

**STRATEGIES FOR COMBATING DUIS:
Coordinated Treatment, Community
Supervision, and Penalties**

A Report Related to SJR 39

FOR THE LAW AND JUSTICE INTERIM COMMITTEE

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Introduction

The Law and Justice Interim Committee has already received a large amount of information about drinking and driving. The purpose of this paper is not to pile on even more material for the committee's consideration, but to offer some "digested" material to help the committee wrap-up the information-gathering phase of the SJR 39 study and move toward recommendations.

At its December 17-18, 2010, meeting, the committee voted to further examine options related to DUI treatment alternatives, community-based supervision, and penalties. This paper highlights selected strategies in these three areas by:

- summarizing available research;
- looking at other states with nationally-recognized programs; and
- comparing related statutes in Montana.

The selected state programs, highlighted research, and Montana statutory analysis have been arranged according to accepted strategies for combating hardcore drunk driving that seem most relevant to the committee's current discussion. These strategies are selected from among the recommendations of the National District Attorney's Association, The Century Council (a coalition of distillers against hardcore drunk driving), and the National Hardcore Drunk Driver Project (an independent interdisciplinary study project funded by The Century Council). The recommended strategies selected for analysis in this paper and that seem most relevant to the committee's current work are as follows:

- Fiscally self-sufficient, community-based programs.
- Effective treatment.
- A penalty structure that supports treatment and community-based intensive monitoring.
- Judicial education and DUI courts.¹

Fiscally self-sufficient, community-based programs

Summary

Given our national and state economic situation, there can be no doubt that fiscal issues will dominate state legislative agendas in the coming months. With this in mind, staff researched funding strategies used in other states and found two states, New York and Virginia, that have been nationally-recognized as potential models for their wholly offender-funded programs (i.e., no state general tax dollars are used to support these programs). These offender-funded programs are locally administered to meet local needs, but also offer a coordinated, "systems" approach to combating driving under the influence (DUI).

Since the New York legislature enacted its STOP-DWI, alcohol-related traffic fatalities in the state have decreased by 70 percent in comparison to a national-average decrease of 32 percent.² Alcohol-related fatalities in both New York and Virginia are less than the national average; and, both the New York and Virginia programs have been recognized for innovative achievements and cost effectiveness.³

¹ These strategies were selected from among the recommendations in the "Hardcore Drunk Driving Prosecutorial Guide", published in 2009 by The Century Council and the National District Attorney's Association, and from the recommendations of the National Hardcore Drunk Driving Project, which are published in "Combating Hardcore Drunk Driving", a 2008, nationally-recognized source book for DUI prevention specialists.

² National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, pg. 11.

³ Ibid.

Other states

New York

New York's program dates back to 1981, when the New York legislature enacted the "Special Traffic Options Program for Driving While Intoxicated" or STOP-DWI law. The law permits each of the state's counties to opt in to STOP-DWI by establishing a county STOP-DWI program. If the county opts in to the program and achieves state certification, the county is then entitled to receive back from the state all fines collected for alcohol and other drug-related traffic offenses that occur within the county. All counties in New York have opted in to this program.

Each county appoints a STOP-DWI coordinator. The coordinators have come together to form a professional association called the STOP-DWI Association. The Association provides professional development, information sharing, and advocacy.

New York's Motor Vehicle Commissioner must certify each county's strategic plan for its local STOP-DWI program. This statewide oversight allows for performance-based planning and evaluation. The staff that review the county plans also receive and allocate the state's share of the federal grant money from the National Highway Traffic Safety Administration (NHTSA) for combating drunk driving, which gives the state flexibility in deciding how best to spend federal money, coordinate a multi-agency strategic effort statewide, and target resources accordingly.⁴

Another aspect of statewide oversight is that each county may spend the fine money received back from the state only for STOP-DWI programs that relate to enforcement, prosecution, probation, treatment, public information, education, and administration. These programs must encompass intensive supervision, such as the use of SCRAM bracelets or 24/7 sobriety programs, treatment programs, and DWI courts.⁵

The fines imposed in New York for driving while intoxicated (DWI), which may be charged if the offender's BAC is 0.08 or above, and for driving while ability impaired (DWAI), which may be charged if the offender's BAC is 0.05 or above, are as follows:

⁴ Interview with Jeanette Maikles, Program Manager, Governor's Traffic Safety Commission, New York, February 4, 2010.

⁵ NHTSA, "A review of New York State's STOP-DWI Program", DOT HB 809 950, October, 2005.

New York State DWI Fine Structure

	DWI	DWAI
1st offense	\$500 to \$1,000	\$300 to \$500
2nd offense	\$1,000 to \$5,000	\$500 to \$750
3rd offense	\$2,000 to \$10,000	\$750 to \$1,500

New York's penalty structure is discussed in further detail in other sections of this paper. However, for purposes of this section, it is important to note that in New York, plea bargaining on DWI's is restricted by law. Thus, a person charged with a DWI cannot plead down to a non-alcohol offense, such as reckless driving. The person may plead down to a DWAI, which has lesser fines, but cannot avoid a fine entirely if convicted, nor can the offender escape having an alcohol-related offense on their record. According to a 2005 NHTSA study, 91% of DWI or DWAI arrests in New York result in convictions.⁶

The following two tables show the weighted per capita budget for high, moderate, and low population counties in New York, and how available funds are spent by STOP-DWI program area.

New York: Estimated Weighted Per Capita Resources, by Group

County Group	Total Resources	Total Population	Average (Weighted) Per Capita Resources*
1 High Population	\$9,051,815	13,508,613	\$0.11
2 Moderate High	\$3,808,929	1,661,171	\$0.20
3 Moderate Low	\$4,053,371	1,919,032	\$0.46
4 Low Population	\$6,274,488	2,024,680	\$1.92
Total	\$23,188,603	19,113,496	\$1.21

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⁶ Ibid.

New York : Most Frequently Reported Program Countermeasures, by All Programs.

STOP-DWI Program Area	Mean % (Range) Annual Program Budget	Countermeasures	# (%) Programs
ENFORCEMENT	35% (11-86%)	Equipment & Supplies	58 (100%)
		DWI Patrols	55 (95%)
		Education/Training Programs	24 (41%)
COURT-RELATED	18% (0-49%)	Dedicated DWI Attorney(s)/Staff	47 (81%)
		Education/Training Programs	15 (26%)
		Offender Supervision Programs	5 (9%)
		DWI Victim Services*	5 (9%)
PROBATION	13% (0-44%)	Dedicated Officer(s)/Staff	45 (78%)
		Education/Training Programs	8 (14%)
		Intensive Supervision	8 (14%)
		DWI Victim Services*	7(12%)
REHABILITATION	6% (0-27%)	Dedicated Counselor(s)/Staff	38 (66%)
		DWI Victim Services	4 (7%)
PUBLIC INFORMATION AND EDUCATION	14% (0-37%)	Underage Drinking Emphasis	54 (93%)
		Special Prevention Focused Events	32 (55%)
		DWI Victim Services**	10 (17%)
		Advertising Bill Boards	4 (7%)

Data source(s): New York Department of Motor Vehicles, 2003 STOP-DWI Program Plans and County Budgets, United States Census Bureau (2000 data). Insufficient data for 2 counties (Hamilton, Wyoming).

However, special revenue funding and local administration has disadvantages. About 15 to 30 percent of the fines imposed in New York are not collected; revenue flow can be unpredictable and inconsistent; and locally-administered programs mean inconsistencies when taking a statewide view. Nonetheless, studies conclude that New York's STOP-DWI program is working.⁷

Virginia

Virginia also received national recognition of its funding strategy to combat drunk driving because it's programs, too, are funded by offenders rather than state tax dollars. Virginia's program dates back to 1975, when the Virginia legislature enacted the Virginia Alcohol Safety Action Program (ASAP). The law establishes a 15-member commission to oversee local programs. The local

⁷ NHTSA, "A review of New York State's STOP-DWI Program", DOT HB 809 950, October, 2005; see also National Center for State Courts, "An Evaluation of the Virginia Alcohol Safety Action Program: VASA Works!", August 6, 2003.

programs are funded by offender participation fees. Virginia currently has 24 district ASAP programs serving about 80,000 clients annually.⁸

In Virginia, each convicted DUI offender is required by statute to enroll in a local ASAP program within 15 days of conviction and must pay a minimum participation fee. The participation fee is imposed by court order and is in addition to any other fines or fees. Virginia's statute sets the fee at no more than \$300. The fine may be waived or reduced if the offender is indigent.⁹ According to ASAP staff, nearly everyone who is ordered to participate is able to and does pay the participation fee.¹⁰ The fee is collected by the court or probation office and forwarded to the State Treasurer. Up to 10 percent of the fees may be used for statewide administration. The remainder must be reallocated in grants to the district ASAP programs.¹¹

The basic components of each district ASAP in Virginia are:

- intensive driver education or treatment;
- monitoring and testing programs and equipment (such ignition interlock devices, SCRAM bracelets, breathalysers, and other enforcement programs);
- training for law enforcement officers, judges and attorneys;
- information collection and management; and
- educational services to public schools, colleges and universities.¹²

Other funding models

Other states, such as New Jersey, use alcohol tax revenue to support anti-DUI programs; or, like New Mexico, use fees imposed on all traffic citations.¹³

⁸ National Center for State Courts, "An Evaluation of the Virginia Alcohol Safety Action Program: VASA Works!", August 6, 2003, pp. 11-12.

⁹ Section 18.2-271.1 of the Code of Virginia.

¹⁰ Interview with Richard Foy, Ph.D., Technical Instructor, Commission on Virginia's ASAP, February 3, 2010.

¹¹ Section 18.2-271.1 of the Code of Virginia.

¹² <http://www.vasap.state.va.us/>

¹³ NHTSA, "A review of New York State's STOP-DWI Program", DOT HB 809 950, October, 2005.

Comparing Montana's statutes

Statewide coordination

In Montana, as required by federal law, the governor is responsible for administering federal funds allocated to the state for highway traffic safety programs, including DUI-related programs. State law also designates the Department of Transportation as the lead agency through which the governor accomplishes this responsibility.¹⁴

Montana statute requires that at least 40% of all federal funds received by the state be allocated to and spent by local governments to carry out approved highway traffic safety programs.¹⁵

County DUI task forces

Section 61-2-106, Montana Code Annotated (MCA) authorizes county drinking and driving prevention programs, otherwise known as DUI task forces. Each county's governing body may appoint a local task force to "study the problem of alcohol-related traffic accidents and recommend a program to:

- (a) prevent driving while under the influence of alcohol;
- (b) reduce alcohol-related traffic accidents; and
- (c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgement or motor functions."¹⁶

The statutory language states that the task force shall submit its recommendations to the county governing body, which may then adopt the recommendations by resolution. The proposed program must also be approved by the state.¹⁷

The current statutory language is broad and unspecific. It makes no mention of program components associated with comprehensive, integrated strategies, such as drivers' education, treatment, or community supervision programs

¹⁴ See section 61-2-103, MCA.

¹⁵ See section 61-2-104, MCA.

¹⁶ Section 61-2-106(1), MCA.

¹⁷ Section 61-2-106(3), MCA.

similar to those offered through the local STOP-DWI programs in New York or the ASAP programs in Virginia. Nor does the statute address multi-agency coordination, such as collaboration with law enforcement, the courts, probation and parole offices, and treatment providers.¹⁸

The statute does provide that the DUI task force presiding officer must submit an annual report to the county governing body that includes the task force budget and an evaluation of program effectiveness, statistics on arrests, convictions, sentences, alcohol-related crashes, and other information requested by the county.¹⁹

Funding

State funding for DUI task forces in Montana is limited to half of the \$200 drivers' license reinstatement fee (i.e., \$100 for each reinstatement). Task forces may also spend federal highway traffic safety grant money passed through the state.²⁰ Federal funds also pay for one part-time contract state DUI task force coordinator, whose duties include technical assistance for counties interested in establishing a local DUI task force, training coordination, and statewide information sharing; and for a contract Traffic Safety Resource Prosecutor, who acts as an information resource and training officer for law enforcement, prosecutors, and judges.

Under current law, District court fines for alcohol-related traffic convictions are forwarded to the state for deposit to the state general fund. Justice court fines are split 50/50 between the state and the county.

Montana statute does currently provide that a drug court or mental health court may charge a participation fee of up to \$300 a month.²¹

A more detailed fiscal analysis of funding for Montana's impaired driver programs will be available to the committee for its next meeting, which is scheduled for April 5.

¹⁸ Section 61-2-106, MCA.

¹⁹ Ibid.

²⁰ See section 61-2-107, MCA.

²¹ Section 46-1-1112, MCA., and section 46-1-1212, MCA.

Options to promote integrated strategies and provide funding

Obviously given the state's current fiscal situation, diverting current general fund revenue, such as court fines, to fund new DUI programs is likely not a viable option. However, options available to policymakers interested in enhancing statewide coordination and the role of local DUI task forces in Montana could include:

- strengthening the statutory language in Title 61, chapter 2, part 1, MCA, by expressly requiring multi-agency coordination at the state and local level to leverage all currently available funding toward shared strategic goals;
- enhancing the statutory duties and role of local DUI task forces to include language about partnering with courts, law enforcement, and treatment providers and integrating existing programs to implement coordinated strategies; and
- to the extent policymakers are willing to look at new funding sources, requiring program participation fees for DUI courts (as currently authorized in drug court statutes) or, increasing fines, drivers' license fees, or alcohol taxes and using the increase for DUI programs.

Effective treatment

The second recommended strategy analyzed in this paper is effective treatment. Studies of treatment referral rates in other states indicate that at least 60 percent of first-time DUI offenders and more than 90 percent of repeat DUI offenders have an alcohol or drug abuse problem requiring treatment. Although some hard core drunk drivers are not chemically dependent, they are at risk. According to some studies, non-addicted drivers do benefit from intensive education and early intervention programs to help them retreat from risky behaviors, avoid chemical dependency, and not become a repeat DUI offender.²²

Studies also suggest that effective treatment requires integration with intensive supervision and meaningful penalties for noncompliance. In other words,

²² National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008.

according to studies cited by The Century Council, treatment is most effective when it is combined with long-term counseling, education, intensive supervision (which may include regular breathalyser testing, SCRAM bracelets, and/or an ignition interlock program), and meaningful sanctions for noncompliance. According to these studies, treatment integrated with supervision and sanctions can reduce recidivism by 20 percent or more.²³

What is necessary for treatment to be effective in changing the behavior of hard core drunk drivers? A research project at the George Washington University Medical Center identified 13 necessary ingredients for effective treatment for chemically addicted drivers:

1. Early detection and intervention.
2. Comprehensive assessments and treatment plans.
3. Case management.
4. Individualized professional interventions that offer more than a one-size fits all approach.
5. Behavioral contracting.
6. Life skills training.
7. Medications, if necessary, in combination with behavioral interventions.
8. Specialized services for special medical, psychological, economic, or family needs.
9. Continuing care, supervision, and follow-up.
10. Trust in a therapist or counselor.
11. Longer duration treatment programs (i.e., at least a 90-day intensive outpatient treatment program).

²³ Ibid. p. 107.

12. Participation in peer support groups.
13. Strong patient motivation.²⁴

Other states

Ohio

Ohio is recognized as the birth place of what is called the Weekend Intervention Program (WIP), which has proven an effective strategy for early intervention and treatment. On a first offense DUI, Ohio law provides that the court may require a defendant to attend a 72 hour driver intervention program in lieu of an otherwise mandatory 72 hour jail term. If the DUI offense involves a high BAC (above 0.17), the court is required to sentence the defendant to 72 hours in jail and then to the 72 hour driver intervention program. If the defendant is noncompliant in treatment or refuses to attend a driver intervention program, the court must sentence the defendant to 6 days in jail. Although there are mandatory minimum sentences for noncompliant offenders, the WIP has proven an effective alternative to jail time for misdemeanor DUI offenses. Ohio driver intervention programs generally cost \$300 to \$500 for the weekend and are paid for by the offender.²⁵

Virginia

Virginia's previously discussed intervention program is also a post-sentencing program. A person convicted of a DUI, including a first-time offender, is required by statute to be placed on court-supervised probation. As a condition of probation, the offender must report to and enroll with the local ASAP office within 15 days of conviction. Additionally, the person's driver's license is suspended or revoked. The court may grant a restricted drivers' license, but a second-time offender or a first-time offender with a BAC of 0.15 or higher must have an ignition interlock installed on any vehicle the offender drives.²⁶ Offenders who

²⁴ Ensuring Solutions to Alcohol Problems, The George Washington University Medical Center, "The Active Ingredients of Effective Alcohol Treatment" (PDF), June 2003.

²⁵ National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, p. 103; Wright State University School of Medicine website at <http://www.med.wright.edu/citar/wip/>; <http://www.1800duilaws.com/ohio>

²⁶ See section 18.2-271.1 of the Code of Virginia.

fail to enroll in ASAP as ordered by the court are not eligible for license reinstatement or a restricted license.

In Virginia, penalties for driving with a suspended or revoked license are severe. A third violation for driving with a suspended or revoked license within 10 years is a felony.²⁷ Virginia's penalty structure is discussed in greater detail later in this paper. However, the key point here is that the penalty structure provides motivation for the offender to enroll in the treatment program.

Wisconsin

Wisconsin is nationally-recognized for its pretrial intensive supervision program (ISP), which provides intervention as soon as possible after arrest and before sentencing.²⁸ Wisconsin's pretrial program originated with federal startup funding in 1993. Following a successful pilot project in Milwaukee County, the Wisconsin Legislature authorized state funding for the ISP in the 1997-1999 budget and established what is formally known as the Wisconsin Pretrial Intoxicated Driver Intervention Grant Program.

Under the pretrial program, local governments or private nonprofit organizations may apply for state grants to help fund court-based pretrial intervention strategies. The local entities applying for a grant are eligible for state funds only if their programs include the following components:

- structured program monitoring, data collection, and program evaluation;
- intensive supervision, such as through SCRAM bracelets or 24/7 breathalyser testing; and
- multi-agency coordination and monitoring of assessment, education, and treatment.²⁹

Additionally, local matching funds are required. The state grant may not exceed 80 percent of the program's costs. Wisconsin has 11 ISP programs serving 13 counties. Supporters of the grant program note that successful ISP programs in

²⁷ See section 18.2-272 of the Code of Virginia.

²⁸ Wisconsin Statutes, 85.53.; see also National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008.

²⁹ Bureau of Transportation Safety, Wisconsin Department of Transportation, "Wisconsin's Pretrial Intoxicated Driver Intervention Grant Program Annual Report", 2007 Federal Fiscal Year.

Wisconsin have reduce the pressure on county jails while still promoting public safety. While there is plenty of room for improvement, the program cites a 79% completion rate; and a multi-year recidivism analysis shows ISP participants were less likely than non-ISP participants to re-offend.³⁰

Comparing Montana's statutes

Assessment, Course, Treatment

Montana's current law requires each first-through-third DUI offender to complete a chemical dependency assessment, educational course, and, if recommended in the assessment, an individualized treatment program. This assessment, course, treatment protocol is called A.C.T..³¹ The assessment and educational course must be completed by licensed addiction counselors through state-approved treatment programs. In Montana, the educational program is not an intensive program. It consists of 8 hours of classroom instruction about driver safety and alcohol impairment.³²

If chemical dependency is indicated by the assessment, the addiction counselor must recommend a treatment protocol suitable for the offender's level of addiction.

If an offender fails to comply with any part of A.C.T., the court may impose any suspended fines or jail sentences. Subsection (9) of section 61-8-732, MCA, requires monthly monitoring for at least one year following admission to the treatment program for second or subsequent convictions. Subsection (1) of section 61-8-732, MCA, authorizes the judge to retain jurisdiction for the remaining portion of the suspended sentence, up to one year.

Montana's statute requires that costs for A.C.T. be paid by the offender, but there is no participation fee that is forwarded to the state for reallocation to counties or regions, as provided for in Virginia. The Virginia model allows participation fees to be pooled and then reallocated through grants so that programs in locations where unemployment and indigence is higher are funded and can still function.

³⁰ Ibid.

³¹ Section 61-8-732, MCA.

³² Montana Motor Vehicle Division, Traffic Safety Bureau, website at <http://www.mdt.mt.gov/safety/act.shtml>.

See attachment A for a summary of statewide data about Montana's A.C.T. participants.

WATCh

For a fourth or subsequent DUI offense in Montana, section 61-8-731, MCA, provides that the offender must be sentenced to the Department of Corrections for 13 months and placed in a residential treatment program (i.e., WATCh). The offender must also be sentenced to prison for 5 years, but all 5 years must be suspended and served concurrent to the 13-month sentence. The committee has already received detailed information about the WATCh program, so it is not reiterated in this paper.³³

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³³ Section 61-8-731, MCA.

Options to promote effective treatment

Some of the options available to promote more effective treatment alternatives for DUI offenders in Montana include:

- amending section 61-8-732, MCA, which provides for A.C.T., to strengthen the educational component and provide a for a more intensive early intervention program;
- statutorily authorize an intensive weekend intervention program modeled after the Ohio (post-conviction) or Wisconsin (pre-conviction) program for certain offenders, such as first or second- time offenders with high BAC violations;
- require offenders to report to and enroll in an integrated, comprehensive local treatment program and intensive monitoring, similar to the ASAP in Virginia, within a certain amount of time after conviction or face specified consequences, such as driver's license revocation (rather than suspension), or mandatory jail time; and/or
- require residential treatment for second or third-time DUI offenders and/or offenders with high BAC.

A penalty structure that supports treatment and intensive monitoring

As previously mentioned, a common theme in current literature on effective strategies to combat hardcore drinking and driving is that the greatest chance of success comes when there is an integrated approach to treatment. Thus, national studies emphasize that treatment alternatives must be supported by swift and certain punishment.³⁴

The section above discussed effective treatment. This section discusses the "swift and certain punishment" component.

³⁴ National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, pg. 17.

Recommended strategies for swift identification and intervention for hardcore drunk driver include:

- stricter penalties and mandatory interventions for high BAC offenders or repeat offenders;
- mandatory interlocks for high BAC offenders if a restricted license is granted; and
- preconviction intervention and assessment.

New York

New York is an example of a state with higher penalties earlier for repeat offenders. Mandatory jail sentences and minimum drivers' license sanctions also escalate.

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NEW YORK PENALTIES

DWI in New York means "driving while intoxicated" and applies when BAC is .05 or higher; a DWAI means "driving while ability-impaired" and applies to BAC of .08 or higher.

DWI OFFENSE	DWI FINE	DWI JAIL SENTENCE*	DWI LICENSE ACTION
1st Offense (Misdemeanor)	\$500 - \$1,000 (+ fees)	Up to 1 Year	Minimum 6-Month Revocation/Suspension**
2nd Offense (Within 10 years) Felony	\$1,000 - \$5,000 (+ fees)	Up to 4 Years	Minimum 1-Year Revocation**
3rd Offense (Within 10 years)	\$2,000 - \$10,000 (+ fees)	Up to 7 years	Minimum 3-Year Revocation**
DWAI OFFENSE	DWAI FINE	DWAI JAIL SENTENCE*	DWAI LICENSE ACTION
1st Offense	\$300 - \$500*	Up to 15 Days	90-Day Suspension
2nd Offense (Within 5 years)	\$500* - \$750	Up to 30 Days	Minimum 6-Month Revocation**
3rd Offense (Within 10 years)	\$750 - \$1,500	Up to 180 Days	Minimum 6-Month Revocation**

* Sentence can include alcohol treatment in lieu of jail, restitution for victims, and community service.

** Decision to reissue license is made by the New York Dept. of Motor Vehicles. Repeat offenders are ineligible for restricted driving privileges.

Virginia

Virginia provides higher penalties for higher BAC offenders. Additionally, offenders in Virginia who fail to enroll in ASAP as ordered by the court are subject to minimum mandatory penalties.³⁵

For first-time high BAC and repeat offenders, Virginia also requires vehicles be equipped with an ignition interlock device if a restricted license is granted.

³⁵ See section 18.2-272 of the Code of Virginia.

VIRGINIA DUI PENALTIES

	Mandatory min. fine	Drivers' license/vehicle sanctions	Mandatory minimum jail/prison time
<u>1st offense</u> BAC >0.15 to 0.20 >0.20	\$250	1 year revocation Interlock mandatory if restricted license granted	- 5 days min - 10 days min
<u>2nd offense</u> BAC >0.15 to 0.20 >0.20	\$500	3 year revocation Interlock mandatory if restricted license granted	up to 1 year - 10 days min if w/in 10 yrs - 20 days min if w/in 5 yrs - 10 days min - 20 days min
<u>3rd offense</u>	\$1,000	- indefinite revocation - interlock mandatory if restricted license granted - if within 10 years, permanent forfeiture of solely owned vehicle	Class 6 felony (1 to 5 yrs) - 90 days min if w/in 10 yrs - 6 months min if w/in 5 yrs
<u>4th or subsequent</u>			1 to 5 yrs - mandatory min, 1 yr

Source: Virginia Department of Motor Vehicles

Washington

The state of Washington also has a pretrial intervention program. All persons charged with a DUI are assessed prior to prosecution. Any DUI offender who is found to be chemically dependent, regardless of whether the offense is a first, second, or third violation, may agree to a "deferred prosecution". This deferral is available to an offender only one time. Under deferred prosecution, the offender agrees to two years in a community-based treatment program and other court-ordered conditions. If the offender successfully completes the treatment and complies with all court-ordered conditions, the DUI charges are summarily dismissed. If the offender fails to comply with the conditions set by the court, a guilty verdict is summarily pronounced. A 1993 study found a 22% recidivism

rate for offenders who participated in Washington's deferred prosecution program compared to a 48% recidivism rate for drivers who did not participate.³⁶

Certain punishment

Recommended strategies for the "certain punishment" component of an integrated strategy to combat hardcore drunk drivers include:

- restricted plea bargaining;
- closing "look back" loopholes;
- staggered sentencing;
- more severe consequences for BAC test refusals; and
- more severe consequences for driving with a suspended or revoked license.³⁷

Restricted plea bargaining

Twenty-nine states have some form of restricted plea bargaining with respect to their DUI laws.³⁸ For example, in New York the law prohibits a DWI offender from pleading down to a non-alcohol offense, such as reckless driving. However, a DWI offender may plead to a DWAI, which is subject to a lesser penalty.³⁹

³⁶ National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, p. 56.

³⁷ *Ibid.*, p. 17.

³⁸ National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, pg. 57.

³⁹ Data source(s): New York State Department of Motor Vehicles, 2003; New York State Police, 2000.

Closing "look back" loopholes

How previous DUI convictions are counted when determining prior offenses for determining penalties (i.e., the "look back" period) varies greatly state to state. A 10-year "look back" is the most frequently used period and the minimum period recommended by the National Hardcore Drunk Driving Project and National Transportation Safety Board.⁴⁰

Staggered sentencing

A district court in Isanti County, Minnesota, uses staggered sentencing as a strategy to combat hard core drunk driving and reduce repeat offenses. Justice James Dehn splits an offender's jail sentence into thirds. The offender serves the first segment immediately. Then, the offender enters intensive supervision using electronic monitoring equipment along with an appropriate treatment program. If the offender complies, the second segment of the jail sentence remains suspended. The third segment of sentencing involves a period of less intensive supervision, but continued monitoring and treatment. Again, if the offender complies and avoids re-offending, the third segment of the sentence remains suspended.⁴¹

More severe penalties for breath test refusal

Minnesota is one of five states with laws that criminalize breath test refusals. However, this approach is controversial and although Minnesota has a breath test refusal rate of 13 percent compared to the national average of 22 percent, Alaska, which also criminalizes breath test refusals has a refusal rate of 31 percent. Nevertheless, the National Committee on Uniform Traffic Laws and Ordinances recommends in its model DUI legislation that the penalty for breath test refusal be equal to the penalty for test failure.⁴²

⁴⁰ National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, pg. 37.

⁴¹ National Association of State Judicial Educators and The Century Council, *Hardcore Drunk Driving Judicial Guide*, 2003, p. 35.

⁴² National Hardcore Drunk Driver Project, "The National Agenda: A System to Fight Hardcore DWI," The Century Council, 2008, pg. 34.

Forty-one states and the District of Columbia impose administrative license revocation laws for BAC test refusals. In most states, license suspension is 90 to 180 days and restricted licenses may be granted.⁴³

Breath test refusal in Virginia is punishable as if it were a breath test failure. Virginia has one of the lowest breath test refusal rates in the country, 3% compared to 22% nationally.⁴⁴

More severe penalties for driving with a suspended or revoked license

Studies have found that as many as 75% of drivers whose licenses have been suspended or revoked drive anyway. Some studies have found that sanctions against offender vehicles, such as impoundment or license plate seizure can be an effective deterrent to driving with a suspended or revoked license. In Minnesota, one year after a vehicle license plate impoundment law became effective, there was a 50% reduction in the number of citations for driving with a suspended or revoked license.⁴⁵

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⁴³ Ibid., p. 35.

⁴⁴ Ibid., p. 34.

⁴⁵ Ibid., p. 46.

Comparing Montana's statutes

Jail and fine structure

The following table summarize the jail and fine penalties under Montana's current law.

MONTANA DUI PENALTY STRUCTURE

	DUI <i>Section 61-8-401, MCA</i>	BAC 0.08 or above <i>Section 61-8-406, MCA</i>
1st offense (within 5 years)	- min. 24 hrs jail , up to 6 mos - after 24 hrs, sentence may be suspended for up to 1 yr pending completion of A.C.T. - \$300 to \$1,000 fine	- up to 10 days in jail - \$300 to \$1,000 fine
2nd offense (within 5 years)	- min. 7 days jail up to 6 mos - after 48 hrs, jail days may be home arrest - after 5 days jail or home arrest, sentence may be suspended for up to 1 yr pending successful completion of A.C.T. - \$600 to \$1,000 fine	- min. 5 days, up to 30 days - \$600 to \$1,000 fine
3rd offense (within 5 years)	- min. 30 days, up to 1 yr - after 48 hrs, jail days may be home arrest - after 10 days jail or home arrest, sentence may be suspended for up to 1 yr pending successful completion of A.C.T. - \$1,000 to \$5,000	- min. 10 days in jail, up to 6 mos - \$1,000 to \$5,000
4th and subsequent (lifetime)	Felony - sentence to Dept. of Corrections for 13 mos, may not be suspended or deferred, except if person completes WATCh, remainder of 13 mos is served on probation - 5 years community supervision - \$1,000 to \$10,000 fine	Same as for DUI

Plea bargaining

Montana law does not restrict plea bargaining in drunk driving cases. Consequently, a drunk driving offender may plead to a non-alcohol offense, such as reckless driving.

Look back period

Section 61-8-734, MCA, provides a "look back" period of 5 years for previous drunk driving convictions in determining a first, second, or third offense. However, the "look back" for a fourth or subsequent DUI (section 61-8-401, MCA) or a BAC of 0.08 or above (section 61-8-406, MCA), or any combination of the two types of violations, is lifetime.

BAC test refusal

Section 61-8-402(4), MCA, provides for the following penalties for BAC test refusal:

- immediate seizure of the person's driver's license (i.e., at the scene) and issuance of a temporary permit effective 12 hours after the issuance, which is valid for 5 days;
- suspension of the person's driver's license as follows:
 - first offense, 6 months with no provision for restricted license; and
 - second or subsequent refusal within 5 years of a previous refusal, 1 year with no provision for a restricted license.

Driving with suspended or revoked licence

Section 61-5-212, MCA, provides that driving with a suspended or revoked licenses if the suspension or revocation was for an impaired-driving offense is punishable by:

- not less than 2 days in jail or more than 6 months; and/or
- a fine of up to \$2,000;
- up to 40 hours of community service; and
- vehicle impoundment or immobilization for 30 days.

Joint vehicle ownership does not prohibit vehicle impoundment or immobilization; and a court may not suspend or defer imposition of penalties.

Options for strengthening Montana law for swift and certain punishment

Some of the options lawmakers may consider that are not already addressed in Montana's statutes are:

- intensive supervision (such as SCRAM bracelets, a 24/7 program, and mandatory interlocks) and intensive treatment (such as intensive weekend intervention programs) for certain offenders (for example, for second-time offenders with a BAC of greater than 0.15 BAC);
- authorizing staggered sentencing strategies;
- a longer "look back" period for first, second, and third offenses, such as 10 years; and
- restricted plea bargaining;

Judicial education and DUI courts

The judiciary plays a pivotal role in the effort to combat hard core drunk driving because court is where it must all come together - treatment, community supervision, and effective penalties. To achieve this integrated approach, a growing number of judges across the country are establishing DUI courts. Through a DUI court, a team that includes the case manager, treatment provider, prosecutor, defense attorney, and probation and parole officer, can come together under the judge's supervision to ensure effective sanctioning and appropriate treatment. To orchestrate this multi-agency strategy, judges need to have appropriate tools, specialized training, and stable funding.⁴⁶

⁴⁶ National Association of State Judicial Educators and The Century Council, *Hardcore Drunk Driving Judicial Guide*, 2003.

Most DUI courts start with federal grant money. As these federal grants expire, the courts, and ultimately state legislature's, are confronted with questions about how to ensure statewide oversight and secure ongoing funding.⁴⁷

Some states have developed statewide judicial education programs, judicial standards, and special funding streams.

New Mexico

In New Mexico, the University of New Mexico Judicial Education Center developed an interactive, internet program that allows judges to use a sentencing calculator to quickly calculate sentencing ranges and help judges keep consistent sentencing practices. The education center also offers helpful judicial training tools online and through virtual court practices sessions.⁴⁸

Colorado

Judges in Colorado developed a benchbook that provides judges with a step-by-step procedural guide about how to establish and run a DUI court.⁴⁹

Pennsylvania

The Pennsylvania Department of Transportation used federal highway traffic safety funds for a judicial outreach program that educates judges about hard core drunk driving and national highway safety initiatives.⁵⁰

⁴⁷ Cary Heck and Aaron Roussell, "State Administration of Drug Courts: Exploring Issues of Authority, Funding, and Legitimacy", *Criminal Justice Policy Review*, 2007.

⁴⁸ National Association of State Judicial Educators and The Century Council, *Hardcore Drunk Driving Judicial Guide*, 2003, p. 33.

⁴⁹ *Ibid.*, p. 34.

⁵⁰ <http://www.ghsa.org/html/projects/stateshowcase/pa.1.html>

Comparing Montana's statutes

The Montana legislature has already enacted a statutory framework for drug treatment courts⁵¹ and mental health treatment courts⁵². Although DUI courts are not expressly provided for in statute, Montana's judiciary clearly has the constitutional authority to establish them.

The current statutes on drug and mental health treatment courts authorize the court to impose a participation fee of up to \$300 a month, based on the offender's ability to pay. The statutes also authorize the court to develop supplemental funding sources, but require any federal funds received to be spent first.⁵³

Last session, the legislature provided \$751,372 general fund and \$125,000 state special revenue and authorized 3.00 FTE in FY 2010 and 4.00 FTE in FY 2011 to support drug courts.⁵⁴

The Office of Court Administrator employs one full-time drug court coordinator, Jeff Kushner, who presented information on Montana's drug and DUI courts as part of the judicial and DUI court panel at the last committee meeting, December 18, 2009.

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⁵¹ Title 46, chapter 1, part 11, MCA.

⁵² Title 46, chapter 1, part 12, MCA.

⁵³ Section 46-1-1112, MCA., and section 46-1-1212, MCA.

⁵⁴ Legislative Fiscal Division, *2011 Biennium Fiscal Report*, p. D-7.

Options related to DUI courts

The committee could recommend statutes for DUI courts similar to the drug court statutes already enacted. However, such a statutory framework may be unnecessary because judges may establish DUI court without specific statutory guidance. Alternatively, current drug court statutes could be generalized to encompass any type of treatment court. If DUI courts are modeled after the current drug court statutes, each DUI court could charge a participation fee of up to \$300 a month.

The committee could encourage statewide judicial training focused on the problem of hard core drunk drivers and handling DUI offenders.

The committee may request that a summary of funding available for Montana's DUI courts and statewide judicial training be provided at the next committee meeting on April 5.

Conclusion

Nationally-recognized studies on hardcore drunk driving conclude that best strategies to combat DUIs integrate treatment, intensive supervision, and meaningful penalties and help the judiciary bring it all together. Montana's current laws already provide many of the ingredients recommended by these national experts. However, this paper has highlighted some nationally-recognized programs in other states and offered some possible options for legislative consideration. The options offered are not exhaustive. However, the information presented may help wrap-up the information gathering phase of the SJR 39 study, and assist the committee in its desire to move forward.