



Law and Justice Interim Committee

00:00:01

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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

April 5, 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
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. DAVID HOWARD
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED

REP. MIKE MENAHAN

STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst
DAVID NISS, 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 February 8 and February 9, 2010, meeting minutes as written.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. AUGARE called the meeting to order at 8:00 a.m. The Secretary took roll, REP. MENAHAN was excused (ATTACHMENT #3). REP. AUGARE welcomed SEN. LARRY JENT as a new committee member to replace former Senator Laslovich. REP. AUGARE thanked former Sen. Laslovich for his good work on the Law and Justice Interim Committee (LJIC).
- 00:01:46 **REP. EBINGER moved to approve the February 8 and 9, 2010, meeting minutes, as written. The motion passed on a unanimous voice vote.**
- 00:02:08 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD),** reviewed the meeting materials in the meeting binder and explained how the materials would be used during the meeting.

COMMITTEE INFORMATION REQUEST RESPONSES

- **Disposition of drivers' license reinstatement fees**

00:06:31 **Pat Gervais, Fiscal Analyst, Legislative Fiscal Division (LFD),** said that the materials she would be discussing were behind the first tab in the binder. She explained how the drivers' license reinstatement fees are collected, disbursed to counties, and used to partially fund DUI task forces (**EXHIBIT 1**).
- **DUI Task Force funding**

Ms. Gervais discussed two additional tables listing all counties with an approved DUI Task Force and the amount of funding that each county has received from the state through fiscal year 2009 (**EXHIBIT 2** and **EXHIBIT 3**). She also referred the bullet points listed at the bottom of **EXHIBIT 1**.

00:10:42 SEN. JUNEAU asked why Glacier County is not receiving funding for a DUI task force. Ms. Gervais said it could be because Glacier County doesn't have a DUI task force or because it is involved in a cooperative effort with surrounding counties. SEN. JUNEAU asked how the license reinstatement fees collected in Glacier County were handled. Ms. Gervais said the fees are allocated by the Department of Transportation to address related issues.
- **DUI Court funding**

00:12:19 Ms. Gervais explained how DUI courts are funded and how the funding was allocated to the state's DUI courts (**EXHIBIT 4**). She also referred the bullet points listed on page 2 of **EXHIBIT 1**.

- **Disposition of alcohol taxes**

- 00:13:34 Ms. Gervais reviewed a report prepared by Terry Johnson, Fiscal Analyst, LFD, regarding the different types of alcohol taxes and how they are collected and allocated (**EXHIBIT 5**). A table listing state sales, gasoline, cigarette, and alcohol taxes collected in all fifty states was included. She also discussed the bullet points listed on page 2 of **EXHIBIT 1**.
- 00:16:43 REP. PETERSON asked what "enterprise funds" are (page 1, EXHIBIT 5). Ms. Gervais said an enterprise fund is generally deemed to be self-supporting and is operated more as a business.
- 00:17:21 SEN. JUNEAU asked how much of alcohol tax collections are being spent on prevention programs. Ms. Gervais said that there is a prevention program funding table in the binder (**EXHIBIT 6**). SEN. JUNEAU asked if the Department of Public Health and Human Services (DPHHS) is the only agency addressing prevention efforts. Ms. Gervais said she did not look for other prevention programs. SEN. JUNEAU asked her to research the total percentage of funding being spent on prevention programs through all state agencies.
- 00:21:09 SEN. MOSS asked if task forces are required to report back to the state about how they are expending funds. Ms. Gervais said that the counties report back to the Montana Department of Transportation (MDT) but that she is not aware of any other required reports. Ms. Gervais said that information could be acquired on a county-by-county basis and thought that the Montana Association of Counties (MACo) could assist in obtaining it. SEN. MOSS asked her to do that, saying it would tie in with SEN. JUNEAU's interest and could help streamline and improve existing programs.
- 00:24:09 Ms. Gervais reviewed the summary statewide DUI data report for January of 2008 through December 31, 2009, from the Office of the Court Administrator behind Tab 2 (**EXHIBIT 7**). She also discussed a draft summary report on DUI fines, fees, and costs (**EXHIBIT 8**).
- 00:31:56 SEN. ESP asked if the \$4.5 million outstanding balance (bottom of page 1, EXHIBIT 8) would eventually be written off or collected. Ms. Gervais said she thought that if the fine was not paid, other penalties would be assessed.
- 00:33:04 **Karen Nelson, Director, Court Technology Program, Office of the Court Administrator, Montana Supreme Court**, said that debts are tracked and paid, using payment agreements that span over a long period of time, if necessary.
- 00:34:22 REP. AUGARE said that not all of the DUI data are being collected in Glacier County and that the same is probably true of other counties as well, because tribal courts are not included. He said that more thorough data collection efforts need to be made.

VEHICLE INTERLOCK DEVICES

- 00:35:30 **Stan Morris, DMB Interlock, and Darrin Traver, Warrior Auto Works**, passed out materials relating to a vehicle interlock device (**EXHIBIT 9**) and demonstrated how the unit works.
- 00:36:31 **Stan Morris, DMB Interlock, Billings**, explained how the Dräger interlock device can be programmed for different needs or uses and said that it works in all altitudes and at high and low temperatures. He also explained what backup measures are in place in the event the unit fails.
- 00:41:30 SEN. JUNEAU asked how customers in very remote or rural areas are monitored and serviced. Mr. Morris said it is the customer's responsibility to get to the provider. He said he is working to expand his business into more areas of the state, but that as a provider, he must have the enforcement to back it up and have enough customers to support the business. He said that he is considering investing in a mobile operation that will travel to different locations to service the interlock device. He said that most people are willing to make the drive because use of the device allows them to drive and to maintain their daily lives.
- 00:44:15 SEN. JUNEAU asked how much an interlock device costs, how much it costs to maintain it, and how he handles people who can't afford the device. Mr. Morris said he charges \$120 for installation and \$80 per month to maintain it, which is very inexpensive, in his opinion. Regarding people who can't afford the device, Mr. Morris said they would not be able to drive until they could prove they would not drink and drive again.
- 00:46:21 REP. STOKER asked what happens if a device fails. Mr. Traver said if the failure is the fault of the provider, the provider pays. If not, the client pays. REP. AUGARE asked what the percentage of error is. Mr. Traver said it is about 1%.
- 00:47:41 SEN. ESP asked about passengers blowing in place of the driver. Mr. Morris explained that there are many failsafes built in to prevent tampering but that the device is not foolproof. He said that, for instance, the device is calibrated to an adult driver's lung volume, which would prevent a child blowing for a parent but not another adult. He said another failsafe is that rolling retests occur frequently so the offender is almost always caught. He said that the technology is not perfect but is very effective.
- 00:50:04 SEN. MOSS asked if businesses are installing interlock devices in commercial vehicles as a safeguard against employees drinking and driving on the job. Mr. Morris said yes and noted that an interlock device with a camera may be available soon, which would eliminate even more problems.

UPDATE ON SJR 29 - DNA STUDY

- 00:55:22 Ms. Heffelfinger reported that she is meeting with a working group that is developing recommendations for the full LJIC's consideration. Ms. Heffelfinger said that the working group needs additional time to consider the issues and options, and has scheduled its next meeting for April 12. She said that LJIC members are welcome to attend.

ELECTRONIC MONITORING OF DUI OFFENDERS

- 0:58:03 **Deanne Brown, Aquila Vision, Missoula**, said she works with the iSECUREtrac company in Omaha, Nebraska, and presented a brief PowerPoint slide show on a remote alcohol testing monitor. **Andy Nebrigich, iSECUREtrac**, assisted in the presentation.
- 01:03:07 SEN. SHOCKLEY asked for additional explanation of how the picture taken at the time of blowing is used. Mr. Nebrigich explained, saying that the monitoring center is open 24 hours a day and is fully staffed at all times.
- 01:04:14 REP. PETERSON asked who provided monitoring for a person in Montana, for example. Mr. Nebrigich said the monitor center in Nebraska does all monitoring and works with the local agencies in the event of a violation.
- 01:05:01 Mr. Nebrigich said that there is no installation fee but there is a daily fee between \$8 and \$10 dollars per day because it is all leased to the client.
- 01:07:18 SEN. JUNEAU asked for a list of other states that are using the iSECUREtrac devices. Mr. Nebrigich said he would provide that information.
- 01:08:01 SEN. HINKLE asked if device works on other substances besides alcohol. Mr. Nebrigich said it does not.
- BREAK**
- 01:10:04 REP. AUGARE recessed the LJIC for a 15-minute break.
- 01:14:31 REP. AUGARE called the meeting back to order.

BLOOD ALCOHOL TESTS - QUESTIONABLE RESULTS, DEFENSE ARGUMENTS

- 01:14:47 **Mike Sherwood, criminal defense attorney, Missoula**, discussed questionable breath test results and defense arguments used in defending people charged with DUI. He discussed examples of two women who used a chart in Montana's drivers' license manual as a defense to drinking and driving and the outcome of their arguments. Mr. Sherwood said that inclusion of the chart in the manual could be considered entrapment and caused people to not realize the extent of their impairment. He said that while the chart is no longer included in the manual, the manual contains statements that drinks should be consumed in a certain manner over a specific period of time in order to avoid accumulating alcohol in one's system. He said that the charts are still used in the A.C.T. program and by driver education programs. He said the law needs to be clarified and said he would like to see legislation to require that testing be done by an independent laboratory to determine what could be considered a "safe" way to consume alcohol. He said that this would help reduce drunk driving.

Committee Questions

- 01:26:52 SEN. SHOCKLEY asked what specifically should be done to solve that problem. Mr. Sherwood said he would like to require state-funded testing by independent labs and that the results be published in newspapers and pamphlets.

01:27:44 REP. PETERSON asked why people shouldn't be held personally responsible for their behavior. Mr. Sherwood said he has no problem with that but people shouldn't be told they can do something and then be convicted of a crime when they do it. He said he is not testifying as a proponent for drinking and driving, but for people who want to know how much they can drink and still be safe to drive.

PANEL - 24/7 SOBRIETY PROGRAMS TO COMBAT DUI

Ms. Heffelfinger distributed information relating to Montana Department of Justice 24/7 sobriety pilot program (**EXHIBIT 10**).

01:30:10 **Steve Bullock , Montana Attorney General, Department of Justice (DOJ)**, noted that Sheriff Freedom Crawford would not be able to participate in the panel discussion. He reviewed the involvement of the Attorney General's Office in the issue of DUI, including the recent death of Montana Highway Patrol Officer Mike Haynes and two other Highway Patrol officers. He said that it is very clear that something needs to be done because people are demanding change. He said that Montana leads the nation in almost every statistical category relating to DUI and drinking and that those trends must not be allowed to continue. He discussed the 24/7 sobriety pilot project in Lewis and Clark County, saying that the project will keep people sober, that repeat DUI offenders will be required to take a breath test twice a day, and that there will be immediate sanctions if the offender does not comply. Attorney General Bullock said that South Dakota statistics have plunged since implementing the 24/7 project. He related specific Montana statistics and estimated that, under the 24/7 project, DUIs would be reduced by 33% in one year and that over 30 lives per year would be saved. He said that he hoped to have a report on the success of the pilot project available for the 2011 Legislature. Attorney General Bullock said he was looking forward to working with the legislature to address the problem of drinking and driving in Montana.

01:38:36 **Bill Mickelson, South Dakota 24/7 Sobriety Program**, said he was testifying on behalf of the South Dakota Attorney General Larry Long. Mr. Mickelson reviewed the history and components of the South Dakota program (**Summary Report - EXHIBIT 11**) and said that the program proved to be very effective very quickly. He said that the South Dakota Legislature approved the program for statewide use (**EXHIBIT 12 - HB 1027 and EXHIBIT 13 - HB1065**) and said that Montana could benefit from South Dakota's experience. He predicted that Montana would see the same quick results as South Dakota did. Mr. Mickelson noted that the program is catching on in other states and that North Dakota has already implemented the program statewide and that California, New York, North Carolina, and Minnesota are in the process of starting 24/7 sobriety programs.

01:41:41 **Leo Gallagher, Lewis and Clark County Attorney, Helena**, said that he went to South Dakota to review the program as a cynic and came back as a believer. He said that it costs about \$4 per person per day so is very affordable and that provisions are in place for indigent people. He said that about 300 people per day are tested and that the program is administered very efficiently and cost effectively.

- 01:46:38 **Jon Moog, Office of the State Public Defender (OPD)**, said that as the agency that represents indigent clients, the OPD is concerned about the cost of the program and its client's ability to pay. He said that while the OPD understands the intent, cost must be a consideration. Mr. Moog also discussed the OPD's concern regarding the program being expanded to other crimes where alcohol was not a nexus of the offense. He said that smarter clients could "game the system" and schedule their drinking around testing times. He suggested that random testing would be a better deterrent. He said the OPD is also concerned about potential challenges to such a testing for defendants who are in the predisposition or prejudgement process because some judges consider the daily charge unreasonable for someone who has not been found guilty of the charged offense.
- 01:48:40 **Rep. Janna Taylor, HD 11, Dayton, sponsor HB 376, 2009 session**, referred to HB 376 in the binder (**EXHIBIT 14**) and said it was originally intended to be almost identical to South Dakota's program. She said there are minor differences in how tests are administered and that her bill also tried to address cost concerns. She discussed other concerns with her bill and offered it to the LJIC for its use. She thanked the LJIC for inviting her to the meeting.
- 1:51:46 **Larry Epstein, Glacier County Attorney**, said his District Court judge has been operating his own version of the 24/7 program for almost two years and that the program has been embraced by local law enforcement agencies. Mr. Epstein said it has been proven to be very effective and low cost as well.

Committee Questions

- 01:54:29 SEN. JENT asked if the South Dakota programs uses hand-held portable blood testing devices (PBT). Mr. Gallagher said yes and explained. SEN. JENT said that he has no trouble imposing such a device as a condition of a sentence but is concerned about the issue of bail because posting bail is a fundamental right under the Constitution. He asked how that could be squared, considering that right and the presumption of innocence. Mr. Gallagher agreed that people have a right to post bail but said the bail amount has to be sufficient to ensure public safety. He said that under the program, a person is allowed to go home, to continue to work and to function but that some assurance is needed that the person won't hurt someone. He said that bonds could be reduced if that assurance was made and that it would also decrease jail costs for longer stays. He said it is a balancing, but a good solution.
- 01:57:46 SEN. JENT said that the argument about community safety is a compelling one for enacting the program. He asked Mr. Gallagher if he would advocate that a felony DUI be required to participate in the 24/7 monitoring program. Mr. Gallagher said yes, for a second or subsequent DUI.
- 01:58:40 SEN. SHOCKLEY agreed that the 24/7 sobriety program is a good idea but said he also agreed with some of the concerns discussed. He said perhaps it should be resolved at the Supreme Court level and noted that he has always thought that bail amounts have been too high. He said he has discussed the program with the Ravalli County Attorney, who thinks the program is impractical. Mr. Gallagher said there are some issues that will have to be dealt with, such as the very remote and

rural areas of the state, but that devices such as a SCRAM bracelet can be used in the rural and remote areas. SEN. SHOCKLEY asked if the cost is less expensive than paying for jail time. Mr. Gallagher said it is and that the person will be expected to pay the \$4 per day fee. SEN. SHOCKLEY said he would support the use of state money to implement the 24/7 program.

02:01:57 SEN. SHOCKLEY asked Mr. Epstein to explain the very remote and rural clients would be dealt with. Mr. Epstein said that a Kalispell judge was able to get the support of the law enforcement agencies, who agreed to oversee and monitor the clients and that all of the officers involved became certified in the use of PBT units. He explained how a client living in Babb, Montana was dealt with.

02:03:43 SEN. SHOCKLEY asked if the County Attorneys from the larger counties would support the 24/7 sobriety program. Mr. Gallagher said that he hasn't polled them but thought that the legislative committee of the Montana County Attorney Association does support it.

02:04:18 REP. PETERSON asked if twice a day testing is adequate to detect alcohol consumption. Attorney General Bullock said yes, and that those with chronic addiction problems will end up in jail if they blow "hot". REP. PETERSON asked if the program would apply to both pending and post conviction cases. Attorney General Bullock said it would apply only to pending cases at this point. He said that once the pilot program results are in, changes can be made. He said that a proposal to take the program statewide will be prepared once the pilot program is completed, and that while he is aware of the concerns that the system will be overwhelmed, he believes that will not happen.

02:07:30 REP. PETERSON asked how a person convicted of a second DUI would get to the testing site. Mr. Mickelson said the person may walk, ride a bike, or use public transportation, a taxi, a family member, or an employer to get to the testing site. He said that almost all clients show up on time and blow a clean test.

02:09:06 REP. PETERSON asked if someone who drives to the testing site under these circumstances will be ticketed. Mr. Mickelson said yes but that has been a very unusual occurrence in South Dakota. REP. PETERSON asked if probation is extended for a person who blows hot or is arrested for another crime. He said he is concerned about a court losing its jurisdiction. Mr. Mickelson said that after consulting with the judges in the pilot project, he found that 99.6% of the people show up on time so the judges have not had to deal with violators. He said that some failures must be expected, considering the level of addiction in some of the people.

02:12:13 REP. PETERSON said he is most concerned about keeping these people off of the road. He asked what the recidivism rate is for those who successfully complete the program. Mr. Mickelson said that preliminary results from South Dakota's program indicate that recidivism rates have dropped by half, which is very good. Attorney General Bullock said that post conviction, a judge can order twice-a-day tests for up to a year, which hopefully will allow the person time to "dry out" and decide to make better choices. He said that long-term data on

recidivism rates is not available yet but that preliminary data indicates it is very effective. He said he would get the South Dakota preliminary data to the LJIC.

- 02:22:09 REP. STOKER said that the City of Darby recently passed a \$500 fine for refusal to blow and that Missoula soon followed suit. He said he believes this will be an effective deterrent, considering the expense of a SCRAM bracelet. He asked what chemicals can be detected in a urine test and how accurate a urine test is. Mr. Gallagher said that the test is accurate and can detect many substances, including barbiturates, cannabis, and methamphetamine. He said that urine tests are highly reliable and are used routinely by the Department of Corrections.
- 02:25:51 SEN. MOSS asked Mr. Mickelson about the amount of space and personnel needed for a testing facility. Mr. Mickelson said that the South Dakota program has its own building and parking lot and is staffed mainly by college students and retired police officers. Staff receives training in program administration, on court requirements, and equipment operations. He said that everyone knows the rules and the protocol, so the process is very efficient and fluid.
- 02:28:56 SEN. MOSS said for the 24/7 program to be effective, there must be coordination and communication between all of the stakeholders and counties. She asked if that will be possible. Attorney General Bullock agreed that there has to be buy in from the counties if it is a volunteer program because the City and County Attorneys play key roles. He said the use of the pilot program will help work out problems and that any reluctance will be overcome by results.
- 02:32:14 SEN. JUNEAU asked if the South Dakota program developed memorandums of understanding (MOU's) and coordinated with its tribal police and tribal courts and if so, how it is working. Mr. Mickelson said that informal working agreements have been reached with three of the nine tribes in South Dakota; and that efforts are underway to formalize agreements with all of the tribes.
- 02:35:06 SEN. JUNEAU asked Attorney General Bullock to describe how he would work with Montana's Indian nations. Attorney General Bullock said that the issues of sovereign nations and jurisdictions will add another layer to an already complicated issue of dealing with 56 county governments but that he plans to travel to all seven reservations to introduce the program and to try to build partnerships between state and tribal governments. SEN. JUNEAU said she would like the LJIC to consider how to make sure that all necessary entities are included in the planning and implementation of the program.
- 02:36:50 SEN. JUNEAU asked if South Dakota has reduced its DUI fines and fees in order to allow the offender to pay for testing. Mr. Mickelson said the judge has discretion regarding fines but that court costs still have to be paid. He said that certain fines have been suspended upon successful completion of the 24/7 program in conjunction with a court approved treatment program.
- 02:37:50 SEN. JUNEAU said that counties will likely have to hire new staff and will incur additional expenses in administering the 24/7 program. She asked how they will be able to absorb the extra work and expense. Mr. Mickelson said that only the

two largest counties had to hire additional civilian staff and that the remainder have been able to handle the program using existing staff. Offender fees cover administration and other expenses. Mr. Mickelson said that juvenile offenders are not included in the program because of liability concerns. SEN. JUNEAU said that a lot of drinking behaviors begin at young ages and that some services need to be offered to the juvenile population.

- 02:41:24 SEN. JUNEAU asked if the 24/7 sobriety program has influenced the culture of drinking among the general population in South Dakota. Mr. Mickelson said South Dakotans are drinking less and despite reductions in beer and liquor sales, the beer and liquor wholesalers and retailers support the program as active partners.
- 02:44:06 SEN. JUNEAU asked if South Dakota uses the program as a prevention tool and how the 24/7 program is advertised, in order to influence behavior. Mr. Mickelson said that both state and national media coverage has been very helpful, which has helped the success of the program.
- 02:45:32 SEN. JUNEAU asked that Montana's pilot project include profile information on the participants, in order to help determine the effectiveness of the pilot program. Attorney General Bullock agreed that data collection is important and said that Montana's pilot program will include data collection and that Montana will borrow South Dakota's software to begin data collections.
- 02:47:35 SEN. JUNEAU asked the panelists to share their ideas, suggestions, or comments with the LJIC, particularly for prevention and education.
- 02:49:32 SEN. SHOCKLEY asked if the Attorney General plans to offer legislation to implement the program. Attorney Bullock said he wants to see what sorts of results come from the pilot program and to identify challenges. He said that minor changes in process may be necessary, such as petition to revoke and the potential for restoration of driver licenses, as well as an appropriation to fund the program.
- 02:53:20 SEN. SHOCKLEY asked about charging for use of the PBTs and said if the state purchased them in large quantities, the cost of the program for offenders could be reduced significantly. Mr. Mickelson said that SCRAM bracelets and software will be loaned to Montana and that the goal is to structure the program so that it will be cost neutral to the law enforcement agencies and tax payers. He provided additional details on cost savings.
- 02:55:29 SEN. HINKLE asked if South Dakota has been able to determine if the use of other substances increased under the 24/7 program. Mr. Mickelson said that South Dakota tried to implement a testing model in the program to include other substances. He said that an increase has not been observed in drug-related DUIs. SEN. HINKLE said that he had an opportunity to spend time with a local narcotics officers, which was very enlightening. He said he is very concerned about drug use in Montana and would like to include drug testing in the 24/7 pilot program. Mr. Mickelson said that would be possible and had already been planned for in the Montana project.

- 02:58:13 SEN. ESP asked Mr. Epstein to discuss more fully about what DUI and court data is collected, particularly from Indian reservations. Mr. Epstein said that currently, reporting is voluntary and that some tribes have chosen not to report, but that city, justice, and District Courts are reporting. He said that he has been given unofficial reports from deputies but that in order to get official reports, the issue will have to be worked out between each tribal entity and the state, which he is encouraging.
- 03:01:22 SEN. ESP said it is important to consider that the information may not be as complete as previously thought. He asked if statistics on alcohol-related accidents and fatalities on reservations are included in the Attorney General's information. Attorney General Bullock said he thought that they were.
- 03:03:05 **Col. Mike Tooley, Montana Highway Patrol (MHP)**, said that if the MHP investigates an accident on a reservation, the information is reported and tracked.
- 03:03:38 SEN. ESP asked if staff from the Court Administrator's Office could talk about reservation statistics on what is or is not being reported.
- 03:05:16 Mr. Epstein said that efforts to gather more and better information has to be done between the state and each tribe, most likely through the use of a memorandum of understanding. He said some have suggested using traffic safety funds as leverage but that he opposes that idea.
- 03:08:35 SEN. JENT said it would be interesting to compare the recidivism between those who plead guilty and get the existing statutory sentence with those placed in a pre-trial program and monitored. Attorney General Bullock said that was a great idea and would be included in the data profile.
- 03:11:10 Rep. Janna Taylor asked about the participation/agreement forms used in the South Dakota program (**EXHIBIT 15**). Mr. Mickelson said the type of form used depends on the type of testing that is needed and that all agreement forms are thoroughly reviewed with the client before being filed with the Court. Rep. Taylor asked if the public health or foster care systems have seen benefits from the use of the 24/7 program. Mr. Mickelson said that he is not aware of any violations by program participants with domestic violence or abused or neglected children charges, which is a great unintended consequence.
- 03:13:08 REP. PETERSON asked if 24/7 program participants dealing with domestic violence and neglected children charges are tested just for alcohol. Mr. Mickelson said the judge has the discretion to decide what to test for. REP. PETERSON asked if other criteria is allowed and what is required to be reported. Mr. Mickelson said if there is no history of drug or alcohol abuse, the 24/7 program would not be used for that family.
- 03:14:46 Mr. Epstein said the District Court judge he works with has imposed drug and alcohol testing under the 24/7 program for a mother involved in a DPHHS case as part of her treatment plan. He said this case has nothing to do with driving violations but with domestic issues related to drug and alcohol problems. Attorney General Bullock said to that pilot program he is proposing will only involve drinking

and driving violations but that expanding it to other areas could be considered if the data indicates the need to do so.

03:17:39 Attorney General Bullock thanked the LJIC for its interest in the 24/7 program and said several counties have volunteered to participate in the pilot project, which indicates the level of interest in addressing the DUI problem. He said he is anxious to look at the results and that while the program won't be a cure-all, it will be a good start.

03:18:44 REP. AUGARE thanked Mr. Mickelson for his time. Mr. Mickelson affirmed the South Dakota Attorney General's pledge to assist Montana in any way possible.

03:19:27 Recess for lunch until 1 p.m.

LUNCH BREAK

04:58:07 REP. AUGARE reconvened the meeting at 1:02 p.m. Ms. Heffelfinger noted that corrected versions of HB 376 will be distributed during public comment. REP. AUGARE asked David Niss, Staff Attorney, to discuss a comparison between the introduced bill and the amendments that were offered.

04:59:26 **David Niss, Staff Attorney, LSD**, asked LJIC members to compare HB 376 (**EXHIBIT 14**) with the original draft, LC 577 (**EXHIBIT 16**). He said the reason why the draft is important is because it is the Montana version of the South Dakota program, but was never introduced because of the large fiscal note (**EXHIBIT 17**). Mr. Niss discussed details and provisions of the two versions of the bills, including the amendments offered (**EXHIBIT 18**). He said the most notable difference was testing requirements, mainly the issue of requiring testing for first and second DUI charges only versus all DUI charges.

05:11:53 REP. STOKER asked, under HB 376, what information would be presented to a jury and, if the intent is to capture the multiple DUI offender, would HB 376 have to be amended to do that? Mr. Niss said what information goes to the jury is not addressed in HB 376 and that as currently written, HB 376 only includes testing and only for first and second DUI offenses.

Public Comment - 24/7 Sobriety Program and SJR 39 DUI Study

05:16:05 **Jim Smith, Montana Common Sense Coalition**, said that the Coalition is a grass roots organization of individuals and groups interested in DUI reform in Montana. He read policy goals formed by the coalition (**EXHIBIT 19**). Mr. Smith said that many coalition members have personal experience with tragedy resulting from DUI and thanked the LJIC for its work on behalf of the coalition. He said it was disappointing to the coalition when the LJIC voted to not criminalize refusals and other issues of concerns. He said that the coalition supports the proposal to allow a warrant for a breath test.

05:22:18 **Rebecca Sturdevant, Mothers Against Drunk Driving (MADD)**, said that first-time offenders are the place to begin efforts and that MADD strongly supports the use of interlock devices. She discussed a handout supporting MADD's position (**EXHIBIT 20**). Ms. Sturdevant said she likes the 24/7 program but that it does not address first-time offenders. She said that use of an interlock device is

preventative in nature and allows people to continue to work and live and support their families.

- 05:26:45 **Gary Acevedo, Montana Common Sense Coalition, Flathead Reservation,** encouraged the Committee to support the Coalition's goals. He responded to a question from SEN. JUNEAU regarding working with Montana's reservations and said that Flathead Reservation is the only reservation with public law 288 in place and that memorandums of understanding with the state were worked out as part of that process. He said it is difficult to do but that it has been balanced with the tribe's sovereignty and has worked well, to date.
- 05:30:05 **Kris Minard, citizen,** encouraged the LJIC to reduce Montana's dismal DUI fatality rate. She said she left the last meeting shaking her head at all of the proxy voting and stated that it didn't appear to her that much progress was being made. She said she is encouraged that some changes will be attempted and said that the LJIC needs to know that South Dakota also repealed its implied consent law, which is significant. She urged the Committee to reconsider the social host law and said it would strengthen prevention efforts considerably. She said she supports the Montana Common Sense Coalition's goals and she thanked the LJIC for its work to date.
- 05:33:12 REP. EBINGER asked to clarify that a breathalyser unit does not require a land line telephone for monitoring because it can be programmed to be read at a facility on a weekly basis.

GUARDIAN AD LITEM (GAL) QUALIFICATIONS, TRAINING, GRIEVANCES

- 05:34:43 Rep. Betsy Hands said that Ellen Bush replaced LaNette Diaz as a panelist. She thanked the LJIC for the time to present the issue and explained how the issue arose at the end of the 2009 Legislative session. Rep. Hands said that she wanted the Committee to be aware of problems that have been reported and anticipated that there would be legislation introduced in the 2011 session to address the problems. She said that focus groups will be meeting and that as much stakeholder involvement as possible will be encouraged. She provided an overview of the student research project done on the GAL system that included a brief history of the issue and work that has been done to date (**EXHIBIT 21**).
- 05:41:35 **Steve Knight, licensed clinical social worker, private counseling practice, Missoula,** said that he frequently works with guardian ad litem and has observed that some show obvious bias toward one parent or another, which is troubling to him. He said that because a GAL can significantly impact the life of a child, he would like more training and oversight for the program.
- 05:44:39 **Diana Garret, attorney, Montana Legal Services, Missoula,** said that she has served as GAL and is part of a working group to reform the system in Missoula. She said the Missoula working group came together because of common concerns and the desire to improve the system. The working group has studied qualifications, training, and supervision; and has determined that there is no oversight of the program, nor is there a grievance procedure in place. Ms. Garret

said that she has witnessed first hand how important a GAL is in representing a child's best interests, that the system is flawed, and that changes are needed.

05:50:01 **Emily McKey, Missoula**, said that she represents a group of parents who organized a into group called Montanans Supporting GAL Guidelines (MSGG) as a result of problems experienced with GALs. Ms. McKey said that her family's involvement with a GAL has been abusive, expensive, and very distressing. She related specific instances of being bullied and abused by the GAL assigned to her family. She said there is no oversight or grievance procedure in place and that a GAL has judicial immunity so there is little fear of retribution. She said their power is limited only by the judge and that it is virtually impossible to get a GAL removed, once he or she has been assigned to a family. Ms. McKey said she came to the Legislature last April to seek relief and it was there that she met Rep. Hands, who agreed to provide assistance. She said that her group's purpose is to advocate for Montana's children and families and that guidelines, training, and grievance procedures for the GAL system are badly needed.

05:58:52 **Katie Baumler, University of Montana graduate student**, said that she and several other graduate students became involved after a parent group visited a UM class. She said that as a result of that visit, her class researched the current system and how it could be improved. She said that other states' models were included in the research, that an extensive report and recommendations have been prepared, and the LJIC received a summary of that report (**EXHIBIT 21**). Ms. Baumler said that four students have continued the research project and have implemented a three-step course of action:

- To create and disseminate a statewide survey for parents, GALs, and professionals; to find out how the system operates in different counties in Montana, what people's experiences with the system have been, and how to improve it;
- to conduct focus groups in communities around Montana to talk directly with parents, GALs, and professionals; and
- to conduct public hearings for potential legislative changes.

Ms. Baumler said that the students are also pursuing ways in which the School of Social Work can initiate positive changes and that changes are needed because there are virtually no guidelines or statutes regarding the qualifications and responsibilities of GALs in Montana. She said that establishing a baseline through legislation would significantly improve the adoption and creation of stricter guidelines by the involved jurisdictions.

06:03:33 **Ellen Bush, Executive Director, Court Appointed Special Advocate (CASA)**, distributed an informational pamphlet on the CASA/GAL program (**EXHIBIT 22**) and provided a detailed explanation of the differences between the CASA and GAL programs. The explanation included information about local, state, and national standards for training and recruiting; statutory language relating to CASA and GAL volunteers; operating rules; and training and supervision requirements.

06:15:14 SEN. JUNEAU asked that the representative from the Missoula District Court present her perspective. She also asked if it has been determined if this problem is limited to the Missoula area or if it extends to the rest of the state.

- 06:16:23 **Susan Leaphart, Missoula District Court, Standing Master**, said that there has not been a lot of direct communication with the District Court regarding this issue but that she is aware of the need for changes. She noted that it is very difficult for judges and GALs because someone is always upset by the decisions made but agreed that there are some ineffective GALs. Ms. Leaphart said that training is needed, as is a grievance procedure. She said that Missoula courts have tried to be proactive in working around ineffective GALs and that a vote will be taken soon on proposed guidelines. She said that the judges are primarily interested in adopting rules locally, rather than through legislation.
- 06:21:42 Rep. Hands emphasized that three separate groups are working on this issue and that all groups reviewed the proposed local rules referred to by Ms. Leaphart. She said they were well-received and have the support of all involved. She said these issues are being dealt with nationwide and that through research, Ms. Heffelfinger was able to determine that Montana has very minimalist requirements. These cases can be very complicated that the GALs would benefit from training in order to work effectively for the children and families they represent. Rep. Hands said it is important that the residents have a voice in this matter and that without a grievance process, it is impossible for this to happen. She discussed several other points related to the issue.
- 06:28:01 Ms. Garret said that the first round of the survey has been sent out to all judicial districts in the state and that the results will be available soon. Preliminary results indicate that this is an issue in other areas of the state.
- 06:29:03 SEN. MOSS thanked the UM students for their research. She asked how the focus groups will be set up. Ms. Baumler said finding out if this is an issue in other areas is a top priority and that the survey is extensive. She explained how the survey will be conducted and how the focus groups will be set up.
- 06:30:35 SEN. MOSS said it appears that model legislation will likely be presented as a result of the student's efforts and asked if the students will be at the 2011 legislature to present their work. Ms. Baumler said yes, that many of the students intend to participate in that part of the process.
- 06:31:25 SEN. MOSS said that she thought that Montana has a Commission on Uniform Law and asked if that person has been consulted. Rep. Hands said she was not aware of that position but would like to visit with him or her. Ms. Heffelfinger said one of Montana's delegates to the National Commission on Uniform State Law is Greg Petesch.
- 06:32:48 SEN. ESP said that the grievance process should have a point at which it becomes final in order to keep it from dragging on for years. He asked Ms. Leaphart to comment. Ms. Leaphart said it would be difficult to set a point at which the process must end. She agreed that these types of situations can go on for years and that there will always be disagreement on what is best for the child but that the goal is to decide what is best for each particular child, which is a difficult process.

- 06:34:42 REP. PETERSON said he is concerned about the amount of money a GAL can charge a family for his or her services. He said that in the past, a GAL served pro bono. He said he is also concerned about creating another governmental agency. He read 41-3-112, MCA, aloud. Ms. Bush said that 40-4-205, MCA, is the statute involved. REP. PETERSON said that the charge by the GAL is substantially different in that statute. He said that the first statute he cited does have a provision for removal of the GAL and for the Court to expedite proceedings,
- 06:39:17 Ms. McKey said it is the judge that assigns a GAL and the same forum is used to remove a GAL. She said that purpose of a GAL is to assist the judge, so a judge is usually reluctant to remove him or her. REP. PETERSON stated that he thought the statutes were adequate as written. Rep. Hands said there is confusion between the statutes and that there is a need to clarify 40-4-205, MCA.
- 06:40:55 Ms. Garret said that the statutes are very different and that the requirements in 40-4-205, MCA, are very vague. She said that because a GAL can be a very powerful position, the language can contribute to difficult situations.
- 06:42:32 REP. AUGARE said that as committee chair, he will look forward to future conversations on this topic. He asked that all of the tribal nations be included in future work.
- 06:43:36 Rep. Hands thanked the LJIC for the time to discuss the issue. She asked the members to contact her if they have questions. She said she would appreciate their comments and their help.
- 06:44:32 **15 minute break** until 3:00 p.m.
- 06:57:12 REP. AUGARE called the meeting back to order at 3 p.m.

Public comment

- 06:57:51 **Rob Harrison, MSGG**, said that all children deserve good parents and that parents deserve a legal system that will help them too. He said that GALs need to be competent and ethical and that they need education, training, and supervision; and that fees should be reasonable. He said a parent should not have to choose between paying the rent or the GAL. Mr. Harrison suggested that in addition to reasonable rates, itemized billing and a sliding fee scale should be required. He also suggested placing a cap on the amount of hours and fees, that can be charged and that a GAL should not be immune from prosecution. He said in his case, evidence has been suppressed by the GAL and that there should be a process in place that would allow a parent to refute what the GAL says. He said that he feels there has been a very strong bias against him, led by the GAL involved, and that sworn testimony should be required in a proceeding that will be used to take someone's children away. Mr. Harrison discussed other details relating to his personal situation.
- 07:06:51 **Jennifer Harrington, Missoula, MSGG**, testified as a parent who has experienced problems with a GAL. She said it is indicative of a system that has failed and that children are experiencing severe distress as a result. She said that

the parents involved in MSGG have come together to help fix the problems but have met with numerous brick walls. She said the group's goal is to talk about oversight and how to resolve the problems.

07:10:26 **Lorne Murphy, Missoula**, testified that good laws are in place but that they aren't being upheld. She discussed her personal situation, saying she was actively involved in her children's lives and in spite of her husband's documented drug addiction and abusive behavior, she is still battling for custody of her children. Ms. Murphy discussed how the use of a GAL contributed to the situation and said that she has proof that the GAL has lied about her but that the Court has done nothing to help her. She said she has not seen her children in two years and that she is working to make certain other children and families don't suffer as hers has.

07:23:09 **Jodie Netzer-Schoening, Missoula**, related her struggles with her ex-husband and role the GAL played in the situation. She said that fortunately for her, the judge did not agree with the GAL's recommendation and removed her from the case. She said that many parents across the state have experienced problems but fear retaliation from the GAL so they do not speak up. She said a major fix is needed, not a band-aid approach.

VEHICLE TITLE, REGISTRATION, & DEALERSHIP LICENSING RELATED TO MERLIN BACKLOG

07:26:29 **Tim Burton, Chief of Staff, Department of Justice (DOJ)**, updated the LJIC on the status of the MERLIN system and the backlog issues. He referred to several documents provided to LJIC members in their meeting materials (**EXHIBIT 23**). He reported that he attended the Montana Association of Counties (MACo) winter meeting and made strides in improving communications and has also met with County Treasurers. Mr. Burton said he plans to meet with them monthly but will meet more frequently if needed. He reviewed the materials in EXHIBIT 23:

- printer update;
- renewal cards for expiring vehicle registrations;
- meetings with MACo, the Montana Automobile Dealers Association, and other stakeholders; and
- Title and Registration Bureau production charts through March 19, 2010.

Committee Questions

07:40:28 SEN. SHOCKLEY said that most of the County Treasurers are reporting that improvements have been made and that the system is working better. He said that issues of concern do remain, the system itself, communications within the DOJ, communication with county treasurers, and questions about how the financial portion of the system is working. SEN. SHOCKLEY referred to a letter (provided in materials mailed in advance of the meeting) from Kevin Larkin, Park County Treasurer letter (**EXHIBIT 24**) which listed five issues of concern. Mr. Burton agreed that the points mentioned by SEN. SHOCKLEY are concerns but said that work is underway to address each of them. SEN. SHOCKLEY questioned Mr. Burton further about IT issues, communications between the DOJ and the DOC, funding for administration of MERLIN, inventory control problems, bandwidth concerns, and increasing staffing levels to improve customer service. Mr. Burton responded to each of SEN. SHOCKLEY's concerns and explained

what is being done to solve or mitigate the problems. He said that the DOJ will examine internal controls and determine what business practices may be relaxed.

08:01:48 SEN. ESP also referred to Mr. Larkin's letter (EXHIBIT 24) and discussed his concerns, which included dealer plate applications, communication issues, rude treatment of County Treasurers by DOJ staff, and web registration renewal problems. SEN. ESP suggested that the DOJ allow county treasurers to do more, such as allow them the forms needed to duplicate a title. He said it would help the DOJ and speed up the process.

08:05:05 Mr. Burton responded to SEN. ESP's concerns, saying that web renewal has to be done very carefully and that policies must be in place in order to track the fees collected and inventory mailed out. He agreed that DOJ staff issues are a challenge but said that budget concerns prevent him from receiving any additional FTE. SEN. ESP suggested consolidating the staff in Deer Lodge, which would be economical and make better use of existing FTEs.

08:08:25 REP. EBINGER read from Mr. Larkin's letter regarding delays in web renewal funds. He said he wanted to be sure the LJIC would not be asking the same question at the next meeting. Mr. Burton said that Mr. Larkin is working with the DOJ to resolve this problem.

08:09:37 REP. PETERSON said that the system seems to be working well in Yellowstone County and that county staff has complimented DOJ staff. He asked about the slow down that occurred when the new printers were installed. Mr. Burtons said he knows that more work remains but that the slow down is complicated because each county's set up is different. He said that the top priority is Flathead County but that he would follow up with REP. PETERSON regarding Yellowstone County.

Public comment

08:14:25 **Rhonda Wiggers, Montana County Treasurers Association**, said the Association is working with the DOJ to resolve problems and that while some of the issues are technical fixes and not a legislative fix, she is aware that the legislators are getting complaints. She discussed concerns related to her by county treasurers across the state:

- county treasurers are meticulous book keepers and that the problems encountered in balancing their books has been very distressing;
- a number of counties have run out of license plates, which has also been very distressing;
- renewal cards are still a problem;
- printing is still a problem in a number of counties; and
- Flathead County is experiencing severe difficulties to the point where staff is walking out.

Ms. Wiggers said the County Treasurers make two requests of the LJIC: (1) don't cut DOJ staff because the Help Desk needs to be manned and staffed every day; and (2) don't implement the insurance verification system until the MERLIN system is completely up and running.

- 08:20:12 **Jesse Anderson, Cascade County Treasurer, Great Falls**, said that services were practically at a standstill when the MERLIN system was first implemented and that while the system is working better, there is still room for improvement. Mr. Anderson said that the web registration money issue is still of great concern and plate inventory that can be maintained in county offices.
- 08:21:58 **Kim Buchanon, Gallatin County Treasurer's Office, Bozeman**, agreed with the concerns stated by Mr. Anderson and said that the goal of County Treasurers is to please the taxpayer.
- 08:26:20 Ms. Heffelfinger noted that additional public comment was received in the meeting materials besides the letter from Mr. Larkin:
- an email from Dawn Wakefield regarding the Crime Victim's Advisory Council and the dissolution of that Council (**EXHIBIT 25**);
 - handouts from the Montana Common Sense Coalition (**EXHIBIT 19** - discussed by Jim Smith);
 - an email from Joseph Mironach, retired deputy sheriff, regarding his concerns about sex offenders and medical marijuana (**EXHIBIT 26**); and
 - a letter of response from State Auditor Monica Lindeen regarding the Two Rivers Detention Authority securities (**EXHIBIT 27**).

ADJOURNMENT

08:28:08 With no further business before the Law and Justice Interim Committee, REP. AUGARE recessed the meeting until 8:00 a.m., April 6, 2010.

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