

**COCLJ AUTOMATION & ACCOUNTING ADVISORY  
COMMITTEE MEETING – May 16<sup>th</sup> 2013  
HELENA, MONTANA**

**MEMBERS PRESENT**

Chairperson Judge Larry Carver  
Judge Gregory P. Mohr  
Judge Audrey Barger  
Judge Linda Budeski  
Lisa Mader, Montana Supreme Court Administrator's Office  
Claudia Anderson, Montana Supreme Court Administrator's Office  
Sharon Skaggs, Yellowstone Co. Justice Court  
Tina Schmaus, Missoula Municipal Court  
Jackie Schara, President of Montana Justice, City and Municipal Court Clerk's Assoc.  
Thelma Keys-Nicol, Kalispell Municipal Court

**MEMBERS PRESENT BY VISION NET OR PHONE:**

Barbara Pepos, Richland County Justice Court/Sidney City Court

**PUBLIC COMMENT:**

No one was present for public comment.

**APPROVAL OF MINUTES:**

Judge Linda Budeski made a motion to approve the minutes as submitted, with a second by Judge Barger. Motion passed and minutes were approved by the committee. Tina added a comment to the minutes regarding the new Training and Education committee regarding *not enough training provided at the Fall Conference*. She said in part it is not enough, but the main problem is not every clerk can attend in the fall. Sharon said the comment in the minutes is not a reflection of what is being provided for at the fall conferences.

**CARVER UPDATE:**

Greg Noose will attend the meeting and discuss HB 233, which allows courts to require scam bracelets, 24/7, or other alcohol detection devices in addition to or in lieu of interlock devices. In doing so, he wants the committee to look at the form he provided to the judges at their training conference. Judge Ortley made a decision in Kalispell that driving while suspended is not an absolute liability offense as purposely and knowingly. Therefore, Greg Noose has done some research on this which may make a difference in some of his rules. Another item of discussion is there were two definitions of conviction, and the legislature cleaned this up by eliminating one.

HB 206 was passed regarding civil fees in our courts. Judge Carver said this was one of the first bills to be introduced and one of the last bills to come out of the legislature. In regards to the civil filing fees, beginning July 1<sup>st</sup>, 2013 they increase by \$5.00, another increase of \$5.00 beginning July 1<sup>st</sup>, 2014, and a final increase on July 1<sup>st</sup>, 2015 of \$5.00.

The request from MACO was to double the filing fees in the civil cases in our courts. The fees on the Defendants were doubled and in Small Claims the filing fee was doubled. The collection agencies actually got the bill tabled in the first reading, but Judge Mohr was one of the judges that were able to keep the bill going. Judge Carver said in essence our fee tables will need to be adjusted in Full Court. Sharon said their filings dropped when the jurisdiction increased. What they were able to find out, however, is the credit collection agencies had to file 2 civil suits prior to the jurisdiction increase, now they just file one, which is a money saver for them.

Judge Carver did notify the COCLJ of the change in the reporting categories for the Limited Jurisdiction courts. Jackie and Judge Carver also went to the COCLJ with the clerk's new Training and Education committee.

Lisa added during the legislative session, she sent an e-mail to Tom Butler and Scott Tenney of the Montana Highway Patrol and she gave him the numbers of the courts added to the roadside payment program at their request. She noted the 3 courts having received roadside payments and that one of those was Dawson County with most of the roadside payments. She asked the question requested by Judge Mohr as to the policy of the patrol. Are they requiring their officers to use roadside payments, or just what the officers are being told? She did not get a response back on the question, but he did respond they are very busy with the legislature right now, and he would reply. This week Major Butler responded he would have liked to talk with Lisa at the Spring Judge's conference, but did not have a chance to discuss this with all the judges. Major Butler said they are pushing roadside payments from their end and Judge Carver should be up to speed on what the patrol is doing. Lisa does attend meetings with the DOJ and has requested roadside payments be included in the stats provided, but to date this has not been done.

Judge Carver said it was mentioned and Judge Mohr told the patrol they needed to collect more bonds in his County, due to the large amount of DL suspension orders he has been signing. Judge Mohr asked the MHP questions while at the training, including how many officers will be assigned to eastern Montana, what is your policy regarding roadside payments and then define eastern Montana. The patrol defined eastern Montana as starting at Lewistown. Additionally, the patrol stated they were working hand in hand with Judge Carver's IT committee.

Judge Barger commented the patrol put it on the judges to get after the MHP officers to collect more bond using roadside payments. But, Judge Mohr said there is a separation of powers issue with an officer advising a defendant he will not accept cash, or a check, but the judge wants your credit card. Jackie asked one of her highway patrol officers if he was going to start using roadside payment and he commented he has not heard of it, will not use it and does not care to. Judge Mohr further commented after having been gone on vacation, he got back and signed 76 DL suspension orders, 46 of them were highway patrol violations. Judge Carver agreed with Judge Mohr due to separation of powers he cannot order his officers to collect bond. Judge Carver knows the officers in

his area are telling defendants they do not collect bond – period. He said regarding citepay, the defendants are told to call the court.

### **Fish, Wildlife & Parks**

Lisa explained at the last meeting they were advised by the DOJ they were changing their tables dramatically. Greg, one of the developers, recently sat in on a meeting with DOJ and Fish, Wildlife & Parks and learned the tables are not changing drastically. Lisa advised the mobile forms have gone out to about 20 of their officers and hope to pick 30 more, but this is just on a test basis. Therefore, Lisa told them when the forms are ready to be pushed out to import, the officers will deliver the printed out copies to the court for the 1<sup>st</sup> phase. What is required of her office is touching each court and making a new file layout. With time restraints and other projects on the table, she let FWP know her office may not be ready to work on this project when they were. They were fine with this and did not anticipate going to production until July. DOJ is involved in this project because they have the contract with JTS, the vendor. She also wanted everyone to know when Motor Carrier Services are ready to begin the import project; they will need to follow the layout already being used.

Judge Carver commented the Gallatin County judges spoke to him at the spring training about the accounting policy of the IT division. He advised the judges if they have a problem, it needs to be written out and sent to him and he will add it to the minutes of the meeting for discussion. To date Judge Carver has received nothing, therefore, the agenda item of Gallatin County Justice Court accounting concerns will not be discussed at this meeting.

### **LISA MADER – UPDATE**

Lisa said they are fully staffed. They are getting projects done as fast as Claudia and her crew can handle them. Most of these projects deal with FullCourt. They did receive approval of the 3 FTE, but are not filling those positions immediately because of vacancy savings. She is not sure what expertise they need and has discussed needing a statistician, but no solid decisions have been made.

### **E-Filing update**

They had their first kick off meeting with the vendor on March 7<sup>th</sup> and since then have had multiple working sessions with the vendor, LT Court Tech, outlining high level work flows and system configurations. They had phone conferences with JSI and LT Court Tech to figure out the integration. No work has begun because of some minor contractual issues, which were just resolved the day before this meeting. Lisa commented the RFP committee will be coming back together on June 7<sup>th</sup> to discuss pilot sites, review the modified rules and then review the e-filing criteria. To become an e-filing court, the judge and the clerk must make an application.

Once pilot sites are chosen, members will be asked to participate in work groups for each of the major case types. They will be coming to the IT committee and asking for support in terms of forcing standardization for courts that are non-standard, specifically in regards to the case numbering table. For example, Helena Municipal court has a completely

different numbering system, due to their being one of the first courts ever setup. Therefore, in order for them to become an e-filing court, they would have to adopt the current standard case numbering system. This does not mean there is no e-filing on old cases, but from day 1 of e-filing, courts would need to adopt the standard table.

Lisa commented further this project is moving slower than anticipated with LT Court Tech. There were some different ideas on how projects should be handled. During our RFP this small company which is the vendor for the appellate case management system was bought out by Thomson Reuters, a very large company. This caused LT Court Tech to be spread a little thin, but she had many conversations with the President and finally has a commitment to meet with her department and discuss how the project is going. She feels it is now moving forward.

### **Website - redesign**

The new website was deployed on May 9<sup>th</sup>, and looks great, with just some minor changes needed. Kevin did a wonderful job on that project. Judge Carver said he did look at it and did not see the *Best Practices*. He wondered if this was left off by accident. Lisa will check with Kevin on this.

### **Repository issues**

Lisa said the IJIS exchanges, the District Court exchanges, have been fixed and operating successfully since mid-March. She just received a new code for the municipal infractions to report correctly and sent test files over to the DOJ, just waiting for them on the go ahead for production. It is still her goal before the end of this year to add courts to the automatic process of reporting to the DMV.

Thelma mentioned several months ago a defendant called her and said his deferral was showing up in a records check. Apparently, a clerk had gone on to the repository, printed out the record from there and gave it to the military on the records check. It was a deferred-closed case and should not have been reported. Thelma believes this is a training issue for clerks to not look at the repository as public information to hand out to anyone. Claudia advises the clerks to not give out information from another court. When a clerk logs on to the repository it is with their access, not public access.

Judge Carver said the clerks do not sign a user's policy and if they do not attend training, how do they know the proper usage. This issue came up with the MTIVS project, because Brenda Nordlund is drafting a user's policy with clear understanding how the insurance checks should be done. Sharon asked if something could be put on the repository, such as a box stating this is not for outside distribution purposes. Thelma said perhaps when a clerk obtains her user name and password, to sign a document stating how the central repository will be used. Lisa said the password is the same as their FullCourt user name and password. Tina does not allow access to the repository to her clerks.

Jackie said a new clerk told her the best thing about her job is the repository, where she can find out anything about anybody. She was trained by the other clerk in the office.

Lisa will talk with Beth about some kind of policy, or disclaimer, which will probably end up with the Commission. Without having public access rules in place, it becomes a bigger issue. Judge Muth has asked for access to the District Court and has been told no. No one has access to the District Court database, except for the Court Admin. Office. The judges and clerks do not have access to the District Court repository. Judge Carver said talking to Brenda Nordlund might be helpful, since she was worried about the insurance verification database being misused.

Sharon said training the clerks is good, but with turnover in the court clerks, it still might be a good idea to have something on the website itself. It could also be an issue of someone having been told about the proper usage of the central repository, but six months later when they finally use it, they may not remember to follow those rules. Thelma believes only certain people in an office should have access to it. Lisa said it was designed in such a way that if you have a logon to FullCourt, you have access to the Central Repository. This application does not have the level of security necessary to block some FullCourt users out.

Judge Barger added it has been used to find out the proper court for a defendant who calls or comes in and has no idea which court he should be in. Sometimes on a highway patrol ticket they do not even know where they were pulled over. Being able to check the central repository for a ticket and instruct the defendant to the proper court is helpful. Judge Carver found this is helpful as well.

### **Public Defender report**

The committee was provided with an example of the information they will supply the Public Defender's office. The disclaimer on the form was discussed first. The next page was the amount collected by the courts, with the dates shown (from this date - to this date) at the top of the page. Lisa said she wants it formatted for every county, such as Lewis & Clark County and then the subtitle of the courts in that county. The same format will be used for the last page which is the amounts assessed. Claudia and Gregory have done copious amounts of verification on this project. There is some minor formatting work to be done and it will be ready for distribution. She suggests starting on August 1<sup>st</sup> with the July figures, therefore, starting the report with the fiscal year.

Thelma asked why they are doing this, since she sends them these figures every month now. Lisa replied this report will take the place of hers. There is a District Court clerk meeting today with discussion on this same issue. This report will take care of the Public Defender reporting from the District Courts as well. There is no breakdown per case on this report. After the meeting with the Public Defenders, it was clearly decided the need to breakdown these figures by case was not needed. Tina from Missoula stated her public defender's office actually wanted figures reconciling with what they had on their records. She had to advise them her office could not supply the additional figures due to time constraints.

Lisa believes the public defenders are trying to reconcile out of the lump sum received from the Dept. of Revenue with each individual court. What they want to know is out of

the \$50,000 (for example) from Missoula County, how much came from the Municipal court and how much came from the Justice Courts. In the minutes of our meeting with them, it was specified this is all they needed. Claudia added they only wanted the report from 7-1-2011, not anything collected before then. Judge Carver is curious about figures at the end of the year, showing a large amount assessed, but very little collected. District Courts do not have overdue processing, nor take part in the collection of fines or fees; it is left to the probation officers. It's an entirely different system than the Limited Jurisdiction Courts.

Judge Carver commented the disclaimer is good. Lisa is asking the committee if they are OK with the first report coming out August 1<sup>st</sup>. This gives them the rest of May and June to perform more validation.

**Sharon made a motion to accept this procedure beginning with the Fiscal Year of July 1<sup>st</sup>. Judge Carver restated the motion is on the floor to accept these reports and the disclaimer. This motion was seconded by Linda Budeski. The committee passed this motion with Greg Mohr dissenting with reservation.** Judge Mohr said it is not our job and there are duties out there which need to be done and would benefit the courts. When this first came about from Senator Shockley, Judge Herman developed the perfect document and the forms were sent to the Public Defender's office, but they did not use them. Now, it came back to us as our problem and we had to develop a new form. When the next legislative session takes place, we will all be sitting in this same room redoing these forms because they want more.

Judge Carver said the point is well taken, but we did make this agreement and one of the reasons was they were going to the legislature to force the courts to send the reports. It was a monthly report from each court, showing what was assessed, what was collected and what amount was waived. Fritz Gillespie pulled the bill once we had this agreement. Lisa wanted to give credit to Claudia and the development staff on this project, as it was a tremendous amount of work. They were able to get this project done and not have to contract services with JSI, which from a development standpoint is awesome. Lisa is concerned this information will get out to other agencies and they may receive more requests of this type. In the past the requests were always denied.

Claudia wondered if in the disclaimer we should add this information was supplied as per the agreement with the public defender's office, and no additional information will be provided. Judge Barger said what will happen when they cannot reconcile with these reports. Lisa said if more information is needed, it will have to come from each individual court. She doubts the public defender's office will be able to reconcile with what comes to them from the Dept. of Revenue. Judge Carver read part of the disclaimer: *the information provided in this report only reflects information entered into FullCourt.* He said this disclaimer is very clear.

Lisa asked if this should be added to the disclaimer, **No further information will be provided beyond the scope of the agreement between the OCA office and the Office of the Public Defender. Judge Mohr made a motion this statement be added to the**

**disclaimer. Judge Barger seconded the motion. Committee voted and passed this motion.**

**Dept. of Motor Vehicles – Greg Noose**

Court approved alcohol detection program language is the first issue discussed, which replaced 61-8-442. His division issues restricted driver licenses subsequent to DUI convictions, in accordance with statute 61-5-208. The reference in section 61-8-442 states the court may allow a restricted license. There needs to be a process to manage the subsequent convictions of DUI and BAC violations.

The second issue is the reporting requirements under 61-11-101 which removed the final conviction reporting in 5 days. Previously, the reporting was 5 days and they allowed 10 days in case of appeal, therefore, the 15 days reporting date was chosen. This may require a change in programming. SB 314 is the bill to change the reporting requirements. Federal standards required reporting within 10 days and they were missing the deadline, because they were reporting dispositions in 15 days.

Greg Noose gave some history on the process. In 2005, there were stricter rules regarding reporting, therefore, the 15 days became the time the court could collect the fine and take action if a deferred was given as the disposition. In 2009, the statute was changed on deferred. You were not even required to report a deferred on a non-commercial driver. On the commercial driver, you reported the deferred sentence as soon as it happened. Although, there are still some differences of opinion whether you can defer a citation on a commercial driver, it needed to be reported during the deferral period. SB 314 took out some of the language regarding reporting convictions and now you have 5 days to report a conviction. A conviction must be a finding of guilt and a sentence. Once a finding is made on the conviction, you have 5 days to report.

Electronically, the system sends convictions on day 1 for DUI and BAC convictions and the same rule applies for the manual reporting courts. Greg wants to discuss how the courts will be handling the reporting of convictions now. Also, the Attorney General has advised under 61-5-213 the conviction goes on the record and does not automatically come off once the case is appealed. In fact it stays on the record, until an order from the District Court stays the disposition. In the past when a DUI was appealed to the District Court and removed from the record, it never was put back on, even if the appeal did not move forward. Now, the District Judge must make a ruling regarding the appealed conviction. Thelma asked if the Defense Attorney has filed an appeal and stay of the conviction, shouldn't it be removed and the case moved to the District Court. Greg Noose said under this language the conviction will be on the record, until the District Court makes a ruling otherwise. Even regarding the ACT program, the court may stay the order of the ACT program and this may have little effect on a first offender, but a 2<sup>nd</sup> or subsequent DUI or BAC offender would have to provide proof of completion of the alcohol treatment program before a license is reinstated.

Judge Carver said the problem is the appeal papers state the judgment is stayed. He does not know how the judgment can be stayed and a conviction reported. Judge Mohr said

once the appeal is filed and they ask for a stay on the judgment, everything goes to the District Court. Judge Carver said once the appeal is filed, they have lost their entire jurisdiction on the case. Judge Barger said the law says Municipal courts of record must stay the judgment upon appeal.

Greg Noose said one example is when a court finds someone guilty of a 1<sup>st</sup> offense DUI. That is how the conviction comes to his department. However, they see a prior conviction on the record and their administrative penalties are different than those of the court. Therefore, the defendant is subjected to the 2<sup>nd</sup> offense administrative consequences. This does not change because the local court took a different action. Now your stay of a judgment means a conviction had occurred and his administrative consequence is to follow the conviction report, until the District Court sends an order stating otherwise. The language regarding the expiration of time of appeal is no longer in the statutes.

Judge Mohr believes Greg Noose is correct because he is administrative, not judicial. He sees plea agreements where a second offense is plead down to a first, because they are not sure the first offense would stand. He gets phone calls from defendants who say the State suspended their license longer than the Judge advised them at the sentence. He lets them know the State is the administrative part of it and has their rules. Greg Noose said sometimes Defense Attorneys will have a defendant plead guilty to two first offense DUI charges. DMV rules are upon a conviction, not necessarily whether it is a first or second. Judge Mohr does not know if he would then sign the defendant up for ACT and the other requirements of the DUI, if it was appealed.

Judge Carver believes the judgment is stayed, therefore, all the fines and other requirements of the sentence are stayed, and the administrative report is another matter. Greg Noose was asked if he was coming back to teach the judges in the fall. Judge Carver says it would be helpful if the judges saw a letter from the Attorney General's office stating this is how it should be done. Greg Noose agreed the letter would be a good idea. At the spring conference, it was agreed Greg Noose and the DMV were not given enough time for their presentation.

Judge Carver said once the DUI gets into the District Court; another issue is their reporting to the DMV. Greg Noose said once the Petition for the appeal gets into the District Court, then the Judge has the option to let the DMV know if the defendant is subject to suspension or not. The DMV will comply with a subsequent order and in fact they do this several times per year with the implied consent suspension. Judge Carver asked if the Attorney General is going to make an official opinion. Greg does not believe it will be an official Attorney General's opinion, but Peter from that office has stated when a defendant is arrested and convicted of theft and an appeal is filed, they are not automatically released from jail. There must be a deliberate action to make this happen. Driver Improvement records should be handled no differently.



What Greg Noose is hearing today is the conviction will go on the record and should there be an appeal, they will need to hear from the District Court as to the stay of the license suspension.

Judge Mohr agreed with Greg Noose the conviction will be put on the record even on an appeal and they would need an order from the District Court to remove it. Judge Mohr said a policy statement would be helpful to the judges. It was suggested Peter accompany Greg to the Fall Conference as well. Judge Barger said the rule is different for the Municipal courts of record and the Justice Courts of record, in that the court must stay the judgment. Judge Carver pointed out the statute says the same regarding the stay of the judgment. Judge Barger said in Rule 7 of the Courts of Record, it does not say there is a stay of the conviction. The position Judge Mohr is taking is the Limited Jurisdiction courts do not take action; it is up to the District Court to do that. Judge Mohr believes the fines and jail time can be stayed in his court, but not the ACT or the DL suspension part of it.

Greg Noose said there is time to figure this entire procedure out, since the law does not take effect until October 1<sup>st</sup>, 2013. Greg said if he gets a policy statement approved, he will e-mail it to Judge Carver. Judge Carver wants it all figured out by the time of the Fall Conference, because he knows there will be judges questioning this procedure.

Greg Noose inquired about the timeline for the electronic reporting, should they all be the same as the DUI convictions are done now. Right now, Greg said it makes sense to send the DUI convictions in right away, because the court is seizing licenses and the driver can't drive until he gets a probationary license, if he is eligible.

The sooner they get the conviction, the sooner they can take the action of collecting the fees and getting the driver his probationary license. He is not discussing the 2<sup>nd</sup> or subsequent offender. Judge Mohr said on Aggravated DUI, the statute reverts back to the regular statutes, but says nothing about the suspension of the driver's license. Therefore, he does not order this, but advises the Defendant the State of Montana will suspend and the court will take the license to send in. Greg Noose said it is important to do the DUI on day 1 after the conviction. He asked what should be done about the speeding tickets, report electronically on day 1 or day 5.

Judge Carver asked Lisa how the reporting date is set and Lisa said it is hard coded. This will require vendor intervention, not only for FullCourt and the courts manually reporting but also the central repository. Judge Carver said we cannot leave 15 days for traffic offenses. He asked why we would want to hold convictions for 5 days. Judge Barger said there is a possibility of a defendant coming back in that 5 days and saying they made a mistake pleading guilty. Thelma said this does happen and the defendants end up back in Court.

Greg Noose said with paper reporting you can hold it 5 days, but electronically they already receive the prior disposition, new action feature. Sharon asked if they no longer have to do a manual disposition and Greg Noose said no, they get these changes in the

disposition all the time, and most of the time they are deferred action and then a dismissed action. Claudia said this only happens if it is a deferred imposition.

Judge Carver asked the members of the committee if there is a reason to wait 5 days on the electronic reporting of tickets. Lisa has no idea how much it would cost to change coding, as they have not had to do so in a long time. Judge Budeski asked if it would be more cost efficient to do away with the 15 day reporting and leave it 1 day, as with the DUI convictions. Lisa would agree it should be more cost efficient. But, they are dealing with a new version of FullCourt as well. Greg Noose knows of no grant funding for this change. Personally Lisa believes it would be a better idea to go to the one day reporting, the same as the DUI and BAC convictions.

Judge Barger asked if she has a conviction on a Monday, but the conviction was not entered in FullCourt till Thursday or in other words, it is backdated to the date of the conviction which is Monday, will the computer pick it up for reporting. Lisa said yes it will pick it up. Lisa said you can have a case with no disposition for the past six months, but once a disposition is entered, regardless of the date, the computer will pick it up. Claudia said the program knows the conviction has not been sent. Once sent, then it will fill in the date it was reported. Judge Carver also noted he reports manually and if he is in court all day, the DUI is not going in that day. He will work on it later in the week when he is out of hearings. Claudia said even for courts reporting manually with paper, you can see on the computer when the disposition went in.

Therefore, Judge Carver said the only decision to make is does the computer wait 1 day to send dispositions in, or does it wait 5 days. Judge Mohr said when they eliminated sub 4; the only option is to send it in immediately. **Judge Budeski made a motion reporting convictions be 1 day. Judge Audrey Barger seconded the motion. The committee voted and passed this motion.** Judge Mohr voted yes with a caveat the Legislature did this right. Thelma voted no on this motion.

Discussion then followed about whether a court can defer a citation on a commercial driver's license holder. Judge Mohr commented defendants will call and ask him to remove just one citation from the record, which he cannot do. Greg Noose replied they do not advise defendants there is nothing that can be done, because he has seen many types of court orders. Regarding the part of the law that says a court will take no action to keep a conviction off the record, defense attorneys argue it does not say you cannot defer a citation; you just need to report the deferred and the dismissal. Judge Carver said this is how the committee feels as well, you report deferred sentences. Greg Noose said he will make sure his clerks are telling the defendants proper information, but they cannot tell a defendant a conviction cannot be removed for cause. He knows once a conviction is on the record for a year, it is unlikely a judge will take action to remove it, but Judge Loudon did this routinely.

Judge Carver asked Greg Noose how a deferred is handled on a commercial driver, does the federal government see this. Greg said yes, they can look at it and they will see it as a conviction. If it was considered a serious violation, such as more than 15 MPH over the

speed zone and he had two of them the DL is suspended for 60 days. If after six months, the judge takes a look at the deferred sentence and dismisses it, it will change the conviction, but it will not change the action driver improvement took when they first saw the conviction. This is what prior conviction-new action in the electronic reporting was meant to address. He did not know this process was only meant for deferred sentences. At any rate once the dismissal is reported, it changes the conviction, but the underlying actions are still there.

Judge Carver asked if the driver has a Kentucky DL, does the dismissal remove it from his record there. First of all, Greg Noose reported they do not even send deferred dispositions to other states because they are too hard to get off. They have had to make this internal decision, because in the past once they send in the dismissal, it shows up as another violation on the record instead of a dismissal of the prior violation. Lisa asked the judges if DUI or BAC convictions can be deferred and they said no. Judge Mohr said you cannot defer driving while suspended tickets and no liability insurance tickets as well.

The other question Lisa asked is there a need to change the central depository, so it is not sending deferred sentences on non-commercial drivers. Judge Carver asked why they would change it when a deferred is a sentence. Lisa said she has heard over and over again, you do not have to report deferred sentences. Judge Carver said it is a conviction, until such time it is marked as dismissed. Judge Mohr said before the anti-masking statute came to fruition in Montana, you kept the deferred tickets in the file and sent them in when they were dismissed. Greg Noose said this is not across the board because there are many courts that do not send in the deferred sentences. Judge Carver replied the statute says it is supposed to be sent in. Lisa just wants to know if the logic needs to be changed in the repository and Judge Carver said no. Lisa said the reporting remains the same on a deferred whether they are a commercial driver or non-commercial driver and Judge Carver said this is correct. Greg Noose believes there are paper reporting courts that do not send in the deferred sentences. Jackie said they are a paper reporting court and the deferred sentences do not print out. Judge Mohr asked Greg Noose to address this issue at the fall conference as well. Also, Judge Mohr stated judges can never go wrong following the law.

On another issue, there has been some controversy in the bond book with Judge Jones and the 309 and 310 speeding violations. Greg Noose said what they wanted in those south central counties is to charge 309 and 310 violations on 3<sup>rd</sup> offense and now it can be done. Judge Carver said this was a decision out of the Columbus area. Greg Noose wants to clarify the issue of when points go on the record, because there are a lot of people who feel there are no points because it is less than 5MPH at night and 10MPH during the day under 61-8-303. Judge Carver recommended a cheat sheet to the judges. For a commercial driver with an out of state license, these violations are reported. Sharon said her clerks are advised to say the driver needs to contact the DMV in Montana or in the State where they are licensed.

Greg Noose has been implementing the 10 year rule at Driver Control for determining what the administrative consequences are. This has been supported by their legal advisor as well. He explained they are still only issuing probationary licenses on 10% of 2<sup>nd</sup> or subsequent offenders on DUI. For the most part a person is suspended for an entire year. There is a different waiting period track for 24/7 participants and a different track for DUI Court. On 61-8-442 there is new language of *court approved alcohol/drug detection program*. This makes it possible for a court to grant a license after a waiting period. They need to know once the waiting period is over if the court is recommending a probationary license, normally we get that with a disposition. Then they need assurance the court approved alcohol detection system is in place. They do not need the same level of detail they need with interlock, because interlock is statutory. When a court puts someone on a court approved alcohol detection program, whether it be scam, sober link, patches or other devices, the court wants to assure the defendant gets a license.

Once the waiting period passes, Greg Noose does not want to assume the defendant is on a court approved alcohol detection program. The court may want to suspend the license because the defendant has failed the alcohol detection program. Therefore, how can the court and the DMV exchange information in this procedure. When Greg Noose spoke to the representative of Sober Link, he said they will not report to the DMV, they will report to the Court that ordered the alcohol detection device. The court would OK a probationary when the defendant is on scam and it would be the court that would suspend if the defendant fails the program.

The other approach Greg Noose talked about was to establish a link to vendors, which would be trickier. Judge Carver said they are not all vendors, 24/7 is done through a Sheriff's Office. Greg said 24/7 is a separate track as there is no waiting period. If the court reports the defendant is a 24/7 participant, he will presume all the requirements of 61-8-442 are being met. Interlock ignition is another program the DMV has faith in. Although, he noted very few courts using 24/7 are getting the proof of completion of treatment and the proof of insurance requirement. 24/7 is a complicated program, but they have issued very few probationary driver licenses based on the defendant being in that program. What he sees happen is they get put on 24/7 at the arrest, but upon conviction just wait until they are able to get their driver's license.

Judge Carver suggested possibly adding to the top selection, a court approved alcohol detection program. Judge Mohr signs off on the waiting period, after 45 days or 90 days, a recommendation of probationary as long as the defendant has enrolled and is participating in a court approved treatment program. Judge Mohr also feels the defendant should have to prove to the DMV he is enrolled in an approved program. Restorative justice is putting the onus on the defendant to control his destiny. The judge does not have a problem with a defendant wanting a license, as long as he does what he is supposed to do. Judge Mohr does not feel it would be appropriate to send defendants to a particular vendor, especially if more than one is available. Therefore, the defendant should have to prove to the State he is enrolled.

Judge Barger has a concern if each judge will have their own definition of what is court-approved alcohol detection device. She wondered how the DMV will know what Judge Mohr wanted the defendant to do. Judge Mohr said right now he only knows about Sober Link. His Sheriff said he is not going to run a 24/7 program. Judge Barger asked how the DMV will know what programs the Judge is approving. Greg Noose understands the provider list will be an ever changing list and not every program will be approved by every court. Judge Carver said add a check box the defendant is in a court approved alcohol detection program. Is it necessary for the DMV to know exactly what program it is? Tina said they will list the program on the document, because their compliance officer must keep track of their progress. Judge Mohr still believes the onus is on the defendant to bring proof it is court approved.

Judge Carver said for Greg Noose, all they need to know is the defendant is in a court approved alcohol detection program. This would then allow the DMV to issue the defendant a Probationary license. Greg Noose believes the court approved program must be on an approved list, or there could be a breakdown in the system. If the Defendant is using Sober Link, but the court wanted scam, he would have no way of knowing that. Judge Barger said what needs to be done is check the box for court approved and then write in the program that was accepted. Greg Noose said, therefore, he would need to see proof of scam before a defendant got his probationary license.

Greg Noose said the form was designed to be used later by the court to check all the boxes that apply. Right now Greg Noose has a list of approved interlock ignition vendors. He has never had to get involved in the other programs before. Tina wondered why the DMV needs to know who the providers are, as long as the court has approved them. How will Greg Noose see the proof the defendant is indeed in the program. Judge Budeski said if the defendant violates, the court will withdraw their eligibility for a probationary DL. Greg Noose said it will make it easier for his department if the court keeps track of this.

Judge Carver said most likely someone is going to provide Greg Noose with a vendor that is not on your list. If the court approves it and signs off on the defendant getting a probationary, that should be good enough for the DMV. Greg Noose feels this may increase the number of defendants seeking a probationary, since other devices will be available to them. What Greg Noose will do is not issue the probationary until he sees proof of interlock from the provider for the defendant, or the court sends him the form they are in a court approved program. Judge Carver added make a checkbox the Judge must check they are in a court approved alcohol detection program.

Greg Noose does not want the ACT/PFL form mailed to the DMV with the conviction anymore. Judge Carver asked if they could just use the form they are discussing, so the judges would get used to this form. I am recommending a probationary license on a first offense, sign it and send it in. Greg Noose said the ACT form is a good form for the courts to communicate with an alcohol counseling provider. He wants to get that information with the disposition. Greg Noose wants to know why he needs the form on a

first offense. The electronic reporting courts have a box and manual reporting courts have a comment field where they can add it.

On first offenses, which is half of the DUI convictions, Greg Noose would rather not have the ACT form coming to his department. He would rather have it written on the disposition. Judge Carver agrees and he will work with Claudia to see if it can be made easier on the manual disposition. Greg Noose said on the 2<sup>nd</sup> or subsequent form, if they receive the copy the defendant should be suspended again, that defendant will not receive a probationary for his entire year of suspension. He said the court can also use the non-appear, non-comply or non-pay suspension form which puts it on the court when he is eligible for a DL.

Judge Mohr made a motion to amend the form; the defendant has provided proof to the court of enrollment in the ignition interlock, scam and/or other court approved alcohol/drug detection program. Therefore, only one box would need to be checked. Greg Noose said in other words they would still have the interlock check box, but next to it add scam, or other court approved detection program. Thelma inquired how it works if they are using drugs, not just alcohol. Judge Barger said in the 24/7 program they test for drugs and Judge Carver added in Lewistown he orders defendants to report to a nurse randomly for a drug test, which they pay for.

#### **CITEPAY AT THE JAIL-JSI Demonstration**

JSI gave a demonstration of the Montana specific bond at the jail application from CitePay. The application was not to be accessible to just anyone, but had to be approved by someone before it went online. Therefore, the jail will have this application available to them. Each user will sign in with their login ID. What the jailer will see based on security features is a warrant lookup or they can make it eligible for someone to post bond on a jail defendant. The jailer ID will be used to identify which jail facility in Montana they are assigned to approve bonds.

The jailer will have the ability to lookup the warrant with Case #, Citation #, or last name, first name and DOB. Once the warrant comes up, the jailer will mark the box to allow bond to be posted on CitePay. Once allow is marked, it immediately becomes available for payment on CitePay. The application also keeps a history of who approved or disapproved the bond. Once the bond is approved, the jailer can click on post bond and immediately gets to CitePay. Therefore, a person standing right next to them can use their credit card on CitePay. Also on CitePay is the language the committee wanted regarding whether the person posting would allow the bond to be used as fines, fees and/or restitution at the conclusion of the court case. There are mandatory fields, because information on third party posters must show up on the bond window in FullCourt.

Tessa pointed out the receipt will also print out the bond conditions they agreed to. If they chose to receive an e-mail receipt, this information is on that receipt as well. Looking at the case in FullCourt, the warrant flag will be gone and it will show the warrant was electronically served. It will show as being updated by CitePay. The Bond

Window will show the person who posted and see all the language he/she agreed to when it was posted on CitePay. It will also show the facility where the bond was approved. The ROA will show the bond posted, with a receipt # and all the conditions of bond.

Tessa asked the committee if it would be likely a jail would have a stack of warrants in front of them and need to mark several allowed at one time. Judge Carver said no, the jailer will wait until a defendant is ready to bond out. Thelma asked how a person with multiple warrants will be able to post bond on CitePay. Tessa said the jailer will have to look up each warrant and make each one payable on CitePay. Once on CitePay, they will have the option to see all of them and post bond for all at one time.

Judge Carver asked how they know a bond poster has not allowed the bond to be used later on for fines, fees or allow forfeiture. Ernie said it is optional to check the box allowing the use of that bond money, there is nothing to check if you do not allow it, but the fact you do not want your bond used for fines or fees is noted in the ROA. Lisa asked if JSI will work on the feature if on the receipt the person checks the box bond can be used for fines, fees or restitution, it will appear on the bond window as a checkmark, allow conversion. Tessa said yes, this program is still in beta and needs to be Q and A before they are done with it.

Tina asked if there is a report they can pull to see this payment of bond. E-mail will be sent to the court stating bond has been paid. Tessa noted an e-payment report is available to the courts for any payment received on CitePay. Sharon asked how they would handle the posting of a bond where there is no warrant. A defendant has appeared in court, plead not guilty and the judge has set a bond. She asked if they will be able to use this application to accept a bond payment. Tessa said no, you would have to create an unapplied receipt and then transfer it to the case.

Lisa said usually a new process goes into the automation committee member courts first. But, there needs to be contact with each and every detention center first. Plus JSI still needs time for Q & A of the program. JSI thought by the end of July they would have their piece of this project done. Lisa said by the end of July their office is finally finished with jury in the courts. Additionally, an instruction sheet for the jail must be created; they will need to do their own testing and instructions for the court as well. Judge Carver told JSI he believes the end of July sounds great and this committee will try to figure out the other issues on our end. Judge Mohr commented he has already discussed this with his jail and they would be anxious to have the capability. Tina believes if they can provide a very good sheet of instructions to the jail, it should work out. Unfortunately, jails have a high rate of turnover in their staff.

Lisa said her staff will come up with Best Practices or instructional guides, but they will need to know which jails are first and which courts want to be first. Judge Budeski suggested the larger jails should have one universal e-mail address, instead of an e-mail address for each jailer.

## **MEETING DATES**

Judge Carver wanted this committee to rethink our meeting dates. We had agreed to keep them on a schedule with the Commission meetings, but this month, for example, there is no commission meeting tomorrow. At the spring conference they have a meeting and it tends to cover April and May. Fall conference is September 23<sup>rd</sup> through September 26<sup>th</sup>, and the commission will meet then, probably not having a meeting in October. Sharon said there are just too many issues to go too long without a meeting. Judge Mohr suggested a meeting date in August, since there will be no meeting in September. Claudia also commented they are busy with the fall conference as well.

Judge Carver suggested meetings in January, March, June, August and October. The committee discussed having at least 5 meetings per year. This would skip November and December, holiday months and July. Judge Carver wanted to schedule a meeting in August of this year and then follow the above track. Next meeting would be August 15<sup>th</sup> and then October 17<sup>th</sup>. This would keep our meetings on Thursdays.

### **Update on Clerk's Training and Education committee:**

Sharon said the committee had a meeting to discuss dates and a venue for a spring conference for clerks. The dates chosen were April 1<sup>st</sup> and 2<sup>nd</sup> in Helena, Montana. Claudia did some foot work for them and they have chosen the location of the Holiday Inn in downtown Helena. They will meet again on May 22<sup>nd</sup> to discuss possible agenda items. There may be an issue with how many rooms the hotel will give us. Allison Thompson is trying to come up with a number of clerks attending, as well as how many motel rooms would be needed. The conference will begin at 10:00 AM on April 1<sup>st</sup> and end at 3:00 PM on April 2<sup>nd</sup>, with an earlier start time on the 2<sup>nd</sup> day. Sharon said many clerks would like training on forms. The IT lab would be setup for this and more training on civil was requested as well. Sharon said there will be breakout sessions available.

Sharon said they would really appreciate judges supporting this effort at more training for their clerks. It is hoped this would become a yearly conference. There is too much turnover in the clerks for once a year training to cover everything, especially when not all the clerks can attend. Judge Carver would like Sharon to send him an e-mail and he will draft a letter to all the judges of how important this is. They are hoping to get 80 clerks to attend this session. The cost to attend would be travel, meals and motel rooms. Registration would be minimal, possibly \$25.00 and higher for non-members of the MJC&MCCA. The \$25.00 would be used to cover lunch for two days and break drinks and food. The Association is picking up the cost of the meeting room and other associated costs. Judge Carver said his letter could include the need for statistics, a Best Practices method of entering Search Warrants, the reporting issues given to us by Greg Noose of the DMV, user policy for the central repository and Tina brought up the mandatory training a clerk or judge should receive for handling credit cards. Because the budget process is taking place, Judge Carver will get this out to the judges as soon as he gets the information from Sharon. He needs to know the capacity, when registration will take place and he wanted to know if Judges who are their own clerks can attend.



Sharon also commented the clerks will be invited to attend the training this fall which takes place in conjunction with the judges conference. Judge Budeski said it is a good idea, as all clerks are not able to go to the fall conference. She said some of these topics need to be addressed at the fall conference as well. Tina commented they hosted a Western District clerk's meeting in Missoula last week. Judge Jenks presented on pro se defendants, a local compliance agency gave a presentation, as well as a presentation on wellness issues. The Montana Motorcycle Safety program was presented because May is motorcycle safety month and that class gave 2 free certificates for classes, which are normally \$175.00 each. The highway patrol was invited to come and talk about the Montana Hope project.

Sharon sent 3 clerks to Missoula and they enjoyed it. Yesterday she sent 4 clerks to Laurel for the Eastern and Central District clerks meeting. Jackie said DSVS provided a presentation on domestic violence issues. Judge Carver said he just had a question from a judge who has been around for quite some time and he wanted to know on the OOP forms where the Brady indicator is. The judge needed the procedure explained to him again. Greg Noose always says you have to train the basics. Tina said you can inform the judges all you want, but if the instruction does not get down to the clerks, it may not happen. Judge Carver said every school he has attended he has learned something new.

#### **Claudia update:**

The bond book is up for everyone to see. There is a mistake on 45-5-206 which should show No Bond. They will correct the copy that is online. If you print it online, the top headers do not print. They will fix these issues and resend. Lisa added John, one of their developers, built a new program for Claudia to manage the statutes in. She used to spend hours making changes and reformatting statutes. Now, Claudia can make the changes and the program does 98% of the formatting. Claudia says she has the excel copy which Law Enforcement can use to print their bond book. Lisa said another thing the new application does is make it easier for DOJ to grab the changes made to the statutes, instead of the lengthy procedure they had to go through before.

#### **Roadside payments:**

There are 13 counties and a few districts to finish on the roadside payment project. Claudia has called the last few counties to get their work orders in. She wants to be done by July 1<sup>st</sup>. Now, the bank accounts need to be set up and a verification run with the one penny. There are a few stray counties which cannot be setup, such as Prairie, Teton and Silverbow. Claudia will work on Missoula and Ravalli later as they require more attention.

The trainers did take the traveling lab to the spring judge's conference. 16 judges stopped by; 8 judges stopped to visit and 8 stopped with questions. They had a power outage and a few other problems at this lab. The new judges had to take a test that day which made a difference as well. Claudia said the lab will be at the conference in September, which includes judges and clerks. Judge Carver believes the COCLJ will

want the computer lab at the fall conference, but possibly not at the spring conference, due to the lack of interest by the judges.

Claudia said they have a new trainer, Cara Bergum, who was a clerk in the District Court in Fergus County. She most recently worked for the Montana Dept. of Transportation and has been with the Court Administrator's office for approximately a month. Chad is located in Missoula, Sherry is in Bozeman and Cindy and Cara are in Helena.

The JSI Conference in Portland will be held August 28<sup>th</sup> through August 30<sup>th</sup> this year. She has not seen an agenda, but will pass it on once it is posted. Lisa talked to procurement a couple months ago and mentioned they are coming up on the 10 year contract renewal with JSI and how fully invested they are with the company. She asked without specifics if they would be required to go through an entire procurement process or grant a sole source justification. At that time procurement thought they would grant the sole source justification. She has spoken to Ernie with JSI and asked if sometime this fall he can send one or two of his court specialists and do a thorough evaluation of our infrastructure, our implementation of Limited Jurisdiction courts, our implementation of District Courts, our central repository, our IJIS exchanges, and give us a solid plan with the costs involved to move Montana to Enterprise.

Lisa wanted to add that dealing with the current e-filing vendor, it has been difficult and she has found a certain level of confidence in the conversations when JSI has been there. She said JSI is asking some key questions in these conversations. Lisa believes they will want to stay with JSI. Judge Carver added it may simply be too expensive to switch court programs at this time. Lisa said going to the 2015 legislature, they will have a massive IT proposal to move from V5 FullCourt to Enterprise and to initiate e-filing statewide.

Judge Carver has a question from last year when they made a rule that no one outside your court should have access to your computer, except the Court Administrators office. This involved a computer in the West Yellowstone court. Claudia said over a year ago at one of the conferences those two judges met with her and drew up a plan for reconciling the court account. The West Yellowstone court did not provide Claudia with any bank statements to look at, so the two judges took on the project. She has no idea where this process is and she has never been contacted again.

#### **Yellowstone County ROA Implementation:**

Lisa has pulled down a copy of the Yellowstone County database and she has given instructions to the developers on what to think about while going through the process. They have not had any time to work on this project. She says the developers need to keep in mind every court will need to be contacted in this process. They will discuss this more at the next meeting.

Sharon reported how helpful Claudia has been in working on the Inactivity Dismissal project. They developed a batch process of inactivity dismissal on their civil cases. Sheri came down from Bozeman and trained the civil clerks and Sharon and it is a great time

saver for them. It is a wonderful option in that they do not have to go back and look at the old cases.

**Bozeman Municipal Infractions:**

Lisa said they want to make 3 statutes local ordinances. Claudia wants to know the authority to do this. Claudia presented their paperwork to make talking on a cell phone a municipal infraction. Judge Carver said they need to go through the proper procedure. Local Ordinances can become criminal matters, depending on how the ordinance is written up. Judge Mohr said it appeared from what was provided they want to amend the reading of it. Michelle wants these listed as Municipal Infractions, because right now they are listed in the civil cases and defendants cannot pay on line. Judge Mohr noted they have given animal control officers more authority and defined the violation as a crime.

Judge Carver recommended writing Bozeman a letter and asking them exactly what it is they need changed. Further, it appears from their written material they have criminal violations, therefore, the procedure would be done the same. Ask them if they are handling these as a civil matter, such as issuing default judgments. Are they asking the city attorney to be involved? Claudia asked them for their documents, but Michelle from Bozeman Municipal court said this issue is for the City Attorney. Judge Carver said ask them if they want their finding tables changed, as per the Municipal infractions. In other words, Judge Carver does not know what they are asking to be done. Judge Mohr was not sure who the department is that sends notification of the civil hearing, which would take place no later than 3010 days? This was found on page 4 of the 7 pages provided. The document says it has been *provisionally* passed.

Lisa said they will draft a letter to send back to them. Judge Carver would like a copy of it, so he can reply if one of the judges gives him a call. Lisa will send the letter to Judge Carver before sending it on to Bozeman. They will ask for clarification on the questions raised.

**Search Warrant – Best practices:**

This has come about due to the change in the statistical data needed from the Limited Jurisdiction courts. Courts were not entering their search warrants all the same. Claudia said since search warrants can be difficult to look up, you start to enter them with the SW/. Then you type the name, address, vehicle description, or description of what is given on the search warrant. Judge Carver would like to add after the part about the search warrant to remain in the care of the Judge's office refer to 46-5-310, stating the application is retained by the judge until returned served or returned not served. Judge Mohr also noted under 46-5-225 the Search Warrant is valid for 10 days. If it has not been served in 10 days it must be returned to the court as void and not served.

Claudia said *search warrant* has been entered in the statute table, so it can be picked as the statute. They would also have a finding of *search warrant*. Judge Carver asked how to perform a search on these search warrants. Claudia said that is the reason to use the prefix of SW/. If you just enter that, all your search warrants will come up and you can

look for the one you need. Whenever you save this, you will always have a SW/ number to save it as. Judge Carver asked what is the best practice for showing it was served or returned not served. Sharon said you could put it in the other finding, or Claudia said in the ROA. It was decided to put served or not served in the other finding, because you see that on the screen, without going into an ROA. Judge Carver said he would probably use the comment field to identify what they obtained on the search warrant.

The instructions do say “opening a new Search Warrant case”, which identifies this as a separate case by itself. Judge Barger said a search warrant is an investigative civil action and has nothing to do with a criminal offense at this time. Judge Carver said he is not sure it is civil either. Therefore, it is good to enter search warrants as a separate case. Judge Carver asked how District Court enters them. Judge Barger said you start in civil and then you pick a sub-category under the civil feature. Sharon felt it should remain as its own case type as it is now. Lisa said if it is important to report the statistics on a search warrant under the civil cases, she can just take these numbers and put them there.

Lisa explained there are 3 categories under FullCourt, Criminal, Civil and Juvenile. In the Limited Jurisdiction courts these search warrants would be entered as a separate case type under criminal. In District Court they are entered as a separate case type under Civil. Judge Carver said it is the counting of them for statistical purposes that is important. Lisa discussed all the reporting categories which were approved at the last meeting.

### **Fish, Wildlife & Parks:**

Claudia showed the committee the old form regarding suspension of privileges and then she presented a new form. On the old form it was separate as to Hunt, Fish or Trap. On the new form they are all together now and you do not need to check each individual box. At the bottom there is a difference in how the court order referral to attend the Remedial Hunter Ed program is shown. At the bottom it is clearly marked where to mail this. Some courts had the old form in their docs. Claudia is not sure how to get this new form in the FullCourt docs. Sharon said Fish, Wildlife & Parks should convert the form to the proper format for FullCourt docs. Judge Mohr said he has always wondered if signing this form means it was his order, or is it an administrative suspension from the Dept. He would like it to separate out whether a Judge ordered suspension or an administrative suspension. Judge Mohr does not like the idea of the Remedial Hunter Ed program, because they send the defendant tapes and he is supposed to watch them. Judge Barger does like to print forms out of FullCourt, rather than hand write everything. Judge Mohr wants to see the form changed to say: administrative suspension and a place to check, or a judicial suspension and a spot to check. Judge Carver said they would like input when the next form is sent out to the courts. Claudia said if she can get this form in a word format, she can get it in the docs in FullCourt and have some of the information pre-filled when it is printed out. This form can be filled out, scanned in and e-mailed to the department of Fish, Wildlife & Parks.

Claudia wanted to discuss the MANS# and the manual disposition reports. The DOJ said they would take the manual disposition reports, instead of typing the disposition on the

green sheets, as long as the MANS# is on there. Claudia said we should enter the MANS# in FullCourt. This is something else to teach the clerks at the next training. The DOJ appreciates this, because they can pull up the record with the MANS#. The committee all agreed the MANS# should be added to the manual disposition.

Judge Budeski made a motion to adjourn, seconded by Tina. Motion was carried and meeting was ended.

**NEXT MEETING DATE**

Thursday, August 15<sup>th</sup>, 2013.