

## **Solving the DUI riddle,**

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As a drunk, Mark Madon was extraordinarily lucky.

He drove drunk lots of times, but never killed anybody. He never even injured anyone, including himself. And when he finally got popped with his fourth DUI - a felony - he was lucky enough to land a spot in Montana's lockdown alcohol treatment center at Warm Springs.

"I'm able to feel again," said Madon, 45, of Belgrade, who graduated in January from the Department of Corrections' WATCH program for repeat drunken drivers.

Montana lawmakers on the Interim Law and Justice Committee have been studying drunken driving issues for months, with an eye toward the 2011 Legislature where DUI is expected to be a key issue. The group is trying to find a way to cut the number of people who drink and drive, particularly the stubborn minority who do it over and over again.

They are finding what Madon already knows: The journey to sobriety - out of that world where drunken driving routinely happens - is imperfect and complex. Parts of the current legal system simply don't work. Lawmakers heard from expert after expert, stressing the need for earlier treatment for drunken drivers, but treatment costs money and nobody seems to have any, including the state. So far, they've not proposed any concrete changes.

Part of the problem is defining the problem: Is drunken driving a drinking problem or a driving problem.

For Madon, that part is easy.

"I had a drinking problem," he said, and many chemical dependency experts agree. They say that drunken driving is not a traffic offense, but a violent offense, and it shouldn't be treated like speeding, particularly in the first, second or third offenses.

But there are others who say that part of the problem does point to Montana's driving realities. Taxis and other forms of public transportation are rare, said Richard Buley, a Missoula lawyer who has defended clients charged with DUI since 1981. Most cities have intentionally zoned drinking establishments away from the neighborhoods where people live, meaning most Montanans must drive to and from a bar.

"You've got to (drive)," Buley said, adding that it is unrealistic to think Montanans are going to stop getting drunk in bars given that alcohol has been a part of human culture for thousands of years.

Dealing with the driving piece will not solve the individual problems of alcoholism, but there is some evidence that it could make the roads safer. Take the famed Testicle Festival, near Missoula, Buley said.

Held every August at Rock Creek Lodge about 15 miles out of town, the festival is a celebration of Rocky Mountain oysters - castrated bull testicles breaded and fried - often heavily seasoned by booze. Buley said he used to get calls every year from festival-goers who had been arrested for DUI on their way back into town.

Then the festival changed its policies: Once you go in, you can't come out. You have to spend the night at the nearby campground.

"So there just aren't any arrests," Buley said.

And there is something about how routine driving is that leads people to think it's safe and they can easily do it, even after having a few beers, said Dave Carter, a deputy Yellowstone County attorney. Many people, when drunk, wouldn't attempt something they perceive as hard or dangerous.

"Like tightrope walking," he said. But driving is something almost all Montanans do every single day; it's easy. And even drunken drivers manage to get home safely about "90 percent of the time," he said.

But when they don't get home okay, the consequences are deadly - and, sadly, preventable.

Madon and counselors like Mona Sumner of Billings' Rimrock Foundation treatment center or Mike Ruppert, of Helena's Boyd Andrew treatment center, say that the best way to deal with DUI on a broad scale is to treat the alcoholic behind the wheel, not try to make it more difficult or less necessary for the drunk to drive.

But Montana's current legal scheme means that for most alcoholics, effective, mandated treatment doesn't come until the fourth time they get caught. Here's why: Driving while intoxicated is a misdemeanor offense until the fourth time, when it becomes a felony.

Felons and misdemeanants move through different systems. From start to finish, felons are a state problem: they are charged in state-funded courts and punished by the state-funded Department of Corrections.

Madon said he wished he'd been sent to WATCH long before his fourth DUI. But WATCH, which doesn't cost the drunk a dime, is only for felons.

Those convicted of misdemeanors, in contrast, are a local problem: If they serve any jail time, it's in a county-funded local jail and most drunken drivers are handled by locally supported city courts.

Ruppert said drunk drivers should be screened after their first offense and those identified as addicts should get the kind of treatment they need right then.

The question is how to pay for it.

Cities, said Jim Nugent, Missoula city attorney, don't have the money to be sending the hundreds of drunken drivers their police officers arrest each year, to the kind of effective, intense treatment that will actually work.

Another option is to make the offender pay for it. But even the cost of less expensive, outpatient meaningful treatment is still beyond the means of many people, particularly confirmed alcoholics who may already have a hard time paying their bills, Buley said.

"It sounds good in theory, as punishment, but they just can't do it," he said.

There is some alcohol education legally mandated after every DUI arrest. Those convicted of misdemeanors must attend a mandatory, self-paid alcohol education, known by the acronym ACT. But according to Madon and other chemical dependency experts, those classes fail to rehabilitate addicts.

Madon took those classes three times.

"It was pretty much a big waste of everybody's time," he said.

Even now, judges may sentence someone to more intense treatment after their first DUI offense.

"But very rarely does that happen," Ruppert said. And on second offense, the law says drunken drivers "shall go" to treatment.

But the treatment they're getting "is not what they need," Ruppert said. "It needs to be intensive treatment."

Intensive outpatient treatment is defined by the U.S. Department of Health and Human Services' Center for Substance Abuse Treatment as treatment with a minimum of nine hours per week. It can be either during the day or evenings and addicts usually receive both group and individual therapy.

Not every drunken driver even needs treatment. About 80 percent of people charged with drunken driving once never do it again, said Ruppert. For them, the shame, inconvenience and existing legal punishments are sufficient to keep them re-offending.

But, of course, those people are generally not alcoholics, he said.

The remaining 20 percent are the problem. And for them, treatment must come before their fourth offense if Montana wants to cut down on the number of repeat drunken drivers, Ruppert said.

Sumner, the Billings counselor, said there are ways to get at meaningful treatment more cheaply. She points to Yellowstone County's drug and DUI court as a success. Such treatment courts get alcoholics plugged into services only days after their arrest and the treatment piece is built around the needs of the addict, meaning very few people actually need in-patient treatment.

Right now, that treatment - both outpatient and inpatient - is paid for either by state human services money or from federal grants. But that's because the court is a "pilot program." To expand it and make drug courts a wider part of the solution, Sumner said, would require more state money.

"It's okay to get started with grant funds," she said. But the program can't grow that way.

With Montana already expecting a big budget shortfall next year, spending any new money on anything could face tough sledding in the 2011 Legislature.

Supreme Court Chief Justice Mike McGrath has proposed taking a portion of the existing alcohol tax and using that to pay for, among other things, expanding drug courts. McGrath launched a drive last month to put that idea to Montana voters next year as an initiative.

However, at least one lawmaker on the Interim Law and Justice Committee, Sen. Jon Esp, R-Big Timber, pointed out that McGrath's idea doesn't completely solve the funding piece. Alcohol tax money currently goes to pay for other government services.

McGrath's idea would spend \$10 million of it on drug and DUI courts. That's \$10 million lawmakers will have to cut from somewhere else; it's not \$10 million in new money.

It's not just money that's a problem, said Carter, the Billings prosecutor.

Right now, people convicted of a misdemeanor can be sentenced up to a maximum 12-month sentence. That means judges only have power over them for a year. It sometimes takes longer than a year to complete treatment.

Carter proposes making a new kind of misdemeanor charge, an "aggravated misdemeanor," for certain DUIs that have all the markers of alcoholism, such as extremely high blood-alcohol levels or driving drunk with children in the car.

Under Carter's proposal, drunken drivers convicted of aggravated DUI could be on probation for longer than a year, long enough for a judge to force treatment.

Attorney General Steve Bullock has also unveiled his 24/7 Sobriety Project, which begins on a limited scale in Lewis and Clark County in May. That program, modeled after South Dakota's successful project of the same name, makes those accused of a second DUI submit to twice-daily Breathalyzer tests, at the offenders expense.

Offenders who live too far away from a Breathalyzer site would wear a special bracelet that monitors the alcohol content of their sweat.

Bullock said the simple strategy will help "change the behavior" of repeat drunken drivers because the consequences of drinking again are immediate: jail time.

In South Dakota, the 24/7 program has seen success: More than 99 percent of the 12,000-plus people who have been through the program pass their breath tests and South Dakota saw the nation's biggest drop in alcohol related fatal crashes from 2006 to 2008.

The cost is relatively cheap: About \$115 a month for offenders who can use the Breathalyzer test or around \$210 for the ankle bracelet, known by its acronym of SCRAM. Offenders would pay the costs. In South Dakota, the program is self-supporting, which Bullock said he expects to be the case, here.

Buley cautioned that such ankle bracelets may not be all they're cracked up to be.

"SCRAM is a fantastic piece of marketing," he said. And they're expensive.

"If people could afford that, they wouldn't be having public defenders," he said. "You're putting another burden on people. It's wear that or go to jail. It's insane."

However the state makes changes, Madon said changes need to be made. He offers his own life as proof.

Before treatment, before WATCH, before he became a felon, Madon was not just a drunk driver, he was a man whose life was coming undone.

I was looking at my marriage failing, looking at losing everything I'd worked for," he said. "I felt pretty hopeless. The biggest thing was my drinking problem."

A construction subcontractor, Madon was able to put his job "on hold" while he attended WATCH.

"My wife and I, our relationship is a thousand times better," he said. "We are able to talk to each other without it being a screaming match. Her biggest issue was the way I drank."