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Law and Justice Interim Committee

61st Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES

February 8, 2010

Room 137, State Capitol
Helena, Montana

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

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COMMITTEE MEMBERS PRESENT

REP. SHANNON AUGARE, Chair

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

REP. MIKE MENAHAN
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED

REP. BOB EBINGER
REP. DAVID HOWARD
REP. RON STOKER, Vice Chair

STAFF PRESENT

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

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Law and Justice Interim Committee approved the December 17 & 18, 2010, meeting minutes, as written.

CALL TO ORDER AND ROLL CALL

00:00:01 REP. AUGARE called the Law and Justice Interim Committee (LJIC) to order at 8:04 a.m. The Secretary took roll, SEN. HOWARD, REP. EBINGER and REP. STOKER were excused (ATTACHMENT #3). REP. AUGARE briefly reviewed the meeting agenda.

SJR 39 - STUDY OF DUI LAWS

00:02:12 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed meeting materials provided in the member's mailing packet:

- Office of the Court Administrator summary information on DUI and related charges from January 2008 through December 2009 (EXHIBIT #1);
- a Motor Vehicle Division (MVD) table listing alcohol-related convictions for calendar years 2002-2009 (EXHIBIT #2); and
- Department of Corrections DUI offender probation report as of December 31, 2009 (EXHIBIT #3).

00:04:05 Ms. Heffelfinger presented a report, *"Strategies for Combating DUIs: Coordinated Treatment, Community Supervision, and Penalties"* (EXHIBIT #4). Ms. Heffelfinger focused on four main points:

- fiscally self-sufficient, community-based programs;
- effective treatment;
- a penalty structure that supports treatment and community-based programs; and
- Judicial education and DUI courts.

Committee questions and discussion

00:22:47 SEN. HINKLE asked what the penalty is for drunk drivers who kill or injure someone in New York and Virginia. Ms. Heffelfinger said that she would find out.

00:23:16 SEN. JUNEAU said she would like to know what the county DUI task forces are doing and how they are spending their money. She also asked if there is a standard cost for the A.C.T. program. Ms. Heffelfinger said that she would find out.

00:24:54 REP. PETERSON asked when the LJIC would look at the South Dakota 24/7 model. REP. AUGARE said that it would be presented at the April meeting. REP. PETERSON said that DUI courts are more expensive and asked if that has been taken into consideration. Ms. Heffelfinger confirmed that drug courts are more expensive than other programs and that Judge Mary Jane Knisely would discuss her drug court in the afternoon portion of the meeting. REP. PETERSON asked if a habitual offender statute has been considered in Montana. Ms. Heffelfinger said that the LJIC could consider that type of statute.

00:28:02 SEN. MOSS asked for a summary of all funding available for the DUI courts and also the statewide judicial training for the next LJIC meeting. Ms. Heffelfinger said she would gather that information.

00:28:56 SEN. SHOCKLEY asked to find out how much money the \$200 license reinstatement fee generates and how it is used. He said he would also like to know how much money is generated by the 50-50 split of justice court fees between the state and counties.

Dr. Tim Conley, Ph.D., L.C.S.W., Associate Professor of Social Work, University of Montana: Results of an opinion survey of WATCH participants

00:32:43 **Sara Shapiro, graduate student, University of Montana**, reviewed the execution of the study, sample group information, the survey and focus groups, and several of the key findings using a PowerPoint slide show (EXHIBIT #5). Copies of the full report were also provided to the committee (EXHIBIT #6).

00:39:04 Dr. Conley said that the majority of the sample offenders began drinking at an early age and that many of them had already developed an alcohol dependency by the time they committed a felony DUI. He also discussed the essay responses and recommendations given by the offenders, saying that:

- education and prevention efforts directed at youth would help prevent DUI offenses later in life;
- the current A.C.T. program is ineffective;
- incarceration is substantially less effective than treatment;
- most of the offenders felt that the current punitive measures related to early offense DUIs are merely a "slap on the wrist";
- it is important that the consequences be consistent, swift, and significant, particularly for felony DUI;
- Montana's drug court system is effective and ensures compliance with sanctions; and
- the offender supported mandatory treatment programs and had specific recommendations on when treatment should begin.

00:58:53 SEN. MOSS asked how to combat the challenge of community acceptance of underage drinking and how to decrease the risk of youthful offenders developing alcohol addiction problems. Dr. Conley said that early education is key. He discussed, as an example, a grass roots effort in the Bitterroot area designed to decrease and prevent underage drinking.

01:01:17 SEN. MOSS asked what elements would be necessary in order for a program to be effective for young people. Ms. Shapiro said that the sample of offenders surveyed were adamant about strengthening education and increasing awareness of how drunk driving affects others, not just one's self. She said that an approach similar to that of the meth project would very likely be effective. She agreed that cultural acceptance of underage drinking is a problem.

01:03:00 SEN. ESP asked if providing punishment, consequences, and treatment earlier and more swiftly, as recommended by the study participants, would make a

difference. Dr. Conley said that it really depends on a person's internal trigger and their desire to change.

01:06:26 REP. MENAHAN said he thought that the A.C.T. program should be a graduated system. Dr. Conley agreed that a graduated approach would be effective. He recommended that a second DUI offense require a 14-day treatment program in a residential treatment program and that a third offense impose a mandatory 60-90 day treatment program, such as WATCH.

01:07:55 REP. PETERSON said he supports giving judges more discretion at the second offense and sending the offender directly to treatment after the third offense, with no felony conviction. He said that other states have provisions for revoking drinking privileges. He asked Dr. Conley to comment on revoking a citizen's drinking privileges. Dr. Conley said he could support a system in which the judicial system had zero tolerance for alcohol consumption so long as it was combined with treatment.

01:11:41 SEN. SHOCKLEY commented that increasing penalties has not worked and said that he agreed with Dr. Conley's approach of treatment rather than punishment. Dr. Conley said that even if the law was applied to the fullest extent possible, he would still prefer to see the multiple offenders in a treatment program.

Approval of Minutes

01:15:08 **SEN. ESP moved to approve the December 17 and December 18, 2010, meeting minutes, as written. The motion passed on a unanimous voice vote.**

Community-based treatment

01:16:34 **Mona Sumner, Chief Operations Officer, Rimrock Foundation, Billings,** presented a PowerPoint slide show to discuss solutions for Montana's DUI problem (EXHIBIT #7). She discussed incarceration rates, the need for a paradigm shift in how the issue of DUI is dealt with, the basics of effective treatment, the effectiveness of the drug court approach, drug court technology, and outcome data from the Billings Drug Court. Ms. Sumner also distributed copies of *"Outcome Findings 2006-2009: Performance Measures of Jail-based Diversion for Incarcerated Offenders"* (EXHIBIT #8).

01:40:10 **The Honorable Mary Jane Knisely, Municipal Court Judge, Billings,** stated that, in her opinion, DUI courts are highly effective because of the multi-disciplinary approach but that their effectiveness could be further increased by addressing certain flaws in Montana statute. Judge Knisely discussed several statutes that could be improved and offered suggestions on what language changes would improve effectiveness. She said that the Billings DUI Court uses the RANT system, which allows the Court to tailor its treatment programs to meet the specific needs of each offender. She said the program is cost-effective as well. Judge Knisely reviewed funding sources for the DUI Court, including fees paid by participants for certain services and treatment. She provided copies of the *Billings Adult Municipal Drug Treatment Courts: Outcome Findings FY 2008-2009* (EXHIBIT #9).

01:49:32 **Rosalee Rupp, Coordinator, Billings Adult Misdemeanor DUI Court**, testified to the effectiveness of treatment courts. She emphasized that the effectiveness is due to the group effort made by participants and staff alike, and that participants have the tools to be successfully deal with society when they exit the program. Ms. Rupp discussed certain statistics. Ms. Rupp said that the biggest challenge is jurisdiction limitations and that a minimum of 12 to 18 months is needed in order to achieve the best results.

Committee Questions

01:53:17 REP. PETERSON asked if the participants are handled on a deferred prosecution basis. Judge Knisely said that her court does not have anyone on a deferred prosecution because her court is a post-plea court. She said that the "carrot" for her participants has been getting treatment and getting their driver's license back. REP. PETERSON asked if the privilege to drink is revoked and if the DUI Court participants are allowed to go in bars. Judge Knisely said that participants are not allowed to drink or go to bars. She explained the steps of the program and said that tough requirements are imposed in order to help the participants avoid alcohol. REP. PETERSON asked how a participant's family is involved. Judge Knisely said that supportive family members are involved when available but that friends and employers can also provide important support for the participant.

01:57:56 SEN. LASLOVICH asked for further explanation regarding the timeliness of the DUI Court in dealing with an offender. Judge Knisely said that the process for getting an offender into DUI court averages about 10 days but depends on if a person chooses to plead guilty or not guilty. She explained what happens as the offender progresses through the system and said that certain factors, such as if the offender is a violent or sexual offender, may effect how treatment is structured.

02:02:25 SEN. LASLOVICH asked Judge Knisely to comment on what the Legislature could do to help. Judge Knisely said that sections 61-8-714 and 61-8-722, MCA, need to be cleaned up. She also suggested;

- placing WATCH graduates in DUI Court so that they could continue to be monitored within a structured setting;
- considering other programs, such as the *Drug Courts on a Dime* program designed by a New Mexico judge, for use in rural areas;
- that technology, such as video streaming and video conferencing, be used to treat, monitor, and educate offenders;
- expansion of jail-based programs such as the one sponsored by the Montana Board of Crime Control; and
- changing the sentence structure because handing out the same sentence for every offender will not work.

Judge Knisely invited the members to attend her court, either in person or by videoconferencing, so they could get a first-hand view of how it works.

02:07:03 SEN. LASLOVICH asked about the cost of resources, particularly for the communities in which drug courts are operating. Ms. Sumner said a webcam is extremely inexpensive and works very well. She said that most state programs

offer an intensive outpatient level of care and is what most drug court people go through successfully. She said that the duration of a program is the most important aspect because it allows time for the person's mind set to change and that programs must be based on each individual's circumstance.

- 02:09:09 SEN. LASLOVICH said that the LJIC is exploring graduated penalties and treatment for 2nd and 3rd offenses. He said that he is convinced that more needs to be done for second and third offenses. Ms. Rupp said it is very difficult to legislate the number of days a person needs to be treated and emphasized that treatment really needs to be tailored to each individual's needs. SEN. LASLOVICH asked how legislation could be written to allow for that. Judge Knisely said if person chooses to plead guilty then assessment and treatment should begin very soon, or if the offender chooses to seek a second legal opinion, the decisions are made based on that opinion. Judge Knisely and Ms. Rupp both agreed that the assessment and treatment time frames are very important because the offender is motivated and willing to work, but if the period is not long enough, there is not adequate time for the brain and body to heal enough to deal with the addiction problems.
- 02:14:46 SEN. LASLOVICH asked for opinions on the effectiveness of the SCRAM device versus the interlock device. Judge Knisely said that SCRAM is very effective because it is an immediate and constant presence. She said that the interlock device works well also but isn't used until the offender gets their driver's license back a year later. Regarding cost, Judge Knisely said that costs are comparable for the two devices.
- 02:18:02 Regarding extending jurisdiction, REP. MENAHAN said that the LJIC has heard testimony from judges also in support of that. He asked if increasing jurisdiction to a year would help. Judge Knisely said that would be a very effective and simple fix. She said that it would send a strong message to offenders and would still allow judges discretion in treatment and sentences. REP. MENAHAN and Judge Knisely discussed the importance of uniform punishment in all counties and how that might be achieved. REP. MENAHAN said that there is dissatisfaction with the A.C.T. program. He asked if the DUI court model is the best model to ensure compliance with treatment. Judge Knisely said yes, that she has heard from her clients for many years that the A.C.T. program is not effective because it doesn't connect with the person as an individual.
- 02:24:54 Ms. Sumner said that people who are that dependent need treatment and that education alone is not the appropriate approach.
- 02:25:54 SEN. MOSS said that accountability is crucial and that her observation is that DUI court participants are held accountable to the court and also their families, employers, and others. Judge Knisely explained how good behaviors are quickly rewarded and encouraged, including support from neighborhood law enforcement officers.
- 02:28:57 SEN. MOSS asked how this model could be replicated across the state. Judge Knisely said that there is a statewide drug court administrator who is willing to

work on this, as are judges and others. She suggested a statewide education conference would be valuable and said that there are national resources available to help. SEN. MOSS asked if the LJIC could look at Judge Knisely's suggestions in more detail and the committee's next meeting. Ms. Heffelfinger said yes.

02:31:03 SEN. JUNEAU asked the panelists how youth offenders could be included, particularly considering Montana's youth drinking statistics. Ms. Sumner said that there are provisions for adolescent courts that are structured identically to the adult courts. She said that a youth court could be designed to support the needs of Montana youth.

02:34:02 Judge Knisely said that there are three juvenile drug courts operating in Montana. She said that Yellowstone County's youth court is a great model to be used to set up youth courts. SEN. JUNEAU said that treatment programs are expensive and asked what could be done for smaller towns and rural areas with fewer resources than Billings and Yellowstone County. She said that availability and expense are two big obstacles for rural citizens. Ms. Sumner said that the high level of supervision in drug court allows for a less expensive level of treatment. She said only a small percentage of drug court participants require residential treatment and that not all services have to be accessed under the drug court. SEN. JUNEAU said she would like to have a clearer idea of the cost of treatment. Ms. Sumner explained what measures have been taken to assist low income residents in getting treatment, such as state-funded residential treatment programs or day counselor programs.

02:40:51 REP. PETERSON asked for comment on his suggestion of allowing judges more discretion in sentencing and treatment, without a DUI felony conviction. Judge Knisely said it would be a great tool but that under current law, the WATCH program is only for felony convictions. REP. PETERSON said that people tend to gravitate back to past behavior after they complete their sentence or treatment. He asked if any follow-up is done on DUI Court graduates. Judge Knisely said that the reality is that once jurisdiction is up, it is difficult to continue to track an offender but that to date, few offenders have reappeared before her. Regarding recidivism, Judge Knisely said that she will be getting more data on her drug court participants because the DUI Court is still quite new.

02:47:43 SEN. SHOCKLEY asked if forcing people into treatment can work. Ms. Sumner said yes, that coerced or forced treatment is just as effective as voluntary treatment and that the longer the duration of treatment, the more successful the outcome. She said that the minimum treatment time frame is four months. She invited the LJIC to attend an upcoming training session being presented on the effectiveness of coerced treatment.

02:50:07 SEN. SHOCKLEY asked how employment of the participants and how fees and fines are handled. Judge Knisely said that participants meet with their case manager to develop a resume and are required to do job searches. They are also allowed to work part time and continue their job search. The case managers provide testing to determine aptitudes, which help guide their job search. If the

participant in unemployed, then community service is required and the participant earns \$8 per hour. SEN. SHOCKLEY said that misdemeanor probation officers seem to be very effective in helping offenders maintain. Judge Knisely agreed that they are very effective, particularly if they have training in the treatment court model. SEN. SHOCKLEY said that the biggest complaint he's heard is about the delay in ordering treatment and actually getting it. He said that offenders often get in more trouble before treatment is provided and that is a problem. Judge Knisely agreed that the delay in treatment is a problem.

Public Comment

- 02:55:32 **Harold Hoem, Missoula**, discussed how Norway deals with the issue of drinking and driving. He said that very tough laws have managed to change the cultural perspective. He provided details of laws and programs in Norway and Scandinavia and suggested that the LJIC study them. He said he had provided information to SEN. ERICKSON and SEN. WILLIAMS, and would be happy to share that with the Committee should the Committee desire.
- 03:00:58 **Jack Pollari, Gallatin County Recidivism Committee**, said, as a recovering alcoholic, that he agrees strongly with the information presented by the panelists. He said that when he was facing a second DUI charge many years ago, he was fortunate to get a kind judge who offered him treatment, rather than incarceration. He said the treatment he received included his family and follow-up reports to the judge and that he credits that approach to saving his life. He said he has been sober for 36 years and is now a director of sobriety programs in Bozeman. Mr. Pollari said two key components are assessment and who is going to pay, and that long-term treatment is very important.
- 03:05:33 **Jay Stanford, small business owner, Missoula**, discussed his experience with DUI offenders as a law enforcement officer. He said that he appreciates the value of treatment and of DUI courts. He offered three recommendations for consideration by the LJIC:
- encourage more public involvement in solving the problem by using programs similar to TIPMONT, by paying rewards to those who turn in drunk drivers;
 - conduct routine vehicle safety spot checks during daylight hours; and
 - strengthen DUI laws.
- 03:12:34 **Mark Murphy, Chief Criminal Deputy, Yellowstone County Attorney Office**, said that the majority of decisions made by the legislature have actually reduced the availability of punishment and treatment. Mr. Murphy discussed several examples, referencing section 46-18-208, MCA, and DOC statistics (EXHIBIT #3). He suggested that the LJIC consider adding aggravated DUI as an offense, saying it would help prosecutions be more effective. Mr. Murphy said that he has a video tape available for viewing that shows an individual being processed for drunk driving who went to trial and was able to avoid prosecution.
- 03:18:37 **Peg Shea, private practitioner, Missoula**, offered several recommendations, saying that:

- the A.C.T. program needs to be expanded to include more offenders because currently, about 4,000 of the 14,000 DUI offenders are not being offered treatment;
- the *Prime for Life* program is an evidence-based, best practice program and that she would be willing to present additional information to the LJIC;
- she agrees with SEN. JUNEAU that much more youth prevention and education is needed and that, in her opinion, the minor in possession system is broken and has been for quite some time; and
- she agrees with Ms. Sumner that treatment must be based on need and that with support, people can do well on outpatient treatment programs for much less expense.

Ms. Shea said that outpatient and rural areas can be served economically for about \$250 a week and explained how federal block grant money and insurance may be available to help. She also discussed other federal issues, such as parity rules, that affect the availability of treatment.

- 03:23:13 **Mike Sherwood, criminal defense attorney, Missoula**, discussed his perspective of the DUI issue as a criminal defense attorney. He said he believes that there is good chance that state government could be to blame for Montana's acceptance and tolerance of drinking and driving. He said that the MDT and the DOJ have published erroneous "safe" drinking levels and that this has affected Montana's perception of what is allowable under the law. He discussed several cases in which he defended DUI offenders (EXHIBIT #10).
- 03:33:48 **Wynn Smith, Hamilton**, spoke as a concerned citizen of Montana regarding the culture of acceptance of drinking and driving in Montana. He said that times have changed and that the laws have to change to meet the will of the people. Mr. Smith stated that he thought judges were being lenient and that the laws should be straightforward and simple in dealing effectively with drunk drivers. He said that most citizens are very interested in addressing this and making the needed changes.
- 03:36:43 **Rebecca Sturdevent, Mothers Against Drunk Driving (MADD)**, handed out information on monitoring devices (EXHIBIT #11 and EXHIBIT #12). She said that the devices help to battle drunk driving and that it could be used very effectively in rural areas.
- 03:38:36 REP. AUGARE briefly recessed the committee to pick up their lunch in the hall.
- 04:01:11 REP. AUGARE called the meeting back to order five minutes later at 12:05 p.m.
- 04:01:37 **Dr. Steve Seninger, Senior Research Professor, University of Missoula**, discussed his report, "*The Economic Costs of Alcohol-Related Vehicle Crashes in Montana*" (EXHIBIT #13) and corresponding PowerPoint slides (EXHIBIT #14). He also provided a full report (EXHIBIT #15) and a summary (EXHIBIT #16) of *The Economic Cost of Alcohol Abuse*, by Dr. Patrick Barkley, Director, Bureau of Business and Economic Research, University of Montana. Dr. Seninger noted that the economic cost totals approximately \$511 million annually. He said that

additional information is also available at the bureau's website:
www.bber.umt.edu.

- 04:24:42 SEN. ESP referred to slide 3 on page 1 of Dr. Seninger's PowerPoint slides (EXHIBIT #14) and asked what accounted for the reduction in the number of crashes. Dr. Seninger said that he thought the drop in fatalities could be attributed to hard economic times, with fewer people driving fewer miles. He predicted that it was not a trend and would not continue. SEN. ESP asked if national statistics all use the same criteria to define an "alcohol-related" crash. Dr. Seninger said that it is not completely uniform among states but that very strict criteria is used to gather the information that is turned into the national reporting system.
- 04:30:03 REP. PETERSON said he is very interested in keeping these drivers off the road. He asked Dr. Seninger if his research provides any insight on how that could be done. Dr. Seninger said that research indicates that a community-based approach has been very successful in several states, such as social host ordinances. He said that social host ordinances are very effective with underage and binge drinking problems. REP. PETERSON asked how specific social host laws need to be and what do they do. Dr. Seninger said they place liability with the property owner for unsupervised parties of underage drinkers and that they also give law enforcement more authority to investigate and make arrests. He said that keg registration and community watch efforts are also effective measures to combat youth drinking.
- 04:35:40 REP. MENAHAN said that the committee has also heard that there has been a huge increase in both prescription and illegal drug abuse and drug-related fatalities. He asked Dr. Seninger if his research addressed that issue. Dr. Seninger said that he did look at prescription drug use in his work. He said that it is tricky to extract the data but that information is available in field reports.
- 04:38:36 SEN. SHOCKLEY asked if the definition of an alcohol-related accident includes any amount of alcohol detected on any driver in any vehicle. Dr. Seninger said that in a fatality situation, any amount of alcohol found categorizes the accident as "alcohol related" but that in crashes with injuries, sometimes BAC is available and sometimes it isn't, so it may be a matter of observation. He said that it is likely that some crashes due to alcohol do go undetected. SEN. SHOCKLEY said that there are cases in which there may not be a correlation between alcohol and what really caused an accident. Dr. Seninger agreed that it could occur.
- 04:44:07 **Jeff Hayes, City DUI Prosecutor, Stevensville and Darby**, discussed the challenges that cities are facing in enforcing DUI laws and offered several proposals to remedy some of the problems. He explained how justice and city courts work and the financial burden placed on city and justice courts responsible for DUI enforcement. Additionally, he said, there is an increasing number of people who are refusing testing. He described a typical DUI case procedurally.
- 04:51:49 Mr. Hayes offered several proposals that would provide relief to cities:
- make city and justice courts courts of record;

- make refusal to blow a separate penalty; and
- monitor DUI prosecutions statewide in order to show that many prosecutors amending down and dismissing DUI cases because of costs, multiple jury trials, and refusals.

Mr. Hayes said that the information would give a very clear picture of what is really happening.

04:58:25 SEN. ESP asked Mr. Hayes to look at the information from the Office of the Court Administrator distributed earlier in the meeting to see if that is what he had in mind. Mr. Hayes said he would do that.

04:58:59 REP. MENAHAN asked if cities have the authority to establish their court as a court of record. Mr. Hayes said no, that legislation is required to make that change.

05:07:16 The Committee members discussed Mr. Hayes' proposals. SEN. SHOCKLEY said that he has concerns about the constitutionality of the proposal for creating a separate penalty for refusal to blow. He and Mr. Hayes discussed their opinions. REP. PETERSON had several questions about the process for establishing courts of record, how costs of proceedings would be assessed, and how refusal to blow would be prosecuted as a separate crime. Mr. Hayes addressed each question.

05:16:08 10-minute break reconfigure the meeting room for classroom-style instruction.

SOBRIETY LAB

05:31:13 REP. AUGARE reconvened the meeting. **Sgt. Steve Baiamonte, Standardized Field Sobriety Testing (SFST) Instructor, Montana Highway Patrol (MHP)**, explained standardized field sobriety tests using PowerPoint slides (EXHIBIT #17). Sgt. Baiamonte covered topics such as simultaneous capabilities required for driving, common indicators of impairment, National Highway Traffic Safety Administration (NHTSA) approved standardized field sobriety tests, observations and conclusions made by an officer during a traffic stop, and MHP training.

05:46:25 **Trooper Kurt Sager, Traffic Safety Resource Officer, MHP**, explained the Montana Drug Recognition Expert (DRE) program using a PowerPoint presentation (EXHIBIT #18). Topics discussed included the training required to become a certified DRE, drug categories, how DRE's are useful, plans for expansion of the DRE program, and hurdles faced.

05:58:50 **Ben Vetter, Breath Alcohol Section, Department of Justice, Forensic Science Division**, presented PowerPoint slides illustrating the effects of alcohol on the brain and resulting impairment of the senses (EXHIBIT #19).

06:11:55 SEN. SHOCKLEY asked if the sobriety tests are applicable to people aged 55 and older. Sgt. Baiamonte said that NHTSA did not validate test results for people 65 years of age or older or more than 50 pounds overweight, so test results for those categories cannot be used in court.

- 06:12:43 REP. PETERSON asked Trooper Sager if a DRE is required to get verification in order to get a conviction. Trooper Sager said that verification is obtained if possible and is very helpful, but is not necessary for a conviction.
- 06:14:00 Sgt. Baiamonte explained that the LJIC would first tour the Mobile Impaired Driving Assessment Center to see an actual DUI processing center and then observe the sobriety lab in progress in Room 102. He said that the class would resume in about an hour. REP. AUGARE recessed the LJIC for one hour.

BREAK - Tour Mobile Impaired Driving Assessment Center Observation of Sobriety Lab

- 07:40:57 REP. AUGARE reconvened the LJIC. Sgt. Baiamonte thanked the members for their questions during the sobriety lab and said his goal was to provide as much useful information as possible.
- Sara Hansen, Forensic Toxicologist, Department of Justice, Forensic Science Division**, used PowerPoint slides to explain forensic toxicology, what constitutes a "drug", drug categories and the specific effects of each category, Montana statistics, and drug use in America (EXHIBIT #20). She discussed several of the more prevalently used drugs in Montana and their effects. She noted increased prevalence of marijuana use and discussed medical marijuana use.
- 08:11:31 SEN. ESP asked what level of hydrocodone, for example, is required to be considered impaired. Ms. Hansen said that Montana has not established legal levels for prescription drugs and that the officer's observations are heavily relied upon in assessing a person's impairment. She said that even a small amount of certain drugs can have significant effects.
- 08:22:06 SEN. HINKLE asked if it would help law enforcement if medical marijuana could be sold only to licensed pharmacies. SEN. ESP asked if it is possible, from a clinical perspective, to sell marijuana through a licensed pharmacy. REP. AUGARE said that questions about selling medical marijuana were not appropriate questions for crime lab personnel.
- 08:23:43 SEN. JUNEAU said, in order be fair to the people who are legally growing medical marijuana and to the legal users of medical marijuana, that she objected to the statement made by Ms. Hansen regarding medical marijuana use and statistics.
- 08:26:15 Sgt. Baiamonte said that, as a law enforcement officer, he believes medical marijuana is a serious issue and that he has seen a lot of misuse of medical marijuana cards, such as using a medical marijuana card as an excuse for impaired driving.
- 08:31:56 REP. MENAHAN asked Ms. Hansen to provide statistics on juvenile offenders, saying that he has prosecuted several juveniles who have been prescribed medical marijuana cards and that they present a high risk for crashes.

- 08:33:15 REP. AUGARE recessed the committee for five minutes to allow a video clip to be set up. After reconvening the meeting, REP. AUGARE asked Ms. Hansen to continue her presentation. Ms. Hansen showed the committee a short video of a young man under the influence of drugs. The video was not video broadcast to the public.
- 08:39:32 **Erin Inman, Traffic Safety Resource Prosecutor, Department of Transportation**, used PowerPoint slides (EXHIBIT #21) to discuss P.A.S.T. - portable alcohol screening test, BAC, implied consent, related statutes, and other issues. The Committee viewed a short video regarding refusals. Ms. Inman said that people with a history of DUI know how to use refusals to avoid prosecution.
- 08:59:10 REP. PETERSON said that it has been suggested that a new statute be adopted to charge an individual as a habitual offender, which would allow all prior DUI offenses to be entered as evidence in court. He asked Ms. Inman to comment. Ms. Inman said that she thought that would be appropriate avenue for dealing with hard core cases.
- 09:01:31 SEN. HINKLE asked if the nonadmissibility of prior offenses is allowed for other offenses in addition to DUI. Ms. Inman said that it is true for other offenses also.
- 09:02:07 SEN. ESP asked, without implied consent for suspected DUIs, if it makes it more difficult for the prosecutor. Ms. Inman said implied consent does apply to drugged drivers and is a part of the regular DUI statutes, but that it does not have presumptions tied to specified levels in the blood stream. Additionally, Ms. Inman said there are no drug per se limits.
- 09:03:15 REP. PETERSON asked if there are any kind of measurements that could be set for drugs for per se impairment. Ms. Inman said yes, that some states have adopted per se impairment provisions for a select list of drugs.
- 09:04:49 SEN. SHOCKLEY asked about testing for metabolites and said charging a person with possession just by testing urine for a metabolite. Ms. Inman said it is very rare for a prosecutor to charge for possession based only on the person having a metabolite or the active ingredient in their system. SEN. SHOCKLEY asked if a law is needed to help the situation. Ms. Inman said that would help.
- 09:06:45 Ms. Hansen that there are certain drugs that are unstable in the collection tube and break down very quickly. She said that some states do base their DUI per se laws for drugs on the presence of metabolites.
- 09:07:28 Sgt. Baiamonte thanked the LJIC members and staff for allowing him and the others to share their information with them and distributed DVD copies of the sobriety lab to the members (EXHIBIT #22).
- 09:11:14 REP. AUGARE recessed the committee until 8:00 a.m. on February 9, 2010.

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