

PART II

Study Issues and Options on remaining Alcohol, Tobacco and Other Drug Control Policy Task Force Recommendations

Prepared by Susan Byorth Fox and Miko Owa, Research Intern
August 11, 2003

The following recommendations are those that have been determined to be left without a specific entity actively working on it or information is still needed to determine the extent to which it is being addressed. Information has been solicited from the Interagency Coordinating Council on Prevention, the Department of Public Health and Human Services, the Department of Justice, and the Department of Corrections.

6.1.2 Hold State and Federal Government to Government Discussions

Recommendation as excerpted from Blueprint: Hold government to government discussions between the state and the federal government regarding Task Force recommendations and the coordination of efforts on lands held in trust by the federal government for the Tribes in Montana.

Status: There is no known progress on this recommendation.

6.1.3 Establish a “Drug Czar” Position

Recommendation as excerpted from Blueprint: Encourage a joint Governor/Attorney General initiative (including authorizing legislation and attached funding) to establish the permanent position of a “drug czar” within Montana with the responsibility and authority to provide leadership and direction for state prevention, treatment and correctional programs. This position would also have responsibility to analyze the impact of alcohol and drugs, inform citizens and lead cross-department planning for the most effective use of state dollars over time.

Status: During the 2003 Legislative Session, neither the Governor nor the Attorney General pursued this initiative for a drug czar or a board of prevention. In the blueprint was included a discussion that the Board of Prevention "is intended to strengthen the Interagency Coordinating Council and the Prevention Resource Center efforts and to provide a representative board. The Board of Prevention would model the Board of Crime Control."

Senator Duane Grimes sponsored Senate Bill No. 421 to create a director and office of drug control and substance abuse prevention and treatment. The bill was introduced as a repeal of the Interagency Coordinating Council on Prevention (ICC) and the temporary addition of 5 members to the Montana Board of Crime Control (MBCC): the director of the office of substance abuse prevention and treatment, the director of the Department of Public Health and Human Services,

the Superintendent of Public Instruction, and two gubernatorial representatives. The Senate Judiciary Committee approved the bill with some minor amendments requested by Senator Grimes that added liaison with local governments and reduced the additional membership to only the director of the office of drug control and one gubernatorial appointee at the request of the MBCC. Concerns were expressed regarding how it would be funded, the repeal of the ICC, and the apparent reiteration of their duties under the new office.

After a revised fiscal note was received, the bill was rereferred to Senate Finance and Claims where it was indefinitely postponed. The bill was brought out of committee and placed on second reading on 4/10/03 where it was amended by Senator Grimes to utilize the ICC instead of the MBCC for the new office on drug control and substance abuse prevention. The bill passed third reading, but the motion to suspend the rules to allow for late transmittal to the House failed.

6.2.1 Develop uniform standards in a 'curriculum' for MIP program

Recommendation as excerpted from Blueprint: Develop uniform standards or a “curriculum” for the Minors In Possession (MIP) program using the standards already established for DUI as an example.

Status: The Department of Justice, Board of Crime Control, juvenile probation, and Department of Public Health and Human Services would be important stakeholders in this issue. The entity that develops the standard curriculum for DUI would also be the logical entity for this task. This issues requires further research.

6.2.2 Mandatory Training for "Allied Service Providers"

Recommendation as excerpted from blueprint: Add a component to existing mandatory training for “allied service providers” to address and change the accepting culture of drug use in Montana.

Explanation: Judges, Prosecuting Attorneys, Law Enforcement (City/County/State) and Juvenile Probation and Parole Officers (County/ State) currently have mandatory training requirements. This training includes training by the Attorney General’s office, to explain any new standards (changes brought about by new legislation). Another type of training that is needed and that should be added to existing mandatory curriculums, is training to address and change the accepting “culture” of alcohol, tobacco and other drug abuse in Montana. The intent of this training would be focused on changing the current culture that accepts and downplays alcohol, tobacco and other drug use by minors.

Status: There is no information on any progress on this issue and it requires further research.

6.2.4 A Strengthen MIP law to clarify language

Recommendation from Blueprint: Clarify current statute on MIP describing what constitutes

possession. (i.e. Is it necessary to see consumption to have possession; what is the “zone of control?”). Also, clarify language to make it very clear that an offense is a “Minor in Possession” offense for those under 18 years of age.

Explanation: The law is interpreted differently by different officers regarding possession. The intention of this strategy is to make the MIP laws stronger by clarifying this area of confusion. Additionally, there has been confusion regarding “Minor in Possession” (for those under 18 years of age, i.e. 17 or younger) and “Under Aged Possession” (for those 18 and older but under 21 years old.)

Status: Senate Bill No. 362 made changes to 45-5-624, MCA, in the penalties for both minors in possession (under 18 years or age) and under age possession (under 21 years of age). It does not appear that SB 362 "clarified" any distinction. Basically, if you are under 21 you are subject to a certain set of penalties, and in addition, if you are under 18 years of age, you can receive harsher penalties in addition to any Youth Court disposition.

Consumption, possession, and zone of control also are not specified in the legislation **as enacted**. The introduced version of SB 362 included a provision regarding what has been referred to as the "guilt by association" provision which sought to make it a crime for a person under 21 years of age to be at or in a place where a person or persons under 21 years of age are knowingly consuming or possessing an intoxicating substance in addition to the crime of consuming or possessing. That provision was amended out of the bill before passage.

6.2.6 Propose Keg Registration Legislation

Explanation as excerpted from Blueprint: Keg registration is used to identify and penalize adults and youth who purchase beer kegs and allow underage youth to consume alcohol from them. This legislation would require kegs to be marked with unique, and preferably, non-removable identification.

Status: During the 2003 Legislative Session, Representative Rosalie Buzzas sponsored House Bill No. 660 which would require retailers of beer kegs to identify each keg with a unique number. The bill passed the house with an 81 to 16 vote. The bill was referred to the Senate Finance and Claims Committee where it died.

6.2.7 Propose Graduated Driver’s License Legislation (GDL)

Recommendation as excerpted from Blueprint: Any Graduated Driver’s License Legislation bill should include strong and immediate penalties or sanctions for any violation of Minors in Possession laws.

Status: During the 2001 Legislative Session, Representative Kim Gillan sponsored House Bill No. 403 which would have revised the driver’s license laws in four ways. As excerpted from the Blueprint, the law would:

- (1) require minors to hold an instruction permit, a traffic education learner license, or a traffic education permit for six months prior to the issuance of a license;
- (2) restrict a driver's license issued to a minor for the first year after issuance; and
- (3) remove the time limit in which a person must pass the driver's examination after first applying for a license;
- (4) and provide a delayed effective date and an applicability date.

The bill was vetoed by the Governor due to concerns about how the bill would affect young drivers in rural areas (farm/ranch areas).

During the 2003 Legislative Session, Representative Kim Gillan sponsored House Bill No. 226 which imposed restrictions during the first year of licensure, but did not provide strong or immediate penalties for any violation of Minors in Possession laws. The bill did not pass.

6.3 A - C Interagency Coordinating Council and Prevention Resource Center recommendations

Recommendations from Blueprint:

- A. Support and fund the Interagency Coordinating Council (ICC).
- B. Support and fund the Prevention Resource Center (PRC).
- C. Change the name of the ICC.

Status: The status of these recommendations is interrelated to recommendation 6.5 below and any options would be included with the pursuit of that recommendation.

6.4 Comprehensive evaluation of state-supported treatment services

Recommendations from Blueprint: Conduct a comprehensive evaluation of the continuum of state-supported treatment services to monitor performance and outcomes related to core benchmarks.

Status: Core benchmarks for treatment have already been established. It is important to evaluate how the treatment services are doing related to these benchmarks.

6.4.1 Correctional and treatment issues

Recommendations from Blueprint:

- A. Coordinate with Department of Corrections (DOC) on existing standards and "levels of care".
- B. For 1st and 2nd offense, non-violent, felony substance abuse convictions (excluding 4th time DUI offenders) offer alternative programming that includes "monitored" treatment.
- C. Develop a statewide, uniform and consistent DUI process strategy for clinical assessment, treatment, and education of DUI offenders.

Status: These recommendations require further research to determine what the departments are pursuing. These recommendations are specific in nature, but in a more general sense could be researched if the committee is interested in looking toward more integration of the two parallel treatment systems that exist and sometimes cross-over.

6.4.2 Encourage state legislation to remove sanctions related to public benefits for certain felony drug offenders.

Recommendation excerpted from Blueprint: Encourage state legislation to remove sanctions related to public benefits for certain felony drug offenders.

Status: Currently the following individuals are ineligible for TANF/FAIM cash assistance under 53-4-231, MCA, as reflected in the Montana State Plan: "Individuals having committed and been convicted after August 22,1996, of a felony an element of which is the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802 (6)]."

Income and resources are counted for the person towards the support of family members, but the individual is not counted to determine assistance or food stamps for family members. Other federal benefits are allowed including emergency medical services, public health assistance, prenatal care, job training, and drug treatment programs. States are allowed, by a specific reference in law, to exempt any or all individuals from the application of this prohibition or to limit the period for the prohibition (Sec. 115(d)(1) PRWORA).

In the 2001 Legislative Session, Senate Bill No. 77 (Ch. 465, L. 2001), contained a provision amending 53-4-231, MCA, that would have allowed persons with felony drug convictions to be eligible for benefits upon satisfactory completion of probation and parole and a chemical dependency assessment that showed an absence of dependency and satisfaction of treatment and other requirements of the chemical dependency counselor. The bill including that specific provision was approved by the Legislature and sent to the Governor. The provision was subsequently deleted from the legislation when SB 77 was returned with Governor's amendments striking that provision and the Legislature passed the bill with the Governor's amendment.

Options: The Committee could explore the impact on the TANF/FAIM program of allowing individuals with felony drug convictions to be eligible for cash assistance, either altogether or after a certain period of time. The Committee could recommend legislation making such persons eligible for benefits.

6.4.3 Encourage DPHHS to apply innovative approaches to rate structure to allow development of family-based treatment intervention for families and children.

Recommendation as excerpted from Blueprint: Encourage DPHHS to apply innovative approaches to rate structure to allow development of family based treatment intervention for families and children.

Status: More information and research is need on this recommendation. it could be incorporated in a broader policy approach of an integrated continuum of services that spans different agencies.

6.4.4 Native American Populations – Encourage Cultural Treatments

Recommendation as excerpted from Blueprint: Cultural treatments, such as sweat house in prisons, should be allowed and encouraged.

Status: More information is needed from the Department of Corrections.

6.5 D Establish a Board of Prevention

Recommendation as excerpted from Blueprint: Establish a Board of Prevention that includes and incorporates prevention departments and programs from throughout the state, including tobacco, alcohol and other drugs.

Status: During the 2003 Legislative Session, neither the Governor nor the Attorney General pursued an initiative for a drug czar or a board of prevention. In the blueprint was included a discussion that the Board of Prevention "is intended to strengthen the Interagency Coordinating Council and the Prevention Resource Center efforts and to provide a representative board. The Board of Prevention would model the Board of Crime Control."

The Interagency Coordinating Council on Prevention (2-15-225, MCA) was proposed by the original Joint Interim Subcommittee on Children and Families in 1992 and enacted into law in 1993. It is attached to the Governor's Office for administrative purposes only, but the office has resided in the Department of Public Health and Human Services where it has received donated support and in-kind services and been linked to the Prevention Resource Center. The ICC is funded by the donations it receives from the agencies whose department heads comprise the members of the committee. The members include:

- (a) the attorney general;
- (b) the director of the department of public health and human services;
- (c) the superintendent of public instruction;
- (d) the presiding officer of the Montana children's trust fund board;
- (e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;
- (f) the administrator of the board of crime control;
- (g) the commissioner of labor and industry (1995);
- (h) the director of the department of corrections (formerly corrections and human services);
- (i) the state coordinator of Indian affairs (1997);
- (j) the adjutant general of the department of military affairs (2001);
- (k) the director of the department of transportation (2001);
- (l) the commissioner of higher education (2001); and

(m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members (2001).

Members have been added steadily since 1993 as the breadth of prevention programs is catalogued. A statutory requirement for a unified budget was added in 1997, also at the behest of a Children and Families Committee recommendation. A major issue with the ICC has been variable rates of participation by the actual members who in their ex officio capacity often send others in their stead, but the representatives do not always have the authority to follow through or to provide financial resources.

The ICC explored what a prevention board would look like and how it would fit into a structure lead by a drug czar through a facilitated meeting in October 2002. They developed criteria and possible "new models". They agreed upon guiding principles and selected an operational model that would meld the "prevention board" with the Interagency Coordinating Council into one entity. The ICC work could be used by the Committee in developing any future recommendations.

In the 2003 Legislature, Senator Grimes had requested a bill on the ICC's behalf (LC0944) to implement their model and to amend their statutory provisions revising the membership, responsibilities, and administration of the Interagency Coordinating Council for State Prevention Programs, and changing the name to the "Montana prevention council for state prevention programs". However, the bill was not introduced.

Options:

(1) Research creation of a "drug czar" and related boards, commissions, etc. nationally and in other states to determine what may be effective. Committee could work with the ICC and utilize their past research.

(2) Make recommendations regarding an office of drug control and substance abuse prevention and treatment or board of prevention, etc, or a new director, or both.

(a) If amending an existing board or agency is recommended, the Committee would need to decide which agency or elected official would the director and the board be attached to, i.e. Montana Board of Crime Control (Department of Justice), Interagency Coordinating Council (Governor/DPHHS), or Addictive and Mental Disorders Division (DPHHS), which is intertwined with clarifying a primary goal or focus of an umbrella agency to coordinate one of or all of the following: law enforcement, prevention, or treatment.

(b) Create a new agency and perhaps amend or repeal other existing boards/agencies as duties related to enforcement, prevention, and treatment are consolidated.

(3) Provide adequate funding and resources for existing programs, or any new recommendations.

(4) Resurrect LC0944 for consideration regarding changes to ICC. (Relates also to recommendation 6.3C to change the name of ICC).

6.7 B Propose Administrative License Revocation Legislation

Explanation as excerpted from Blueprint: Administrative License Revocation (ALR) is the suspension or revocation of a DUI offender’s license at the time of arrest when an individual refuses to take or fails a BAC test. The police officer seizes the offender’s license and issues a temporary license. Because it offers an immediate consequence, ALR has proven to be one of the most effective ways to combat drunk driving. Forty states have enacted ALR legislation.”

Status: During the 2003 Legislative Session, Senator Dale Mahlum sponsored Senate Bill No. 37 which modified several DUI laws. Section 6 (4) allows a peace officer to immediately seize a person’s driver’s license if they refuse to submit to one or more tests requested and designated by the officer. The bill passed the Senate with a 46 to 4 vote. The bill was referred to the House Judiciary Committee and sent to the House floor where it died in process.

Also in the 2003 Legislative Session, Representative Cindy Younkin sponsored House Bill No. 282 which included the mandatory revocation or suspension of a license as part of the sentencing guidelines. The bill was sent to the House Judiciary Committee where it was tabled.

6.7 C Propose Vehicular Homicide and Aggravated DUI Legislation

Explanation as excerpted from Blueprint: A key purpose to this legislation is in its name. The term “negligent” is very offensive to victims of these tragedies according to victim rights groups and the County Attorney’s Association. The essence of the new legislation is to make it clear that if you get behind a wheel in an impaired state (i.e. drunk or under the influence of drugs) it is NOT simply a negligent act. Montana is one of only four states without a Vehicular Homicide Law.”

Status: During the 2003 Legislative Session, Representative Larry Jent sponsored House Bill No. 295 which would create the offense of aggravated driving under the influence of alcohol or drugs. The bill passed the house with a 90 to 7 vote. The bill was referred to the Senate Finance and Claims Committee where it died.

6.7 D Modify the Driving Under the Influence Law by Increasing Mandatory Fines for First Time Offenses

Explanation as excerpted from Blueprint: The intention of this recommendation is to create another strong deterrent to add to a complete and comprehensive package of DUI deterrents to ultimately reverse the trend of increasing DUIs. There is no one silver bullet; a strong and comprehensive package is needed. Other states, such as Washington, have very stiff 1st offense penalties.”

Status: During the 2003 Legislative Session, Representative Tim Dowell sponsored House Bill No. 500 which would increase the imprisonment and driver’s license suspension or revocation periods for driving under the influence or with an excessive alcohol or drug concentration in the body; providing that community service must be ordered as a condition of any imprisonment suspension. The bill was referred to the House Judiciary Committee where it missed the deadline for general bill transmittal.

Also in the 2003 Legislative Session, Senator Dale Mahlum sponsored Senate Bill No. 37 which modified several DUI laws. Section 10 increased the penalty for first through third offenders to a fine of not less than \$300 or more than \$1,000. Section 11 (5) added that the court may make community service a condition of any sentence. The bill passed the Senate with a 46 to 4 vote. The bill was referred to the House Judiciary Committee and sent to the House floor where it died in process.

Also in the 2003 Legislative Session, Senator Mike Wheat sponsored Senate Bill 317 which would increase fines for first through third DUI offenders providing the twenty-five percent of the fines must be used to help fund treatment and education programs. The bill missed the deadline for revenue bill transmittal.

6.7 E Propose an Open Container Law

Recommendation as excerpted from Blueprint: Propose Open Container law that is in compliance with Section 154 of 23 U.S.C. (note this is for motor vehicles on public roadways). If it does not pass the Task Force recommends that incentives for counties and cities to pass local open container legislation be explored. The incentives could be funneling Highway Traffic Funds to jurisdictions that pass the legislation.

Status: During the 2003 Legislative Session, Senator Dale Mahlum sponsored Senate Bill No. 39 by request of the Department of Transportation because of certain federal funding being contingent upon its enactment. After passing the Senate, the bill died in House Judiciary.

Representative Christopher Harris also sponsored House Bill No. 242 prohibit the possession of an unsealed alcoholic beverage container in the passenger area of a motor vehicle on a street, road, or highway. The bill missed the deadline for general bill transmittal.

6.7 F Propose Repeat Intoxicated Drivers (DUI) Law

Explanation as excerpted from Blueprint: According to the National Highway Traffic Safety Administration, Section 164 of 23 U.S.C. requires that states must:

- ? Require a minimum one-year driver's license suspension for repeat intoxicated drivers.
- ? Require that all motor vehicles of repeat intoxicated drivers be impounded or immobilized for some period of time during the license suspension period, or require the installation of an ignition interlock system on all motor vehicles of such drivers for some period of time after the end of the suspension.
- ? Require mandatory assessment of repeat intoxicated driver"

Status: During the 2003 Legislative Session, Senator Dale Mahlum sponsored Senate Bill No. 37 which modified several DUI laws. Section 4 provided a one-year driver's license suspension for repeat intoxicated drivers. Upon reinstatement of the person's driving privileges, the person

will be restricted to driving a motor vehicle equipped with a functioning ignition interlock device for a period of one-year. Section 10 required that driver's committing a second offense be imprisoned for no less than seven days. Driver's committing a third offense must be imprisoned for no less than 30 days. The bill was a composite of many DUI-related issues and it died in House Judiciary after numerous subcommittee amendments were proposed and adopted.

6.7 J Develop a centralized DUI tracking system.

Status: The Blueprint indicated that a system was considered by the Department of Transportation last year (2001?) as a possible expenditure of construction funds transferred to the Governor's Highway Safety Plan. The Department of Justice indicated that implementation of this recommendation would take intense coordination and dedication of resources by multiple entities. Keys to success would include positive identification of offenders and the ability to "track" a citation from issuance to disposition, via electronic automated processing between law enforcement, the courts, the Department of Justice, among others. (Note: a similar system has been desired for all criminal offenders for years and has never been fully implemented because of the complexity of the issues between several branches and levels of government.) The federal TEA-21 reauthorization (SAFETEA) may have appropriations/grant-funding for systems projects of this nature.

6.12 Reduced Revocations of Probation and Parole Offenders for Alcohol/Drug Use

Status: This recommendation involved 4 separate recommendations involving immediate and graduated sanctions, alternative sentencing, and support of contracts and pilot projects. More information is needed to assess the department of Corrections' progress in this area.

6.13 Comprehensive Methamphetamine Plan

Status: This recommendation involved 11 separate recommendations. Senate Bill No. 364 providing that exposing a child to the criminal distribution, production, or manufacture of dangerous drugs or to the operation of an unlawful clandestine laboratory constitutes child abuse or neglect for purposes of the child abuse and neglect statutes addressed recommendation 6.13H. The Department of Justice is holding a Meth-Free Montana Conference on October 1 and 2 and Senator Trudi Schmidt will be participating. An update on the progress of this recommendation could be placed on the October agenda.

CI2196 3224sfne.