said that education made a difference in reducing smoking and meth use and that same approach could be used to decrease DUIs. He

suggested that organizations could donate to help defray the costs. He asked staff to research having a special license plate for persons convicted of DUI.

03:24:13 REP. PETERSON said that he didn't think a special license for a first offense would be allowed under the law. He said that statistics show that 80% of first time DUI offenders never re-offend and suggested an alternative approach would be to issue an identification card in place of a drivers license identifying the driver as a second DUI offender. He explained how the card would be used. REP. PETERSON said he would like stricter requirements for checking identification and to make it a civil penalty for anyone who serves or provides alcohol to someone who has been convicted of a second DUI, and to be liable for damages caused by that person.

03:26:53 SEN. SHOCKLEY asked that staff look into whether or not insurance companies are aware of tickets issued to taverns for serving those who are intoxicated or underage. He asked staff to look into what a special license plate would cost.

03:28:30 SEN. LASLOVICH said that the Department of Corrections (DOC) has much of the information requested today and suggested that the DOC, as a vital resource, be invited to attend every LJIC meeting. He said that he has personally looked into the third-time DUI felony and that the cost would be overwhelming. Regarding criminalization, SEN. LASLOVICH asked that a legal analysis be obtained from at least one of the eight states using it to see what problems have been encountered. SEN. LASLOVICH said, regarding the cost of a special DUI license plate, that the Department of Justice has cost information. SEN. LASLOVICH asked to find out if what the DUI offense windows are in other states and if Montana should consider extending its five-year window. SEN. SHOCKLEY discussed a United States Supreme Court case from South Dakota involving the imposition of a penalty for failing to blow. REP. PETERSON said his experience as an attorney has shown that civil penalties can be more effective than criminal penalties.

Mental Health Diversion Bills Update

03:35:07 **Deb Matteucci, Behavioral Health Liaison DOC, DPHHS**, provided the information requested by the LJIC regarding the cost of the WATCH treatment program, saying that the average cost at WATCH West is \$10,222 per individual, and is \$16,783 per individual at WATCH East. She then updated the committee on implementation of the mental health diversion bills: HB 130, HB 131, and HB 132.

03:44:33 REP. PETERSON asked how the Billings Crisis Center is doing under implementation of HB 130. Ms. Matteucci said that a grant request has been received from the Crisis Center for a proposal involving the Crisis Center and ten eastern Montana county partners. She explained the criteria for awarding the grant funding. REP. PETERSON asked if the funding criteria was mandated by HB 130 or developed by the DPHHS. Ms. Matteucci said some of the criteria is in the bill and some was created by the agency.

- 03:48:42 REP. MENAHAN asked if the contract beds in Bozeman and Butte will be used and if there are plans to add more beds. Ms. Matteucci explained how the beds would be used and said that to some degree, it will be the provider's choice on how the beds will be used. She said there is no ability or authority to build more beds. She discussed scenarios on how beds could be used and how costs will be allocated to either local governments or to the funding in HB 130.
- 03:50:54 SEN. ESP expressed his displeasure that the program was not up and running by the September 1, 2009 deadline and that no counties had received funds yet. He asked when funds would be out and working to help people. Ms. Matteucci said that the funds are available but that counties have to request them. She agreed that the programs should be further along but said that it is up to the counties to apply and that to date, only one has. SEN. ESP asked when that application came in. Ms. Matteucci said the application was received the previous week. SEN. ESP asked if the rules are done. Ms. Matteucci said that there was a technical error so that the rules are not completed yet. SEN. ESP asked what could be done to incent the DPHHS to get the process going. SEN. ESP asked, as applications come in, that their review take priority.
- 03:54:51 REP. PETERSON asked that the LJIC get another update on this issue at the at the December meeting. REP. AUGARE said it is already on the December agenda.
- 03:55:09 SEN. JUNEAU asked if the grant proposal from the Billings Crisis Center and its area partners will fund current program or if it will be an expansion of services. Ms. Matteucci said that the language in the bill was to improve, enhance, and expand services, not to fund business as usual.
- 03:56:41 **LUNCH BREAK** - The LJIC recessed for lunch.
- 04:56:35 REP. AUGARE called the LJIC meeting back to order at 1:03 p.m.

DUI laws and Enforcement

- 04:57:00 **Steve Bullock, Attorney General**, discussed Montana statistics relating to fatalities involving drugs and/or alcohol, saying that:
- the average blood alcohol content (BAC) in fatal crashes was 1.6;
 - there have been 70 crashes to date in 2009 in which alcohol was a factor;
 - in order to truly make changes, all of the pieces must be evaluated in order to create a tailor-made solution;
 - not every problem can be solved through a legal means and that "out of the box" solutions should be pursued;
 - the 24/7 sobriety pilot project in South Dakota has been successful and that it should be investigated as a possible solution;
 - treatment is a key component and that treatment courts are very successful; and
 - that changing the cultural mind set of Montanans will be the biggest challenge in creating true change.

- 05:09:57 SEN. ESP asked for more information on the South Dakota sobriety project. Attorney General Bullock said he would get the information to LJIC staff for distribution to the committee.
- 05:11:06 SEN. SHOCKLEY asked how the project is used in rural areas. Attorney General Bullock said that rural sheriffs were initially resistant but that different tools, such as a SCRAM bracelet, have eased concerns of rural law enforcement agencies.
- 05:13:26 REP. PETERSON asked if other states have programs similar to South Dakota's pilot program. Attorney General Bullock said he is not aware of any but that his staff is investigating. He said that Montana could take the best of all programs and combine them into a tailor-made program for Montana.

Panelist #2 - DUI laws and enforcement: Should DUI-related offenses be revised in statute? If so, how? Should enforcement be improved? If so, how?

Panelists prepared their comments and discussion points based on a pre-meeting information packet on laws and enforcement decision points to be considered by the LJIC (EXHIBIT #11).

- 05:15:41 **Scott Newell, Chief of Police, Ennis**, said that DUI is a violent crime with predictable results. He discussed DUI enforcement from a law enforcement officer's perspective (EXHIBIT #12), including several recommendations.
- 05:27:17 SEN. SHOCKLEY said he was intrigued by the possibility of judges faxing arrest warrants to law enforcement officers in the field. He suggested that having a single central location with a judge on duty twenty-four hours a day and that the judge would be available to all law enforcement officers in the state. Chief Newell agreed that would be a good model.
- 05:29:33 SEN. HINKLE asked how Chief Newell and his officers detect drug use. Chief Newell said that is one of most difficult situations to handle because it is almost impossible to detect the presence of drugs and then link the drug to the impairment. He said that officers are being sent to drug recognition school, which is expensive and time consuming in itself and that it also adds a great deal of time to investigations. SEN. HINKLE asked what his recommendations for handling drugs would be. Chief Newell said that the best option would be to give law enforcement officers to authority to obtain a search warrant to do a blood test.
- 05:31:52 SEN. SHOCKLEY asked if changing statutory language regarding rebuttable inference would solve the problem. Chief Newell said yes, but that there are other statutory changes he would like also, particularly regarding prima facie cases.
- 05:32:55 SEN. MENAHAN discussed with Chief Newell the use of out-of-state DUI convictions under Montana statute and changes "per se" versus "reasonable inference of impairment".
- 05:38:01 **Col. Mike Tooley Montana Highway Patrol**, said he was happy to assist the LJIC in any way that he could and he discussed the following points:

- The average law enforcement officer sees DUI as a very serious violent crime. The officers work hard to enforce the laws and it takes a great deal of time to properly process an offender. In spite of that, there is a good chance that charges will be dismissed or pled out, which is very disheartening for the officer.
- Multiple offenders are also very discouraging. Law enforcement is working to improve technology by improving processing and incorporating more technology, such as cameras in all patrol cars and additional training.
- Seventy-five percent of officers say breath test refusals are an issue.
- Interlock devices are a very effective method of reducing multiple offenses and grants could be written to assist smaller departments to obtain equipment such as interlocks and cameras.
- Training for prosecutors would be of benefit.
- DUI check points should be considered and would be of great assistance to law enforcement officers.
- There must be a joint effort with businesses and the industry in general to reduce the number of intoxicated patrons leaving establishments. Server training is essential because it is very important to be able to gauge a person's level of impairment.

- 05:50:02 SEN. HINKLE asked what it costs to send an officer to drug recognition school and how many officers should get it. Col. Tooley said it costs thousands of dollars per officer and that ideally, all officers would get the training. He said that the training received so far has been paid for by grants.
- 05:51:36 SEN. JUNEAU asked what can be done to reduce teenage drinking rates. Col. Tooley said that the problem needs to be addressed at the preteen age. He discussed the effectiveness of the Montana Meth Project and said a similar approach should be used to decrease teenage drinking. SEN. JUNEAU asked if the BAC in young drinkers is higher on average than in older drinkers. Col. Tooley said that he did not have the information but would try to find it.
- 05:54:42 REP. PETERSON asked how a DUI checkpoint would be conducted. Col. Tooley said their effectiveness has been debated but that they do get drivers' attention. He said he would concentrate them in problem areas with lots of publicity, which would act as a preventative measure.
- 05:55:50 SEN. MOSS asked about abuse of prescription drugs. Col. Tooley said prescription drug abuse is an emerging and serious issue; and has killed many Montanans already. He said that drug recognition training would definitely help officers identify cases.
- 05:57:13 Sheriff Newell said that his department has seen a significant rise in drug DUIs. He listed several common drugs being abused.
- 05:58:08 SEN. SHOCKLEY asked how it was determined that the person was on drugs. Sheriff Newell said in his cases, he has had some DRE training and enough personal experience to spot the signs, which include: body language, pupil size,

sweat, blood pressure, or rapid pulse. SEN. SHOCKLEY asked how the presence of drugs can be proven if the person won't submit to a blood test. Chief Newell said that is the crux of the problem - it is very difficult to prove without a blood test.

- 06:00:25 **Travis Bruyer, Director, Alcohol Enforcement Training, American Athletic Institute, and Deputy Sheriff, Flathead County**, discussed compliance checks, saying that the purpose of compliance checks is to ensure that businesses are following the law. He said that checks are an inexpensive and effective tool but that not every community is using them as they should. He explained how Montana Board of Crime Control funding is used to recruit participants, how a compliance check is conducted, and what happens to a business that fails a compliance check.
- 06:07:44 REP. MENAHAN asked if the minors used in a compliance check are given fake identification. Mr. Bruyer said no, that the youths use their true identity.
- 06:08:50 SEN. JUNEAU asked about fines. Mr. Bruyer said fines are given to the business owner but that clerks can be fined also.
- 06:10:06 The LJIC viewed a short video depicting a compliance check.
- 06:11:40 SEN. JUNEAU asked how a community can get compliance checks going. Mr. Bruyer said to contact the Board of Crime Control for information.
- 06:15:53 **David Carter, Yellowstone County Deputy Attorney**, said that he agrees with most of comments made by previous panelists. The question is, he said, how to deal with the most dangerous offenders in Montana, which are repeat DUI offenders. He discussed his perspective of the situation, as a county attorney. Mr. Carter also entered into the record a letter from Dennis Paxinos, Yellowstone County Attorney (EXHIBIT #13), which contained recommendations for three legislative changes that would address the serious problem of repeat offenders. Mr. Carter discussed each of the recommendations.
- 06:26:49 REP. PETERSON asked about criminalizing implied consent. Mr. Carter said it would make it a crime for a high risk repeat offender to refuse and that the penalties would be set by the legislature.
- 06:29:03 REP. PETERSON asked if the court, as a probation condition, could order an interlock device. Mr. Carter said yes, but that they are very expensive. He said that the biggest problem is compliance, because offenders are very good at finding another vehicle to drive. He discussed other problems associated with using an interlock device, such as the difficulty they create for family members who also depend on using the vehicle. REP. PETERSON said he is considering drafting a bill that would make it a crime to sell, rent, loan, or lease a vehicle to anyone with a DUI conviction. Mr. Carter said that such a law may act as a deterrent but predicted it would not have the desired effect.

06:34:09 SEN. SHOCKLEY said he was against the criminalization of refusal but agreed there is a problem. He asked if a centralized, 24-hour-a-day, Justice of the Peace to issue warrants for breath tests would take care of the problem. Mr. Carter said it would assist rural counties tremendously but would be very expensive to operate. He predicted dealing with 80 - 100 warrants per night. SEN. SHOCKLEY said that he likes the idea of using interlock devices and explained how the law could be amended to deal with problems that could arise. Mr. Carter agreed that it could work but questioned the efficacy of it. SEN. SHOCKLEY said it was suggested that the WATCH program be used for DUI three offenders. Mr. Carter agreed, saying that identifying and treating a high risk offender sooner would help.

06:41:45 REP. MENAHAN asked, if the legislature chooses not to criminalize refusal, if allowing evidence of prior convictions would be a good alternative measure. Mr. Carter said yes, that it would go a long way in addressing multiple offenders.

06:45:43 **Chris Petaja, Public Defender, Bozeman**, said that he strongly supports a person's right to refuse a breath test. He said he would also fight to preserve a person's right to drive because of the rural nature of Montana. excepting repeat offenders. Mr. Petaja briefly discussed the use of interlock devices. He said he would like to see a first offender program in Montana which would allow the offender to complete certain treatment steps, and if successfully completed, the the offender's record would be expunged. He said that the public defender's office opposes expansion of check point authority and allowing past offenses to be admissible in court.

06:50:35 **BREAK** - REP. AUGARE recessed the committee for a 15 minute break.
07:10:12 REP. AUGARE called the LJIC back to order.

Public Comment

07:10:46 **Frank Rozan, Southwest Montana Community Change Program, Butte**, spoke in support of using interlock devices and discussed how problems could be addressed.

07:13:51 **Rube Wrightsman, Undersheriff, Saunders County**, discussed his perspective of repeat DUI offenders and offered several proposals to keep offenders off highway (EXHIBIT #14).

07:20:41 **Jimbo Logan, Logan Auction Service, Clyde Park, Montana**, testified to problems he is having obtaining titles on vehicles he purchased in May of 2009. He said that the new MERLIN system for registering vehicles has caused him great difficulty and expense and that he knows of many others experiencing the same difficulties he is.

07:24:21 **Matt Kuntz, Executive Director, National Alliance on Mental Illness (NAMI)**, asked the LJIC to take into consideration the high rate of mental illness among those with substance abuse problems. He urged the committee, when formulating solutions, to include treatment options rather than just criminal sanctions.

- 07:26:15 **Mona Jamison, Boyd Andrew Community Services, and Montana Association of Service Providers (MASP)**, said that the LJIC needs to be aware that the ACT program contains loopholes for first offenders. She explained the loophole and said that statistics show that 40% of the first offenders who have recommendations for optional treatment do reoffend.
- 07:28:18 **Chris Minard, citizen**, briefly discussed the South Dakota pilot project and pointed out that South Dakota law does not allow refusal of a breath test. She said that no one solution will fix everything, but that step by step, the problem can be taken care of. Ms. Minard said that it has to start with educating children at an early age. She also briefly discussed the social host ordinance recently passed by the Helena City Council and said it was a good first step.
- 07:30:27 **Becky Sturdevant, MADD**, said that MADD is very supportive of using interlock devices. She discussed the issue of implied consent, inaccurate statistics, and how they affect the issue of DUI; cultural beliefs that contribute to drug and alcohol use; and MADD's support of social host ordinances and of compliance checks in preventing underage drinking.
- 07:32:39 **Angelica Caplette**, said that mandating the use of an interlock device does not guarantee that the device will be used because there is no administrative follow through. She said that the LJIC should consider strengthening the statute in order to enforce their use, saying that if there is going to be legislation to mandate this, funding must be included to provide followup tracking and enforcement measures.

Committee work session: What are the legislative issues related to law enforcement that the committee wishes to further examine?

- 07:35:49 Ms. Heffelfinger distributed information provided by the Attorney General regarding the South Dakota 42/7 sobriety project (EXHIBIT #15 - Reuters article on NHTSA numbers) and (EXHIBIT #16 - National Partnership on Alcohol Misuse and Crime article). SEN. SHOCKLEY announced that REP. STOKER provided letters from Larry Rose, the Darby Chief of Police (EXHIBIT #17) and copies of correspondence between Chief Rose, the City of Darby and Mayor Scheel, and Debbie Trimmer/Trapper Peak Investments (EXHIBIT #18) detailing issues of concern in the Darby community.
- 07:38:39 SEN. MOSS said she would like information on the Washington State program. and she asked Ms. Jamison to provide additional information on the loophole in the ACT program. Ms. Jamison said she would provide the information to Ms. Heffelfinger well in advance of the next meeting.
- 07:41:08 REP. PETERSON said he would like to investigate aggravated DUI on second and subsequent offenses and to look at the possibility of sending offenders to the WATCH program while still being a misdemeanor offense; and if mental illness could be used as a means to get help for repeat DUI offenders. He said he would like to adopt a law that would make it a misdemeanor to sell, rent, lease, loan, or in any way provide a vehicle to a person convicted of a second DUI.

- 07:44:20 SEN. SHOCKLEY said that the state does not have the assets to send all offenders to the WATCH program for everyone but suggested that it would be good to stop DUI offenders before it becomes a felony. He asked for MDT data on how many DUI 3's Montana has.
- 07:46:18 SEN. LASLOVICH said that in order to be truly effective, treatment programs are necessary. **Rick Deady, Treatment Program Contract Manager, DOC**, said that there is about a 4 - 6 week waiting period to get into the WATCH program. SEN. LASLOVICH said would be helpful to know what services are available for people also. He agreed with SEN. SHOCKLEY that the third offense is good idea but said it would overwhelm the current program.
- 07:49:09 SEN. HINKLE said that he would like to include drug use, both legal and illegal, in discussions and asked that a medical expert be invited to the next meeting.
- 07:50:00 SEN. JUNEAU agreed with SEN. LASLOVICH that more treatment programs are needed. She also said she would like to continue studying the issue of youth offenders and suggested that one option would be to create a lower BAC treatment threshold for youth. She said that support services are critical for teens.
- 07:53:44 SEN. ESP asked for information on how or if the offenders in the WATCH program are tracked in other programs. Mr. Deady, DOC, said that they are tracked and that he would provide an information sheet to the members in advance of the next meeting.
- 07:55:00 REP. PETERSON said that it takes about three months for the brain to readjust to no alcohol, so 30-day or even 60-day treatment programs are not sufficient. He said that it is important to get people help, but that it is even more important to protect society from them. He said that if he has to decide between getting them help or keeping them off the street, he will choose to keep them off the street.
- 07:57:16 REP. MENAHAN said that he supports repealing language in the sentencing provision to say that if a person gets a DUI, the person will be charged and convicted; and if there is a second conviction, it will be worse. He discussed several statutory changes that wouldn't cost much but would have a strong effect, such as a no bail provision and changing the rebuttable inference at .08 to a presumption of being under the influence. Regarding license suspensions, REP. MENAHAN said that his opinion is that suspensions should be graduated, depending on the number of DUIs the person has. He said he also supports changing statutory language to say that a defendant "shall not operate a motor vehicle unless equipped with an interlock device".
- 08:01:26 SEN. SHOCKLEY said that bail must be option because an individual is not supposed to be incarcerated unless convicted.
- 08:02:02 REP. EBINGER said that care must be taken not to create unfunded mandates for local governments, which could happen if instant incarceration is required.

08:04:19 SEN. JUNEAU said that she wants more information from the South Dakota 24/7 project on the how it uses the SCRAM bracelet and associated costs. She noted that only 7% of 1,022 offenders have reoffended while on the bracelet.

AGENCY OVERSIGHT

Update on MERLIN transition and backlog in vehicle title processing, Brenda Nordlund, Motor Vehicle Division, Department of Justice (DOJ),

08:05:42 **Brenda Nordlund, Administrator, Motor Vehicle Division, DOJ**, distributed copies of an outline for her discussion topics (EXHIBIT #19). Ms. Nordlund reviewed the timeline and events encountered in the implementation of the MERLIN project.

08:17:46 Ms. Nordlund also discussed several graphs depicting progress made in the implementation of the MERLIN project (EXHIBITS #20, #21, and #22).

08:21:55 REP. AUGARE thanked Ms. Nordlund for coming and said that, in the future, the LJIC would like more detail and more specific information in the updates. He said that the members are frustrated by the lack of information and that their constituents continue to voice their frustration and dissatisfaction with the MERLIN project.

08:23:18 SEN. ESP asked about the status of the que today. Ms. Nordlund said, as of this day, there are about 38,000 in the que. SEN. ESP asked what the average length of time is that they have been in the que. Ms. Nordlund said a person enters the que at the county level and that the turn-around rate is averages about 12 days. She acknowledged that there are areas that are still backlogged.

08:26:26 SEN. ESP asked if the process has improved since July. Ms. Nordlund said yes, without question.

08:27:50 SEN. ESP asked Ms. Nordlund to comment on the plight of Mr. Logan. Ms. Nordlund said she would like to talk personally with Mr. Logan to make sure she is clear on the difficulties he is experiencing.

08:29:37 REP. EBINGER said he has received numerous constituent complaints and that he would like an assurance that this will be resolved soon. He related several specific constituent concerns. Ms. Nordlund said that there are electronic processes now in place that will speed the process up but said that some system anomalies still remain to be worked out.

08:33:13 REP. EBINGER said many of his constituents have complained that their calls are not answered or returned. Ms. Nordlund explained how resources have been allocated and that staff is trying to handle customers on a timely bases as much as possible. She pointed out that there is a finite number of employees and phone lines. REP. EBINGER also expressed concerns about DMV offices being asked to do insurance verification and the change in process used for reissuance of license plates.

- 08:39:15 SEN. SHOCKLEY asked if Bearing Point is a foreign or United States company. Ms. Nordlund said it is a U.S. company with international businesses.
- 08:39:48 SEN. LASLOVICH asked if the MERLIN project has gone over budget. Ms. Nordlund said that she did not have budget information with her and explained the funding flow. She said that she is cognizant of costs and realizes she must bring MERLIN in within the original budget set for the implementation.

Public comment and committee discussion on MERLIN

- 08:44:32 **Robert Ward, Vice President, Enterprise Rental Cars**, testified that Enterprise licenses approximately 1,000 vehicles in Montana and that the vehicles all had to be licensed in the summer at the height of tourist season, which created a very difficult situation. He said that the process has improved and that Enterprise is not experiencing the same level of difficulty as it was in the summer months. Mr. Ward predicted the situation would continue to improve.
- 08:45:56 **Ronda Wiggers, Montana County Treasurers Association**, said that the MERLIN system is fixable and is moving forward but that there are issues to address. Ms. Wiggers discussed several of the issues, which included printers breaking down, system idiosyncracies that need to be worked out, server problems, and license plate reissuance problems.
- 08:51:17 **Sheryl Wood, Associate Director, Montana Association of Counties (MACo)**, testified that MACo fully supports the county treasurers and DOJ's continued efforts to resolve the problems. She agreed that the entire process has caused a great deal of stress, to the point of having to bring in stress counselors for some county offices and losing employees. She discussed funding issues and the difficulties that the project has placed on local governments; and said that there needs to be an appropriation for implementation of future projects such as MERLIN.
- 08:53:15 Ms. Heffelfinger submitted into the record a letter from the Citizens for Balanced Use (EXHIBIT #23) relating that group's difficulty in working with the MERLIN system.
- 08:53:58 REP. AUGARE proposed sending a formal letter to the Attorney General explaining the LJIC's concerns and to request that a formal response to be mailed to LJIC members by a certain deadline. He said that the LJIC would request another briefing at its December meeting and said that he would also consider appointing individual legislators to meet with DOJ staff and report back.
- 08:55:27 SEN. ESP said he could see progress and felt that things were moving in the right direction. He asked that the LJIC continue to receive regular updates. He asked Ms. Nordlund to describe what efforts are being made to assist county treasurers. Ms. Nordlund did so, saying that the Montana County Treasurers Association has been the main avenue used to provide assistance.

08:59:19 SEN. ESP suggested waiting until the December meeting before moving forward with a letter or meeting. REP. EBINGER agreed, but said he will demand answers if the December meeting arrives and there is still a backlog.

09:00:01 REP. PETERSON asked that the LJIC receive monthly reports. SEN. ESP asked that they begin with the month of July 2009. Ms. Nordlund agreed.

09:01:18 REP. AUGARE recessed the LJIC until 8:00 a.m. September 29, 2009.

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