

Traffic Safety Standard

Providing relevant information to Montana's prosecutors, law enforcement and judges

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In this issue:

The Alcohol Nebulizer Study 1

"Prosecuting the Drugged Driver" Training Sharpens Skills 3

Legislature to Tackle Multiple DUI Bills 4

Traffic Safety Case Highlights 5

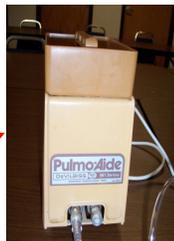
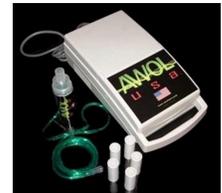
MONTANA
MDT
DEPARTMENT OF TRANSPORTATION

Montana's Traffic Safety Resource Prosecutor (TSRP) position is funded by the Montana Department of Transportation as part of a comprehensive effort to reduce the number and severity of traffic crashes, injuries, and fatalities on Montana highways.

THE ALCOHOL NEBULIZER STUDY

By Ben Vetter, Director Breath Analysis Section, Montana Department of Justice, Forensic Science Division.

Nebulizers have long been used in the medical field to deliver medications in an aerosol form. They are used for treatment of cystic fibrosis, asthma, COPD and other respiratory diseases. In the last few years people have been experimenting with using a nebulizer to introduce alcohol into the body through the lungs. This is commonly referred to as Alcohol Without Liquid or AWOL.



Common Home Nebulizer

The idea behind AWOL is to get alcohol into the body while bypassing first-pass metabolism. This means that alcohol will enter the blood stream via the lungs, travel to the brain, and then travel to the liver where metabolism occurs. By using this route, the alcohol can gain entry into the brain, but *theoretically* will not build up in the blood stream. Therefore, a person using AWOL should not have any lasting impairment from the alcohol once the nebulizer is removed.

Unfortunately, little research dealing with AWOL has been conducted in the breath analysis community. A small study was performed by persons from the Montana Forensic Science Division and the Montana Highway Patrol to start gathering information on AWOL. This study was very limited and only intended to introduce the scientific and legal communities to basic results from subjects using AWOL.

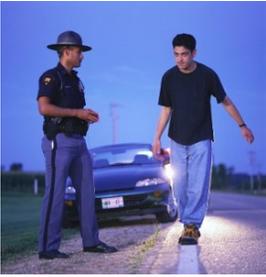
Two subjects, one 32 year old male and one 27 year old female, were continuously attached to two common home nebulizers for 120 minutes via a nebulizer mask. The male subject was dosed with 100 proof (50%) whiskey and the female was dosed with 80 proof (40%) gin. The alcohol was replaced each time the nebulizer had aerosolized the entire previous dose. Breath alcohol tests (Brace) on an Intoxilyzer 8000 were done approximately every 15 minutes. However, it should be noted that the mandatory 20-minute deprivation period for these tests was not observed. Standardized Field Sobriety Tests (SFST) were conducted approximately every 30 minutes by a Certified SFST Instructor. Venous blood samples were taken from each subject after 60 minutes and subsequently analyzed for blood alcohol content (BAC).



Continues on page 2...

The Alcohol Nebulizer Study

Results of these tests were far from surprising. Due to the fact that a 20-minute deprivation period was not observed, the BrAC results are of limited value. The subjects provided results ranging from 0.009 g/210L to 0.077 g/210L. Two BrAC tests were performed by both subjects, 5 and 10 minutes after removing the nebulizer masks and both subjects recorded 0.000 g/210L. The BAC analysis also determined a result of 0.000 g/100ml for each subject's venous blood sample. Since both subjects were exposed to the nebulizer for an extended period, both BrAC and BAC results would support the theory that alcohol is not accumulating in the blood with AWOL.



Horizontal Gaze Nystagmus

SFST results did show some slight impairment. The SFST Instructor noted that at approximately 60 minutes, both subjects showed slight impairment on the Horizontal Gaze Nystagmus (HGN) and the Walk and Turn (WAT) Tests. While these tests did show some level of impairment, it was not sufficient to warrant other testing in a law enforcement capacity if the subjects had been under suspicion of DUI. Also, the SFST's were performed 20 minutes after removal of the nebulizer masks and results showed no impairment, which again may illustrate that alcohol is not collecting in the blood.

While this small research study does indicate that AWOL will not impair someone for any length of time, more research needs to be done in this field. A much larger subject sample would be needed. Also a means to test arterial blood to determine the alcohol level reaching the brain would be very beneficial.



“Prosecuting the Drugged Driver” Training Sharpens Skills

Sixty six prosecutors, law enforcement officers, and toxicologists came to West Yellowstone in late October to hone their skills at a “Prosecuting the Drugged Driver” training. Among the participants were 35 prosecutors, 29 law enforcement officers, and two toxicologists. Students came from Montana and Idaho. Today’s DUIs involve many drugs more than alcohol alone, and this training focused on driving impairment caused by drugs other than alcohol.

During the training, students learned about the investigative techniques used by Drug Recognition Experts (DREs) to determine whether a person is under the influence of drugs other than alcohol. They learned how science and medicine are the basis for a DRE investigation and how best to present the information to the judge and jury.

A highlight of the course was a presentation by Dr. Karl Citek, OD, PhD, FAAO, Professor of Optometry, Pacific University College of Optometry. Dr. Citek described how the use of certain drugs affects the human eye. He explained how pupil size may change and why horizontal gaze nystagmus is one of the best ways to accurately detect drug use.

Students appreciated the multi-state and multi-disciplinary aspect of the training. Being from different states provided a fresh perspective on the information. “Having both Idaho and Montana [students] promoted great discussions and awareness,” commented one participant. Also, having law enforcement and prosecutors learn side-by-side facilitated a deeper understanding of each other’s role in the process. One DRE said “It was eye-opening to see a DRE case from a prosecutor’s point of view,” and found it “very helpful for future court cases.”

The next multi-day training for law enforcement and prosecutors is “Prosecuting the DUI.” It is scheduled for April 19-21, 2011 at the Montana Law Enforcement Academy in Helena.





LEGISLATURE TO TACKLE MULTIPLE DUI BILLS

DUI legislative proposals will be abundant during the 2011 legislative session. Proposals come from the Law and Justice Interim Committee, Attorney General Steve Bullock, and individual legislators. They all have a common goal: reduce DUIs in Montana and save lives.

The Law & Justice Interim Committee met several times over the last year and a half, hearing research and testimony regarding proven strategies in reducing DUIs. After discussion and debate, this bipartisan committee voted to submit the following fourteen proposals to the 2011 Montana Legislature:

1. Strengthen drivers' license sanctions for MIP offenders.
2. Allow game wardens to issue MIP citations.
3. Mandatory alcohol server and sales training.
4. Statewide on-call judge for search warrant.
5. Provide that any amount of dangerous drug in the system is impaired driving per se.
6. Revise drivers' license provisions to provide incentives for DUI Court participation.
7. Revise jail penalties to provide incentives for DUI Court participation.
8. Allow cities to establish courts of record.
9. Strengthen ACT laws for treatment of DUI/BAC offenders.
10. Provide one-year jurisdiction for DUI/BAC offenders.
11. Eliminate 5-year look back in misdemeanor DUI/BAC cases.
12. Create a misdemeanor crime of aggravated DUI (where BAC is above 0.2).
13. Authorized county social host liability ordinances.
14. Authorize search warrants to obtain blood or breath test in DUI cases.

For additional information about the Interim Committee proposals, including bill drafts, visit http://leg.mt.gov/css/Committees/Interim/2009_2010/Law_and_Justice/ .

In addition to the bills proposed by the Interim Committee, Attorney General Steve Bullock is also pursuing changes in Montana's DUI laws this legislative session. He will focus on the 24/7 program, criminalizing refusal, and aggravated DUI (where BAC is above 0.15). For more information: www.doj.mt.gov/news/releases2010/20101209.asp .

Montana's Legislature will consider all introduced bills between January and April, 2011. The status of individual bills can be tracked online at [http://laws.leg.mt.gov/laws11/LAW0200W\\$.startup](http://laws.leg.mt.gov/laws11/LAW0200W$.startup) .

Montana TSRP

Erin T. Inman, PLLC

11 Friendship Lane, Ste 101

Montana City, Montana 95634

Phone: 406-449-1255

FAX: 406-449-2188

Email: etinman@qwestoffice.net

Website: <http://www.mdt.mt.gov/tsrp/>

*This edition of
The Traffic
Safety Standard
is dedicated to
the memory of
Trooper David
DeLaitre*



A Memorial Fund for the family of David DeLaitre has been established. To donate, please go to <http://www.doj.mt.gov/>

Traffic Safety Case Highlights

State vs. James, 2010 MT 175. Double jeopardy occurs when person charged and convicted in tribal court with DUI and fleeing from or eluding a peace officer and subsequently tried for criminal endangerment when charges stem from the same transaction.

State vs. Christiansen, 2010 MT 197. Felony DUI case reversed and remanded for a new trial, because jury instruction regarding “actual physical control” was confusing which prejudicially affected the defendant’s substantive rights.

State vs. Seiffert, 2010 MT 169. No Brady violation when State did not obtain and provide surveillance tape from casino, because 1. Defendant could have obtained it himself, and 2. comparable evidence was obtained.

Training Dates

Course Title	Date	Location	Registration Information
DRE School	January 17 - 28, 2011	Fort Harrison, Helena	Contact Kurt Sager for additional information and registration.
DRE School	April 18-29, 2011	Fort Harrison, Helena	Contact Kurt Sager for additional information and registration.
Prosecuting the DUI	April 19-21	Montana Law Enforcement Academy	Contact Erin Inman for additional information and registration.

For information about more trainings and conferences, please go to <http://www.mdt.mt.gov/tsrp/> and click on “Training”

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call (406) 444-3423, TTY (800) 335-7592, or the Montana Relay at 711.