



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

December 18, 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. JESSE LASLOVICH
SEN. LYNDA MOSS
SEN. JIM SHOCKLEY

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

COMMITTEE MEMBERS EXCUSED

REP. RON STOKER, Vice Chair
SEN. CAROL JUNEAU

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:

- voted to not further examine Issue area 1 - prevention and education (EXHIBIT #42);
- voted for continued consideration of Issue 2, options B, C, and D;
- voted down a proposal to draft legislation to increase penalties; and
- agreed not to further examine Issue area 3 - enforcement (EXHIBIT #42).

CALL TO ORDER AND ROLL CALL

00:00:01 REP. AUGARE reconvened the Law and Justice Interim Committee (LJIC) at 8:05 a.m. The Secretary took roll, SEN. JUNEAU and REP. STOKER were excused (ATTACHMENT #3).

PANEL #1: FELONY DUI OFFENDERS AND WATCH PROGRAM

Sheri Heffelfinger, Research Analyst, Legislative Services Division, prepared a pre-meeting packet of relevant materials that included the following:

- an overview of Montana felony DUI laws (EXHIBIT #16);
- selected MCA sections related to felony DUI laws (EXHIBIT #17);
- a state-by-state summary table (EXHIBIT #18);
- a table of alcohol-related convictions reported to the Motor Vehicle Division (EXHIBIT #19);
- a DUI fact sheet from the Department of Corrections (EXHIBIT #20);
- a bar graph depicting the cost for an average length of stay in a correctional facility (EXHIBIT #21); and
- a Montana Department of Corrections At-A-Glance booklet (EXHIBIT #22).

00:01:41 **Rick Deady, Treatment Contract Program Manager, Adult Community Corrections, Department of Corrections (DOC)**, presented a primer on the costs, capacity, demographics, curriculum, and outcomes of the Warm Springs Addictions Treatment and Change (WATCh) program (EXHIBIT #23). Copies of his testimony were also provided (EXHIBIT #24).

00:09:07 **Alex Vukovich, WATCh Administrator, DOC**, said that most participants have a long criminal history and that the WATCh program is the last chance to become sober for many of them. He said that success of the program depends on the strong staff that is able to work that type of population, and that it is not just the disease that must be treated in order for the participant to successfully complete the program.

00:14:21 **Mark Madon, WATCh Phase III participant**, testified to how alcoholism controlled his life and how the WATCh program has given his life back to him. Mr. Madon said that his treatment was very successful and that he feels that the program has done nothing but good for him.

00:17:49 **Diana Koch, Legal Counsel, DOC**, discussed statutory penalties and sentencing options for felony DUI offenders (EXHIBIT #25).

00:28:03 **Bob Anez, DOC**, discussed the cost and implications of making a 3rd DUI a felony offense and the costs and implications for expanding WATCH.

Committee Questions

00:35:20 REP. HOWARD said that the cost to the victims and to the victims' families must also be a consideration. Mr. Anez said that he did not know how to put a number on a life but that if one offender can be brought back from the brink, that has to be valued as well. He said that it can be difficult to measure how much good is done in dollars and cents. REP. HOWARD said that airlines, for example, have to pay victim's family if it is determined that the airline was at fault for a person's death. He said, having lost a daughter, that the cost of the victim must be a part of the discussion.

00:37:35 SEN. LASLOVICH complimented the DOC for what they do and said it was a pleasure to work with DOC staff. He asked Mr. Anez about an additional WATCH facility and if there has been an analysis to determine how much another facility would cost. Mr. Anez said that he is not advocating that a 3rd DUI be made a felony offense and that the first step in seeking a new facility would be a request for information (RFI) on costs. SEN. LASLOVICH asked if the initial discussion for a new facility has taken place. Mr. Anez said no.

00:40:55 SEN. LASLOVICH said he was amazed to learn that a judge could suspend a sentence for an offender who had 4 or more DUIs. Ms. Koch confirmed that was possible under current statute, but rarely occurs.

00:42:22 SEN. LASLOVICH asked for more information regarding the wait time to get into the WATCH program. Mr. Anez said that it typically takes 44 days from sentencing to placement in the program. Mr. Deady said that the program is running at full capacity and that participants must wait until a bed opens. He said that the even with 7 beds added at each facility, the wait time is 5-6 weeks. SEN. LASLOVICH asked if a person who has completed WATCH and reoffends can go through the program again. Mr. Deady said that the priority would be a first-time participant but that if a bed was open, the person could go through again. He said that there are other options for subsequent offenders and discussed a 90-day program operated by the CCCS. Inc. in Butte.

00:48:24 SEN. LASLOVICH asked if the Montana State Prison (MSP) is at capacity. Mr. Anez said the population fluctuates daily but remains close to capacity. SEN. LASLOVICH asked Mr. Madon several questions about his perspective, as a recovering alcoholic and graduate of WATCH; and for any comments on potential treatment options. Mr. Madon said that WATCH is a very intensive program and that it would be difficult for a participant to complete the program and still be in denial of a problem. Regarding treatment options, Mr. Madon said that he believed an interlock device would be a deterrent to him, but would not have been fool proof; and that he has heard many stories on how to get around one. He said that having his license suspended never stopped him from driving; and that the Alcohol, Course, and Treatment (ACT) program was not intensive enough to cause a change in his behavior.

- 00:58:01 REP. AUGARE asked if there is the potential to expand on either the WATCH East or WATCH West campuses, specifically WATCH East. He said he is aware of two cottages on the WATCH East property. Mr. Deady said that the agreement between the DOC and the community is very specific in what buildings could be used for the program. REP. AUGARE asked how many additional beds could be gained, should the agreement be renegotiated. Mr. Deady said that he didn't know but would get back to the LJIC.
- 01:00:26 REP. PETERSON said the he does not support making a 3rd DUI felony because it involves a sickness. He asked Mr. Madon to estimate how often offenders drive impaired between and first and second DUI offense. Mr. Madon said thousands of times. REP. PETERSON asked, if the Court was given the discretion to send a person to WATCH or a similar program on the second DUI offense and no discretion for a third offense, without convicting the person of a felony, if that would help. Ms. Koch said that the sentencing structure would have to be changed and discussed several of the changes that would be necessary. REP. PETERSON said that the LJIC must be willing to think outside to box to find solutions and he predicted that if people received treatment earlier, there would be fewer DUIs. Mr. Madon agreed. REP. PETERSON said he would like to make 3rd DUI a misdemeanor offense and give courts more jurisdiction in sentencing and mandating treatment.
- 01:07:28 SEN. ESP asked how the cost for treatment is figured, specifically if costs per day, depreciation, and new building costs for the future are included. Mr. Anez explained how the DOC determines the cost and said that salaries or utilities, for example, are not factored in. SEN. ESP asked if WATCH pays a lease for the building. Mr. Vukovich said the DOC allows WATCH to use the building but that WATCH is responsible for utilities and some maintenance. Mr. Anez said, regarding expansion of treatment programs, that new construction, rather than using an existing state structure, would change cost estimates.
- 01:10:38 SEN. ESP asked how the treatment process would flow for a person convicted, for example, of a 5th DUI and sentenced to DOC. Ms. Koch said it is a five-year sentence to the DOC and that the person would be assessed, then placed in one of several programs for treatment. Mr. Deady said the DOC has some discretion for placement of a subsequent DUI offender. He said that it is a priority to get a 4th time offender into the WATCH program but that, depending on the assessment results, the offender could also be placed at the MSP or Connections Corrections. SEN. ESP asked if it would be possible to get more specific numbers on actual DUI sentencing because the LJIC needs that information in order to get a clear perspective on what is really happening. Mr. Deady said that he would have that information for the next committee meeting.
- 01:14:00 REP. MENAHAN asked about the WATCH compliance rate of about 72% and what exactly it means. Mr. Vukovich said that the program tracks its graduates for up to five years and explained how compliance rates are determined.
- 01:16:59 REP. MENAHAN discussed his concerns about wait time and capacity issues. He asked Mr. Deady if he thought it was a problem. Mr. Deady said no. REP.

MENAHAN asked if the WATCH program could accommodate misdemeanor offenders, if successful completion of the WATCH program was made a mandatory condition of a misdemeanor offense conviction. Ms. Koch explained how a boot camp-type sentencing structure could be used, with suspension of sentence for successful completion of treatment.

- 01:21:03 REP. MENAHAN referred to Ms. Koch's synopsis (EXHIBIT #25) and said he noticed that she omitted penalties for driving under the influence of alcohol per se and driving with a blood alcohol content (BAC) greater than .08, as found in 61-8-406, MCA. He said that his concern with the statute is that a per se violation is only punishable by a sentence of ten days in jail. He said he is not necessarily advocating more jail for a per se violation but thought that courts should have more teeth in dealing with this issue. Ms. Koch said she did overlook that.
- 01:24:37 REP. HOWARD said that the goal is to stop repeat offenders and that it is critical to determine at what point a person knows he can't help himself. Mr. Anez said he did not know of a way to determine that point and that the DOC does not maintain data on anything but felony DUIs. He said that examining court records for DUI offenders could provide insight.
- 01:28:33 SEN. MOSS said that she was impressed with the WATCH staff and asked if it is challenging to find the right staff for the program. Mr. Vukovich said it takes a very special person to deal with WATCH offenders and explained the qualities he looks for in WATCH staff.
- 01:31:45 SEN. MOSS commented that many offenders begin drinking at a very young age and asked Mr. Madon what message he would share with young people. Mr. Madon said that he fell victim to what he perceived as acceptable societal behavior and that he would recommend that drinking and using drugs as a way of life be made more unacceptable; and to show how it ruins families. He said that his own behavior affected his two sons and that he feels responsible for that. He said that he and other WATCH graduates have spoken to ACT classes about drinking and about drinking and driving and its ill effects.
- 01:38:04 **Sheri Heffelfinger, Research Analyst, LSD**, said that members received copies of an article printed in *Montana Business Quarterly/Summer 2009* on the economic cost of alcohol abuse in Montana (EXHIBIT #26). She said that a University of Montana professor who compiled the research for the article will address the LJIC at its next meeting. She said that she has also scheduled a criminologist at Montana State University to answer questions at the next meeting. Ms. Heffelfinger said that data provided by the Department of Motor Vehicles (EXHIBIT #19) was included in the committee's pre-meeting packet and that work is underway to also provide additional, more specific information from the Office of the Court Administrator.
- 01:40:25 **BREAK**
- 01:55:11 REP. AUGARE called the LJIC back to order at 10:03 a.m.

PANEL #2: COMMUNITY CORRECTIONS AND ADMINISTRATIVE SANCTIONS FOR DUI OFFENDERS

Ms. Heffelfinger prepared a pre-meeting packet of relevant materials that included the following:

- an overview of 1st through 3rd DUI violations (EXHIBIT #27);
- selected MCA sections (EXHIBIT #28);
- a state-by-state table of interlock laws (EXHIBIT #29);
- an NCSL magazine article, "Last Call" - ignition interlock devices (EXHIBIT #30);
- information on SCRAM electronic monitoring devices used the by the Department of Corrections (EXHIBIT #31); and
- a Reuters article on 24/7 sobriety programs (EXHIBIT #32).

01:56:16 **Pam Bunke, Administrator, Adult Community Corrections, DOC,** discussed an overview of and statistics on 4th offense felony DUI offenders under DOC community supervision programs (EXHIBIT #33).

02:08:31 **Jessica Grier, Alternatives, Inc,** provided background information on Alternatives, Inc. and an explanation on the operation and use of a Secure Continuous Remote Alcohol Monitoring (SCRAM) bracelet (EXHIBIT #34). She passed around a SCRAM bracelet for viewing and provided a folder of information from Alcohol Monitoring Systems, Inc., which manufactures SCRAM bracelets (EXHIBIT #35).

02:17:14 **Col. Mike Tooley, Chief, Montana Highway Patrol,** reviewed South Dakota's 24/7 sobriety project, explaining the origins, goals, objectives, testing methods and results, SCRAM statistics, and other information (EXHIBIT #36). He also provided copies of South Dakota's 24/7 sobriety program statutes (EXHIBIT #37).

02:29:21 **Ms. Brenda Nordlund, Administrator, Department Motor Vehicle Division, Department of Justice (DOJ),** explained how Montana law is administered in terms of license suspensions and revocations due to DUI. She provided a table showing conviction-based license suspensions (EXHIBIT #38).

02:41:48 **Steve Smith, Director of Adult Services, Mountain Peaks, Great Falls,** displayed an ignition interlock device and explained how it works. He also discussed its effectiveness, its cost, how offenders are referred to the Mountain Peaks program, and client statistics and demographics.

02:55:01 **Mary Aggers, probation and parole officer, DOC,** said that she is a DUI specialist and currently supervises approximately 70 DUI offenders. She explained her position and duties as a DUI specialist within the DOC probation and parole division and the components of her supervisory programs (EXHIBIT #39).

Committee Questions

03:06:13 REP. EBINGER asked about installation and monthly costs for the interlock device. Mr. Smith said he charges \$75 to install the device, \$79 per month to monitor the device, and \$50 charge to remove the device. REP. EBINGER said that the LJIC has heard contradictory information regarding the effectiveness of

interlock devices. Mr. Smith said that a microprocessor records everything, including if the machine is tampered with or if the vehicle is started without the aid of the interlock; and that the technician has access to that information.

- 03:08:26 SEN. SHOCKLEY asked Ms. Aggers about the recidivism rate of WATCH program graduates. Ms. Aggers said that in Yellowstone County, she is seeing a high number of WATCH program graduates reoffend once they are no longer under DOC supervision.
- 03:10:01 SEN. SHOCKLEY asked Ms. Bunke to discuss supervision of DUI offenders while they are under the control of the DOC. Ms. Bunke agreed that DUI offenders have a high risk of recidivism and need specialized programs and close monitoring. She listed several monitoring measures taken, such as frequent breath analyzer tests, use of a SCRAM bracelet, and meetings with substance abuse aftercare providers. Ms. Bunke said that no statistics are kept on WATCH graduates once they leave the jurisdiction of the DOC.
- 03:12:47 REP. MENAHAN said that a penalty for a crime should be applied uniformly. He asked about the statewide availability of SCRAM bracelets and of interlock devices; and if they would be affordable to all counties. Ms. Grier explained that the DOC pays \$15 per day per offender and \$12 per day per offender in the Billings Municipal Court. She said that the purchase price for a bracelet is about \$1500 and that maintenance is an additional charge. She said they are only being used in a few areas of the state. Mr. Smith said that the consumer is responsible for all costs associated with using an interlock device. He said that he can service as many customers as can come to him and that there is a service center in Billings and in Great Falls.
- 03:16:35 REP. MENAHAN discussed the limitations of current DUI statutes and asked if the Legislature should consider graduated suspensions to deal with repeat felony DUI offenders. Ms. Nordlund said that the DOJ does not have a policy position on the issue but agreed that multiple offenders are very difficult to prosecute because they are so savvy on how to avoid prosecution.
- 03:19:33 REP. MENAHAN discussed license suspension under current statute and asked if licenses should be suspended for longer periods of time or if additional restrictions should be put in place to catch repeat DUI offenders. He discussed how a lack of communication between probation officers and law enforcement officers allow felony DUI offenders to continue to refuse to perform sobriety tests in order to avoid arrest or prosecution. Ms. Bunke agreed that the scenarios discussed by REP. MENAHAN do occur and are a great source of frustration to probation and parole officers. She said that, as a professional, she thought that these offenders present a very high risk and should not be allowed to have a driver's license.
- 03:22:54 Ms. Nordlund asked that Greg Noose respond because of his experience in dealing with offenders who have had their license suspended and revoked. **Greg Noose, Chief of Records and Driver Control Bureau, Montana Motor Vehicle Division, DOJ**, agreed that officers frequently assume that a license is valid

when it is presented but that a system check would provide additional information on the driver. He said that certain restrictions are listed on the back of a license but that officers need training in how to interpret the information. He said that the DOJ strives for balance in how to brand a license in a way that adequately identifies the restrictions on the license but that won't negatively affect other portions of the offender's life. Mr. Noose said that the DOJ would appreciate guidance from the legislature on how to depict restrictions on an offender's license.

- 03:25:00 REP. MENAHAN said that legislation has been introduced in the past to create a special license for DUI offenders, which would make it easier for law enforcement officers and others to deal with DUI offenders. Mr. Noose said that is a public policy question for the legislature and that a person's privacy rights would have to be balanced with public safety concerns. Mr. Noose related statistics on DUI offenders and said that he is very interested in finding a way to identify the persistent offenders in any way possible.
- 03:27:28 SEN. LASLOVICH asked about drivers who are convicted of driving while their license is suspended. Mr. Noose said those convictions are tracked and is the second most frequent citation issued in the state. He said that sanctions are applied as allowed but even so, a very high number of drivers continue to drive after a license suspension. SEN. LASLOVICH said that there needs to be a focus on ways to prevent these drivers from driving. He asked Ms. Aggers to comment, as a probation and parole officer. Ms. Aggers estimated that 75% of the DUI offenders in her office drive with no license.
- 03:33:55 SEN. LASLOVICH asked if the DOJ plans to make a proposal for the 2011 session. Col. Tooley said that the DOJ is considering the South Dakota 24/7 sobriety program but does foresee certain challenges. He said it would also depend on what the LJIC proposes.
- 03:36:08 REP. PETERSON asked if the DOJ anticipates that it would have administrative duties, should the South Dakota project be adopted. Col. Tooley said that it did, but that local governments would also have to administer it in local courts and jurisdictions. REP. PETERSON said he supports placing identifying information on a license or a state identification card. Mr. Noose said that certain administrative changes would have to be made, but that it is physically possible to flag a license. REP. PETERSON said it has been suggested that the information be embedded in the magnetic strip on a license. He asked if the license bureau could do that and what problems may be encountered. Mr. Noose said it could be done and explained how licenses are programmed.
- 03:41:55 REP. PETERSON said that it does not appear to him that the WATCH program has a particularly high success rate, even with aftercare programs. He asked if there is a point at which these offenders should be warehoused, simply to keep them off the street and from harming others. Ms. Aggers explained several factors that affected success rates. She said that changes have been made and that WATCH graduates are now much more likely to stay sober. REP. PETERSON asked how offenders function once they are discharged from DOC

supervision. Ms. Aggers that she did not have statistics on that but said that efforts are being made to modify the program to help them maintain after release from supervision. REP. PETERSON asked Ms. Aggers to expand on a previous remark that interlock devices can be manipulated. Ms. Aggers said that an offender will drive a different vehicle; or have their children or friends blow for them. She discussed several problems associated with the interlock device.

- 03:47:22 SEN. MOSS asked if there is information in the drivers license examination manual about the consequences of driving under the influence and said that the booklet may be a good tool to educate the public. Ms. Nordlund said that it does contain basic information about DUI and license suspensions. SEN. MOSS asked if there are questions on the examination that are specific to driving under the influence. Ms. Nordlund said she didn't think so, but would check and report back. SEN. MOSS encouraged the DOJ to consider that as an educational tool.
- 03:49:17 SEN. SHOCKLEY discussed past proposals to identify certain drivers, such as special licenses or license plates. He said that license plates would make identification much easier for law enforcement officers. He asked Col. Tooley how driver history is obtained by the Montana Highway Patrol. Col. Tooley explained how the Highway Patrol gets it's information.
- 03:51:31 SEN. HINKLE said that a colored license plate would make it much easier to identify offenders and that the stigma would act as a deterrent for many.
- 03:52:25 SEN. LASLOVICH asked why previous attempts to approve a colored license plate were not successful. Ms. Nordlund said that it mainly due to policy issues related to concerns that other family members would also be stigmatized. REP. AUGARE said that the focus must be on treatment and prevention. SEN. ESP agreed.

Public Comment

- 04:00:03 **Dan Altvater, SCRAM**, discussed costs associated with the SCRAM bracelet and availability of the bracelet in Montana. He also explained how the South Dakota sobriety project uses the SCRAM bracelet, including maintenance and other costs.
- 04:02:37 **Eric Albright, President, Big Sky Ignition Interlock, Bozeman**, spoke to the availability of the interlock device in Montana and problems that are encountered in using the device. He discussed several different features of the device he offers and said that he has multiple installation locations throughout the state, that he will service all units, and is willing to travel to any Montana community.
- 04:05:23 **Rebecca Sturdevant, Mothers Against Drunk Driving (MADD)**, said she is very appreciative of the LJIC's efforts. She discussed MADD's national agenda and also provided comments specific to the work of the LJIC, which included several suggestions for prevention and treatment.
- 04:10:03 **LUNCH BREAK** - reconvene at 1 p.m.

- 04:54:29 REP. AUGARE reconvened the LJIC at 1:01 p.m. Ms. Heffelfinger distributed three documents:
- a letter from Mona Jamison in response to questions from SEN. MOSS regarding the ACT program (EXHIBIT #40);
 - a letter from Judge Mary Jane Knisely, Billings Municipal court regarding the SJR 39 study (EXHIBIT #41); and
 - an issues and options paper for decision-making guidance for the SJR 39 work session (EXHIBIT #42). Ms. Heffelfinger briefly reviewed the paper.

PANEL #3: JUDICIAL PERSPECTIVE, DUI COURTS, SENTENCING ALTERNATIVES, TREATMENT PROGRAMS

Ms. Heffelfinger prepared a pre-meeting packet of relevant materials that included the following:

- an overview of the ACT program (EXHIBIT #43);
- an overview of the Montana Chemical Dependency Center (EXHIBIT #44);
- a table of licensed chemical dependency programs (EXHIBIT #45);
- a map of chemical dependency program locations in Montana (EXHIBIT #46); and
- a fiscal year 2009 Chemical Dependency Bureau budget summary (EXHIBIT #47).

05:01:39 **Jeff Kushner, Statewide Coordinator for Problem Solving Courts, Office of Court Administrator**, discussed drug courts in general, including the purpose of drug courts, drug court clients, national research statistics, a map of the location of Montana's drug/DUI courts, a list of each drug court in Montana, and ten key components of drug courts (EXHIBIT #48). Mr. Kushner also provided a written copy of his comments (EXHIBIT #49).

05:19:01 **Judge Heidi Ulbricht, municipal DUI court judge, Kalispell**, said that recent headlines indicate the seriousness of the drinking and driving problem in Montana. She discussed her experience as a judge in a DUI court and said that wrap around services have made a huge difference. She recommended that several changes be made:

- harsher sentences that would provide an enhanced penalty for an injury DUI accident and
- offenders should be fully engaged in treatment before allowing them to drive again, so change licensing provisions.

Judge Ulbricht said that money is an issue and she noted that SCRAM bracelet costs are double that of Billings because of the rural nature of her jurisdiction.

05:25:28 **Judge Karen Orzech, Missoula County Justice of the Peace**, discussed the difficulty of changing attitudes within and out of the legal system in order to hold people accountable and in order to achieve more effective laws. She discussed the mentality and attitudes prominent in Montana culture that contribute to the problem. Judge Orzech recommended reducing the speed limit and development of a coordinated legal and community response to impaired driving that would include a measured and measurable response that takes into consideration the needs of the offender and the victim. She discussed statistics from Missoula County and the different treatment and supervisory programs being used, and

the difficulty of getting all of the necessary people together to plan an effective treatment plan. She said other challenges include inadequate jurisdiction, lack of incentives, transportation problems, and contradictions in Montana law in assessment and treatment requirements. Judge Orzech said that sobriety courts have many benefits and are cost effective but that judges must have discretion in sentencing. She discussed what funding is needed and how it would be used in administering a sobriety court.

05:44:48 **Joan Cassidy, Chief, Chemical Dependency Bureau, Department of Public Health and Human Services (DPHHS)**, reviewed three documents from the pre-meeting packet: a table listing all Montana Chemical Dependency licensed/approved treatment programs (EXHIBIT #45); a map of licensed chemical dependency treatment services in Montana (EXHIBIT #46); and the fiscal year 2009 Chemical Dependency Bureau budget (EXHIBIT #47).

05:57:31 **Mike Ruppert, CEO, Boyd-Andrew Community Services, and President, Montana Addictive Service Providers (MASP)**, reviewed Boyd Andrew Community Services programs and his involvement and experience with the issue of DUI. He said that one change in current law that would have the biggest impact on DUI and recidivism would be to require first offenders who are assessed and diagnosed as chemically dependent to receive treatment.

Committee Questions

06:03:26 REP. MENAHAN said it concerns him that for the first through third DUI offenses, an offender has only to complete the ACT program. He asked if there should be different programs for second and third offenders. Ms. Cassidy said that it isn't a loss to repeat the course but it probably would be better to offer an enhanced course for second or third offenses. REP. MENAHAN discussed how offenders use loopholes in the law to avoid treatment.

06:08:00 REP. MENAHAN asked Mr. Ruppert to discuss residential treatment models that would be less restrictive and less expensive than the WATCH program, and length of treatment recommendations. Mr. Ruppert said that residential treatment programs should base treatment the needs of the patient. He said that there are residential alternatives to WATCH that run from two weeks to six months. He said that the barrier is the lack of a legal structure that would provide for that.

06:13:48 SEN. LASLOVICH asked if it is possible to mandate inpatient treatment, considering the availability of treatment programs. Mr. Ruppert said that treatment could be mandated but agreed that availability is a problem, as is how to pay for it. SEN. LASLOVICH asked what the daily cost is for inpatient treatment. Mr. Ruppert said it ranges from \$208 to \$70 per day, depending on the type of treatment.

06:17:06 SEN. LASLOVICH asked how many SCRAM bracelets are in use in Montana. Mr. Kushner estimated that about 30 bracelets are in use by the court system and that they are spread across the state in various drug courts. He said that federal funding was used to purchase them at a cost of approximately \$1250

each and that they are operated at a cost of \$5.70 per day. He said that they are effective tools and are a good investment.

- 06:22:41 SEN. LASLOVICH asked Judge Ulbricht if SCRAM bracelets are being used in Kalispell and if she thinks they are effective. Judge Ulbricht said yes and that a vendor in Missoula County is used to affix them to the offender. She agreed that they are very useful and effective. Judge Orzech said she also uses SCRAM units and a breath test unit in the offenders home that is monitored through their home telephone; and that both are good tools. She said that the expense of an interlock device is too great for many people.
- 06:24:08 REP. PETERSON said that one idea that has been discussed is to extend jurisdiction out to a year for a second DUI offense, with the option to send the offender to WATCH. Judge Ulbricht said she likes the fact that drug courts keep the person intact in the community, and that they can stay employed and with their family while getting treatment. REP. PETERSON said that it makes sense to him that if offenders get treatment earlier, there would not be fourth, fifth, and subsequent offenses. Judge Ulbricht and Judge Orzech both agreed.
- 06:30:31 SEN. SHOCKLEY asked how telephonic monitoring works. Judge Orzech explained and said it is cheaper, easy to use, and very effective because of the immediate response and results. She noted that it does require a land line.
- 06:34:30 SEN. LASLOVICH said it is important to understand the difference between the WATCH program and community-based residential inpatient treatment programs. Mr. Ruppert said that the WATCH program is a fixed length, therapeutic model program where all participants receive the same treatment. He said that other residential inpatient programs are individualized, with different treatment and length of stay, depending on the needs of the person. He said that one variable in programming that is very important is length of stay. In response to additional questions from SEN. LASLOVICH, Mr. Ruppert discussed outpatient treatment programs, inpatient treatment program locations, and how treatment is paid for.
- 06:41:35 SEN. ESP said that the WATCH program participants are chronic abusers with criminal behaviors and a criminal record. He asked if the WATCH model would still work if it happened earlier in the process. Mr. Ruppert said it would work and explained how.
- 06:43:48 REP. MENAHAN said that both judges want more jurisdiction over DUI cases. He discussed how partner family member assault sentences are used and asked if that same type of sentence structure would work for DUI offenders. Judge Orzech said yes. Judge Ulbricht said yes, because it would allow an offender to fully engage in treatment.
- 06:45:43 REP. MENAHAN said that there is a perception that when legislation to increase the penalty for a crime is introduced, that the intent is to put people in jail for longer periods of time. He asked if that has been the experience of the judge. Judge Ulbricht said that is not the case and provided examples. Judge Orzech said no, that people are given every opportunity to take advantage of treatment

and to comply with the conditions of their treatment plan. She explained what happens in a treatment court if problems do occur.

06:51:53 SEN. SHOCKLEY explained his idea of making a magistrate available day and night to issue court orders to obtain blood samples of drivers who won't blow. Judge Orzech said that the suggestion is an interesting concept and that there would have to be a pool of judges trained in telephonic warrants. Judge Ulbricht said that in certain situations, such a method would be workable.

06:55:55 **BREAK** until 3:20 p.m.

07:15:06 REP. AUGARE reconvened the LJIC at 3:21 p.m.

Public Comment

07:15:42 Judge Orzech read into the record a letter from Charlotte Kasl, Ph.D (EXHIBIT #50). Dr. Kasl's letter was in strong support of developing a DUI treatment court program.

07:20:50 **Mark Murphy, Chief Criminal Deputy, Yellowstone County Attorney's Office**, discussed the effectiveness of the implied consent law, saying that the current version is a joke. He said that criminalization may not be the best approach, but that something has to change. He said he was encouraged to see that the economic cost of drunk drivers is going to be examined. Mr. Murphy distributed copies of Arizona statutes addressing aggravated DUI (EXHIBIT #51) and explained how they work. He said that the devastation caused by drunk driving deeply affects the victim and his family, and also the offender and his family; and that he would like to see increased treatment in order to prevent drunk drivers from creating more victims.

07:29:13 **John Flynn, Broadwater County Attorney**, shared his experiences as a prosecutor dealing with drunk drivers. He said that the current system is not working and that it is very difficult to prosecute a drunk driver. He said that only a cultural change will truly change the situation. He said that if the LJIC really wants to make a difference, it must create a threshold for probable cause and allow refusal to blow to be a separate criminal offense. He said that one change would change the entire complexion of DUI in Montana. Mr. Flynn said he had other ideas on " how to get more bang for the buck" and said asked that the LJIC call him if it had questions.

07:33:54 **Lynnette Catron, citizen, Kalispell**, related her family's experience in losing three family members to drunk drivers, saying that she wants to be a face for the reality of the statistics. Ms. Catron discussed a proposal for legislation, based on legislation passed in Alaska and Idaho. She discussed the history of the legislation and the components of the proposal (EXHIBIT #52).

07:43:34 Ms. Heffelfinger distributed copies of an article from the Helena Independent Record about ending Montana's tolerance of drunk driving (EXHIBIT #53). She said that citizen public comment has been received on the issue also and provided copies for the record:

- Eric and Donna Mendelson (EXHIBIT #54);
- Curtis Lund (EXHIBIT #55);
- Patti Jacques (EXHIBIT #56);
- Joan Hurdle (EXHIBIT #57); and
- R. A. McQueary (EXHIBIT #58).

Work Session

- 07:44:27 Ms. Heffelfinger referred members to the issues and options work sheet (EXHIBIT #42). SEN. ESP asked the panelists and other meeting attendees to consider, if treatment is mandated earlier in the process, what would happen if the person isn't suitable for treatment, if the person refuses treatment, what could happen to jail populations, and what could be used as a "hammer" to encourage participation. REP. AUGARE asked that thoughts on SEN. ESP's questions be given to Ms. Heffelfinger before the next meeting. Ms. Heffelfinger provided a detailed explanation how the LJIC could use the issues and options work sheet to guide its decision making and work.
- Issue Area #1 - Prevention and Education -- After discussion, the LJIC voted 6-5 not to further examine prevention and education at this time.
- 08:27:45 Issue Area #2 - DUI Penalties, Treatment, and Supervision - After extensive discussion of each issue and related options, **SEN. LASLOVICH moved to approve continued study and analysis of Issue 2, options B, C, and D.** SEN. SHOCKLEY said that additional staff analysis is not needed and that the committee has all of the information it needs. He said he would rather direct staff to begin drafting proposed legislation.
- 08:30:46 SEN. ESP said that he would support SEN. LASLOVICH's motion, with certain caveats, including money.
- 08:31:35 REP. PETERSON said that he would generally support the concept but did have some objections to certain portions, such as increased penalties and for higher BAC. REP. AUGARE agreed that he would generally support the motion but would not support additional penalties. **The motion passed on a show of hands vote, with SEN. HOWARD voting yes by proxy (Esp), SEN. JUNEAU voting yes by proxy (Moss), and REP. STOKER voting yes by proxy (Shockley).**
- 08:33:39 **SEN. SHOCKLEY moved to direct staff to draft a statute to increase the penalty for DUI one and for DUI per se. REP. MENAHAN made a substitute motion to increase the penalty for first, second, and third DUI offenses to be punishable for one year, including jail time of day for the first offense, jail time of 7 days for a second offense, and jail time of 30 days for a third offense. (61-8-401, and 61-8-406, MCA)**
- 08:35:44 SEN. LASLOVICH said that he would resist the motion at this time because it is too soon. He agreed that action is needed, but only after further analysis.

08:36:58 REP. PETERSON said that he did not see the harm in drafting the legislation and that it would remain a working document. He discussed how it could be modified or changed to suit needs. He said that he just wants to be certain that judges are given more discretion and leeway in ordering treatment for offenders.

08:37:58 SEN. ESP and SEN. HINKLE agreed that additional study is needed. **The motion failed on a 4-8 roll call vote, with SEN. ESP, SEN. HINKLE, SEN. JUNEAU by proxy (Moss). SEN. LASLOVICH, SEN. MOSS, REP. AUGARE, REP. EBINGER, and REP. HOWARD by proxy (Esp) voting no (ATTACHMENT #5).**

It was agreed that Issue #3 - enforcement - would not be considered at this time.

Other Areas of Concern of Interest to Members

08:44:29 SEN. SHOCKLEY said he would like to further research the idea of creating a central magistrate to issue warrants for blood tests.

08:45:44 REP. EBINGER said that jail suicides remain a great concern for him and noted that five jail suicides have occurred in 2009. He said he would like an update from the state corrections system on what efforts have been taken to prevent jail suicides. REP. AUGARE asked if a written report would suffice. REP. EBINGER said it would.

08:47:38 SEN. ESP asked that updates from the Addiction and Mental Disorders Division (AMDD) on House Bills 130, 131, and 132, be made in person and that a written update is not satisfactory.

08:48:06 REP. PETERSON asked to look at how alcohol taxes compare to other jurisdictions, drivers license fees, and other potential funding sources. He asked that the information be provided in written form.

ADJOURNMENT

08:50:21 REP. AUGARE adjourned the meeting at 4:56 p.m. The next meeting of the Law and Justice Interim Committee is February 8 and 9, 2010, in Helena.

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