

LAW AND JUSTICE INTERIM COMMITTEE
Summary of Final Recommendations
(September 14, 2010)

Final recommendations advance to session

Of the 17 bills considered by the Law and Justice Interim Committee at its final meeting September 9-10, in Helena, 15 will advance to the 2011 Legislature. Fourteen of the committee bills are aimed at changing the culture around impaired driving in Montana; one is a bill to lengthen the period of time that biological evidence must be preserved in certain felony criminal cases. A bill to request an interim study on jail suicide prevention (LClj13) was withdrawn from consideration and a bill concerning refusal to submit to a blood or breath test (LClj16) failed to receive a majority vote. Each of the 15 approved committee bills has now received an official LC number and may be tracked online through the Legislative Automated Workflow System (LAWS) at www.leg.mt.gov/laws.htm.

SJR 39 - Study of DUI laws

Directed by a 2009 legislative study resolution (SJR 39) to examine Montana's DUI laws, the Law and Justice Interim Committee spent the last 14 months tackling policy questions ranging from how to enhance prevention and education to how to get repeat DUI offenders into treatment and off the streets. The committee examined National Highway Traffic Safety Administration statistics showing that Montana's alcohol-impaired driving fatality rate in 2008 ranked highest in the country per 100,000 vehicle miles traveled. Nationally, 72% of the drunk drivers involved in car accidents were driving with a blood alcohol concentration of 0.15 or more (almost twice the legal limit) and that 44% of these drunk drivers were repeat DUI offenders. The committee also found that hard core drinking starts at an early age. A University of Montana study of felony DUI offenders in the Department of Corrections' 13-month residential treatment program, WATCh, found that 50 percent of the offenders had been convicted of their first DUIs while under 21 years of age.

SJR 29 - Study on preservation of biological evidence

Another study resolution (SJR 29) assigned to the committee dealt with concerns that Montana needs better statewide standards for preserving biological evidence for future DNA analysis in felony criminal cases. The Montana Innocence Project, the Montana Coalition Against Domestic and Sexual Violence, as well as the state Attorney General's office supported the study citing the need to preserve evidence that could exonerate wrongly convicted persons or that would help find the perpetrator in unsolved cases. Current law requires law enforcement agencies to keep biological evidence for at least 3 years after a conviction becomes final. However, the law is silent on how long the evidence should be kept in unsolved cases. A statewide survey of city and county law enforcement agencies showed a lack of uniform procedures, that many agencies keep evidence involving serious crimes longer than 3 years, and that evidence storage rooms are at or near capacity.

(table of committee bills below)

Legislation

The table below provides the LC numbers, short title, and main provisions of the committee bills that will advance to the 2011 session.

Official LC No. (old number)	Short title	Main provisions
LC0354 (LCdna3)	Lengthen time DNA evidence must be preserved in certain cases	Requires 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.
LC0365 (LCj01)	Strengthen drivers' license sanctions for MIP offenders	Provides that the drivers' license of a youth under 18 years of age who is convicted of possessing or consuming an intoxicating substance must be suspended until the person reaches 18 years of age or for 6 months for a first offense or 1 year for a second or subsequent offense within 5 years, whichever is longer.
LC0366 (LCj02)	Allow game wardens to issue MIP citations	Provides that a game warden may issue citations to minors for unlawful possession of an intoxicating substance or dangerous drugs on lands owned or operated by the Department of Fish Wildlife and Parks and requires the game warden to complete the investigation and assist the prosecution that arises from the citation.
LC0367 (LCj03)	Mandatory alcohol server and sales training	Provides that anyone licensed to sell alcohol either at a retail store or bar must ensure that their employees that sell or serve alcohol must be trained on how to comply with state law prohibiting the sale or service of alcohol to minors or to noticeably intoxicated persons or be subject to a civil penalty of \$50 per untrained employee.
LC0368 (LCj04)	Statewide on-call judge for search warrants	Provides for the appointment of a standing master in the 1st Judicial District (Lewis and Clark County) to handle search warrant applications during days and hours that courts are not in session.
LC0369 (LCj05)	Provide that any amount of a dangerous drug is impaired driving <i>per se</i>	Provides any amount of a dangerous drug or its metabolite in a driver's system is a <i>per se</i> violation for driving under the influence and providing an exemption for appropriate use of prescription drugs.
LC0370 (LCj06-A)	Revise drivers' license provisions for DUI court participation	Allows a DUI court to grant a probationary drivers' license to a DUI court participant who has been convicted for a second or subsequent impaired driving offense if the participant complies with a treatment plan or other conditions imposed by the court.

Official LC No. (old number)	Short title	Main provisions
LC0371 (LCj06-B)	Revise jail penalties for DUI court participation	Increases from 6 months to 1 year the possible jail time for a 1st or 2nd DUI/BAC offense, clarifies mandatory minimum jail sentences, and allows a DUI court to suspend all or a portion of the jail sentence, except the mandatory minimum, if the DUI court participant is complying with court-ordered treatment and other conditions.
LC0372 (LCj07)	Allow cities to establish courts of record	Allows a city to make its city court a court of record where court proceedings are recording and papers filed are retained for the record and providing that an appeal from a city court of record is confined to a review of the record and questions of law.
LC0373 (LCj08)	Strengthen ACT laws for treatment of DUI and BAC offenders	Revises laws on the chemical dependency assessment, educational course, and treatment (A.C.T.) that DUI/BAC offenders must complete by setting deadlines for completing the assessment and enrolling in treatment, providing that the offenders previous driving record may be considered during the assessment, requiring that the prosecuting attorney's office be notified if an offender fails to attend treatment, and clarifying the court's jurisdiction to impose sanctions for an offender's noncompliance with court-ordered treatment.
LC0374 (LCj10)	Provide one-year jurisdiction for DUI/BAC offenders	Increases the maximum jail time for a 1st or 2nd DUI or a 3rd BAC offense from 6 months to 1 year.
LC0375 (LCj11)	Eliminate 5-year look back in misdemeanor DUI/BAC cases	Provides that in determining how many prior DUI or BAC offenses a person has for the purposes of determining the misdemeanor penalty for a 1st, 2nd, or 3rd DUI or BAC offense, all prior offenses are counted.
LC0376 (LCj14)	Create a misdemeanor crime of aggravated DUI	Provides that a person commits the offense of an aggravated DUI if and any one of the following conditions exists in addition to a regular DUI or BAC offense: the person's BAC is .20 or above; the person has been court ordered to drive only a vehicle equipped with an ignition interlock devise, the person is driving without a license because of a prior impaired driving offense, the person refuses a breath or blood test for impaired driving, the person has a prior conviction or pending charge for an MIP, DUI, or BAC violation within 3 years of the current offense, the person is involved in a crash resulting in bodily injury or property damage. Provides a mandatory minimum of 1 year probationary sentence, a \$1,000 to \$5,000 fine, and a 1 year jail sentence (which may be suspended) for an aggravated DUI offense.
LC0377 (LCj15)	Authorized county social host liability ordinance	Allows counties without self-governing powers 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.

Official LC No. (old number)	Short title	Main provisions
LC0378 (LCj17)	Authorize search warrants to obtain blood or breath test in DUI cases	Providing that if a person is arrested for impaired driving and a search warrant may be obtained and a blood or breath test may be administered without a person's consent.