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Lusk hosts Joint Judiciary Interim Committee: Discuss DUI issues

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Kim O'Brien, Staff Writer

Lusk hosted the Joint Judiciary Interim Committee on June 2 and 3, with members discussing a variety of concerns and legalities with offenders who are caught driving while under the influence of alcohol.

One of the topics discussed was arrests that are made for Driving While Under the Influence (DUI) if a person is behind the wheel of a vehicle, but not actually driving the vehicle. Senator Bruce Burns commented that the whole theory behind the DUI statute is to "keep the roads safe." If they receive the same penalty for "sleeping it off" in the car in front of a bar as they do for actually driving, it makes them want to go ahead and try to drive home. "These people have made the right choice by not driving a vehicle while impaired," said Sen. Burns.

Some would argue that the impaired person "sleeping it off" in the car has the means and opportunity to drive the vehicle at any time so the consequences should be the same. Burns added "I have a gun, that's like arresting me for shooting somebody."

Lorrie Pozarik, spokesperson for the GCID reported that Wyoming has no mandatory chemical testing law for fatalities or for surviving driver of fatal crashes. (Wyoming requires mandatory testing only for the drivers in a fatal crash holding a commercial drivers license.) Determining Blood Alcohol Content (BAC) is a critical component of successful DUI prosecution. The Implied Consent Law allows those arrested for DUI to refuse a chemical test, resulting only in administrative license suspension; thus withholding crucial evidence. This often allows drivers with dangerous BAC levels to escape prosecution and sentencing, and contributes to unidentified repeat offenders endangering the public. Criminalizing refusal as a misdemeanor offense will discourage the withholding of BAC evidence.

In 2006, South Dakota passed a law that requires persons arrested for DUI to submit to the withdrawal of blood, breath or bodily substance, for chemical analysis. This declared that a person lawfully arrested for impaired driving has no constitutional right to refuse to submit to blood sampling taken for the purpose of measuring evanescent evidence of alcohol or controlled substances in the arrestee's system. This has reduced court time by twenty-five percent and has yet to be challenged in court.

A DUI offender with a high BAC, more than one offense within five years, and multiple offenses in a lifetime are significantly more likely to re-offend than is a first-time offender. Thus, they should be charged on a graduating scale: misdemeanor, high misdemeanor, lower felony, and higher felony.

Identifying individuals arrested for or convicted of DUI in more than one county or municipality can be complicated in Wyoming, making it difficult to identify repeat offenders. The Wyoming Supreme Court has a system, the Statewide Court Information Store (SCIS), which can link all court systems statewide to identify such offenders, thus ensuring that all courts and law enforcement have the most complete

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Some solutions to the increasing drunk driving problem might be the use of Mandatory Ignition Interlock for first and second offenders. Ignition interlock technology is a proven tool for significantly reducing the problem of repeat drunk drivers. The device provides continual monitoring for alcohol-driving behavior without the need for additional manpower. After installing an interlock device on a vehicle, the driver must blow into a device that measures the driver's BAC. If the BAC is over a certain level, then the vehicle will not start. The interlock also requires periodic re-sampling of a driver's BAC after the car has started. This prevents a drunk driver from having someone who is sober blow into the device so the driver can start the vehicle or drink while driving. Interlocks also have an on-board computer that tracks BAC levels, driving times, and attempts to disable and/or tamper with the device. Interlocks do not shut off the car due to safety factors, but do cause headlights to blink and the horn to sound.

Intensive Supervised Probation is another option. Numerous and varied sentencing options can be imposed on DUI offenders. However research clearly identifies intensive treatment as one of the most effective means of reducing DUI recidivism. Currently, two Intensive Supervised Probation programs for DUI offenders exist in Wyoming (with one more on the way), and each has demonstrated strong success in reducing recidivism. Wyoming needs a funding stream to ensure that additional Intensive Supervised Probation programs can be implemented and sustained. Unlike one would think, the success rate of these programs for offenders that are required by law to undergo treatment is much higher than those who chose treatment voluntarily as those who are there voluntarily can leave at any time.

Judges need to be able to impose longer jail sentences (beyond six months) for hardcore drinking drivers (offenders with a high BAC, multiple offenses within five years, and multiple offenses in a lifetime) who are significantly more likely to re-offend. Although there is fairly universal agreement that jail does not in and of itself prevent impaired driving, longer jail sentences help protect the public from the highest risk offender and also serve as an excellent motivator for treatment, a highly critical need for this population.

There is a strong support for reducing the mandatory minimum sentence for successful completion of treatment, and that intensive outpatient treatment programs should qualify along with in-patient treatment programs for the sentence reduction.

Felony definition for multiple offenses needs to include a longer "look back" period beyond five years and should also include a level number of DUI's in a lifetime and no "do-overs" after five years.

Traditionally, alcohol has been the drug of choice for impaired drivers. Recently, Wyoming has experienced an increase of drug (non-alcohol) impaired driving. Law enforcement officers now have access to the tools to combat this problem. However, Wyoming's DUI statute allows users of some substances to drive impaired with relative impunity because the definition of controlled substance does not include all routes of administration into the body, nor does it include all psychoactive substances.

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