



## Combating DUIs,



## Preserving DNA, and



## Examining Emerging Law & Justice Issues

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### A REPORT TO THE 62ND LEGISLATURE

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#### Activities of the Law and Justice Interim Committee 2009-2010

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January 2011



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2009-2010**

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# Law and Justice Interim Committee

## Overview: 2009-2010

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### **Assigned studies**

Two interim study resolutions passed by the 2009 Legislature were assigned to the Law and Justice Interim Committee (Committee) for the 2009-2010 interim:

- ▶ SJR 29 - study retention of DNA evidence; and
- ▶ SJR 39 - study Montana's DUI laws.

### **Agency oversight responsibilities**

In addition to conducting studies as assigned, the Committee has the statutory duty to monitor, authorize bill drafting, and review rules for the following agencies:

- ▶ Department of Corrections;
- ▶ Department of Justice;
- ▶ Judicial Branch; and
- ▶ Office of State Public Defender.<sup>1</sup>

### **Emerging issues**

The Committee may also examine emerging issues of interest to Committee members that concern matters of law and justice within the Committee's purview.

### **Priorities**

The Committee set the SJR 39 study of Montana's DUI laws as its top priority.

### **Meeting schedule**

The Committee met eight times, most were 2-day meetings. The Committee also joined the Children, Families, Health, and Human Services Interim Committee

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<sup>1</sup> The Office of State Public Defender is actually administratively attached to the Department of Administration, so is overseen by the State Administration and Veteran's Affairs Interim Committee. However, the Law and Justice Interim Committee has historically performed this function and therefore formally requested that the Legislative Council draft legislation to amend current statutes to formalize the Committee's oversight functions for the Office of State Public Defender. This request was approved.

(CFHHS) for a half-day meeting to examine medical marijuana laws.<sup>2</sup> Four Committee members (Sen. Esp, Sen. Moss, Rep. Augare, and Rep. Peterson) also participated in two subcommittee meetings of the Legislative Finance Committee to review options for budget cutting in agencies that the Committee monitors.

The Committee's meeting dates were as follows:

- ▶ August 3, 2009;
- ▶ September 28-29, 2009;
- ▶ December 17-18, 2010;
- ▶ February 8-9, 2010;
- ▶ April 5-6, 2010;
- ▶ June 29-30, 2010;
- ▶ August 3, 2010 (subcommittee on SJR 29 DNA study); and
- ▶ September 9-10, 2010.

### **Organization of this report**

This report is segregated into the following three parts:

PART I        SJR 39 - Study Montana's DUI Laws;  
PART II        SJR 29 - Study Retention of DNA Evidence; and  
PART III        Agency Oversight and Emerging Issues.

A table of contents is provided at the beginning of each part.

### **More information**

Meeting agendas, minutes, audio and video links, and all major reports presented to the Committee are available online from the Legislative Branch website at [www.leg.mt.gov](http://www.leg.mt.gov). Follow the links for Interim Committees, Law and Justice Interim Committee, 2009-2010. Hard copy files with minutes and all the exhibits from each meeting are available by contacting the Legislative Services Division.

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<sup>2</sup> Children, Families, Health, and Human Services Interim Committee meeting of June 28, 2010.

**PART I**

**SJR 39 - Study Montana's DUI  
Laws**



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# Current Law and Research Findings

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## DUI versus a BAC offense

### *Current law*

Under current law, there are two types of impaired driving offenses: driving under the influence (i.e., a DUI offense); and driving with excessive blood alcohol concentration (i.e., a BAC offense).

Under section 61-8-401, Montana Code Annotated (MCA), it is unlawful for a person to be in actual physical control of a vehicle while under the influence of alcohol or a drug. The statutory definition of "under the influence" is "that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished".

Under section 61-8-406, MCA, it is unlawful for a person to drive a noncommercial vehicle if the person's BAC is 0.08 or more. For a commercial vehicle, the limit is a 0.04 BAC. A separate statute provides that the BAC limit for a person under 21 years of age is 0.02.<sup>3</sup> Section 61-8-406, MCA, setting the 0.08 BAC limit is often called the *per se* statute because "under the influence" may be presumed.

### *Data*

In 2008, Montana had the highest alcohol-impaired fatality rate in the nation at 0.84 fatalities per 100 million vehicle miles traveled.<sup>4</sup> See APPENDIX A for a state-by-state comparison.

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Nearly 40% of all traffic fatalities in Montana involve an alcohol-impaired driver, which is the third highest percentage in the country.

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<sup>3</sup> Section 61-8-410, MCA.

<sup>4</sup> National Highway Traffic Safety Administration (NHTSA), *Traffic Safety Facts Research Note: Fatalities and Fatality Rates in Alcohol-Impaired-Driving Crashes by State, 2007-2008*, Washington D.C.: U.S. Department of Transportation, December 2009. (DOT HS 811 250)

<sup>5</sup> Mothers Against Drunk Driving (MADD), *State Progress Report, Campaign to Eliminate Drunk Driving Report Card*, November 15, 2007. Includes the District of Columbia.

Vehicle Division data on DUI and BAC offenses in Montana is provided at APPENDIX B.

### **Breath and blood testing**

#### *Current law*

Montana's "implied consent" law states that a person driving in Montana is presumed to have given consent to breath or blood testing for alcohol or drugs. An officer who makes a traffic stop may request a preliminary alcohol screening test (a breath test for alcohol) if the officer has a "particularized suspicion" that the person is driving under the influence.<sup>6</sup> An officer may request a more formal test (often called an evidentiary test) if the officer has "reasonable grounds" (such as a preliminary breath test or other field sobriety tests) to suspect the person is driving under the influence.<sup>7</sup> However, even though consent is implied, a person may refuse to submit to a breath or blood test. The penalty for a first refusal is suspension of the person's driver's license for 6 months. For a second or subsequent refusal within 5 years, the person's driver's license may be suspended for 1 year.<sup>8</sup> Refusal is not a criminal offense under current law, so a person convicted of a refusal is not subject to jail time.

#### *Committee work*

On February 8, 2010, the Committee participated in a sobriety lab and seminar conducted specifically for Committee members. Members learned how law enforcement officers conduct field sobriety

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Montana's "implied consent" law states that a person driving in Montana is presumed to have given consent to breath or blood testing for alcohol or drugs.

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tests, including the horizontal gaze nystagmus, the walk and turn, the one-leg stand, and the preliminary breath test. The Committee also toured the Highway Patrol's Mobile Impaired Driver Assessment Center, learned about drug recognition training, and watched video demonstrating the effects of drugs and alcohol on drivers. To learn about how alcohol affects coordination, Committee members observed volunteers before and after drinking for 2 hours in a controlled situation. These volunteers demonstrated various field sobriety tests and breath tests.

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<sup>6</sup> Section 61-8-409, MCA.

<sup>7</sup> If a car crash is involved, the application of the implied consent law changes.

<sup>8</sup> Section 61-8-402, MCA.

Two Committee bill recommendations deal with search warrants to obtain breath and blood tests. These recommendations (numbers 11 and 12) are summarized in the recommendations section.

### **Jail or prison sentences**

#### *Misdemeanor offenses*

A first, second, or third DUI or BAC conviction within 5 years is a misdemeanor. The possible jail sentence is different depending on whether the conviction is for a DUI or BAC violation. If a passenger under 16 years old was in the vehicle, the possible jail sentences are longer.

**Table 1: Possible Jail Sentences**

	<b>DUI violation</b> <b>section 61-8-714, MCA</b>	<b>BAC violation</b> <b>section 61-8-722, MCA</b>
1st offense <i>(w/passenger under 16 yrs)</i>	24 hrs to 6 months <i>(48 hrs to 12 months)</i>	not more than 10 days <i>(not more than 20 days)</i>
2nd offense <i>(w/passenger under 16 yrs)</i>	7 days to 6 months <i>(14 days to 12 months)</i>	5 to 30 days <i>(10 to 60 days)</i>
3rd offense <i>(w/passenger under 16 yrs)</i>	30 days to 1 year <i>(60 days to 12 months)</i>	10 days to 6 months <i>(20 days to 12 months)</i>

The following table shows how many adult misdemeanor DUI and BAC convictions Montana had in 2009.

**Table 2: Misdemeanor Convictions in 2009**

	<b>1st offense</b> <b>(within 5 yrs)</b>	<b>2nd or 3rd</b> <b>offense</b> <b>(within 5 yrs)</b>	<b>TOTAL</b>
DUI offense	2,891	1,161	4,052
BAC offense	2,165	264	2,429
<b>TOTAL</b>	<b>5,056</b>	<b>1,425</b>	<b>6,481</b>

Source: Montana Motor Vehicle Division, Department of Justice

### *Felony offenses*

Current law provides that a fourth DUI or BAC conviction within any amount of time is a felony. The incarceration penalty for a felony DUI or BAC violation is a minimum of 13 months in a state correctional facility. However, if the person completes a 6-month secure residential treatment program (i.e., WATCh),<sup>9</sup> the remainder of the 13-month sentence is served on probation. A suspended sentence of up to 5 years may also be imposed, but must run consecutively with the 13 months.<sup>10</sup> In 2009, there were 217 felony impaired driving convictions in Montana.<sup>11</sup>

As used in this report, the term "impaired driving" is used to refer to both a DUI or a BAC offense.

### *Data on charges*

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A total of 18,553 impaired driving charges were filed from January 1, 2008, through December 31, 2009. This is about 8,500 charges each year.

Current law provides that a fourth DUI or BAC conviction within any amount of time is a felony.

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About 92% of the charges are initially filed in courts of limited jurisdiction.

About 34% of the charges were amended after they were filed; 12% were amended to nonimpaired driving charges (6% were amended to nontraffic charges; and 6% were amended to a traffic charges, such as reckless driving).<sup>12</sup>

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<sup>9</sup> WATCh stands for Warm Springs Addictions Treatment and Change program. WATCh is operated by Community Counseling and Correctional Services, Inc., under contract with the Montana Department of Corrections. There are two campuses: Warm Springs (115 male-only beds) and Glendive (50 male or female beds). The program's recidivism rate (i.e., percentage of WATCh graduates who have committed another impaired driving offense since WATCh was established in 2002) is 10%. The average cost for 6 months at WATCh is about \$16,461. The average cost of 13 months in prison (if the person fails WATCh or elects not to participate) is \$34,729. More information on the WATCh program is provided at APPENDIX C.

<sup>10</sup> Section 61-8-731, MCA.

<sup>11</sup> Montana Motor Vehicle Division, Department of Justice.

<sup>12</sup> APPENDIX B provides more data on DUI and BAC charges and convictions in Montana.

### *Committee work*

In addition to panel discussions with judges, prosecutors, and public defenders, the Committee heard from offenders, including a recent graduate of the WATCh program. The Committee also toured the WATCh program in Warm Springs. A few members, on their own initiative, toured the Municipal DUI Court in Billings and the Rimrock Foundation's jail-based diversion program and outpatient treatment center.

The Committee received a special report from Dr. Timothy Conley, Ph.D., L.C.S.W., School of Social Work, University of Montana. The report involved surveys of felony DUI offenders in the WATCh program and, based on the survey results, provided an assessment of strategies to prevent multiple impaired driving offenses.<sup>13</sup>

The Committee considered making a third DUI or BAC offense a felony, but declined to pursue this option primarily because of the cost. Based on court data (available in Appendix B), if a third DUI or BAC offense was a felony and current sentencing laws remained the same, about 150 more offenders each year would have to be imprisoned or handled by the Department of Corrections' WATCh program.

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Two Committee bill recommendations propose to revise possible jail time for a misdemeanor DUI or BAC violation. See recommendation numbers 6 and 8 in the recommendations section.

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The Committee considered making a third DUI or BAC offense a felony, but declined to pursue this option primarily because of the cost.

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One Committee recommendation would eliminate the 5-year lookback period for determining the number of prior misdemeanor offenses. See recommendation number 10 in the recommendations section.

### **Fines and collections**

Possible fines are the same for either a DUI or a BAC misdemeanor conviction. These fines are as follows:<sup>14</sup>

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<sup>13</sup> Dr. Conley's report, presented on February 8, 2010, is available on the Committee website or in the Committee's hard-copy files maintained by the Legislative Services Division.

<sup>14</sup> Sections 61-8-714 and 61-8-722, MCA.

**Table 3: Fines and Collections**

	Regular fine	With passenger under 16 yrs
1st offense w/in 5 yrs	\$300 - \$1,000	\$600 - \$2,000
2nd offense w/in 5 yrs	\$600 - \$1,000	\$1,200 - \$2,000
3rd offense w/in 5 yrs	\$1,000 - \$5,000	\$2,000 - \$10,000
4th or subsequent	\$1,000 - \$10,000	same as regular

Based on 2 years of data (January 1, 2008, through December 31, 2009) reported to the Committee by the Office of Court Administrator, judges are imposing the minimum fine for most second and subsequent DUI and BAC offenses. In that 2-year period, courts ordered offenders to pay \$9.7 million in surcharges, fees, fines, restitution, and other costs (this includes subtracting suspended and reduced amounts). Fines account for about 85% of the total amount.

Offenders typically pay court-ordered fines, fees, and other costs on an installment basis. In a 2-year period, courts had collected 55% of the total amounts charged. By law, restitution, surcharges, and court fees are collected first, while fines are collected last. Also by law, cities retain 100% of the fines collected by city courts, counties retain 50% of the fines collected by justice's courts, and the state retains the fines and surcharges for information technology and the Montana Law Enforcement Academy collected by district courts.<sup>15</sup>

#### **Need for treatment and supervision**

Reports and testimony presented to the Committee indicated that the DUI and BAC offenders of most concern to the public are the repeat and hardcore drunk drivers. The Century Council, a private nonprofit coalition of distillers who fight drunk driving and underage drinking, defines hardcore drunk drivers are those who drive with a BAC of 0.15 or higher.

Of those convicted of a DUI or BAC offense in Montana in 2009, about 32% were repeat offenders.<sup>16</sup> According to available data, the average BAC of all drunk

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<sup>15</sup> Office of Court Administrator, *Summary of Statewide DUI Data*, January 21, 2010, prepared for the Law and Justice Interim Committee's February 9, 2010, meeting. See APPENDIX B.

<sup>16</sup> This percentage is calculated using Motor Vehicle Division Data showing 1,642 second and subsequent offenders (including felony offenders) and 5,056 first offenders. See Motor Vehicle Division chart at APPENDIX B.

drivers in Montana, including first-time offenders, is above 0.15. However, the driver's BAC is recorded in Montana's court records for only 26% of the cases. The average BAC in these cases increases as the number of prior convictions increases.

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Research indicates that incarceration (or the threat of incarceration) alone will not deter hard core drunk drivers.

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<u>Offense</u>	<u>Avg BAC</u>
1st	0.159
2nd (w/in 5 yrs)	0.175
3rd (w/in 5 yrs)	0.182
4th and subsequent	0.197 <sup>17</sup>

Research indicates that incarceration (or the threat of incarceration) alone will not deter hard core drunk drivers. Because of underlying substance abuse and addiction problems, treatment and intensive community supervision is necessary. The National Highway Traffic Safety Administration (NHTSA) publishes guidelines to assist sentencing judges imposing effective sanctions. According to these guidelines:

- ▶ A professional evaluation of an offender's drug or alcohol problem should be conducted prior to sentencing.
- ▶ Consistency in sentences should be balanced by sentencing tailored to individualized treatment needs.
- ▶ Intensive judicial supervision (i.e., frequent appearances and accountability before a judge, such as provided by a DUI court) reduces recidivism.
- ▶ Conditions of preconviction or postconviction release should combine intensive supervision (such as use of secure remote alcohol monitoring bracelets, ignition interlock devices, and drug and alcohol testing) with regular attendance at peer support groups, therapy sessions, and aftercare programs.<sup>18</sup>

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<sup>17</sup> Office of Court Administrator, *Summary of Statewide DUI Data*, January 21, 2010. See APPENDIX B.

<sup>18</sup> National Highway Traffic Safety Administration, *A Guide to Sentencing DWI Offenders: 2nd Edition 2005*, February 2006. (DOH HS 810 555)

## Driver's license sanctions and interlocks

In addition to possible incarceration and fines, impaired driving offenders face driver's license sanctions and may be required to install ignition interlock devices in their vehicles.<sup>19</sup> These sanctions are the same for either a DUI or BAC conviction and are summarized below.

**Table 4: Driving Restrictions**

	Driver's License Suspension or Revocation	Interlock Device
1st offense (w/in 5 yrs)	6-month suspension, but the court may recommend a probationary license. <sup>20</sup>	The court <i>may</i> require an ignition interlock device. <sup>21</sup>
2nd or 3rd offense (w/in 5 yrs)	1-year suspension, but the court may recommend a probationary license after 45 days. <sup>22</sup>	If a probationary license is granted, the person <i>must</i> use an ignition interlock device. <sup>23</sup>
Felony offense	License is revoked. A probation officer may authorize a restricted license (e.g., for work or certain hours).	If a restricted license is authorized, the person <i>must</i> use an ignition interlock device. <sup>24</sup>

By law, all costs for installation, monitoring, and servicing of an ignition interlock must be paid by the offender. According to testimony presented to the Committee, the cost of an ignition interlock device is about \$120 for installation

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<sup>19</sup> An ignition interlock is a device installed in a motor vehicle's dashboard. To start the car, a person must blow into the device, which then measures the person's BAC. If the person's BAC is 0.02 or more, the vehicle will not start. An interlock device may also require a person to "blow clean" at regular intervals in order to continue driving the vehicle.

<sup>20</sup> Section 61-5-208, MCA.

<sup>21</sup> Section 61-8-442, MCA.

<sup>22</sup> Section 61-5-208, MCA.

<sup>23</sup> Section 61-8-442, MCA.

<sup>24</sup> Ibid., and section 61-8-731(4)(e) and (4)(h).

and \$80 a month for monitoring services.<sup>25</sup> As an alternative to the interlock, the judge may order the person's vehicle or vehicles to be seized and forfeited.<sup>26</sup>

Following New Mexico's example, several states have now mandated an interlock after the first offense, but most states do not. According to national research, ignition interlocks are effective while in use, but recidivism rates increase after they are removed. Thus, many interlock advocates also support treatment in conjunction with interlock use.<sup>27</sup>

#### *Committee work*

The Committee considered testimony and public comment that interlock devices should be mandated for first offenses. The Committee also heard testimony indicating that interlock devices are not being court-ordered or installed as often as required by law. Some testimony indicated that a major reason interlocks are not being installed is the cost. The Committee did not seek to independently verify this perception and chose to not further pursue options to revise current law on Montana's ignition interlock devices.

The Committee also considered revising driver's license sanctions. One of the Committee's recommendations would revise probationary driver's license provisions to allow persons convicted of a second or subsequent impaired driving offense to receive a probationary driver's license prior to the 45-day hard suspension if the person is participating in a DUI court and the judge recommends that the probationary license be granted. See recommendation number 5 (LC0370) under the recommendation section of this report. A Committee recommendation to revise driver's license sanctions for persons under 21 years of age (recommendation number 1) is discussed later in this report.

### **Montana's Assessment, Course, and Treatment (A.C.T.) Program**

#### *Current law*

Under current law, everyone who is convicted of a DUI or BAC offense must complete what is commonly referred to as the A.C.T. program: Assessment of chemical dependency, an educational Course, and Treatment as indicated in the

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<sup>25</sup> Law and Justice Interim Committee, testimony by Mr. Stan Morris, President of DMB Interlock and Safety Service, Inc., Billings, MT, April 5, 2010.

<sup>26</sup> Section 61-8-442, MCA.

<sup>27</sup> Melissa Savage and Anne Teigen, "Last Call: Lawmakers hope new technology could mean end to drunken driving", *State Legislatures*, National Conference for State Legislatures, December 2009, pp. 26-30.

assessment. The law requires that the chemical dependency assessment and educational course be provided by a licensed addiction counselor at a state-approved program.<sup>28</sup> The Chemical Dependency Bureau under the Department of Public Health and Human Services sets the educational course curriculum and approves the A.C.T. providers.

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Under current law, everyone who is convicted of a DUI or BAC offense must complete what is commonly referred to as the A.C.T. program: Assessment of chemical dependency, an educational Course, and Treatment as indicated in the assessment.

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For a first DUI or BAC offense, the offender is required to enroll in a treatment program only if the assessment determines that the person is chemically dependent. However, treatment is mandatory for a person convicted of a second or subsequent DUI or BAC offense within 5 years.<sup>29</sup> The

level of treatment required (e.g., outpatient, intensive outpatient, or residential) depends on the assessment. The law also requires that, at a minimum, for a second or subsequent offense, the offender must be monitored by the treatment provider at least monthly for 1 year following admission to the treatment program.<sup>30</sup>

#### *Demographics*

According to the Department of Public Health and Human Services (DPHHS), of the 5,020 A.C.T. participants in DPHHS-approved programs in FY2010:

- ▶ 10% were American Indian;
- ▶ 40% were 21 to 30 years old;

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<sup>28</sup> Section 61-8-732, MCA.

<sup>29</sup> Treatment for misdemeanor DUI or BAC offenses must be provided through community-based programs approved by DPHHS or through the Montana Chemical Dependency Center discussed in footnote 33. Treatment for felony offenders is the WATCh program operated by the Department of Corrections, as discussed in footnote 9. The WATCh program is not available to misdemeanor offenders. The Department of Corrections supervises only felony offenders.

<sup>30</sup>Section 61-8-732, MCA.

- ▶ 53% were employed full-time (another 16% were employed at least part-time);
- ▶ 40% were assessed as substance abusers;
- ▶ 35% were assessed as chemically dependent;
- ▶ 37% were recommended for treatment; and
- ▶ 12% received the 1 year of mandatory monthly monitoring required by law for second or subsequent DUI or BAC offense within 5 years.<sup>31</sup>

*Costs*

Current law requires that A.C.T. costs must be paid by the offender.<sup>32</sup> However, as an incentive to participate in a DUI court, the court may use funding available from federal grants and local sources to pay the \$300 to \$400 cost for the assessment and educational course for the offender.<sup>33</sup> Beyond the cost for the assessment and educational course, the average minimum cost for outpatient treatment totals about \$500; intensive outpatient treatment costs total about \$1,500; and inpatient treatment costs total about \$8,000. Typically, treatment providers have a sliding fee scale based on the client's ability to pay.<sup>34</sup>

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<sup>31</sup> The data provided in the DPHHS report on A.C.T. participants is based on information reported to DPHHS by A.C.T. service providers. These providers receive information from courts on a court-referral form. According to DPHHS, many providers say these forms do not always contain complete or accurate information. The provider is often relying on information reported by the participant. Thus, this information, too, may not always be complete or accurate.

<sup>32</sup> Section 61-8-732(3), MCA.

<sup>33</sup> Interview with Judge Mary Jane Knisley, Billings Municipal DUI Court, April 24, 2010. Cost information from Joan Cassidy, Chemical Dependency Bureau Chief, DPHHS, e-mail to Sheri Heffelfinger dated September 27, 2010.

<sup>34</sup> Joan Cassidy, Chemical Dependency Bureau Chief, DPHHS, email to Sheri Heffelfinger dated September 27, 2010. Some DUI and BAC offenders may be court-ordered to treatment at the state's Montana Chemical Dependency Center (MCDC) in Butte that serves about 700 people a year. Length of stay at the MCDC ranges from 28 to 45 days. The MCDC is funded by state alcohol tax revenue. MCDC expenditures totaled about \$4.4 million in FY2009. Patients are asked to reimburse the MCDC for their treatment costs based on each patient's ability to pay. The MCDC accepts third-party payments, such as from private insurance or Medicare. With a few exceptions, Medicaid does not cover treatment at the MCDC. See the MCDC website at <http://mcdc.mt.gov/> for more information.

### *Committee work*

The Committee heard reports and testimony that the A.C.T. program was not working as intended. Among the concerns raised was that the assessments are done by treatment providers, which may be a conflict of interest. On the other hand, there were also concerns that assessments did not adequately identify substance abuse problems or treatment needs. The educational course was most commonly criticized as ineffective. Upon examining this, the Committee was informed that the Chemical Dependency Bureau had responded to these concerns and, in spring 2010, revamped its curriculum and adopted a program called Prime For Life. The Committee was informed that this program is an evidence-based model with a proven track record.<sup>35</sup>

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DUI courts are recognized as a promising strategy to help address the substance abuse and chemical dependency problems of repeat DUI and BAC offenders.

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One Committee recommendation is aimed at strengthening Montana's A.C.T. laws. See recommendation number 7 (LC0373) in the recommendations section of this report.

### **DUI courts**

#### *Description*

DUI courts are recognized as a promising strategy to help address the substance abuse and chemical dependency problems of repeat DUI and BAC offenders. A DUI court is any city, justice, or district court that has a specialized way of handling the sentencing and supervision of misdemeanor DUI or BAC offenders. DUI court supervision begins after conviction when all or a portion of the potential jail time is suspended pending the person's successful completion of DUI court. Although some DUI courts in other states provide options for preconviction diversion and supervision, under current law in Montana, a court may not defer imposition of a sentence for a DUI or BAC violation.<sup>36</sup>

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<sup>35</sup> Law and Justice Interim Committee panel discussion on treatment programs (panel #3), December 18, 2009, and testimony by Dr. Conley and a panel discussion on February 8, 2010. Information about Prime For Life provided by Joan Cassidy, Chemical Dependency Bureau Chief.

<sup>36</sup> Section 61-8-734, MCA.

In a DUI court, the judge works with a multidisciplinary team, which typically includes a coordinator, prosecutor, public defender,<sup>37</sup> treatment provider, and probation officer. Offenders are usually required to appear in court weekly (at least for the first few months), regularly report to a probation officer, submit to regular drug and alcohol testing, comply with a treatment plan, maintain or actively seek employment, abstain from alcohol and drugs, and comply with any other court-imposed conditions.<sup>38</sup> Positive recognition is given for achievements. Failure to comply with orders or restrictions may result in revocation of a suspended sentence (i.e., imposition of the jail sentence for time not yet served). An intermediate sanction may involve an offender being ordered to wear a SCRAM ankle bracelet,<sup>39</sup> which provides remote monitoring of a person's sweat to determine if alcohol has been consumed.

Each DUI court establishes its own criteria for determining which offenders are eligible to participate in the court. For example, in the Billings Municipal DUI court, a person convicted of a second or subsequent misdemeanor DUI and who

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<sup>37</sup> On June 17, 2010, the Montana Public Defender Commission (PDC) adopted a policy to not provide support to DUI courts due to budget and workload concerns and because these courts operate on a postconviction basis. However, public defenders are to continue to provide representation for defense purposes as statutorily required for any indigent person that qualifies under Montana law. In a clarification statement issued Oct. 27, 2010, Commission Chairman Gillespie stated that "the PDC supports these courts because they represent a new and enlightened approach to dealing with systemic social problems that gets away from the traditional approach of punishment to gain compliance. On the other hand, in some instances the PDC has information that public defenders were being expected to represent clients who had already been sentenced or did not qualify financially for the agency's services. At times it has appeared that the agency's public defenders were expected to participate in new courts without consideration of the additional strain put on existing resources or any offer to supplement funding so new public defenders could be hired to accommodate the demand. Consequently, the PDC has adopted a supportive but cautious approach to participating in the specialty courts as we work our way through these issues so we can provide effective assistance to those who qualify."

<sup>38</sup> National Highway Transportation Safety, *A Guide to Sentencing DWI Offenders: 2nd Edition 2005*, February 2006. (DOH HS 810 555)

<sup>39</sup> SCRAM is a trademarked brand name for a Secure Continuous Remote Alcohol Monitor marketed and serviced by Alcohol Monitoring Systems, Inc. Detailed information about how SCRAM works is available online at [www.alcoholmonitoring.com](http://www.alcoholmonitoring.com). According to testimony presented on December 18, 2009, from Jessica Grier, Alternatives Inc., a SCRAM ankle bracelet costs at least \$1,500 per unit (not including maintenance costs); and about \$12 to \$15 is charged per offender per day for the remote monitoring services. Although practices vary, the cost to purchase a unit is generally paid by a DUI court for supervision of misdemeanor offenders or by the Department of Corrections for supervision of felony offenders. Daily monitoring costs must generally be paid by the offender.

does not have a history of a violent offense may elect to participate in the DUI court as a condition of a suspended sentence.<sup>40</sup>

#### *Effectiveness*

Studies indicate that DUI court participation reduces recidivism.

- ▶ In a study of Michigan courts, during a 2-year period, DUI court participants were found to be 19 times less likely to be rearrested for a DUI offense than offenders on traditional probation.<sup>41</sup>
- ▶ A study in Georgia found a 9% recidivism rate for DUI court participants compared to a 24% recidivism rate for offenders on traditional probation.<sup>42</sup>

#### *Montana's DUI courts*

Two Montana cities have established DUI dockets within their municipal courts:

- ▶ Billings; and
- ▶ Kalispell.

Four other courts are planning to establish DUI dockets:

- ▶ 7th Judicial District Court (Dawson, McCone, Prairie, Richland, and Wibaux Counties);
- ▶ Missoula County Justice's Court;
- ▶ Butte-Silver Bow County Justice's Court; and
- ▶ Assiniboine and Sioux Tribal Court (Fort Peck).

Four adult drug courts in Montana include DUI offenders:

- ▶ Gallatin County Drug Court;
- ▶ Custer County Treatment Court;
- ▶ 8th Judicial District Adult Drug Treatment Court (Cascade County); and
- ▶ Mineral County Drug Court.

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<sup>40</sup> Law and Justice Interim Committee, testimony from Jeff Kushner, Statewide Drug Court Coordinator, Montana Office of Court Administrator, December 18, 2009.

<sup>41</sup> Shannon Cary, Ph.D., Bret Fuller, Ph.D., and Katherine Kissick, B.A., *Michigan DUI Courts Outcome Evaluation*, NPC Research for the Michigan Supreme Court, October 2007.

<sup>42</sup>James C. Fell, Elizabeth A. Langston, and A. Scott Tippetts, *An Evaluation of the Process and Impact of Three Georgia DUI Courts*, Pacific Institute for Research Evaluation for the NHTSA, July 2008.

### *Funding*

Funding for Montana's DUI courts currently comes from federal highway traffic safety grants. These federal grants are administered by the Montana Department of Transportation and are offered directly to the courts. Typically, a grant will pay for planning and implementation for 3 years, after which the court must find other funding sources. DUI court costs include a part-time coordinator position, a misdemeanor probation officer, chemical dependency assessments, treatment (including the cost of medications that help people overcome chemical dependency), drug or alcohol testing, remote electronic monitoring devices (e.g., SCRAM ankle bracelets), and ignition interlock devices. As previously noted, to the extent costs are not paid by the court as an agreement for DUI court participation, current law requires all treatment and supervision costs be paid by the offender.

The following table shows federal grant funding provided in federal fiscal years 2009 and 2010 for DUI courts in Montana.

**Table 5: Federal Grant Funding for DUI Courts**

Court or activity funded	FFY 2009	FFY 2010
DUI Court Training	\$ 40,924	\$ 16,000
Kalispell Municipal Court		
7th Judicial District Court		
Missoula County Justice Court		
Butte-Silver Bow County Justice Court		
Fort Peck Tribal Court		
DUI Court Implementation	<u>\$ 189,949</u>	<u>\$ 442,000</u>
Billings Municipal Court	\$ 129,947	\$ 205,000
Kalispell Municipal Court	\$ 60, 002	\$ 105,000
Fort Peck Tribal Court		\$ 50,000
7th Judicial District Court		\$ 82,000

Source: Montana Department of Transportation

The Montana Legislature appropriated about \$1.3 million of state general fund money in each year of the FY2008 - FY2009 biennium for drug courts, but has not, to date, appropriated state money for DUI courts.

### *Billings Municipal DUI Court*

According to testimony from Municipal Court Judge Mary Jane Knisely, startup funding for the Billings Municipal DUI Court came from a U.S. Department of Justice, Bureau of Justice assistance grant. Her court later received funding from the NHTSA grant program administered by the Montana Department of Transportation. Her court also receives some funding from a local government surcharge that is imposed on any drug- or alcohol-related offense. Finally, her court charges participants \$30 each week as a supervision fee for drug testing and misdemeanor probation.<sup>43</sup> Judge Knisely told the Committee that her DUI court participants are usually able to pay all of their fees.<sup>44</sup>

Billings DUI Court Coordinator Rosalee Rupp reported to the Committee that:

- ▶ Of the court's roughly 20 participants at any one time, about 87% are employed when they begin participating. Participants who are not employed are required to actively seek a job or be enrolled in educational or training programs for future employment.
- ▶ None of the court's participants have had a new DUI or BAC offense since the court's inception in 2005.
- ▶ Less than 2% of the sobriety tests have come back positive.
- ▶ More than 3,600 treatment sessions have been completed, totaling more than 6,000 treatment hours.

### *Some concerns about DUI courts*

Some concerns about DUI courts are that overly aggressive supervision can become a disincentive for participation. Some offenders may decline to participate because it is "easier" to do the jail time than comply with the multiple conditions imposed by the DUI court. Additionally, defense attorneys may not recommend DUI court participation because the offender could conceivably be subject to longer supervision periods and additional penalties than if opting for traditional sentencing and probation.<sup>45</sup>

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<sup>43</sup> Current law authorizes drug treatment courts to charge a participation fee of up to \$300 a month. See section 46-1-1112, MCA.

<sup>44</sup> Law and Justice Interim Committee, testimony from Judge Knisely, February 8, 2010.

<sup>45</sup> Interview with David Duke, Billings Regional Public Defender's Office, April 24, 2010.

### *Committee work*

Two Committee recommendations are aimed at encouraging DUI court participation. See recommendation numbers 5 and 6 (LC0370 and LC0371) in the recommendations section of this report concerning treatment and supervision.

### **24/7 Sobriety Project**

#### *South Dakota*

As part of the Committee's deliberations about how to strengthen treatment and supervision to reduce repeat offenses, the Committee examined a program called the 24/7 Sobriety Project, which South Dakota began in 2005. The Project is a court-based monitoring program for repeat DUI offenders. The Project's goal is to keep DUI offenders alcohol-free by breath testing them twice a day. Under the Project, an offender with a second or subsequent DUI conviction is required, as a condition of probation or pretrial release, to show up twice a day at a sheriff's office or other designated location for an alcohol breath test. If the offender fails the test, the offender's probation or pretrial release is revoked (i.e., the offender is returned to jail). The program also incorporates, as appropriate, the use of SCRAM ankle bracelets, drug patches, and urine tests to ensure that offenders stay clean. South Dakota's 24/7 Sobriety Project has received national recognition and is credited with helping significantly reduce the state's DUI rates and jail populations.<sup>46</sup>

State and federal funds helped start the South Dakota program, but according to the South Dakota Attorney General's Office, ongoing costs are entirely covered by offender-paid fees of \$2 per test (i.e., \$4 per day).<sup>47</sup>

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<sup>46</sup> See testimony submitted to the Law and Justice Interim Committee on April 10, 2010, by Mr. Bill Mickelson from the South Dakota Attorney General's Office. His testimony and handouts are available on the Committee's website. Mr. Mickelson provided a report stating that at the time the 24/7 Project was introduced in 2005, South Dakota had one of the highest DUI rates in the nation (21.6% in the previous year), but that the rate dropped by 45% between 2007 to 2008 as the 24/7 Project went statewide. Several other initiatives are also credited with contributing to the decline in South Dakota's DUI rate. In 2006, the state repealed its implied consent law and required any person arrested for a DUI offense to provide a blood, breath, or urine sample; law enforcement officers increased the use of checkpoints and saturation patrols; classes for first offenders were revised; media campaigns were stepped up; and a "Parents Matter" program to combat underage drinking was implemented. The report also states that jail populations have decreased in most counties across South Dakota and that in the two largest counties jail population dropped by almost 100 people on any given day.

<sup>47</sup> See testimony submitted to the Law and Justice Interim Committee on April 10, 2010, by Mr. Bill Mickelson from the South Dakota Attorney General's Office.

### *Montana pilot project*

In May 2010, Lewis and Clark County began a 24/7 pilot project led by Montana Attorney General Steve Bullock. Under the project, persons arrested for a second or third DUI or BAC offense must pass twice-a-day breath tests as a condition of pretrial release. The Montana Attorney General's Office reported to the Committee in September 2010 that since May 2010, about 1,600 tests had been administered to about 20 participants and that there had been 16 test failures (i.e., a 1% failure rate). The Attorney General's Office has requested legislation to implement a statewide 24/7 Sobriety Project in Montana.<sup>48</sup> The bill is to be modeled after South Dakota's program, which also covers postconviction testing for offenders on probation. The Attorney General's bill may or may not include an appropriation for startup costs.<sup>49</sup>

### *Committee work*

Committee members expressed great interest in and support for the 24/7 Sobriety Project, though some members questioned how to implement the program in very rural areas and whether offender-paid fees would cover all costs. The Committee was informed that SCRAM bracelets could be used if driving distances to testing sites were prohibitive. The Committee was also assured that costs would be closely monitored. The Committee chose to not pursue a Committee recommendation, but to defer to the Attorney General's agency bill draft request.

## **Underage Drinking**

### *Current law*

Article II, section 14, of the Montana Constitution provides that the Legislature may establish the legal age for purchasing, consuming, or possessing alcoholic beverages. Section 16-6-305, MCA, establishes the legal age as 21 years of age. Under section 61-8-410, MCA, a person under 21 years of age commits the offense of driving with excessive BAC if the person's BAC is 0.02 or higher.

The table below summarizes the potential penalties for an underage BAC driving violation. There is not a 5-year "lookback" for prior offenses with respect to underage BAC violations.

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<sup>48</sup> The bill draft number is LC0385. The bill will receive an official bill number when introduced.

<sup>49</sup> Law and Justice Interim Committee, testimony from Ali Bovingdon, Deputy Attorney General, September 10, 2010.

**Table 6: Potential Penalties for Underage BAC Violation**

	<b>Jail (only if 18 yrs or older)</b>	<b>Fine</b>	<b>Driver's License Suspension</b>
1st offense	none	\$100 - \$500	90 days
2nd offense	not more than 10 days	\$200 - \$500	6 months
3rd or subsequent offense	24 hrs - 60 days	\$300 - \$500	1 year

*Research findings*

Drunk and drugged driving begins with underage drinking.

- ▶ In a 2003 survey, 14% of all adults who drink said they started drinking between 12 and 14 years of age; 33% started between 15 and 17 years of age; and 22% started drinking between 18 and 20 years of age.<sup>50</sup>
- ▶ Nearly 50% of the felony impaired driving offenders in Montana's WATCH program received their first DUI or BAC violations while under 21 years of age.<sup>51</sup>
- ▶ Nearly 45% of high school seniors in Montana reported binge drinking (drinking more than 5 drinks within 2 hours) in the past month.<sup>52</sup>

Underage drinking leads to dependence.

- ▶ Among adults classified as having past-year alcohol dependence or abuse, more than 95% had started drinking alcohol before 21 years of age.<sup>53</sup>
- ▶ In the Substance Abuse and Mental Health Services Administration's 2003 National Survey on Drug Use & Health, persons reporting first use of

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<sup>50</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), *Alcohol Dependence and Age at First Use*, The National Survey on Drug Use and Health Report, October 2004.

<sup>51</sup> Timothy Conley, Ph.D., Sara Shapiro, B.A., Kimberly Spurzem, and Stacy Hardy, *Assessing Montana's Multiple Offender Drunk Drivers for Prevention Strategies*, University of Montana, January 29, 2010, p. 1.

<sup>52</sup> Montana Office of Public Instruction, *2009 Montana Youth Risk Behavior Survey*, [www.opi.mt.gov/YRBS](http://www.opi.mt.gov/YRBS).

<sup>53</sup> Ibid.

alcohol before 15 years of age were more than 5 times as likely to become chemically dependent as those who did not start drinking until 21 years of age.<sup>54</sup>

Underage drinkers most often get their alcohol from adults.

- ▶ More than 64% of underage drinkers in Montana reported getting their alcohol free. Of those, 29% reported getting it from someone 21 years of age or older.<sup>55</sup>
- ▶ Of the underage drinkers who paid for their alcohol, 21% said someone 21 years of age or older purchased it for them.<sup>56</sup>

**Table 7: Source of Most Recent Alcohol Use in the Past Month**

Source of Most Recent Alcohol Use in the Past Month	Percent
<b>UNDERAGE DRINKER PAID</b>	35.8
Purchased It Himself or Herself	8.9
From Store, Restaurant, Bar, Club, or Event	5.7
Liquor, Convenience, or Grocery Store	4.3
Restaurant, Bar, or Club	1.4
Concert, Sports, or Other Event	*
From Another Person	2.8
From Person under Age 21	0.9
From Person Aged 21 or Older	1.9
Purchased by Someone Else	26.6
Parent or Guardian	0.4
Another Family Member Aged 21 or Older	2.1
Someone Not Related Aged 21 or Older	21.3
Someone under Age 21	2.3
<b>UNDERAGE DRINKER DID NOT PAY</b>	64.2
Got It from Parent or Guardian	6.5
Got It from Another Family Member Aged 21 or Older	5.1

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2008.

Source of Most Recent Alcohol Use in the Past Month	Percent
Got It from Someone Not Related Aged 21 or Older	29.4
Got It from Someone under Age 21	15.2
Took It from Own Home	2.2
Took It from Someone Else's Home	0.9
Got It Some Other Way	3.5
From Friend or Acquaintance, Unspecified Age & Method	1.6

\*No estimate reported.

Source: SAMHSA, *Office of Applied Studies, National Survey on Drug Use and Health, 2006, 2007, and 2008*.

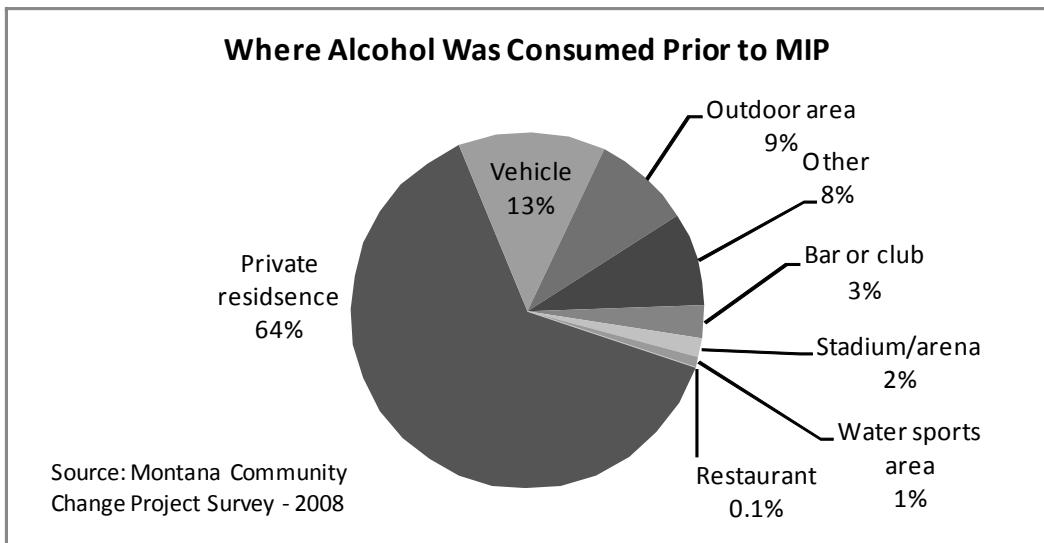
- ▶ In 2009, more than 3,700 citations for underage possession or consumption of intoxicating substances (MIPs) in Montana were issued to youth under 18 years of age.<sup>57</sup>
- ▶ According to a 2008 survey, 64% of MIP offenders said that they consumed their last drink at a private residence before being ticketed.
- ▶ (See the pie chart below.)<sup>58</sup>

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<sup>57</sup> Montana Office of Court Administrator, Youth Court Services.

<sup>58</sup> Montana Community Change Project, *MIP Offender Survey*, April 2009.

**Chart 1: Where Alcohol Was Consumed Prior to MIP**



*Committee work*

The Committee conducted a panel discussion on education and prevention, heard from a panel of youth from Helena High School, and received public comment from several interested high school students from Whitehall (a group called Reality Check) and Superior.<sup>59</sup>

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<sup>59</sup> Law and Justice Interim Committee, September 28, 2009, June 30, 2010, and September 10, 2010.

# Recommendations

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## Organization

### *Four sections*

The Committee recommends that the 2011 Legislature consider 14 bills to revise Montana's DUI laws. The table on p. 25 below groups the Committee's recommendations into the following four sections:

- ▶ Prevent Underage Drinking;
- ▶ Strengthen Treatment and Supervision;
- ▶ Revise Criminal Procedures; and
- ▶ Enact New Laws.

### *Recommendation summaries*

Each recommendation is summarized in order according to the section in which it is grouped. Each summary presents the following information about the recommendation:

- ▶ *LC number* (i.e., the number used to track the bill draft request prior to introduction);
- ▶ *Working draft number* (i.e., the number referencing the bill during the Committee's interim work prior to the official bill draft request);
- ▶ *Proposal sponsor* (i.e., the Committee member who will sponsor the bill during the 2011 Session);
- ▶ *Summary* (i.e., a brief description of bill's main provisions);
- ▶ *Background* (i.e., information or research that provides context beyond the research already presented in this report);
- ▶ *Testimony and discussion* (i.e., a nutshell summary of testimony and opinions expressed during Committee discussions);
- ▶ *Final Committee vote* (i.e., the vote on the bill during the Committee's final work session on September 10, 2010).

### *Meeting guide*

APPENDIX D provides a guide to the Committee meetings by listing meeting dates and the major agenda items related to the recommendations.

*Reports guide*

APPENDIX E provides a reference table by topic area of the main reports or presentations made to the Committee.

(see next page)

## Committee Bill Recommendations

Rec. No.	Working Draft No.	LC No.	Bill No.	Short Title	Committee Vote	Sponsor
<b>Prevent Underage Drinking</b>						
1	<a href="#">LCIj01</a>	<a href="#">LC0365</a>	SB 10	Revise driver's license sanctions for MIP offenses	11-1	Hinkle
2	<a href="#">LCIj02</a>	<a href="#">LC0366</a>	SB 39	Allow game wardens to issue MIP citations	11-1	Shockley
3	<a href="#">LCIj03</a>	<a href="#">LC0367</a>	SB 29	Mandatory alcohol server and sales training	12-0	Moss
4	<a href="#">LCIj15</a>	<a href="#">LC0377</a>	SB 20	Authorize county social host liability ordinances	11-0	Hendrick
<b>Strengthen Treatment and Supervision</b>						
5	<a href="#">LCIj06-A</a>	<a href="#">LC0370</a>	HB 102	Revise driver's license provisions to encourage DUI court participation	12-0	Menahan
6	<a href="#">LCIj06-B</a>	<a href="#">LC0371</a>	HB 69	Revise jail sentencing to encourage DUI court participation	12-0	Menahan
7	<a href="#">LCIj08</a>	<a href="#">LC0373</a>	HB 67	Strengthen ACT laws for treatment of DUI/BAC offenders	12-0	Menahan
8	<a href="#">LCIj10</a>	<a href="#">LC0374</a>	HB 12	Increase potential jail time to 1 year for first or second DUI/BAC offense	11-1	Menahan
<b>Revise Criminal Procedures</b>						
9	<a href="#">LCIj07</a>	<a href="#">LC0372</a>	SB 41	Allow cities to establish courts of record	12-0	Shockley
10	<a href="#">LCIj11</a>	<a href="#">LC0375</a>	HB 14	Eliminate 5-year lookback for counting prior misdemeanor DUI/BAC convictions	10-2	Menahan
11	<a href="#">LCIj17</a>	<a href="#">LC0378</a>	SB 42	Authorize search warrants to obtain blood or breath tests in DUI/BAC cases	10-2	Shockley
12	<a href="#">LCIj04</a>	<a href="#">LC0368</a>	SB 40	Establish statewide on-call judge for search warrants	8-4	Shockley
<b>Enact New Laws</b>						
13	<a href="#">LCIj05</a>	<a href="#">LC0369</a>	HB 33	Provide that any amount of a dangerous drug is impaired driving <i>per se</i>	7-5	Peterson
14	<a href="#">LCIj14</a>	<a href="#">LC0376</a>	SB 15	Create a misdemeanor crime of aggravated DUI	11-0	Jent

## Recommendation 1

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### LC0365 Revise driver's license sanctions for MIP offenses

*Working draft number:* LClj01  
*Proposal sponsor:* Sen. Hinkle

*Summary:*

Under this proposal, if a youth under 18 years of age is convicted of illegally possessing or consuming an intoxicating substance, the youth's driver's license must be suspended until the youth reaches 18 years of age or for 6 months, whichever is longer.

*Background:*

In calendar year 2009, youth courts and courts of limited jurisdiction handled 3,710 minor in possession (MIP) cases involving youth under 18 years of age.<sup>60</sup> In addition to fines and community service, if the minor has a driver's license, current law provides that the driver's license of a minor issued an MIP citation must be suspended for 30 days for a first offense and 6 months for a second or subsequent offense.<sup>61</sup>

*Testimony and discussion:*

Sen. Hinkle brought this proposal forward during a Committee work session on February 9, 2010. A few Committee members raised concerns about the lack of exceptions in the bill and the hardship that could be placed on farming and ranching families. The proposal was amended to include a more general title in case amendments were proposed during the session. The proposal was supported by a citizen advocate and by Mothers Against Drunk Driving during the initial hearing on April 6, 2010, during a youth panel discussion on June 20, 2010, and during public comment by Whitehall high school students on September 10, 2010. No opponents testified at any of the meetings.

*Final Committee vote:* 11 - 1 with Sen. Esp voting no.

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<sup>60</sup> Office of Court Administrator, Montana Supreme Court, data provided by Robert Peake, Youth Court Services, September 22, 2010.

<sup>61</sup> Section 45-5-624, MCA.

## Recommendation 2

### LC0366 Allow game wardens to issue MIP citations

*Working draft number:*

LClj02

*Proposal sponsor:*

Sen. Shockley

*Summary:*

This proposal would allow game wardens to issue citations to minors for unlawful possession of an intoxicating substance or dangerous drugs (MIPs) on state land. It also requires the game warden to complete the investigation and assist in the prosecution that arises from the citation.

*Background:*

Under current law, a county sheriff has law enforcement jurisdiction to issue an MIP on state land within the county. A similar bill was introduced by Sen. Shockley during the 2007 Session (SB 224) but failed.

*Testimony and discussion:*

Sen. Shockley brought this proposal forward during a Committee work session on February 9, 2010. At the April 6, 2010, public hearing on the preliminary proposal, a citizen advocate and a representative of Mother's Against Drunk Driving supported the proposal. High school students also testified in support. Testimony in favor of the proposal noted that many youth drink on public land, but if a game warden comes upon the youth, the warden must call a sheriff's deputy. The Montana Sheriffs and Peace Officers Association opposed the proposal stating that current law was working, that local agreements could be worked out, and that there was much more involved than just issuing a citation (i.e., investigation and followup).

*Final Committee vote:* 11-1 with Sen. Esp voting no.

## Section 1 - Prevent Underage Drinking

### Recommendation 3

LC0367 Mandate responsible alcohol sales and service training

*Working draft number:* LClj03  
*Proposal sponsor:* Sen. Moss

*Summary:*

This proposal mandates that anyone selling or serving alcoholic beverages be trained about not selling or serving to persons under 21 years of age or to intoxicated patrons. The bill provides that the employer is subject to a civil penalty of \$50 for each untrained employee.

*Background:*

It is currently unlawful for establishment owners, managers, sellers, and servers of alcoholic beverages to sell or serve alcohol to underage or intoxicated persons.<sup>62</sup> The Liquor Control Division of the Department of Revenue currently administers a Responsible Alcohol Sales and Service (RASS) training program that certifies volunteer community trainers, who then offer training for employees or retail stores or taverns selling or serving alcohol. Employers may send their employees to training conducted by a volunteer trainer certified under the RASS program, or to training conducted by a private sector organization, depending on availability. The training is voluntary, and the program is not codified in state statute. However, law enforcement agencies conduct random compliance checks to test how well a sales or service person complies with the law. These compliance checks typically involve a person under 21 years of age working undercover with law enforcement. The underage person will enter the establishment and attempt to purchase the alcohol.

*Testimony and discussion:*

This proposal was initially brought forward by Sen. Juneau during the Committee's February 9, 2010, work session. The Committee considered two approaches to mandated training: (1) require the servers and sellers to be individually responsible for obtaining training; or (2) require employers to ensure their employees are trained. The Committee opted for the second approach. During a public hearing on June 30, 2010, proponents of mandated training said they were generally in favor of the concept, but did not like the bill as initially drafted. The Committee amended the initial bill draft by eliminating the Department of Revenue's role in approving training curriculum, eliminating the training fee, and changing how

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<sup>62</sup> Sections 16-6-304 and 16-6-305, MCA.

often employees should receive refresher training. However, some Committee members stated that they wanted to keep working on the bill and perhaps offer amendments during the session. Proponents included private citizens as well as representatives of Mothers Against Drunk Driving, the Convenience Store Association, the Montana Restaurant Association, the Montana Tavern Association, and the Gaming Industry Association. No one testified as an opponent at any of the meetings.

*Final Committee vote: 12-0.*

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## Section 1 - Prevent Underage Drinking

### Recommendation 4

#### LC0377 Authorize county social host ordinances

*Working draft number:*

LClj15

*Proposal sponsor:*

Rep. Hendrick

#### *Summary:*

This proposal would allow a county to adopt an ordinance establishing civil or criminal liability of a person hosting a social gathering at which an underage person is illegally served or illegally possesses or consumes alcohol.

#### *Background:*

Under Montana's Constitution, incorporated cities and towns have self-governing powers allowing them to adopt social host ordinances even though that authority is not specifically provided for in state statute.<sup>63</sup> However, counties that have not adopted self-governing charters under state law (which are most counties in Montana) may *not* adopt social host ordinances unless specifically authorized by state law. A city ordinance applies only within the boundaries of a city. A county ordinance would apply within the county and in all unincorporated cities and towns within the county, but not within the boundaries of an incorporated city.

#### *Testimony and discussion:*

During a Committee work session on June 30, 2010, Rep. Ebinger moved to have this proposal drafted for further consideration. His motion came after public testimony earlier in the meeting from advocates working with the Community Change Project in the Superior area and from Superior High School students. The Committee discussed whether the bill should provide for a statewide law or whether to let each county control the content of the ordinance. The majority of the Committee preferred local control. At the final hearing, proponents included high school students from Superior and Whitehall and citizen advocates. Informational testimony was provided by Ali Bovingdon of the Attorney General's Office and Frank Smith, Fort Peck Tribal Board member.

*Final Committee vote:* 11-0 with Sen. Esp absent.

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<sup>63</sup> Art. XI, sections 3-6, Montana Constitution.

## Section 2 - Strengthen Treatment and Supervision

### Recommendation 5

#### LC0370 Revise driver's license provisions to encourage DUI court participation

*Working draft number:*

LClj06-A

*Proposal sponsor:*

Rep. Menahan

*Summary:*

This proposal would allow a DUI court to grant a probationary driver's license to a DUI court participant if the participant complies with a treatment plan and other conditions imposed by the court.

*Background:*

Under current law, the driver's license of a person convicted of a second or subsequent misdemeanor DUI or BAC offense must be suspended for 1 year, but a probationary driver's license may be granted after 45 days.<sup>64</sup> Current law also provides that the offender may receive a probationary driver's license if the person enrolls in a Department of Justice driver rehabilitation and improvement class, which the Department is authorized to establish, but has not.<sup>65</sup>

*Testimony and discussion:*

Kalispell Municipal DUI Court Judge Heidi Ulbricht testified that the intent of allowing a probationary license after 45 days was to ensure that the offender was engaged in treatment.<sup>66</sup> Judge Mary Jane Knisely, Billings Municipal DUI Court, testified that one impediment to DUI court participants engaging in treatment and keeping a job is not having a driver's license. The Committee also received information that the possibility of a probationary driver's license prior to the 45 days would be a good "carrot" for DUI court participation.<sup>67</sup> At the June 30, 2010, hearing, proponents included the Yellowstone County Attorney's Office, Mother's Against Drunk Driving, and two private citizens. No one testified in opposition.

*Final Committee vote:* 12-0

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<sup>64</sup> Sections 61-5-208 and 61-8-442, MCA.

<sup>65</sup> Section 61-2-302, MCA.

<sup>66</sup> Committee, December 18, 2009, audio minutes, 05:24:40.

<sup>67</sup> Interview with Judge Knisely on May 19, 2010, and with David Duke, Billings Area Public Defender's Office, on May 20, 2010. Public testimony from David Carter, Yellowstone County Attorney's Office, June 30, 2010, audio file at 06:39:00.

## Section 2 - Strengthen Treatment and Supervision

### Recommendation 6

#### LC0371 Revise jail sentencing to encourage DUI court participation

*Working draft number:*

LCIj06-B

*Proposal sponsor:*

Rep. Menahan

*Summary:*

This bill would increase from 6 months to 1 year the possible jail sentence for a first and second DUI or BAC offense, revise mandatory minimum jail time, and clarify that a DUI court may suspend all or a portion of the jail sentence, except the mandatory minimum, if the person is complying with law requiring that the person be assessed for chemical dependency, attend an educational course, and participate in treatment (A.C.T.). This bill recommendation overlaps with recommendation 8 (LC0374), which increases the possible jail sentence from 6 months to 1 year for first and second DUI and BAC offenses.

*Background:*

**Table 8: Jail Sentences Under Current Law**

	DUI (section 61-8-401, MCA)	Excessive BAC (section 61-8-406, MCA)
<b>1st offense (within 5 yrs)</b>	<u>24 hrs to 6 months</u> <ul style="list-style-type: none"><li>▶ initial 24 hrs may not be suspended</li><li>▶ execution of a jail sentence may be suspended for up to 1 year pending completion of treatment</li></ul>	<u>up to 10 days</u> <ul style="list-style-type: none"><li>▶ all may be suspended</li></ul>
<b>2nd offense (within 5 yrs)</b>	<u>7 days to 6 months</u> <ul style="list-style-type: none"><li>▶ first 5 days may not be suspended</li><li>▶ only 2 days must be served consecutively</li><li>▶ execution of the jail sentence may be suspended for up to 1 year pending completion treatment</li></ul>	<u>5 days to 30 days</u> <ul style="list-style-type: none"><li>▶ first 5 days may not be suspended</li><li>▶ no provision for consecutive days</li></ul>
<b>3rd offense (within 5 yrs)</b>	<u>60 days to 1 year</u> <ul style="list-style-type: none"><li>▶ 10 days must be served in jail</li><li>▶ 2 days must be served consecutively</li><li>▶ execution of the jail sentence may be suspended for up to 1 year pending completion of treatment</li></ul>	<u>10 days to 6 months</u> <ul style="list-style-type: none"><li>▶ all but first 10 days may be suspended</li><li>▶ no provision for consecutive days</li></ul>

*Testimony and discussion:*

Kalispell Municipal DUI Court Judge Heidi Ulbricht and Missoula County Justice of the Peace Karen Orzech testified they would like to have the penalty for first and second DUI offenses increased from 6 months to 1 year so that the court could retain jurisdiction for up to 1 year to impose a suspended jail sentence for noncompliance with DUI court conditions.<sup>68</sup>

Judge Mary Jane Knisely, Billings Municipal DUI Court, testified that the "mandatory minimum" jail sentence provisions are flaws because the law allows exceptions. She also said that some offenders will start drinking or using again as soon as they are released from jail unless they get treatment.<sup>69</sup> The DUI court coordinator in Billings, Rosalee Rupp, testified that a minimum of 12 to 18 months is needed for effective treatment and followup supervision.<sup>70</sup>

The Committee's proposal to revise jail sentencing to support DUI courts was generally supported in public comment on June 30 and September 10, 2010, and specifically supported by Mothers Against Drunk Driving. No one testified as an opponent.

*Final Committee vote:* 12-0

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<sup>68</sup> Law and Justice Interim Committee, testimony on December 18, 2010, audio starting at 06:43:48. The audio may be accessed through the Committee's website.

<sup>69</sup> Law and Justice Interim Committee, testimony February 8, 2010, audio starting at 1:40:10. The audio may be accessed through the Committee's website.

<sup>70</sup> Ibid., audio starting at 1:49:32.

## Section 2 - Strengthen Treatment and Supervision

### Recommendation 7

#### LC0373 Strengthen ACT laws for treatment of DUI and BAC offenders

*Working draft number:*

LClj08

*Proposal sponsor:*

Rep. Menahan

##### *Summary:*

This proposal revises laws concerning chemical dependency assessment, educational course, and treatment provisions (commonly called A.C.T.) for DUI and BAC offenders. It sets deadlines for completing the assessment and enrolling in treatment, provides that the offender's driving record regarding previous DUI and BAC violations may be considered during the assessment, requires that the prosecuting attorney's office be notified if an offender fails to attend treatment, and clarifies the court's jurisdiction to impose sanctions for noncompliance with court-ordered treatment.

##### *Background:*

As summarized earlier in this report, A.C.T. is required for anyone convicted of a DUI or BAC offense.<sup>71</sup> However, driving records are not released to counselors conducting chemical dependency assessments, prosecutors do not have to be notified if an offender fails to comply with A.C.T. provisions, and statute does not establish a timeframe for assessment or enrollment in treatment.

##### *Testimony and discussion:*

Dr. Tim Conley, Ph.D., University of Montana, and some of his graduate students conducted a survey of felony DUI offenders in the Department of Corrections' residential treatment program called WATCh.<sup>72</sup> Dr. Conely reported to the Committee that according to his survey, most felony DUI offenders at WATCh did not think A.C.T. was effective and that many of these offenders either did not enroll in or never completed all components of the A.C.T requirements.<sup>73</sup>

Billings Municipal DUI Court Judge Mary Jane Knisely told the Committee that before she established the DUI court, failure to

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<sup>71</sup> Section 61-8-732, MCA.

<sup>72</sup> Timothy Conley, Ph.D., Sara Shapiro, Kimberly Spurzem, Stacy Hardy, *Assessing Montana's Multiple Offender Drunk Drivers for Prevention Strategy Ideas*, Preliminary Report to the Law and Justice Interim Committee, January 29, 2010.

<sup>73</sup> DPHHS recently revised the curriculum for the education course component of the A.C.T. program. The new curriculum, called Prime For Life, is now being implemented by approved A.C.T. treatment providers.

comply with A.C.T. was sometimes brought to the attention of the court only if the person was rearrested or applied to get his or her driver's licenses reinstated without having completed A.C.T. requirements.<sup>74</sup>

Montana traffic safety resource staff and public health personnel recommended that there should be statutory deadlines for completing A.C.T. requirements, that prosecutors be notified when a person referred to A.C.T. fails to comply, and that information about a person's prior DUI or BAC convictions be made available to professionals conducting chemical dependency assessments.<sup>75</sup>

During discussions, Committee members expressed strong support for DUI courts and the treatment for repeat DUI and BAC offenders. Members also expressed concern that Montana's A.C.T. program needed to be strengthened. This proposal was initially brought forward by Sen. Laslovich at the February 9, 2010, work session. This proposal was generally supported during all opportunities for public comment on committee recommendations. No opponents testified.

*Final Committee vote: 12-0*

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<sup>74</sup> Testimony to the Law and Justice Interim Committee on February 8, 2010, audio starting at 01:40:10.

<sup>75</sup> Meeting of Sheri Heffelfinger with Chemical Dependency Bureau Chief Joan Cassidy and Montana Department of Transportation Highway Safety resource office personnel Erin Inman, Lorrelle Demont, Angie Mullikin, and Pam Buchman, March 22, 2010.

**Recommendation 8**

**LC0374 Increase maximum jail time to 1 year for first or second DUI /BAC offence**

*Working draft number:*

LClj10

*Proposal sponsor:*

Rep. Menahan

*Summary:*

This proposal would increase the maximum possible jail sentence for a first or second DUI or BAC offense from 6 months to 1 year. This change is also contained in recommendation 6 (LC0371).

*Background:*

Unless otherwise provided by law, a judge may suspend all or any portion of a jail sentence. If a suspended jail sentence is revoked, the person must serve all or a portion of the remaining portion of the jail sentence. A table of possible jail sentences under current law is provided with the background for recommendation 6 summarized above.

*Testimony and discussion:*

Judges and treatment professionals told the Committee that 6 months was not long enough to engage a repeat DUI or BAC offender in effective treatment. They asked the Committee to extend the possible 6-month jail penalty to 1 year as a means of extending the length of the court's jurisdiction to supervise offenders to ensure they complied with treatment plans. (See specific testimony and discussion under recommendation 6 summarized above.)

This proposal was generally supported in public comment. There were no opponents.

*Final Committee vote:* 11-1 with Rep. Augare voting no

## Recommendation 9

### LC0372 Allow cities to establish courts of record

*Working draft number:*

LClj07

*Proposal sponsor:*

Sen. Shockley

#### *Summary:*

This bill would allow cities the option of establishing courts of record. The proposal would also provide that an appeal from a city court of record is limited to a review of the record and matters of law. In other words, the appeal may not result in a trial *de novo* (i.e., a new trial).

#### *Background:*

Cities do not currently have the option of establishing a court of record. Current law establishes the following courts as courts of record: the court of impeachment (i.e., the state senate), the supreme court, district courts, the workers' compensation court, municipal courts, and justices' courts in those counties that have chosen to establish their justices' courts as courts of record.<sup>76</sup> In a court of record, all proceedings must be recorded and all documents must be retained for the record. Rep. Ron Stoker introduced a similar proposal in the 2007 Session (HB 251), which died in the Senate Judiciary Committee.

#### *Testimony and discussion:*

Jeff Hayes, a city prosecutor for Stevensville and Darby, testified to the Committee on February 8, 2010, that DUI and BAC offenders know they get a new trial if they appeal from the city court to the district court. He said the financial burden to cities to retry these cases was substantial. He said that he believed one of the best ways to assist cities in prosecuting DUI and BAC offenses and save money was to allow cities the option of establishing a city court of record. Some Committee members expressed concern about the cost of establishing a city court as a court of record and about judicial qualifications. Other Committee members noted that the bill allowed cities to make their own decisions. This proposal was generally supported in public comment. There were no opponents.

*Final Committee vote:* 12-0

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<sup>76</sup> Section 3-1-102, MCA, and section 3-10-101(3), MCA.

## Recommendation 10

### LC0375 Eliminate 5-year "lookback" in counting prior misdemeanor DUI /BAC convictions

*Working draft number:*

LClj11

*Proposal sponsor:*

Rep. Menahan

#### *Summary:*

This bill would provide that when determining the penalty for a misdemeanor DUI or BAC offense, all prior DUI or BAC offenses are counted, not only those committed within the last 5 years.

#### *Background:*

Section 61-8-734, MCA, currently provides that for the purposes of determining the potential jail penalty for a first, second, or third DUI or BAC offense, only those offenses that were committed within the last 5 years are counted. When a person has been convicted of a fourth or subsequent DUI or BAC offense within any amount of time, the offense is considered a felony. Thus, there is no "look back" for a felony offense.

#### *Testimony and discussion:*

Senator Laslovich brought forward this idea during a work session on February 9, 2010. Committee members also discussed extending the lookback period to 10 years, for example, rather than eliminating it entirely. During Committee discussions, it was stated that there would not be a fiscal impact on the state because the proposal does not change when an offense becomes a felony. Members speaking for the bill said it would simplify the statutes, hold offenders accountable, and motivate repeat offenders to get into treatment before they find themselves convicted of a fourth DUI or BAC offense and in prison. There was some concern about the retroactive applicability date, but no action was taken to amend the bill. Some members supported a longer lookback period and remained opposed to eliminating it entirely. During the public hearings, this proposal was supported by a citizen advocate, Mothers Against Drunk Driving, and the Yellowstone County Attorney's Office. No one testified as an opponent.

*Final Committee vote:* 10-2 with Sen. Juneau and Rep. Augare voting no.

## Recommendation 11

### LC0378 Authorize search warrants to obtain breath or blood test for impaired driving offenses

*Working draft number:*

LClj17

*Proposal sponsor:*

Sen. Shockley

#### *Summary:*

This bill would provide that if a person is pulled over for impaired driving and refuses a breath or blood test, the officer may seek a search warrant in order to obtain the test.

#### *Background:*

Montana's current law concerning breath and blood tests was summarized earlier in this report. Current law does not authorize an officer to obtain a search warrant in order to obtain a test if the person refuses to submit to the test. Test refusal is punishable by a suspension of a person's driver's license, but it is not a criminal offense.

#### *Testimony and discussion:*

The Committee received a significant amount of testimony supporting "criminalization" of test refusals (i.e., making refusal a misdemeanor crime punishable by jail time). Some Committee members opposed criminalization on the grounds that such a law would make it a crime to assert a civil right. Proponents of criminalization argued that just as evidence can and should be obtained in any crime, officers making a traffic stop need to be allowed to obtain evidence of an impaired driving offense. Sen. Shockley suggested allowing an officer to seek a search warrant as a means of protecting a person's civil rights, but also of allowing officers to obtain the test evidence if the search warrant is granted by a judge. This proposal received general support during public comment and specific support from Mothers Against Drunk Driving and the Montana County Attorneys Association. There were no opponents.

*Final Committee vote:* 10-2 with Sen. Juneau and Rep. Augare voting no.

## Recommendation 12

### LC0368 Statewide on-call judge for search warrants

*Working draft number:*

LClj04

*Proposal sponsor:*

Sen. Shockley

#### *Summary:*

This bill would provide for the appointment of a standing master in the 1st Judicial District (Lewis and Clark County) to handle search warrant applications statewide during days and hours that courts are not in session.

#### *Background:*

This bill is a companion of recommendation 11 (LC0378), which allows officers to seek a search warrant to obtain breath or blood tests when impaired driving is suspected. This proposal anticipates that under LC0378, a judge will need to be readily available to handle the workload at night and on weekends.

#### *Testimony and discussion:*

Some Committee members expressed concern about the cost of creating new positions to support the duties of the on-call judge. Other Committee members supported the bill as necessary to ensure that search warrants for breath or blood tests of impaired drivers could be issued in a timely manner. The bill was generally supported in public comment and specifically supported by Mother's Against Drunk Driving and the Montana County Attorneys Association. There were no opponents.

*Final Committee vote:* 8-4 with Sen. Esp, Sen. Juneau, Rep. Peterson, and Rep. Howard voting no.

### **Recommendation 13**

**LC0369   Provide that any amount of a dangerous drug is impaired driving *per se***

*Working draft number:*

LClj05

*Proposal sponsor:*

Rep. Peterson

*Summary:*

This bill would provide that if there is any amount of a dangerous drug or its metabolite in a driver's blood, driving under the influence is assumed. The bill provides an exemption for the appropriate use of prescription drugs.

*Background:*

Section 61-8-406, MCA, currently provides a *per se* limit for a person's BAC. However, the section does not currently provide a *per se* limit for drugs. Thus, drug-impaired driving is currently handled under section 61-8-401, MCA, which states that "under the influence" means that "as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished". Thus, the person's inability to safely operate a vehicle must be proved.

*Testimony and discussion:*

This proposal was brought forward by Rep. Peterson at the Committee's February 9, 2010, work session. Proponents included Mother's Against Drunk Driving, the Montana Highway Patrol, and the Yellowstone County Attorney's Office. The Montana ACLU opposed the proposal on the grounds that it cast too wide a net. During the September 10, 2010, executive work session, concerns were raised about not having scientific evidence that would create a presumption that any amount of a dangerous drug automatically means the person is impaired and cannot safely operate a vehicle. Responding to questions, Ali Bovingdon of the Attorney General's Office said some states, including Arizona, do have zero tolerance driving laws concerning drugs.

*Final Committee vote:* 7-5 with Sen. Juneau, Sen. Moss, Sen. Shockley, Rep. Menahan, and Rep. Augare voting no.

## Recommendation 14

### LC0376 Create a misdemeanor crime of aggravated DUI

*Working draft number:* LClj14  
*Proposal sponsor:* Sen. Jent

*Summary:*

This bill would provide that a person commits the offense of an aggravated DUI if any one of the following conditions exists at the time of the DUI or BAC offense:

- ▶ the person's BAC is 0.20 or above;
- ▶ the person has been ordered by the court to drive only a vehicle equipped with an ignition interlock device;
- ▶ the person is driving without a license because of a prior impaired driving offense;
- ▶ the person refused a breath or blood test and has a prior conviction or pending charge for an MIP, DUI, or BAC violation within 3 years of the current offense; or
- ▶ the person is involved in a crash resulting in bodily injury or property damage.

Penalties would include:

- ▶ a probationary term of not less than 1 year or more than 3 years;
- ▶ a \$1,000 to \$5,000 fine; and
- ▶ a term of imprisonment of up to 1 year (all or a portion of which may be suspended and which would run concurrent with the probationary term).

*Background:*

This proposal is based on bill language forwarded by the Yellowstone County Attorney's Office and the Montana County Attorneys Association. The Committee approved of having staff draft a Committee bill based on this language at the June 30, 2010, meeting. The bill received its initial and final hearing at the September 10, 2010, meeting.

*Testimony and discussion:*

At the September 10, 2010, hearing on the bill, Sen. Jent said the bill was to provide harsher penalties for drunk drivers whose violations are particularly egregious (e.g., those who cause injuries, who have excessively high BAC, and who are repeat offenders). Proponents during the hearing included the Montana County Attorneys Association, the Yellowstone County Attorney's Office, the

Attorney General's Office, and Mother's Against Drunk Driving. There were no opponents.

*Final Committee vote: 11-0 with Sen. Esp absent.*

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**PART I**  
**Appendix A**

**National Highway Traffic Safety  
Administration Fact Sheet**



# Traffic Safety Facts

## Research Note

DOT HS 811 250

December 2009

## Fatalities and Fatality Rates in Alcohol-Impaired-Driving Crashes by State, 2007-2008

### Summary

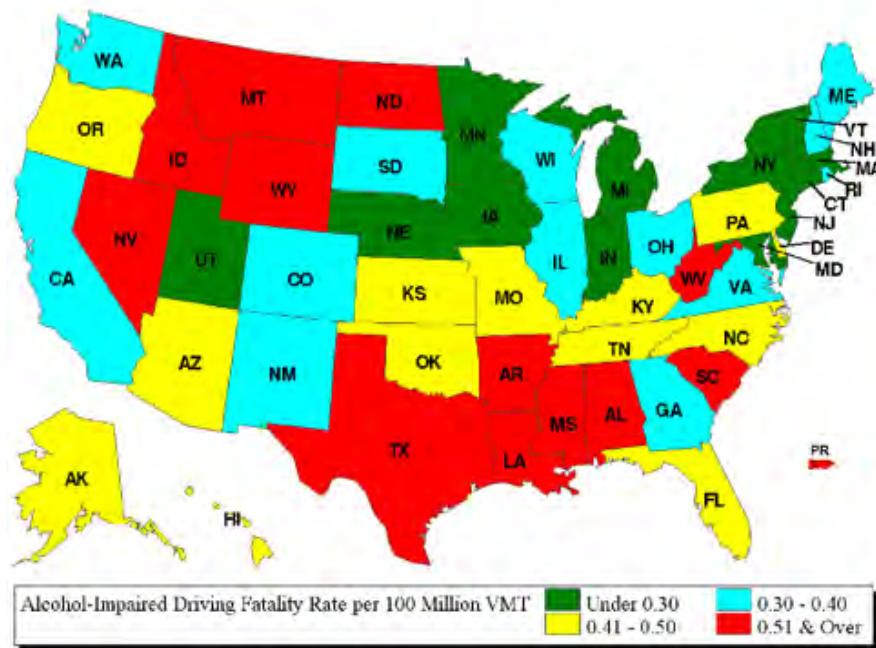
In 2008, as compared to 2007, the overall fatality rate declined from 1.36 to 1.25 fatalities per 100 million vehicle miles of travel (VMT), and the alcohol-impaired driving fatality rate declined from 0.43 to 0.40 fatalities per 100 million VMT. From 2007 to 2008, the alcohol-impaired-driving fatality rate declined in 40 States, the District of Columbia and Puerto Rico and remained the same or increased in the remaining 10 States. An alcohol-impaired-driving crash is defined as a crash involving at least one driver or motorcycle rider (operator) with a blood alcohol concentration (BAC) of .08 grams per deciliter (g/dL) or higher.

In all 50 States, the District of Columbia, and Puerto Rico, it is illegal per se to drive a vehicle or operate a motorcycle with a BAC of .08 g/dL or above. This research note presents, by State, the fatality rates as well as the number of deaths in alcohol-impaired-driving crashes in those States.

### Results

This research note uses the 2007 Final File and 2008 Annual Report File (ARF) of NHTSA's Fatality Analysis Reporting System (FARS) as well as 2008 State VMT data that were provided to NHTSA by the Federal Highway Administration (FHWA) to compute the fatality rate in alcohol-impaired crashes (alcohol-impaired fatality rate).

Figure 1:  
Alcohol-Impaired Fatalities per 100 Million VMT by State, 2008



Estimates of alcohol involvement are generated using a combination of BAC values that are reported to FARS, and imputed BAC values when they are not reported to FARS. Figure 1 maps the rate of alcohol-impaired-driving fatalities per 100 million VMT for each State in 2008. The States are color-coded as to whether their rates are at or above (yellow, red) the national rate of 0.40, or below the national rate (blue, green). Table 3 depicts the fatalities and fatality rates underlying Figure 1, by State for 2007 and 2008.

Table 1 depicts the proportion of alcohol-impaired-driving fatalities who fall within the four categories of alcohol-impaired fatality rate shown in the map in Figure 1. About 14 percent of all alcohol-impaired fatalities occurred in States with alcohol-impaired fatality rates under 0.30, about 28 percent occurred in States with rates between 0.30 and 0.40, about 30 percent occurred in States with rates between 0.41 and 0.50, and the remaining 28 percent of the alcohol-impaired fatalities occurred in States with rates of 0.51 or above.

Table 1:  
**Alcohol-Impaired Fatalities and Percentage of Total Alcohol-Impaired Fatalities by Alcohol-Impaired Fatality Rate Category, 2008**

Alcohol-Impaired Fatality Rate	Number of States	Alcohol-Impaired Fatalities	Percentage of United States
Under 0.30	12 + DC	1,693	14%
0.30 – 0.40	13	3,272	28%
0.41 – 0.50	13	3,531	30%
0.51 & Over	12	3,278	28%
U.S.	-	11,773	100%

In the 40 States and the District of Columbia that showed a decrease in their alcohol-impaired fatality rates, there were 1,317 fewer alcohol-impaired driving fatalities in 2008, as compared to 2007, as shown in Table 2. This decrease was offset by an increase of 49 fatalities for the 10 States that showed an increase or no change in their alcohol-impaired fatality rates in 2008.

As a comparison, among the 44 States and the District of Columbia that showed a decline in the overall fatality rate from 2007 to 2008, there were 3,938 fewer fatalities. There was a marginal decrease of 60 fatalities in the 6 States where the overall fatality rates increased or remained flat in 2008.



U.S. Department of Transportation

**National Highway Traffic Safety Administration**

Table 2:  
**Fatalities and Fatality Rates by Categories of Increasing And Decreasing Rates in 2008 as Compared to 2007**

2008 Rates as Compared to 2007 Rates	Fatalities in All Crashes		Fatalities in Crashes Involving At Least One Driver/Motorcycle Rider With BAC = .08+	
	Number of States	Change in Fatalities	Number of States	Change in Fatalities
States With Higher/Flat Rates	6	-60	10	+49
States With Lower Rates	44 + DC	-3,938	40 + DC	-1,317
U.S.	-	-3,998	-	-1,268

Components may not add to U.S. totals due to independent rounding.

## Alcohol-Impaired Fatality Rates by State

Impaired-driving laws have been enacted in all 50 States and the District of Columbia that make it illegal for a driver or a motorcycle rider with a BAC of .08 or above to drive a vehicle. In 2008, the alcohol-impaired-driving fatality rate declined from 0.43 fatalities per 100 million VMT in 2007 to 0.40 in 2008. In 2008, Montana had the highest alcohol-impaired fatality rate in the Nation – 0.84 fatalities per 100 million VMT while Vermont had the lowest rate in the Nation – 0.16 per 100 million VMT. In 2007, Montana had the highest alcohol-impaired fatality rates in the Nation – 0.93 – and Utah had the lowest alcohol-impaired driving fatality rate – 0.21 fatalities per 100 million VMT. Table 3 tabulates the overall fatalities as well as the alcohol-impaired fatalities and the corresponding fatality rates per 100 million VMT by State for 2007 and 2008 for the 50 States, the District of Columbia, and Puerto Rico. Also presented in Table 3 are the percentage changes in the alcohol-impaired-driving fatality rate from 2007 to 2008.

This research note and other general information on highway traffic safety may be accessed by Internet users at: [www-nrd.nhtsa.dot.gov/CATS/index.aspx](http://www-nrd.nhtsa.dot.gov/CATS/index.aspx)

Table 3:  
**Total Alcohol-Impaired Fatalities and the Corresponding Fatality Rates per 100 Million VMT, 2007-2008**

State	2007				2008				Percentage Change in Alcohol-Impaired-Driving Fatality Rate From 2007 to 2008	
	Total		In Alcohol-Impaired Crashes (Involving at Least One Driver /MC Rider With BAC=.08+)		Total		In Alcohol-Impaired Crashes (Involving at Least One Driver /MC Rider With BAC=.08+)			
	Fatalities	Rate	Fatalities	Rate	Fatalities	Rate	Fatalities	Rate		
Alabama	1,110	1.81	377	0.61	966	1.63	315	0.53	-13.1%	
Alaska	82	1.59	25	0.49	62	1.27	21	0.43	-12.2%	
Arizona	1,071	1.70	337	0.54	937	1.52	266	0.43	-20.4%	
Arkansas	649	1.96	181	0.55	600	1.81	171	0.52	-5.5%	
California	3,995	1.21	1,132	0.34	3,434	1.05	1,029	0.31	-8.8%	
Colorado	554	1.14	167	0.34	548	1.15	173	0.36	5.9%	
Connecticut	296	0.92	111	0.35	264	0.83	86	0.27	-22.9%	
Delaware	117	1.23	47	0.50	121	1.35	45	0.50	0.0%	
Dist of Columbia	44	1.22	16	0.44	34	0.94	9	0.25	-43.2%	
Florida	3,213	1.56	917	0.44	2,978	1.50	875	0.44	0.0%	
Georgia	1,641	1.46	445	0.40	1,493	1.37	416	0.38	-5.0%	
Hawaii	138	1.33	44	0.43	107	1.04	42	0.41	-4.7%	
Idaho	252	1.60	71	0.45	232	1.52	78	0.51	13.3%	
Illinois	1,248	1.16	439	0.41	1,043	0.98	362	0.34	-17.1%	
Indiana	898	1.26	224	0.31	814	1.15	208	0.29	-6.5%	
Iowa	446	1.43	108	0.35	412	1.34	89	0.29	-17.1%	
Kansas	416	1.38	109	0.36	385	1.30	145	0.49	36.1%	
Kentucky	864	1.80	212	0.44	826	1.74	200	0.42	-4.5%	
Louisiana	993	2.19	375	0.83	912	2.02	338	0.75	-9.6%	
Maine	183	1.22	66	0.44	155	1.06	43	0.30	-31.8%	
Maryland	614	1.09	178	0.32	591	1.07	152	0.28	-12.5%	
Massachusetts	434	0.79	155	0.28	363	0.67	124	0.23	-17.9%	
Michigan	1,087	1.04	304	0.29	980	0.96	282	0.28	-3.4%	
Minnesota	510	0.89	173	0.30	456	0.79	135	0.23	-23.3%	
Mississippi	884	2.04	316	0.73	783	1.79	266	0.61	-16.4%	
Missouri	992	1.43	333	0.48	960	1.41	310	0.45	-6.2%	
Montana	277	2.45	105	0.93	229	2.12	91	0.84	-9.7%	
Nebraska	256	1.32	77	0.40	208	1.09	55	0.29	-27.5%	
Nevada	373	1.68	118	0.53	324	1.56	107	0.51	-3.8%	
New Hampshire	129	0.96	34	0.25	139	1.07	45	0.35	40.0%	
New Jersey	724	0.95	201	0.26	590	0.80	154	0.21	-19.2%	
New Mexico	413	1.54	132	0.49	366	1.39	105	0.40	-18.4%	
New York	1,332	0.97	377	0.28	1,231	0.92	341	0.25	-10.7%	
North Carolina	1,676	1.62	497	0.48	1,433	1.41	423	0.42	-12.5%	
North Dakota	111	1.42	53	0.68	104	1.33	47	0.60	-11.8%	
Ohio	1,255	1.13	389	0.35	1,190	1.10	356	0.33	-5.7%	
Oklahoma	766	1.61	223	0.47	749	1.54	244	0.50	6.4%	
Oregon	455	1.31	148	0.43	416	1.24	136	0.41	-4.7%	
Pennsylvania	1,491	1.37	504	0.46	1,468	1.36	496	0.46	0.0%	
Rhode Island	69	0.80	22	0.25	65	0.79	25	0.31	24.0%	
South Carolina	1,077	2.11	464	0.91	920	1.85	403	0.81	-11.0%	
South Dakota	146	1.62	44	0.49	119	1.32	34	0.38	-22.4%	
Tennessee	1,211	1.70	377	0.53	1,035	1.49	327	0.47	-11.3%	
Texas	3,466	1.42	1,333	0.55	3,382	1.44	1,269	0.54	-1.8%	
Utah	299	1.11	56	0.21	275	1.06	46	0.18	-14.3%	
Vermont	66	0.86	22	0.29	73	1.00	12	0.16	-44.8%	
Virginia	1,027	1.25	303	0.37	824	1.00	294	0.36	-2.7%	
Washington	571	1.00	195	0.34	521	0.94	182	0.33	-2.9%	
West Virginia	432	2.10	138	0.67	380	1.83	128	0.62	-7.5%	
Wisconsin	756	1.27	314	0.53	605	1.05	208	0.36	-32.1%	
Wyoming	150	1.60	50	0.53	159	1.68	67	0.71	34.0%	
U.S.	41,259	1.36	13,041	0.43	37,261	1.25	11,773	0.40	-7.0%	
Puerto Rico	452	2.35	142	0.74	399	2.08	132	0.69	-6.8%	

Source: Fatality Analysis Reporting System (FARS) 2007 Final and 2008 ARF Files, FHWA



## **PART I**

### **Appendix B**

### **Montana Data**

#### **CONTENTS**

1. Court Data on charges and convictions
2. Court Data on fines, fees, and other costs
3. Motor Vehicle Division data on convictions
4. Department of Corrections' data: probation and parole



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### **Introduction & Methodology**

This report provides summary information on driving under the influence (DUI) and related charges filed in Montana courts<sup>1</sup> after January 1, 2008. The tables in this report are based on charge information extracted from the court central data repository – a database of cases and charges filed<sup>2</sup> in Montana courts of limited jurisdiction (COLJ) and district courts. The court central data repository is maintained by the Office of Court Administrator.

In this report, a DUI charge is any charge filed under 61-8-401, MCA - **Driving Under the Influence of Alcohol** , 61-8-406, MCA - **Operating with Alcohol Concentration of 0.08% BAC or Greater**, and 61-8-410, MCA - **Operating with Alcohol Concentration of 0.02% BAC under 21 years of age**. These charges were examined in an attempt to answer the following questions posed by legislative services staff.

1. How many and what specific DUI charges<sup>3</sup> are filed in Montana courts?
2. How many DUI charges are amended after the initial filing of the DUI charge?
3. If reported, what is the average BAC (blood-alcohol concentration) level for each DUI-related offense?
4. What is the typical disposition (conviction, acquittal, dismissal, deferral) of a DUI charge in Montana?

### **Charges Filed**

#### **How many and what specific DUI charges are filed in Montana courts?**

Between January 1, 2008 and December 31, 2009, 18,553 DUI-related charges were filed in Montana courts between January 1, 2008 and December 31, 2009. Of these charges, 17,071 (92%) were filed in courts of limited jurisdiction and 1,481 of the charges (8%) were filed in district courts.

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<sup>1</sup> Cases for the Teton County Justice Court are not included in the report

<sup>2</sup> Felony DUI's are included in COLJ counts only if the felony charge was amended to a misdemeanor and the case adjudicated in the court of limited jurisdiction.

<sup>3</sup> Not infrequently, a prosecutor will file charges under both 61-8-401 and 61-8-406, MCA, and will dismiss one charge upon a conviction of the other. Only one charge per case was allowed with the charge resulting in a conviction retained when possible.

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**Table 1** below lists DUI-related charges as originally filed in Montana courts of limited jurisdiction and district courts.

**Table 1: DUI Related Charges Filed in Montana Courts (January 1, 2008 - December 31, 2009)**

Statute	Description	COLJ	District Courts
<b>61-8-401(1)(a) [1st]</b>	Driving Under the Influence of Alcohol - First	11425	359
<b>61-8-401(1)(a) [2nd]</b>	Driving Under the Influence of Alcohol - Second	2409	77
<b>61-8-401(1)(a) [3rd]</b>	Driving Under the Influence of Alcohol - Third	586	34
<b>61-8-401(1)(a) [4th+]</b>	Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	49	898
<b>61-8-401(1)(b) [1st]</b>	Driving Under the Influence of Any Drug (Narcotic, etc) - First	160	10
<b>61-8-401(1)(b) [2nd]</b>	Driving Under the Influence of Any Drug (Narcotic, etc.) - Second	15	
<b>61-8-401(1)(b) [3rd]</b>	Driving Under the Influence of Any Drug (Narcotic, etc.) - Third	8	1
<b>61-8-401(1)(b) [4th+]</b>	Driving Under the Influence of Any Drug (Narcotic, etc.) - Fourth		12
<b>61-8-401(1)(c) [1st]</b>	Driving Under the Influence of Non-Narcotic Drug - First	25	1
<b>61-8-401(1)(c) [2nd]</b>	Driving Under the Influence of Non-Narcotic Drug - Second	1	
<b>61-8-401(1)(c) [3rd]</b>	Driving Under the Influence of Non-Narcotic Drug - Third	1	1
<b>61-8-401(1)(c) [4th+]</b>	Driving Under the Influence of Non-Narcotic Drug - Fourth		2
<b>61-8-401(1)(d) [1st]</b>	Driving Under the Influence of Alcohol and Drugs - First	79	3
<b>61-8-401(1)(d) [2nd]</b>	Driving Under the Influence of Alcohol and Drugs - Second	23	3
<b>61-8-401(1)(d) [3rd]</b>	Driving Under the Influence of Alcohol and Drugs - Third	4	
<b>61-8-401(1)(d) [4th+]</b>	Driving Under the Influence of Alcohol and Drugs - Fourth	5	11
<b>DUI Subtotal</b>		<b>14790</b>	<b>1412</b>
<hr/>			
<b>61-8-406(1)(a) [1st]</b>	Operating with Alcohol Concentration of 0.08% BAC or Greater - First	1455	37
<b>61-8-406(1)(a) [2nd]</b>	Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	166	6
<b>61-8-406(1)(a) [3rd]</b>	Operating with Alcohol Concentration of 0.08% BAC or Greater - Third	42	1
<b>61-8-406(1)(a) [4th]</b>	Operating with Alcohol Concentration of 0.08% BAC or Greater - Fourth		21
<b>BAC Subtotal</b>		<b>1663</b>	<b>65</b>
<hr/>			
<b>61-8-406(1)(b) [1st]</b>	Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First	25	
<b>61-8-406(1)(b) [3rd]</b>	Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - Third	1	
<b>Commercial Subtotal</b>		<b>26</b>	
<hr/>			
<b>61-8-410(1) [1st]</b>	Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	572	4
<b>61-8-410(1) [2nd]</b>	Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second	20	
<b>BAC Under 21 Subtotal</b>		<b>592</b>	<b>4</b>
<hr/>			
<b>Grand Total</b>	<b>DUI Charges Filed January 1, 2008 - December 31, 2009</b>	<b>17071</b>	<b>1481</b>

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**Amended Charges**

**How many DUI charges are amended after the initial filing of the DUI charge?**

Between January 1, 2008 and December 31, 2009, 18,553 DUI-related charges were filed in Montana courts. Of these charges, 14,538 (78%) have been disposed. Of the 14,538 disposed charges 4,942 (34%) were amended after the initial filing of the DUI charge. Most commonly the charge was amended to a different DUI charge, e.g., a charge filed under 61-8-401 (generic DUI) is amended to a charge under 61-8-406 (specific BAC). DUI-related charges were amended to a non-DUI charge in 12% of the cases.

**Table 2** below provides a summary of charge counts, overall percentage and a description of the most common amending charge.

**Table 2: Amended Statute Summary**

Amended Statute Summary	Charge Count	Percent
<b>Total DUI Charges Disposed (January 1, 2008 – December 31, 2009)</b>	14538	100%
<b>Number of DUI charges amended from original DUI charge.</b>	4942	34%
<b>Types of Charges Amended</b>		
<b>Number of DUI charges amended to a different DUI charge</b>	3136	22%
<i>The most common DUI charge amended to a different DUI charge was amending 61-8-401(1)(a)[1<sup>st</sup>] <b>Driving Under the Influence of Alcohol – First</b> to 61-8-406(1)(a)[1<sup>st</sup>] – <b>Operating with Alcohol Concentration of 0.08% BAC or Greater – First</b> – 2296 amended charges</i>		
<b>Number of DUI charges amended to a non-DUI criminal offense. (Title 45)</b>	876	6%
<i>DUI charge amendments to a criminal charge were most commonly to 45-5-208 <b>Negligent Endangerment</b> – 827 amended charges</i>		
<b>Number of DUI charges amended to non-DUI traffic offense (Title 61)</b>	930	6%
<i>DUI charge amendments to a non-DUI traffic charge were most commonly to 61-8-301(1)(a) <b>Reckless Driving</b> – 833 amended charges.</i>		

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**Blood Alcohol Concentration (BAC)**

**If reported, what is the average BAC (blood-alcohol concentration) level for each DUI-related offense?**

Some Montana courts record the blood alcohol concentration (BAC) level of the defendant if provided to the court. Of the 18,553 DUI-related charges filed in Montana courts during the period between January 1, 2008 and December 31, 2009, the BAC was recorded in 4,806 cases (26%). **Table 3** below provides the average BAC for each DUI-related offense and the number of cases used to calculate the average. **Table 4** on the following page provides a ranking of the highest average BAC by violation.

**Table 3: BAC levels recorded for defendants in DUI-related cases charged in Montana Courts  
January 1, 2008 - December 31, 2009 classified by violation**

DUI/BAC Violations	AVG BAC	# Cases
<b>Commercial</b>	<b>0.081</b>	<b>10</b>
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First	0.081	10
<b>First Offense</b>	<b>0.159</b>	<b>3820</b>
Driving Under the Influence of Alcohol - First	0.161	3155
Driving Under the Influence of Alcohol and Drugs - First	0.191	4
Driving Under the Influence of Any Drug (Narcotic, etc) - First	0.151	2
Operating with Alcohol Concentration of 0.08% BAC or Greater - First	0.150	659
<b>Second Offense</b>	<b>0.175</b>	<b>621</b>
Driving Under the Influence of Alcohol - Second	0.175	536
Driving Under the Influence of Alcohol and Drugs - Second	0.141	4
Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	0.175	81
<b>Third Offense</b>	<b>0.182</b>	<b>123</b>
Driving Under the Influence of Alcohol - Third	0.182	108
Operating with Alcohol Concentration of 0.08% BAC or Greater - Third	0.197	15
<b>Fourth or Subsequent Offense</b>	<b>0.197</b>	<b>14</b>
Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	0.197	14
<b>Under 21 - First Offense</b>	<b>0.078</b>	<b>209</b>
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	0.078	209
<b>Under 21 - Second Offense</b>	<b>0.072</b>	<b>9</b>
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second	0.072	9

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**Table 4: BAC Ranking (Highest to Lowest) of Court Recorded BAC**

Rank (Highest to Lowest)	DUI/BAC Violation	AVG BAC	# Cases
1	Fourth or Subsequent Offense	0.197	14
2	Third Offense	0.182	123
3	Second Offense	0.175	621
4	First Offense	0.159	3820
5	Commercial DUI Offense	0.081	10
6	Under 21 - First Offense	0.078	209
7	Under 21 - Second Offense	0.072	9

**Disposition<sup>i</sup> of DUI-related Charges**

**What is the typical disposition (conviction, acquittal, dismissal, deferred) of a DUI case in Montana?**

Between January 1, 2008 and December 31, 2009, 14,538 DUI-related charges were filed and disposed in Montana Courts. Of these disposed charges, 12,732 (88%) were DUI specific charges. **Table 5** below lists the final DUI specific charge and the disposition. For the purposes of this report, a conviction is finding of guilty regardless of whether the finding of guilt was established through a plea, bench trial or jury trial. An acquittal is a specific finding of not guilty by a judge or a jury. A dismissal is a dismissal of the charge by the prosecutor or judge prior to a finding of guilty or not guilty. A deferral is a prosecutor action and does not include a deferred imposition of sentence. Deferred impositions of sentence (125 charges) were counted as a conviction for this report.

**Table 6** beginning on page 6 lists the final disposition for all 14,538 DUI-related charges and amended charges.

**Table 5: DUI-specific charges and manner of disposition - January 1, 2008 - December 31, 2009**

Final Disposition DUI/BAC Charges	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
DUI/BAC - 1 <sup>st</sup> Offense	63	8660	24	769	9516	91.0%
DUI/BAC - 1st – Commercial Offense		19		4	23	82.6%
DUI/BAC - 1st Under 21 Offense	1	581	8	52	642	90.5%
DUI/BAC - 2 <sup>nd</sup> Offense	17	1472	3	183	1675	87.9%
DUI/BAC - 2nd – Commercial Offense		1			1	100.0%
DUI/BAC - 2nd Under 21 Offense		15		1	16	93.8%
DUI/BAC - 3 <sup>rd</sup> Offense	1	302	1	79	383	78.9%
DUI/BAC - 4th or Subsequent Offense	1	419	2	54	476	88.0%
<b>Total DUI Charge Dispositions</b>	<b>83</b>	<b>11469</b>	<b>38</b>	<b>1142</b>	<b>12732</b>	<b>90.1%</b>
<b>Disposition Percentage</b>	<b>0.7%</b>	<b>90.1%</b>	<b>0.3%</b>	<b>9.0%</b>		

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**Table 6: Final Disposition of DUI Charges filed/amended - January 1, 2008 - December 31, 2009**

Final Disposition DUI/BAC Charges as Amended	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
<b>Criminal Total</b>		<b>842</b>	<b>4</b>	<b>30</b>	<b>876</b>	<b>96.1%</b>
Assault with a Weapon - Felony				1	1	0.0%
Criminal Endangerment - Felony		27			27	100.0%
Criminal Mischief		1		1	2	50.0%
Criminal Possession of Dangerous Drugs - Marijuana (Less than 60 grams)		1			1	100.0%
Disorderly Conduct		1			1	100.0%
Negligent Endangerment		795	4	28	827	96.1%
Negligent Vehicular Assault (Bodily Injury) - Misdemeanor		1			1	100.0%
Obstructing a Peace Officer or Other Public Servant		2			2	100.0%
Possessing Intoxicating Substances while under the age of 21 (Over 18)		8			8	100.0%
Possessing Intoxicating Substances while under the age of 21 (under age 18) - First		6			6	100.0%
<b>DUI/BAC - 1<sup>st</sup> Totals</b>	<b>63</b>	<b>8660</b>	<b>24</b>	<b>769</b>	<b>9516</b>	<b>91.0%</b>
Driving Under the Influence of Alcohol - First	52	4716	22	676	5466	86.3%
Driving Under the Influence of Alcohol and Drugs - First	1	33		5	39	84.6%
Driving Under the Influence of Any Drug (Narcotic, etc) - First	4	57		29	90	63.3%
Driving Under the Influence of Non-Narcotic Drug - First		10		5	15	66.7%
Operating with Alcohol Concentration of 0.08% BAC or Greater - First	6	3844	2	54	3906	98.4%
<b>DUI/BAC - 1st – Commercial Totals</b>		<b>19</b>		<b>4</b>	<b>23</b>	<b>82.6%</b>
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First		19		4	23	82.6%
<b>DUI/BAC - 1st Under 21 Totals</b>	<b>1</b>	<b>581</b>	<b>8</b>	<b>52</b>	<b>642</b>	<b>90.5%</b>
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	1	581	8	52	642	90.5%
<b>DUI/BAC - 2<sup>nd</sup> Totals</b>	<b>17</b>	<b>1472</b>	<b>3</b>	<b>183</b>	<b>1675</b>	<b>87.9%</b>
Driving Under the Influence of Alcohol - Second	16	1246	3	166	1431	87.1%
Driving Under the Influence of Alcohol and Drugs - Second		10		1	11	90.9%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Second		6		3	9	66.7%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	1	210		13	224	93.8%

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Final Disposition DUI/BAC Charges as Amended	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
<b>DUI/BAC - 2nd – Commercial Totals</b>		<b>1</b>			<b>1</b>	<b>100.0%</b>
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - Second		1			1	100.0%
<b>DUI/BAC - 2nd Under 21 Totals</b>		<b>15</b>		<b>1</b>	<b>16</b>	<b>93.8%</b>
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second		15		1	16	93.8%
<b>DUI/BAC - 3<sup>rd</sup> Totals</b>	<b>1</b>	<b>302</b>	<b>1</b>	<b>79</b>	<b>383</b>	<b>78.9%</b>
Driving Under the Influence of Alcohol - Third	1	262	1	72	336	78.0%
Driving Under the Influence of Alcohol and Drugs - Third		1			1	100.0%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Third		6		4	10	60.0%
Driving Under the Influence of Non-Narcotic Drug - Third				1	1	0.0%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Third		33		2	35	94.3%
<b>DUI/BAC - 4<sup>th</sup> or Subsequent Totals</b>	<b>1</b>	<b>419</b>	<b>2</b>	<b>54</b>	<b>476</b>	<b>88.0%</b>
Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	1	398	2	49	450	88.4%
Driving Under the Influence of Alcohol and Drugs - Fourth		5		1	6	83.3%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Fourth		6		1	7	85.7%
Driving Under the Influence of Non-Narcotic Drug - Fourth				1	1	0.0%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Fourth		10		2	12	83.3%
<b>Traffic - Non DUI Totals</b>		<b>914</b>	<b>5</b>	<b>11</b>	<b>930</b>	<b>98.3%</b>
Basic Rule - Reasonable and Prudent		2			2	100.0%
Careless Driving		82			82	100.0%
Driving a Motor Vehicle while Privilege to do so is Suspended or Revoked		2			2	100.0%
Driving without a valid Driver License - Expired less than 180 days		1			1	100.0%
Fail to Give Notice of Accident By Quickest Means/Apparent Damage over \$500		1			1	100.0%
Fail to Have 2 Headlamps Properly Operating on Motor Vehicle				1	1	0.0%
Fail/Have Child Under 6 years old and less than 60 lbs Properly Restrained		1			1	100.0%
Fleeing from or Eluding Peace Officer		1			1	100.0%
Habitual Offender Operating a Motor Vehicle		1			1	100.0%

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Final Disposition DUI/BAC Charges as Amended	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
Reckless Driving		819	5	10	834	98.2%
Speeding on Non-Interstate - Exceeding Day Limit of 70 MPH		2			2	100.0%
Unlawful Possession of Open Alcoholic Beverage Container in Motor Vehicle on Highway		1			1	100.0%
Violation of Motor Carrier Standards - First		1			1	100.0%
<b>Grand Total</b>	<b>83</b>	<b>13225</b>	<b>47</b>	<b>1183</b>	<b>14538</b>	<b>91.0%</b>
<b>Percentage</b>	<b>0.6%</b>	<b>91.0%</b>	<b>0.3%</b>	<b>8.1%</b>	<b>100%</b>	

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<sup>1</sup> A one-to-one comparison of court dispositions to convictions reported by Department of Justice, Motor Vehicle Division (DOJ-MVD) is not possible because charges filed in Montana courts may include drivers licensed out-of-state; conversely, DOJ-MVD records include convictions for Montana drivers charged and convicted with violations out-of-state. Further, this report only includes charges filed after January 1, 2008.

## **Introduction & Methodology**

This report provides summary information on court<sup>1</sup> fines, fees and costs assessed, allocated and paid by defendants convicted of a driving under the influence (DUI) offense in Montana.

The information in this report is based on an analysis of 13,340 court cases and corresponding financial records where a DUI conviction occurred and fines, fees and/or costs were ordered by the sentencing court between January 1, 2008 and December 31, 2009. The information was extracted from the court central data repository maintained by the Office of Administrator. This report was prepared at the request of Pat Gervais, Legislative Fiscal Analyst.

In this report a DUI charge is any final charge under 61-8-401, MCA – **Driving Under the Influence of Alcohol or Drugs**, 61-8-406, MCA – **Operating with Alcohol Concentration of 0.08% or Greater**, and 61-8-410, MCA – **Operating with Alcohol Concentration of 0.02% BAC under 21 years of age**. DUI charges may be further categorized in this report by offense count, i.e., 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or subsequent offense.

## **Court fines, fees and costs imposed on DUI offenders.**

**Table 1** provides in the broadest terms a summary by court jurisdiction of cases, court ordered fines, fees and costs, adjustments, payments to date and outstanding balances for the 13,340 DUI cases reviewed for this report. Court ordered fines represent the largest percentage (85%) of the court ordered fines, surcharges and costs. However, prioritization for the payment of fines is a low priority and, therefore, statutorily mandated surcharges and court costs are typically paid before fines. **Table 2** on page two provides a breakdown of court ordered fines, surcharges and costs and notes the current prioritization for disbursements of funds when payments are made based on the allocation parameters set forth in 46-18-251, MCA.

**Table 1: Status Summary of Court Ordered Fines, Surcharges and Costs (CY2008 and CY2009)**

Court Jurisdiction	DUI Cases CY2008-CY2009	Total Court Ordered Fines/Surcharges/Costs	Adjustments (credit for time served, suspended sentences, etc.)	Defendant Paid to date 3/15/2010	Outstanding
City	2,170	\$2,482,698.29	-\$882,700.99	-\$782,314.76	\$817,682.54
District	742	\$884,155.88	-\$208,096.05	-\$112,626.27	\$563,433.56
Justice	5,815	\$4,611,214.10	-\$720,705.95	-\$2,540,996.05	\$1,349,512.10
Municipal	4,613	\$4,679,336.49	-\$1,064,413.07	-\$1,924,200.58	\$1,690,722.84
<b>Total</b>	<b>13,340</b>	<b>\$12,657,404.76</b>	<b>-\$2,875,916.06</b>	<b>-\$5,360,137.66</b>	<b>\$4,421,351.04</b>

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<sup>1</sup> Cases for Teton County Justice Court are not included in this report.

Montana Supreme Court, Office of the Court Administrator  
Draft Summary Report on DUI Fines, Fees and Costs

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As noted, fines, fees and costs are assessed by the sentencing Judge in accordance with current statute. Table 2 provides an itemization of the current priority settings of DUI court ordered fines, surcharges and costs.

**Table 2: Prioritized DUI Court Ordered Fines/Surcharges/Costs by Fund Description (CY2008-CY2009)**

Description	Statute Reference	Amount	Total Court Ordered	Payment Priority
<b>Restitution<sup>2</sup> (50% initial payment)</b>	46-18-251	Variable	\$314,151.15	1
<b>Misdemeanor Surcharge</b>	46-18-236	\$15	\$194,235.00	2
<b>Felony Surcharge</b>	46-18-236	\$20+	\$18,091.00	2
<b>State - Court Technology</b>	3-1-317	\$10	\$133,415.00	3
<b>Victim/Witness Surcharge</b>	46-18-236	\$49	\$623,605.00	4
<b>Victim/Witness Administration Fee</b>	46-18-236	\$1	\$10,837.00	5
<b>State - MT Law Enforcement Academy</b>	3-1-318	\$10 (Limited Courts only)	\$125,320.00	6
<b>State - Public Defender<sup>3</sup></b>	46-8-113	\$150 for each misd, \$500 for each felony	\$12,510.00	7
<b>Local - Costs (prosecution, community service, supervision, DUI treatment courts) assessed</b>	46-18-232	Variable	\$427,216.08	8
<b>Fines</b>	46-18-231 and 46-18-233	See Fines Table 3	\$10,798,024.53	9
<b>Total DUI Fines/Surcharges/Costs Ordered (CY2008-CY2009)</b>			\$12,657,404.76	

### Fines

Minimum and maximum fines and jail time for DUI convictions are set in statute. However, the sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge takes into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

It's also important to note that many defendants establish time pay agreements with the court and the final reconciliation of sentence may take many years.

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<sup>2</sup> This figure is for misdemeanor restitution only. Restitution in felony actions is managed by the Department of Corrections.

<sup>3</sup> In 2009 SB 263 was passed requiring a mandatory public defender cost (if applicable) to be assessed against a convicted defendant of \$150 for each misdemeanor case and \$500 for each felony case. These costs are typically assessed in a judgment or separate sentencing order and forwarded to the OPD for collection. These costs are not typically tracked through the general ledger accounting program of the court.

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**Montana Supreme Court, Office of the Court Administrator  
Draft Summary Report on DUI Fines, Fees and Costs**

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**Table 3** provides the median fine assessed by DUI category and provides the minimum and maximum fine and jail time allowed in statute for the offense.

**Table 3: Median Fine Assessed by DUI Offense Category (CY2008-CY2009)**

DUI Offense Category	# Cases	Median Fine Assessed	Min Fine	Max Fine	Min Jail	Max Jail	Penalty Section
DUI/BAC - 1 <sup>st</sup>	10,069	\$450	\$300	\$1,000	24 Hrs.	6 Mo	61-8-714 & 61-8-722
DUI/BAC - 1st Commercial	20	\$600	\$300	\$1,000	24 Hrs.	6 Mo	61-8-722
DUI/BAC - 1st Under 21	690	\$210	\$100	\$500	0	0	61-8-410(2)
DUI/BAC - 2 <sup>nd</sup>	1,727	\$600	\$600	\$1,000	7 Days	6 Mo	61-8-714 & 61-8-722
DUI/BAC - 2nd Commercial	1	\$1,000	\$600	\$1,000	7 Days	6 Mo	61-8-722
DUI/BAC - 2nd Under 21	18	\$325	\$200	\$500	0	10 Days (over 18)	61-8-410(3)
DUI/BAC - 3 <sup>rd</sup>	355	\$1,000	\$1,000	\$5,000	30 Days	1 Yr	61-8-714 & 61-8-722
DUI/BAC - 3rd+ Under 21	2	\$255	\$300	\$500	24 Hrs. (over 18)	60 Days (over 18)	61-8-410(4)
DUI/BAC - 4th+	458	\$1,000	\$1,000	\$10,000	13 Mo	5 Yrs	61-8-731

**Allocation of Money Collected in DUI Actions**

Table 4 provides a chart of how money collected in DUI actions is distributed based on the jurisdiction of the court.

**Table 4: Allocation of Money Collected in DUI Actions by Jurisdiction**

Fine/Fee/Cost Category	City	Municipal	Justice	District	Reference
Fines	City	City	1/2 County - 1/2 State	State	46-18-231 or 46-18-233
Misdemeanor/Felony Surcharge	City	City	County	County	46-18-236
Victim/Witness Administration Fee	City	City	County	County	46-18-236
Victim/Witness Surcharge	City/State	City/State	County/State	County/State	46-18-236
Court Technology Surcharge	State	State	State	State	3-1-317
MLEA Surcharge	State	State	State	State	3-1-318
Costs	City	City	County	State	46-18-232 or 46-18-233

**Alcohol- Related Convictions Reported  
to the  
Records and Driver Control Bureau  
of the  
Montana Motor Vehicle Division  
(DUI / BAC / 0.02% BAC)**

<b>MVD RDC Statistics (Calendar Year)</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>			
DUI 1 <sup>st</sup> Offense	2823	2790	3009	2832	3250	3051	3043	2891				
DUI 2 <sup>nd</sup> or Subsequent Offense	834	1010	909	967	1055	1129	1135	1161				
BAC 1 <sup>st</sup> Offense	1215	1249	1395	1698	1722	2066	2202	2165				
BAC 2 <sup>nd</sup> or Subsequent Offense	213	204	174	179	247	244	235	264				
0.02% BAC (Under 21 YOA) 1 <sup>st</sup> Offense	460	438	429	361	415	302	343	246				
0.02% BAC 2 <sup>nd</sup> or Subsequent Offense	9	6	23	33	25	22	13	10				
Felony DUI	210	209	258	286	217	213	194	217				
<b>Total</b>	<b>5764</b>	<b>5906</b>	<b>6197</b>	<b>6356</b>	<b>6931</b>	<b>7027</b>	<b>7165</b>	<b>6954</b>				
Implied Consent	1146	1149	1073	1171	1083	1236	1382	1379				
P.A.S.T.	1092	1208	1213	1243	1330	1533	1445	1519				

# Active DUI Offenders Compared to Non-Active DUI Offenders

Population Date: 12/31/2009

	Total P&P Population	% of Total Population	Not on Active DUI Sentence		On Active DUI Sentence			
			Count by Location	% of Population	Count by Location	% of Population	Completed WATCh	Did not Complete
Interim Location	113	1.3%	104	1.3%	9	0.9%	4	5
Anaconda Probation and Parole	116	1.3%	98	1.3%	18	1.8%	16	2
Billings Probation and Parole	1,638	18.7%	1,475	19.0%	163	16.6%	127	36
Bozeman Probation and Parole	551	6.3%	473	6.1%	78	7.9%	70	8
Butte Probation and Parole	473	5.4%	405	5.2%	68	6.9%	63	5
Cut Bank Probation and Parole	100	1.1%	85	1.1%	15	1.5%	13	2
Dillon Probation and Parole	90	1.0%	80	1.0%	10	1.0%	7	3
Glasgow Probation and Parole	87	1.0%	79	1.0%	8	0.8%	7	1
Glendive Probation and Parole	91	1.0%	79	1.0%	12	1.2%	12	0
Great Falls Probation and Parole	1053	12.1%	969	12.5%	84	8.5%	74	10
Hamilton Probation and Parole	287	3.3%	256	3.3%	31	3.2%	28	3
Hardin Probation and Parole	92	1.1%	69	0.9%	23	2.3%	21	2
Havre Probation and Parole	203	2.3%	177	2.3%	26	2.6%	24	2
Helena Probation and Parole	705	8.1%	602	7.8%	103	10.5%	99	4
Kalispell Probation and Parole	896	10.3%	818	10.5%	78	7.9%	71	7
Lewistown Probation and Parole	84	1.0%	76	1.0%	8	0.8%	8	0
Libby Probation and Parole	169	1.9%	148	1.9%	21	2.1%	20	1
Livingston Probation and Parole	64	0.7%	58	0.7%	6	0.6%	5	1
Miles City Probation and Parole	158	1.8%	132	1.7%	26	2.6%	24	2
Missoula Probation and Parole	1236	14.1%	1113	14.4%	123	12.5%	106	17
Polson Probation and Parole	320	3.7%	276	3.6%	44	4.5%	34	10
Shelby Probation and Parole	69	0.8%	60	0.8%	9	0.9%	9	0
Sidney Probation and Parole	90	1.0%	74	1.0%	16	1.6%	15	1
Thompson Falls Probation and Parole	53	0.6%	49	0.6%	4	0.4%	3	1
Total	8,738		7,755		983		860	123
			89%		11%		87%	13%



## **Part I**

### **Appendix C**

#### **Department of Corrections' Primer on WATCH**



# WATCh

## Warm Springs Addictions Treatment and Change

*Prepared by the Montana Department of Corrections  
December 2009*

*Warm Springs*



*Glendive*

The Warm Springs Addictions Treatment and Change (WATCh) program in Warm Springs and Glendive is the Department of Corrections' residential felony DUI treatment program.

WATCh is a six-month, intensive, cognitive behavioral based modified therapeutic community, which assists offenders ("family members") to develop those skills necessary to create pro-social change, reduce anti-social thinking, criminal behavior patterns and the negative effects of chemical addictions while integrating more fully into society.

### **Goals**

The WATCh program has as one of its primary goals the operation of a safe, humane program that provides a place of custody and programs and services that offer family members opportunities for positive change. Specific goals act as benchmarks for the measurement of the services provided:

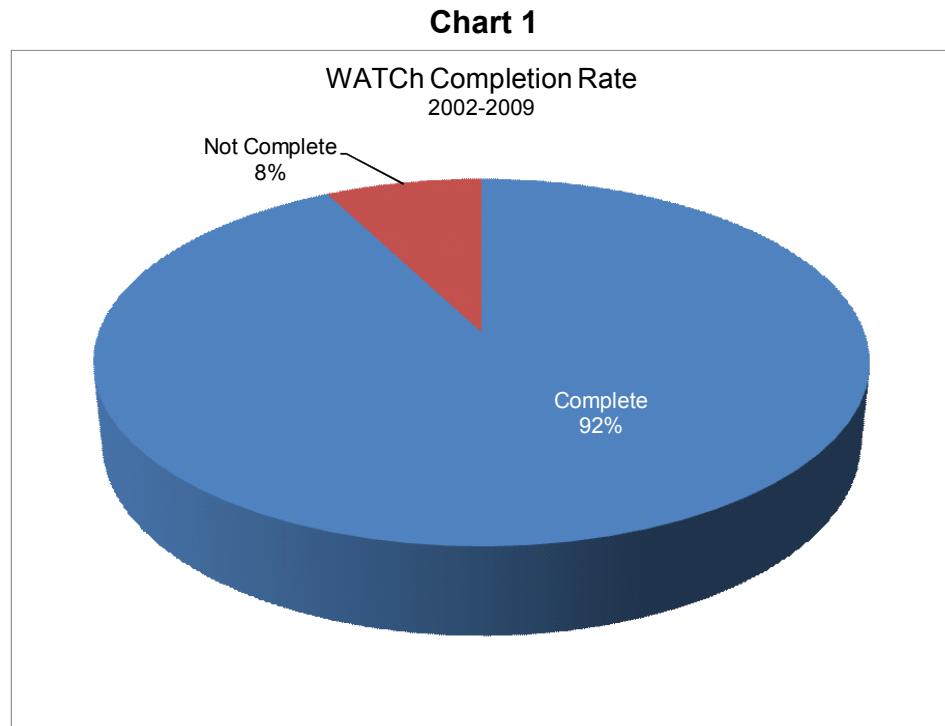
- To increase the offenders' level of knowledge of chemical dependency and the consequences of drinking and driving
- To provide offenders with treatment and associated services necessary to create pro-social change, reduce anti-social thinking, criminal behavior patterns and the negative effects of chemical dependency particularly as it relates to drinking and driving
- To promote responsibility and accountability of offenders by providing an experiential pro-social community environment
- To decrease the incidences of further DUI and other drug-related convictions

## Description

Operated by Community Counseling and Correctional Services Inc. under contract with the department, the program serves offenders sentenced under 61-8-731 MCA. That law allows a judge to sentence a person convicted a fourth or subsequent time of drunken driving to the Department of Corrections for placement in an appropriate correctional facility or program for a term of 13 months. The law also states that a court "shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the Department of Corrections, the remainder of the 13-month sentence must be served on probation." Judges cannot sentence someone directly to WATCh. Judges can recommend placement there and the department tries to comply.

WATCh West, located in Warm Springs, is a 115-bed facility for male offenders. It opened in February 2002. WATCh East, located at Glendive in the former Eastmont facility, is a 50-bed program for both females and males. It opened in February 2005.

Of the 2,399 men and women admitted to the program since it began, 2,237 have been discharged. Ninety-two percent of those (2,066) completed the treatment program before they left (Chart 1). Another 171 did not for a variety of reasons, including disciplinary action, voluntary resignation, medical reasons or transfer to the other WATCh facility. Those who quit voluntarily or faced discipline because of behavior problems returned to prison.



Generally, all offenders convicted of a fourth felony DUI are accepted. However, several exclusions may apply, such as multiple convictions requiring a higher supervision level, medical conditions impacting an offender's ability to participate, and cognitive impairments. A screening committee determines acceptance. The Warm Springs committee consists of WATCh staff members, an institutional probation and parole officer, an Anaconda/Deer Lodge County law enforcement representative, a representative of Montana State Hospital, and others as the contractor and department deem appropriate. The Glendive committee consists of a department employee, the program administrator or designee appointed by the contractor, a law enforcement officer appointed by the Dawson county sheriff and the Glendive police department, a Glendive resident appointed by the city council, and a member of the public who lives in the subdivisions adjacent to the facility and is appointed by the city council.

The average stay in the WATCh program is six months. The daily cost for an offender at WATCh West is \$87.92 and the daily cost at WATCh East is \$110.53. The cost of an average stay at WATCh West is \$15,826 and the cost at WATCh East is \$19,895.

Programming at WATCh includes, but is not limited to chemical dependency programming, cognitive principles and restructuring, criminal thinking errors, family relationships and parenting, anger management, life skills and career development, victim issues and restorative justice, grief groups, men's issues, women's art workshops, co-dependency, negligent vehicular homicide group, Toastmasters, GED classes, community speakers bureau, and smudging and sweats.

## Components

### 1. Security is the top priority

Although WATCH is ostensibly a treatment program, it is still a correctional program and those individuals receiving treatment at the facility are still offenders. Therefore, public safety is of paramount concern for the program. CCCS has implemented the following security control features:

- 24-hour, 7-day a week security staff on-site
- Regular and random security searches of offenders and their living areas as well as common and treatment spaces
- Regular and random breathalyzer and urinalysis screening and testing
- Perimeter fencing
- 21 security cameras of the interior and exterior areas. Cameras supplement, not supplant, security personnel.

### 2. Programming intensity and daily schedule

Family members in the WATCH program receive extensive and varied programming seven days a week. Family members are also responsible to complete individual assignments, participate in recreational and religious opportunities, complete therapeutic tasks and participate in other projects as determined by their respective treatment team and family. The daily schedule provides for structured activities that are organized, consistent and routine, while still allowing individuals to have free time.

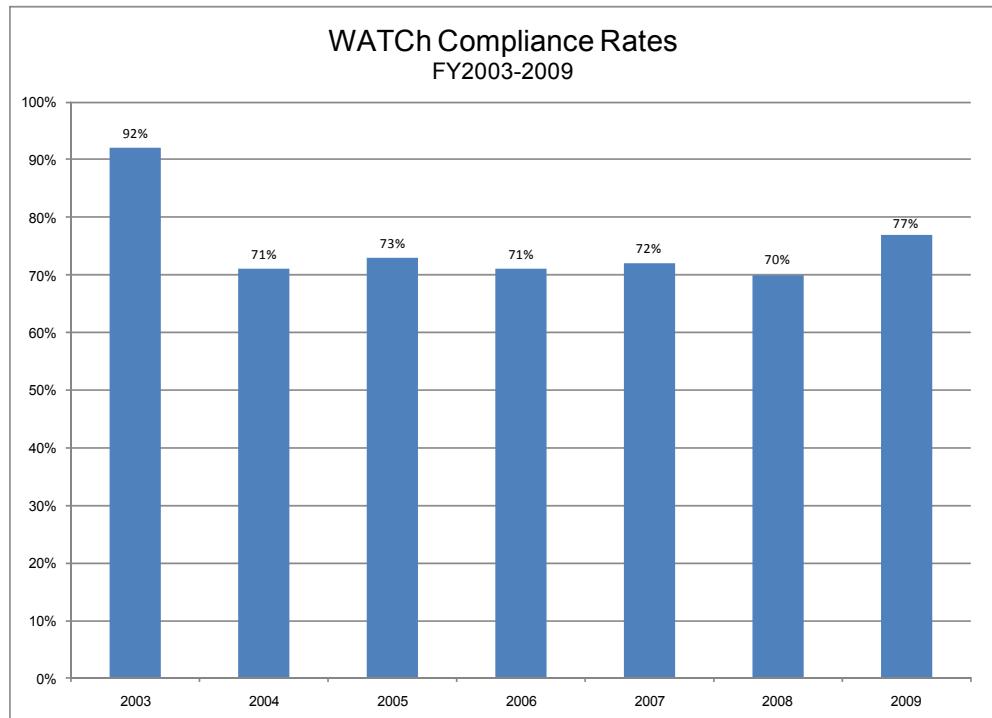
### 3. Program phases

The WATCH program includes three distinct phases. Each phase has specific requirements, as well as individual responsibilities and privileges. Family members may not progress through the phases without the endorsement of their respective treatment team.

## Success

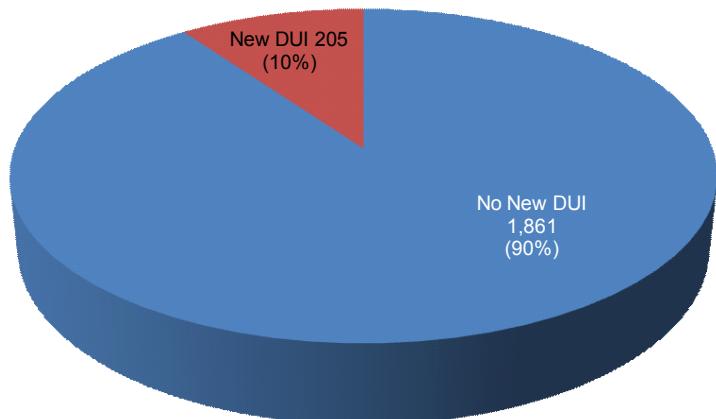
One measure of the effectiveness of any correctional program is monitoring what happens to offenders once they leave. WATCH program graduates consistently have maintained a compliance rate far above the 50 percent rate envisioned when the program was launched. After an initially high rate based on the relatively small number of graduates in 2003, the average compliancy rate has been 72.3 percent (Chart 2).

**Chart 2**



**Chart 3**

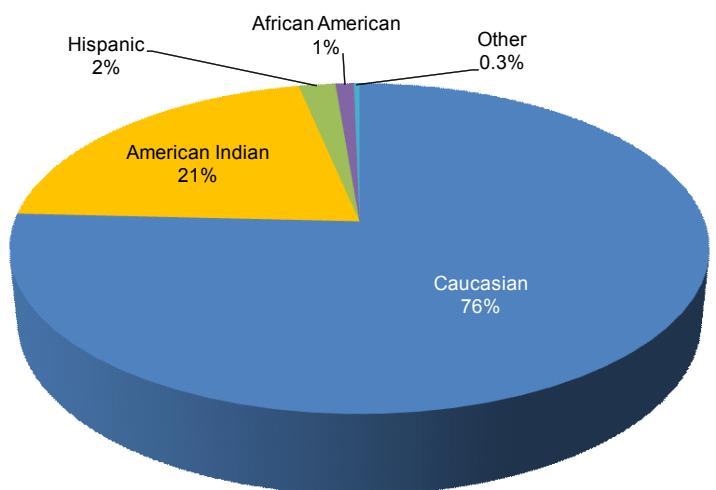
Percentage of WATCh Graduates Getting a New DUI  
2002-2009



For an alcohol treatment program such as WATCh, a key measure of success is how often graduates get another DUI. Of the 2,066 offenders graduating from the program, only 205 (10 percent) have been arrested and/or convicted of another instance of drunken driving (Chart 3).

**Chart 4**

WATCh Admissions by Ethnicity  
FY2002-2009



WATCh has an American Indian population that is disproportionately large compared to the general population. While about 6.5 percent of Montana's total residents are American Indian, about 21 percent of admissions to the WATCh program are Indians. (Chart 4)

**Table 1**

Age at admission	44.1
BAC at arrest	0.217
Number of DUIs	5.6
Number of misdemeanors	18.7
Number of felonies	2.6
Number of prior outpatient treatments	0.86
Number of prior inpatient treatments	1.3
Age of first alcohol use	13.8
Education grade level	11.9
Number of dependents	1.5
Admissions with psychiatric conditions	21.50%

Table 1 paints a picture of the average WATCh participant. The belief that those convicted of felony DUI tend to be relatively young drivers with modest blood-alcohol levels is wrong. The average age of those admitted to the WATCh program is 44 years and the average alcohol content of their blood when arrested was almost 0.22, or nearly three times the legal limit of .08.

**Table 2**

County	Admissions	Population
Yellowstone	297	142,348
Missoula	206	107,320
Gallatin	153	89,824
Flathead	147	88,473
Cascade	162	82,026
Lewis & Clark	136	60,925
Ravalli	71	40,664
Silver Bow	120	32,803
Lake	99	28,690
Lincoln	43	18,971
Hill	67	16,454
Park	25	16,189
Glacier	23	13,297
Big Horn	24	12,841
Jefferson	14	11,255
Fergus	17	11,195
Custer	4	11,149
Sanders	12	11,034
Roosevelt	1	10,089
Carbon	10	9,657
Richland	7	9,270
Rosebud	25	9,190
Beaverhead	19	8,903
Deer Lodge	27	8,843
Stillwater	8	8,687
Dawson	20	8,490
McCone	0	7,509
Powell	29	7,041
Valley	4	6,892
Blaine	7	6,491
Teton	10	5,992
Pondera	14	5,852
Chouteau	3	5,225
Toole	6	5,141
Broadwater	10	4,704
Musselshell	2	4,498
Phillips	0	3,904
Mineral	16	3,862
Sweet Grass	2	3,790
Sheridan	4	3,283
Granite	15	2,821
Fallon	0	2,716
Judith	2	2,014
Wheatland	1	2,010
Meagher	2	1,868
Liberty	0	1,725
Powder River	1	1,694
Madison	6	1,676
Daniels	0	1,643
Carter	0	1,234
Garfield	2	1,184
Golden Valley	1	1,081
Prairie	0	1,064
Wibaux	0	866
Treasure	3	637
Petroleum	1	436

Where WATCh participants come from is largely driven by population, with the greatest numbers coming from those counties with the largest number of residents. Table 2 shows the originating counties of WATCh admissions, listed in descending order of mid-2008 population estimated by the U.S. Census Bureau.

## Costs

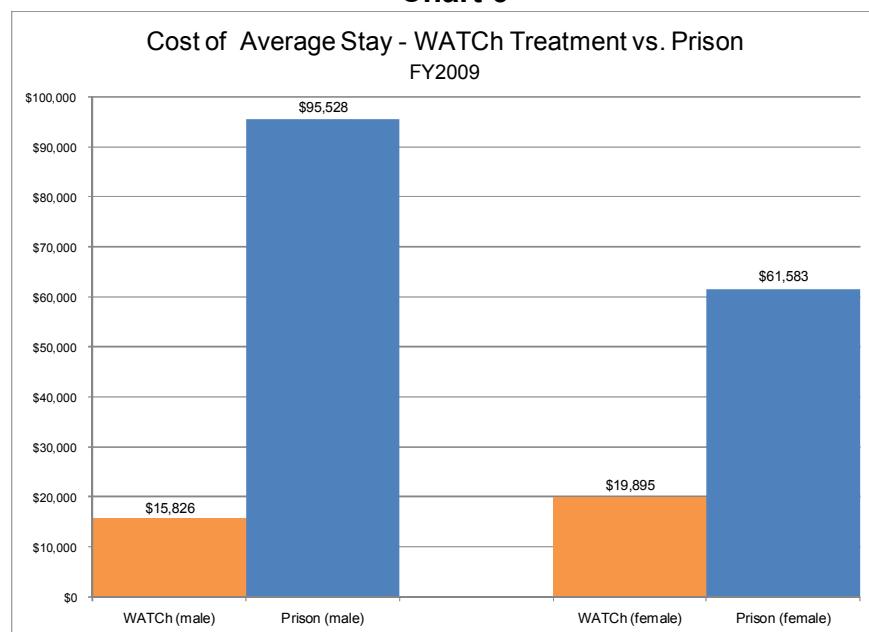
A six-month stay at WATCh is slightly less than half the cost of spending the entire 13-month sentence in prison. (Chart 5)

**Chart 5**



An average stay in prison for a male offender is six times more expensive than treatment in the WATCh West program. The average stay in prison for a female offender is three times more expensive than WATCh East. (Chart 6)

**Chart 6**





**Part I  
Appendix D**

**Guide to Committee Meetings**



# SJR 39 - Study of Montana's DUI Laws

## GUIDE TO COMMITTEE MEETINGS

### RECOMMENDATION SECTION 1

#### Prevent Underage Drinking

Rec. No.	Working Draft No.	LC No. for Session*	Short Title	Committee Vote
1	<a href="#">LClj01</a>	<a href="#">LC0365</a>	Revise driver's license sanctions for MIP offenses	11-1
2	<a href="#">LClj02</a>	<a href="#">LC0366</a>	Allow game wardens to issue MIP citations	11-1
3	<a href="#">LClj03</a>	<a href="#">LC0367</a>	Mandatory alcohol server and sales training	12-0
4	<a href="#">LClj15</a>	<a href="#">LC0377</a>	Authorize county social host liability ordinances	11-0

#### Meeting Guide

<i>Meeting date</i>	<i>Major agenda items</i>
Sept 29, 2009	Panel on Prevention and Education <ul style="list-style-type: none"><li>• John Lynch, Director, Dept. of Transportation</li><li>• Vicki Turner, Prevention Resource Center, DPHHS</li><li>• Cathy Kendall, Safe and Drug Free Schools, OPI</li><li>• Shauna Helfert, Alcohol Server and Sales Training</li><li>• Ron Ladue, Prevention in Indian County, Pikani Action Team, Blackfeet Nation</li><li>• Sgt. John Spencer, Alive-At-25 Program, MHP</li><li>• Brenda Simmons, Community Change Project</li></ul>
Feb 9, 2009	Work session to set priorities, request initial bill drafts
April 6, 2010	First public hearing on preliminary committee bill recommendations LClj01, LClj02, and LClj03
June 30, 2010	Youth Panel <ul style="list-style-type: none"><li>• Helena High School students</li><li>• Superior High School students</li></ul> Public hearing and work sessions on committee bill recommendations LClj01, LClj02, LClj03 Motion to draft LClj15
Sept 10, 2010	Final public hearing and work sessions on committee bill recommendations

## RECOMMENDATION SECTION 2

### Strengthen Treatment and Supervision

Rec. No.	Working Draft No.	LC No. for Session*	Short Title	Committee Vote
6	<a href="#">LClj06-B</a>	<a href="#">LC0371</a>	Revise jail sentencing to encourage DUI court participation	12-0
7	<a href="#">LClj08</a>	<a href="#">LC0373</a>	Strengthen ACT laws for treatment of DUI/BAC offenders	12-0
8	<a href="#">LClj10</a>	<a href="#">LC0374</a>	Increase potential jail time to 1 year for first and second DUI/BAC offenders	11-1

### Meeting Guide

<i>Meeting dates</i>	<i>Major agenda items and reports or exhibits</i>
Dec 18, 2009	<p>24/7 Sobriety Project informational briefing, Col. Mike Tooley, Montana Highway Patrol</p> <p>Panel: DUI courts, sentencing alternatives, and treatment</p> <ul style="list-style-type: none"> <li>• Judge Ulbright, Kalispell Municipal DUI Court</li> <li>• Judge Ozech, Missoula County Justice of the Peace</li> <li>• Jeff Kushner, Statewide Drug Court Coordinator, Office of Court Administrator</li> <li>• Joan Cassidy, Chemical Dependency Bureau Chief, DPHHS</li> <li>• Mike Ruppert, Executive Director, Boyd-Andrew Community Services</li> </ul>
Feb. 8, 2010	<p>Panel: Community-based treatment</p> <ul style="list-style-type: none"> <li>• Judge Mary Jane Knisely, Billings Municipal DUI Court</li> <li>• Rosalee Rupp, DUI Court Coordinator, Billings</li> <li>• Mona Sumner, Executive Director, Rimrock Foundation</li> </ul>
Feb 9, 2009	Work session to set priorities, request initial bill drafts
April 5, 2010	<p>Panel: 24/7 Pilot Project in Lewis &amp; Clark County</p> <ul style="list-style-type: none"> <li>• Steve Bullock, Montana Attorney General</li> <li>• Bill Mickelson, South Dakota's program</li> <li>• Leo Gallagher, Lewis &amp; Clark County Attorney</li> <li>• Jon Moog, Office of State Public Defender</li> <li>• Rep. Janna Taylor, HD 11, Dayton, sponsor of 24/7 bill in 2009 Session</li> <li>• Larry Epstein, Glacier County Attorney</li> </ul>
April 6, 2010	First public hearing on preliminary committee bill recommendations (LClj06-A, LClj06-B, LClj08, LClj10)
Sept 10, 2010	Final public hearing on committee bill recommendations (LClj06-A, LClj06-B, LClj08, LClj10)

## RECOMMENDATION SECTION 3

### Revise Criminal Procedures

Rec. No.	Working Draft No.	LC No. for Session*	Short Title	Committee Vote
10	<a href="#">LClj11</a>	<a href="#">LC0375</a>	Eliminate 5-year look back for counting prior misdemeanor DUI/BAC convictions	10-2
11	<a href="#">LClj17</a>	<a href="#">LC0378</a>	Authorize search warrants to obtain blood or breath tests in DUI/BAC cases	10-2
12	<a href="#">LClj04</a>	<a href="#">LC0368</a>	Establish statewide on-call judge for search warrants	8-4

### Meeting Guide

<i>Meeting dates</i>	<i>Major agenda items and reports or exhibits</i>
Sept. 28, 2009	Panel - DUI laws and enforcement <ul style="list-style-type: none"> <li>• Police Chief Scott Newell, Ennis</li> <li>• Col. Mike Tooley - Montana Highway Patrol</li> <li>• Travis Bruyer, Alcohol Enforcement Training, Compliance Checks</li> <li>• David Carter, Deputy Yellowstone County Attorney</li> <li>• Chris Petaja, Public Defender</li> </ul>
Feb. 8, 2010	Jeff Hays, City Prosecutor, Darby and Stevensville, testifies for allowing cities to establish city courts of record
Feb. 9, 2010	Initial work session requests to drafts for further consideration: <ul style="list-style-type: none"> <li>• statewide on-call judge for search warrants (LClj04)</li> <li>• eliminate 5-year "look back" (LClj05)</li> <li>• allow cities to become courts of record (LClj07)</li> </ul>
April 6, 2010	First public hearing on preliminary committee bill recommendations (LClj04 LClj05, LClj07) <ul style="list-style-type: none"> <li>• LClj04 split into two bills (LClj04 and LClj17)</li> </ul>
Sept. 10, 2010	Final public hearing on committee bill recommendations

## RECOMMENDATION SECTION 4

### Enact New Laws

Rec. No.	Working Draft No.	LC No. for Session*	Short Title	Committee Vote
13	<a href="#">LClj05</a>	<a href="#">LC0369</a>	Provide that any amount of a dangerous drug is impaired driving <i>per se</i>	7-5
14	<a href="#">LClj14</a>	<a href="#">LC0376</a>	Create a misdemeanor crime of aggravated DUI	11-0

### Meeting Guide

<i>Meeting dates</i>	<i>Major agenda items and reports or exhibits</i>
Feb. 8, 2010	Sobriety lab - demonstrations, briefings, and classroom-style instructions about drug-impaired driving and Drug Recognition Education (D.R.E.) for officers. Tour of mobile unit.
Feb 9, 2009	Work session to set priorities, initial request for a bill establishing a drug <i>per se</i> limit. (LClj05)
April 6, 2010	Initial public hearing on LClij05 - drug <i>per se</i> limit
June 30, 2010	<ul style="list-style-type: none"> <li>• Drugged driving informational briefing, Rebecca Sturdevant, health care professional and representative for MADD.</li> <li>• Public comment from Yellowstone County Attorney's Office and MCAA for an aggravated DUI law.</li> <li>• Motion to draft an aggravated DUI bill passes</li> </ul>
Sept 10, 2010	<ul style="list-style-type: none"> <li>• Final public hearing on committee bill recommendation LClij05 - drug <i>per se</i> limit.</li> <li>• First and final hearing on LClij14 - aggravated DUI law</li> </ul>

**Part I**  
**Appendix E**

**Guide to Committee Reports and Testimony**



# SJR 39 - Study of Montana's DUI Laws

## Guide to Reports and Testimony

Meeting Date	Title	Author/Presenter
<b>General Background and Options</b>		
Aug 3, 2009	<a href="#">SJR 39 - A Primer: Background Report</a>	Sheri Heffelfinger, Legislative Staff
<b>Data</b>		
Reference	<a href="#">Initiatives to Address Impaired Driving, December 2003.</a>	National Highway Transportation Safety Administration
Feb 8, 2010	<a href="#">Strategies for Combating DUIs: Coordinated Treatment, Community Supervision, and Penalties</a>	Sheri Heffelfinger, Legislative Staff
Dec 18, 2009	<a href="#">Issues and Options Paper #1</a>	Sheri Heffelfinger, Legislative Staff
<b>Fiscal Issues</b>		
Feb 8, 2010	<a href="#">Impaired Driving Fatality Rates by State, December 2009</a>	National Highway Traffic Safety Administration
Reference	<a href="#">Drunk Driving Fatalities in America, 2008</a>	The Century Council
Feb 8, 2010	<a href="#">DUI-related charges and convictions</a>	Office of Court Administrator
Dec 18, 2010	<a href="#">Motor Vehicle Division Data on DUI and BAC convictions</a>	Montana Dept. of Justice
Dec 18, 2010	<a href="#">DUI/BAC probation and parole data</a>	Montana Dept. of Corrections
<b>Prevention and Education</b>		
Sept 28, 2009	<a href="#">SJR 39 -Issue Summary: Panel #1 Overview - Prevention &amp; Education</a>	Sheri Heffelfinger, Legislative Staff
Sept 28, 2009	<a href="#">Environmental Prevention: Drunk Driving and Binge Drinking</a>	Montana Community Change Project Issue Brief
Sept 28, 2009	<a href="#">Testimony: Prevention Resource Center Efforts</a>	Vickie Turner, DPHHS

<b>Meeting Date</b>	<b>Title</b>	<b>Author/Presenter</b>
Sept 28, 2009	<a href="#">Safe and Drug Free Schools</a>	Cathy Kendall, OPI
Sept 28, 2009	<a href="#">Liquor Control Division Overview</a>	Shauna Helfert, Liquor Control Div. Administrator, Dept. of Revenue
Sept 28, 2009	<a href="#">Alive-At-25 - PowerPoint</a>	John Spencer, MHP
Reference	<a href="#">Montana Youth Risk Behavior Survey 2009</a>	OPI
<b>Laws, Enforcement, and Supervision</b>		
Sept 28, 2009	<a href="#">DUI laws chart</a>	Sheri Heffelfinger, Legislative Staff
Dec 18, 2009	<a href="#">DUI Sentencing</a>	Diana Koch, Department of Corrections
Reference	<a href="#">2007 DUI Model Law</a>	National Committee on Uniform Traffic Laws and Ordinances
Dec 18, 2009	<a href="#">South Dakota's 24/7 sobriety program - PowerPoint</a>	Presented by Col. Mike Tooley, MHP
Dec 18, 2009	<a href="#">Testimony: Ignition Interlock Systems</a>	Steve Smith, IIS
April 5, 2010	<a href="#">South Dakota 24/7 Sobriety Program Overview</a>	South Dakota Attorney General's Office (Presented by Bill Mickelson)
April 5, 2010	<a href="#">Editorial on South Dakota 24/7 Program</a>	Addiction Journal Article
April 5, 2010	<a href="#">Pilot 24/7 in Montana - Press Release with Fact Sheet Link</a>	Montana Attorney General Steve Bullock's Office
<b>DUI Courts and Treatment</b>		
Dec 18, 2009	<a href="#">Overview of DUI courts in Montana</a>	Jeff Kushner, Statewide Coordinator, Specialty Courts
Dec 18, 2009	<a href="#">Testimony on Evaluation Data and Research Findings about DUI Courts</a>	Jeff Kushner, Statewide Coordinator, Specialty Courts
Feb 8, 2010	<a href="#">Solutions for Montana's DUI Problem</a>	Mona Sumner, Rimrock Foundation, Billings
Dec 18, 2009	<a href="#">Testimony: DPHHS Chemical Dependency Programs</a>	Joan Cassidy, Chemical Dependency Bureau, DPHHS
Dec 18, 2009	<a href="#">Prime For Life (New A.C.T. Curriculum)</a>	Joan Cassidy, Chemical Dependency Bureau, DPHHS
Dec 18, 2009	<a href="#">Approved Chemical Dependency Programs, DPHHS</a>	Joan Cassidy, Chemical Dependency Bureau, DPHHS
Dec 18, 2009	<a href="#">Montana map of CD program locations</a>	Joan Cassidy, Chemical Dependency Bureau, DPHHS

<i><b>Meeting Date</b></i>	<i><b>Title</b></i>	<i><b>Author/Presenter</b></i>
Dec 18, 2009	<a href="#"><u>Chemical Dependency Bureau Budget overview</u></a>	Joan Cassidy, Chemical Dependency Bureau, DPHHS
<b>Felony DUI - WATCH Program</b>		
Dec 18, 2009	<a href="#"><u>Primer on WATCH</u></a>	Department of Corrections
Dec 18, 2009	<a href="#"><u>Testimony: status and statistics on WATCH treatment program</u></a>	Rick Deady, Treatment Program Manager, WATCH
Feb 8, 2010	<a href="#"><u>Assessing Montana's Multiple Offender Drunk Drivers</u></a>	Dr. Timothy Conley, et. al., University of Montana
<b>Effects of Alcohol and Drugs</b>		
Feb 8, 2010	<a href="#"><u>Field Sobriety Testing</u></a>	Sgt. Steve Baiamonte, MHP
Feb 8, 2010	<a href="#"><u>Effects of Alcohol on the Human Brain - PowerPoint</u></a>	Ben Vetter, Forensic Science Div., Dept. of Justice
Feb 8, 2010	<a href="#"><u>Drug Recognition Education (DRE) Program - PowerPoint</u></a>	Trooper Kurt Sager, MHP
June 30, 2010	<a href="#"><u>Drugged Driving - PowerPoint</u></a>	Presented by Rebecca Sturdevent (MADD)



**PART II**

**SJR 29 - Study**

**Retention of DNA Evidence**



**TABLE OF CONTENTS**  
**Part II - SJR 29 Study of Retention of DNA Evidence**

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Committee Work .....	Part I	-p 3
Recommendation .....	Part I	-p 5



# SJR 29 - Study Retention of DNA Evidence

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## Issue Background

### *Advances in technology*

Technological advances in forensic DNA analysis provide new opportunities to solve cold cases and exonerate the wrongly convicted. However, these advances also present challenges for retaining and preserving the biological evidence.

Biological evidence is defined in Montana statute as "any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense".<sup>77</sup>

These items may be clothing, weapons, sexual assault kits, bed sheets, carpet pieces, sleeping bags, furniture, cars, and other property. Local enforcement agencies are especially challenged to keep track of this material and preserve it for future use. Access to this evidence depends not only on proper storage, but also on good recordkeeping and accountability policies (i.e., maintaining a proper chain of custody) so that evidence is not contaminated, lost, or inadvertently destroyed.

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As DNA forensic technology has advanced, so have the challenges. Crime scene investigators are collecting more evidence than ever before. And the laws are changing, too.

States are extending or eliminating the statutes of limitations on certain crimes, authorizing DNA samples from more people, and setting longer evidence retention times.<sup>78</sup>

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Local enforcement agencies are especially challenged to keep track of biological evidence and preserve it for future use.

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### *Practical challenges*

How are law enforcement evidence rooms coping? Unfortunately, not well. An investigative series by *The Denver Post* investigative series examining police department evidence rooms in Colorado, Texas, California, and elsewhere across the country discovered that many evidence rooms are not only overcrowded, but are often managed by undertrained staff. Additionally, written policies on the

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<sup>77</sup> Senate Bill No. 447 from the 2009 Session. See new subsection (3)(a) added to section 46-21-111, Montana Code Annotated (MCA).

<sup>78</sup> William P. Kiley, "The Effects of DNA Advances on Police Property Rooms", *FBI Law Enforcement Bulletin*, March 2009. Posted online at [http://www.fbi.gov/publications/leb/2009/march2009/focus\\_on\\_forensics.htm](http://www.fbi.gov/publications/leb/2009/march2009/focus_on_forensics.htm).

preservation of biological evidence are either inadequate or nonexistent.<sup>79</sup> *The Denver Post* also published a series of short videos further exposing the problem with startling images and poignant stories about heinous crimes that will never be solved and innocent people who remain imprisoned because crucial evidence was lost or destroyed.<sup>80</sup> What does this mean for Montana? At the very least it means that the challenges concerning proper collection, cataloguing, storage, preservation, and access are formidable and complex and how Montana's evidence rooms are meeting these challenges bears examination.

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#### *State legislatures*

State legislatures are at the front and center of the growing policy debate. In a recent U.S. Supreme Court ruling that inmates do not have a constitutional right to postconviction DNA testing, the high court made it clear that it is up to Congress and state legislatures, not the courts, to decide how best to resolve these issues and balance the pursuit of justice with individual liberty and privacy rights.<sup>81</sup> According to the Innocence Project, about half of the states currently compel the retention and preservation of DNA evidence after conviction. Many states also currently restrict how long biological evidence must be retained, the types of crimes for which DNA samples are collected and retained, the circumstances under which the DNA may be accessed, and the purposes for which it may be used.<sup>82</sup>

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The challenges concerning proper collection, cataloguing, storage, preservation, and access are formidable and complex and how Montana's evidence rooms are meeting these challenges bears examination.

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#### *Montana law*

Section 46-21-111 of the Montana Code Annotated (MCA) governs the preservation and disposal of biological evidence obtained in felony cases. The 2009 Legislature amended this section by passing SB 447, sponsored by Sen. Moss and cosponsored by Sen. Shockley. Under SB 447, the state crime lab is required to "permanently preserve under laboratory control any remaining

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<sup>79</sup> Chuck Plunket, "DNA retention policies unclear, unwritten", *The Denver Post*, July 24, 2007.

<sup>80</sup> Mike Moffeit and Susan Greene, "Trashing the Truth", *The Denver Post*, July 2007.

<sup>81</sup> *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. \_\_\_\_ (2009). See also, Barnes, Robert, "Court Limits Access to DNA Evidence", *The Washington Post*, June 19, 2009.

<sup>82</sup> Innocence Project, "Preservation of Evidence", Fact Sheet. Available at <http://www.innocenceproject.org>.

biological evidence collected from items submitted to it". The testimony on the bill was that this language simply codified what is current policy at the state crime lab.<sup>83</sup>

SB 447 did not fundamentally change the portion of section 46-21-111, MCA, that requires local law enforcement agencies to preserve biological evidence "obtained in connection with a felony for which a conviction is obtained". The statute currently requires local agencies to retain biological evidence for a minimum of 3 years after the conviction becomes final. There is, however, a process available to law enforcement agencies that may wish to dispose of the evidence earlier.<sup>84</sup> The statute does not address retention of biological evidence obtained in connection with a felony that has not been solved.

## **Committee Work**

### *Overview*

Committee activities related to the SJR 29 study on the preservation of biological evidence included special panel discussions at several meetings, a survey of county and city law enforcement agencies, two staff working group meetings, a subcommittee meeting by conference call, and final Committee action.

### *Survey*

Legislative staff surveyed the state's 116 city police departments and sheriff's offices in an effort to determine the extent to which preservation policies and practices varied, what were the most challenging issues concerning preservation of biological evidence, and whether local agencies would support statewide standards. The survey was constructed so that agencies could respond to the survey's 30 questions, most were multiple choice, through the Internet. Only 27 agencies responded.

The following bullet points summarize the survey results. The complete report is available on the Committee's website or in the Committee's hard copy files maintained by the Legislative Services Division.

For felony criminal cases in which a conviction has been obtained:

- ▶ 28% of respondents reported they retain biological evidence based on the statute of limitations for the crime involved;
- ▶ 20% of respondents reported they retain biological evidence for a minimum of 3 years after the conviction becomes final or for any period

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<sup>83</sup> Senate Judiciary Committee hearing on SB 447, February 20, 2009, and House Judiciary Committee hearing on SB 447, March 18, 2009.

<sup>84</sup> Section 46-21-111(1)(b), MCA.

beyond 3 years that is required by a court order issued within 3 years after the conviction becomes final (which is required under current law);

- ▶ 36% of respondents reported they retain biological evidence indefinitely; and
- ▶ 16% of the respondents reported their biological evidence retention practices depend on the crime.

For biological evidence in felony criminal cases in which a conviction has not been obtained:

- ▶ approximately 58% of respondents reported a retention schedule based on the statute of limitations for the crime involved;
- ▶ approximately 39% of respondents reported they retain the evidence indefinitely; and
- ▶ one agency reported it retained the evidence for 40 years for homicides, 10 years for sexual assault or rape, or 5 years for other sex crimes.

Most of the survey respondents reported that the agency's most challenging issue with respect to preservation of biological evidence was storage space.<sup>85</sup>

*Meeting Guide*

The following table provides a guide to the Committee's work relevant to the SJR 29 study.

<b>Meeting dates</b>	<b>Major relevant agenda items</b>
Sept. 29, 2009	<p>Panel - current practices and problems</p> <ul style="list-style-type: none"> <li>• Sheriff Dave Castle, Cascade County</li> <li>• Tom Weightman, Evidence Technician, City of Bozeman and Gallatin County</li> <li>• Lieutenant Rob Moccasin, Investigative Services, Great Falls Police Department</li> <li>• Mark Murphy, Deputy County Attorney, Yellowstone County</li> <li>• Jon Moog, Office of State Public Defender</li> <li>• Phil Kinsey, Serology and DNA Section, State Crime Lab</li> <li>• Jessie McQuillan, Montana Innocence Project</li> </ul>

<sup>85</sup> Dave Bohyer, *Overview of A Survey on the Preservation of Biological Evidence: A Component of the SJR 29 Study*, Montana Legislative Services Division, prepared for the Law and Justice Interim Committee, February 2010.

<i><b>Meeting dates</b></i>	<i><b>Major relevant agenda items</b></i>
Feb. 9, 2009	<p>Staff Report: Findings of survey of local law enforcement agencies concerning preservation and storage of biological evidence.</p> <p>Staff instructed to organize stakeholder working group and draft bill based on working group recommendations. (Two working group meetings were conducted without a group consensus being reached.)</p>
June 29, 2010	<p>Preliminary bill draft based on instructions from Sen. Moss: LCdna1</p> <p>Panel - defense perspective</p> <ul style="list-style-type: none"> <li>• Jessie McQuillan, Executive Director, Montana Innocence Project</li> <li>• Kelsen Young, Executive Director, Coalition Against Domestic and Sexual Violence</li> <li>• Jon Moog, Office of State Public Defender</li> </ul> <p>Panel - law enforcement perspective</p> <ul style="list-style-type: none"> <li>• Mark Murphy, MCAA</li> <li>• Sheriff Dave Castle, Cascade County</li> <li>• Anne Jacobson, Evidence Technician, Helena Police Department</li> <li>• Megan Ashton, State Crime Lab</li> </ul> <p>Subcommittee appointed to continue work on bill draft (Sen. Moss, Sen. Shockley, Rep. Peterson, and Rep. Menahan)</p>
Aug. 3, 2010	Subcommittee meeting by conference call - discussion and revision of LCdna2, based on revisions proposed by Sen. Shockley
Sept. 9, 2010	Final public hearing on Committee bill recommendation LCdna3

### **Recommendation**

The Committee developed one recommendation concerning its study under SJR 29. This recommendation is summarized on the following page.

(see next page)

**Recommendation**

**LC0354 Lengthen time DNA evidence must be preserved in certain cases**

*Working draft no.:* LCdna  
*Proposal sponsor:* Senator Moss

*Summary:*

This bill would require that biological evidence collected in certain specified felony criminal cases must be preserved for the period of time in the statute of limitations for the crime or for 30 years, whichever is less. The specified crimes are: deliberate homicide, mitigated deliberate homicide, negligent homicide, vehicular homicide while under the influence, sexual assault, and sexual intercourse without consent. The bill also contains a new provision to allow destruction of evidence that is large or bulky if a smaller piece of the evidence containing biological evidence is preserved.

*Background:*

Under section 46-21-110, MCA, a person convicted of a felony and who is serving a term of incarceration may petition the court for DNA testing. The statute specifies the conditions that must exist in order for the court to grant the petition. Among the conditions are that the evidence:

- (i) was secured in relation to the trial that resulted in the conviction;
- (ii) is available; and
- (iii) is in a condition that would permit the requested testing;

The section further states that "the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect".

Section 46-21-111, MCA, currently requires local law enforcement agencies to preserve biological evidence in felony criminal cases for at least 3 years after a conviction in the case becomes final unless otherwise ordered by a court.

*Data:*

According to Montana Board of Crime Control data, in 2009, there were 26 homicides and 325 reported rape incidents statewide.<sup>86</sup>

*Testimony and discussion:*

The Committee's recommended bill draft was supported by the Montana Innocence Project, the Coalition Against Domestic and Sexual Violence, the Office of State Public Defender, the Montana Association of Criminal Defense Lawyers, and Ron Waterman, Helena Attorney. Proponents argued that:

- 3 years is not long enough for preservation of DNA evidence in serious criminal cases (as listed in the bill);
- the bill does not create a new burden on local agencies because the survey showed that most local agencies are already preserving evidence longer in serious cases;
- because practices vary so widely, state law is needed to provide a uniform time period for preservation;
- the Bromgard case (where Jimmy Ray Bromgard was exonerated after spending 14.5 years in prison) illustrated the problem because evidence was fortuitously preserved even though current statute would have allowed that evidence to be destroyed;
- the new language in the bill is consistent with laws in other states;
- the statute will still allow agencies to request earlier destruction of evidence if they do not wish to preserve it;
- new language in the bill concerning large evidentiary items will help agencies clear out those items and keep only small samples as appropriate to allow future DNA testing, thus saving money.

The proposal was opposed by the Montana County Attorneys Association, the Yellowstone County Attorney's Office, the Montana Association of Counties, and the Attorney General's Office.

Opposition was based on various details of the bill and questions about the following:

- notification of parties when evidence was to be destroyed;
- liability if the evidence was inadvertently destroyed by a fire or flood, for example;
- the provision prohibiting the waiver of the right to have evidence preserved;

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<sup>86</sup> Montana Board of Crime Control, *Crime In Montana*, 2008-2009 Report.

- how to ensure that the evidence preserved was relevant to the identity of the perpetrator;
- potential costs, especially to small counties, of requiring longer retention of evidence; and
- the problem was not sufficiently defined (i.e., current law was sufficient, and that the proposed bill was unnecessary).

At various junctures, the Committee discussed amendments to the bill to address various concerns. A subcommittee met by conference call on August 3, 2010, to work out several revisions. Amendments were also discussed and passed at the final hearing on September 9, 2010.

*Final Committee vote:* 9-3 with Sen. Esp, Rep. Peterson, and Rep. Howard voting no.

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## **PART III**

### **Agency Oversight and Emerging Issues**



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Actions . . . . .	Part III- p.1



# Agency Oversight and Emerging Issues

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The following table identifies the issue areas covered by the Committee's agency oversight activities.

## Meeting Guide

<i>Topic</i>	<i>Meeting dates - agenda items</i>
Animal hoarding	Sept. 29, 2010 - panel
Sex offender placements	April 6, 2010 - panel
MERLIN (Montana Enhanced Registration and Licensing Network for motor vehicles)	Sept. 29, 2009 - briefing Dec. 17, 2009 - update April 5, 2010 - update
Public defender system	Dec. 17, 2009 - roundtable with commission
Jail suicide prevention	June 29, 2010 - staff report and briefings
Diversion of mentally ill from justice system (implementation of HB 130, HB 131, HB 132 from the 2009 Session)	Sept. 29, 2009 - briefing Feb. 9, 2010 - update June 29, 2010 - panels
Appointment of guardians ad litem in child custody cases	April 5, 2010 - panel

## Actions

The Committee took the following actions with respect to its agency monitoring activities:

- ▶ Letter requesting legislative audit of MERLIN and MVD. The Legislative Audit Division will conduct this audit and keep the Committee apprised. See APPENDIX A.
- ▶ A joint letter with the Children, Families, Health, and Human Services Interim Committee urging the Governor to include in his executive budget full funding for HB 130, HB 131, and HB 132, which were passed by the 2009 Legislature to create community-based services that divert the mentally ill from the justice system. See APPENDIX B.
- ▶ A letter to the Legislative Council requesting legislation to statutorily assign the Office of State Public Defender to the Committee for purposes

of agency oversight. The Legislative Council has requested this legislation.  
See APPENDIX C.

**Part III**  
**Appendix A**

**Committee Request for Legislative Audit of  
Motor Vehicle Division and MERLIN**





# Law and Justice Interim Committee

## 61st Montana Legislature

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LYNDA MOSS  
JIM SHOCKLEY

### HOUSE MEMBERS

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

### COMMITTEE STAFF

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

June 22, 2010

Legislative Audit Committee  
Room 160 State Capitol  
Helena, MT 59620

Dear Members of the Legislative Audit Committee,

This letter is to request a legislative audit of the Department of Justice Motor Vehicle Division (MVD) with specific attention to vehicle title and registration operations affected by the Montana Enhanced Registration and Licensing Information Network (MERLIN). As you know, the Law and Justice Interim Committee (LJIC) is responsible for monitoring programs under the Department of Justice. Therefore, problems and concerns related to Motor Vehicle Division (MVD) functions and MERLIN are brought to our committee.

Since last September, our committee has heard from individuals, dealers, and associations, including the County Treasurers' Association and the Montana Nonprofit Association, who have encountered numerous difficulties with MVD vehicle title and registration, including MERLIN. **(See Attachment 1 for copies of various public comments received since last July.)**

In response, the LJIC requested and received briefings and monthly updates from Department of Justice Chief of Staff Tim Burton and MVD Administrator Brenda Nordlund on what progress is being made to address or mitigate the problems encountered. **(See Attachment 2 for copies of briefing materials presented to the LJIC over the course of the interim.)**

Although our committee has been informed that problems are being addressed or mitigated to the best of MVD's ability, there are lingering concerns, especially in the following areas:

- sorting and accounting of fees, especially with respect to web registration renewal, which has not only affected state revenue projections, but is also of concern to nonprofit organizations relying on specialty plate revenue;
- lack of timely MVD help desk/customer service provided to assist county treasures and others with questions;
- computer interface glitches affecting the operation of printers and scanners at the state and county level, despite efforts to replace these printers;

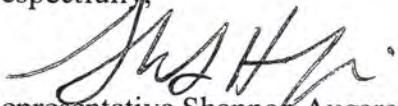
- plate shortages or lack of timely filling of plate orders;
- data conversion glitches and validation of county treasurer title processing, which is causing inaccurate fee charges; and
- long turnaround times for vehicle title services for individuals and dealers.

Response to committee member questions give the impression that MVD is encountering information technology issues (e.g., the interface with SABHRS) that are beyond the agency's control and that although MVD has taken action to redeploy staff, it may not have sufficient staff resources to meet the challenges it is facing. A legislative audit would help clarify what problems with MERLIN and vehicle title and registration remain and whether MVD has appropriate resources to fix those problems.

Our full committee is meeting June 29-30 and will be able to vote on a committee request for a this legislative audit. In the meantime, I am submitting this letter as the committee chairman so that you may consider it at your June 23 meeting. I will inform you of any full committee action taken subsequent to this letter.

In summary, I believe that it in the best interest of the legislature that an audit be conducted of MVD's vehicle title and registration functions with particular focus on MERLIN, the sorting and accounting of fees, and the areas mentioned above. I also believe that such an audit should be given a high priority.

Respectfully,



Representative Shannon Augare, Chairman  
Law and Justice Interim Committee

Attachments

1. Copies of public comment - blue
2. Copies of agency briefing materials - yellow

cc.

Tori Hunthausen

Kent Rice

Pat Gervais

Tim Burton

Brenda Nordlund

Sheri Heffelfinger

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**Part III**  
**Appendix B**

**Letter Urging That Executive Budget Include  
Funding for HB 130, HB 131, and HB 132 From 2009  
Session**





# Law and Justice Interim Committee

## 61st Montana Legislature

PO BOX 201706  
Helena, MT 59620-1706  
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MIKE MENAHAN  
KEN PETERSON

### COMMITTEE STAFF

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

August 13, 2010

Governor Brian Schweitzer  
PO Box 200801  
State Capitol, Room 204  
Helena, MT 59620-0801

Dear Governor Schweitzer,

The Law and Justice and Children, Families, Health and Human Services Interim Committees would like to thank you and the Department of Public Health and Human Services (DPHHS) for the work that has been done to implement HB 130, HB 131, and HB 132 from the 2009 Legislative Session. These bills establish community mental health crisis intervention services and secure treatment beds to divert mentally ill individuals from emergency detention in jail or at the Montana State Hospital.

We applaud the many counties that have stepped up to partner with local mental health providers through the provisions contained in these bills. Such efforts demonstrate a strong commitment to develop innovative community-based solutions. We also appreciate DPHHS's efforts under difficult circumstances to work with and assist these local collaborations to succeed in developing and implementing their strategic plans.

Much is at stake for our communities struggling to cope with increasing precommitment costs for emergency room detention, jail detention, and transportation to the Montana State Hospital. We know that the public and mentally ill individuals are best served if stabilization can be achieved where individuals may be supported by friends and family rather than by becoming wards of the county or state. The efforts made by our communities to achieve this vision should be recognized and the state's commitment to support them should be honored in the 2013 biennium budget.

Our two committees strongly urge you to include in your executive budget proposal for the 2013 biennium full funding for HB 130, HB 131, and HB 132 (at least the \$2.98 million appropriated by the 2009 Legislature prior to the executive spending cuts) so that these state and local efforts can continue to move forward.

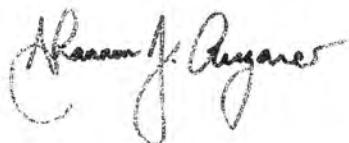
We know that many difficult budget decisions must be made this coming Session. However, we

We know that many difficult budget decisions must be made this coming Session. However, we remain staunchly committed to funding for HB 130, HB 131, and HB 132 and look forward to opportunities to evaluate the measurable outcomes.

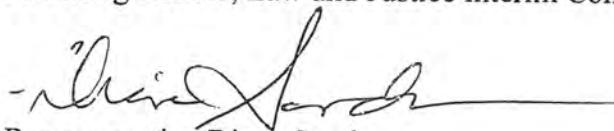
These crisis services are making a real difference in real people's lives. Adequate funding now is an essential investment in the future fiscal health of the state and the counties.

On behalf of our two committees, thank you for your service to the people of Montana. We look forward to working with you and with our legislative colleagues on both sides of the isle to ensure that funding for mental health crisis intervention and stabilization services is a top priority.

Sincerely,



Representative Shannon Augare  
Presiding Officer, Law and Justice Interim Committee



Representative Diane Sands  
Presiding Officer, Children, Families, Health and Human Services Interim Committee

cc      Budget Director David Ewer  
          Director Anna Whiting Sorrell, DPHHS  
          Legislative Finance Committee Members  
          Law and Justice Interim Committee Members  
          Children, Families, Health and Human Services Interim Committee Members  
          Amy Carlson, Legislative Fiscal Analyst  
          Pat Gervais  
          Lois Steinbeck  
          Sheri Heffelfinger  
          Sue O'Connell

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**Part III**  
**Appendix C**

**Committee Letter to Legislative Council  
Concerning Oversight of Public Defender System**





# Law and Justice Interim Committee

## 61st Montana Legislature

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Legislative Council  
P.O. Box 201706  
Helena, MT 59620

August 20, 2010

Dear members of the Legislative Council,

It has been brought to the attention of the Law and Justice Interim Committee that current statutory language requires that the State Administration and Veterans' Affairs Interim Committee conduct administrative rule review and agency monitoring functions for the Office of State Public Defender because the office is administratively attached to the Department of Administration. Staff further informed our committee that these statutory duties cannot be referred or delegated.

The Law and Justice Interim Committee believes that it is in the best interest of the legislature that these statutory duties be performed by the Law and Justice Interim Committee because the nature of the work performed within the public defender system is directly relevant to law and justice matters already under the jurisdiction of the Law and Justice Interim Committee.

Thus, we would like to suggest that the Legislative Council consider sponsoring legislation for the 2011 Session that would amend the relevant statutes as follows:

**5-5-226. Law and justice interim committee.** The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for, the office of state public defender, the department of corrections and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

**5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and the entities attached to the agencies for administrative purposes, except as provided in 5-5-226:

- (a) department of administration;
- (b) department of military affairs; and
- (c) office of the secretary of state.

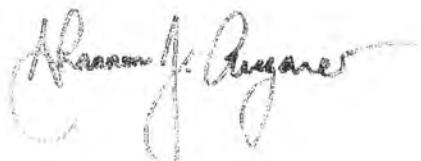
(2) The committee shall:

- (a) consider the actuarial and fiscal soundness....

These statutory revisions will allow the Law and Justice Interim Committee to conduct administrative rule review and request the drafting of legislation on behalf of the Office of State Public Defender.

Thank you for your consideration of this request.

Sincerely,



Representative Shannon Augare  
Presiding Officer  
Law and Justice Interim Committee

cc.

Senator Joe Tropila, Presiding Officer, State Administration and Veterans' Affairs Interim Committee (SAVA)

Susan Fox, Executive Director, Legislative Services Division

David Niss, Staff Attorney, SAVA

Rachel Weiss, Research Analyst, SAVA

Randi Hood, Chief, Office of State Public Defender (OSPD)

Harry Freebourn, Administrator, OSPD

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Sheryl Olson, Deputy Director, Dept. of Administration

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