

**PUBLIC SAFETY AND HEALTH COMMITTEE REPORT**  
**Wednesday, January 25, 2012 1:05 PM – 5:00 PM**  
**Council Chambers, 140 West Pine Street, Missoula, Montana**

**Members Present:** Dave Strohmaier, Adam Hertz, Alex Taft, Cynthia Wolken, Bob Jaffe, Jon Wilkins, Mike O'Herron, Dick Haines

**Members Not Present:** Caitlin Copple, Ed Childers

**Other Present:** Mark Muir, Mike Brady, Jim Nugent, Jason Weiner, Marilyn Marler, Michelle Fogarty, Tanya Campbell, Fred VanValkenberg, Shantelle Gaynor, Kerry Barrett

## **I. ADMINISTRATIVE BUSINESS**

1. Approve minutes from [January 18, 2012](#). Minutes approved unanimously.

## **II. PUBLIC COMMENT**

## **III. CONSENT AGENDA ITEMS**

1. Authorize the Mayor to sign a lease agreement with between City of Missoula and Inspiring Development LLC for commercial office space to be occupied by the multi-agency drug task force. ([memo](#))—Regular Agenda (Mark Muir) (Referred to committee: 01/23/12) **(REMOVE FROM AGENDA)**

**MOTION:** The committee recommends the City Council authorize the Mayor to sign a lease agreement with between City of Missoula and Inspiring Development LLC for commercial office space to be occupied by the multi-agency drug task force.

Mark Muir described the proposed lease for a new High Intensity Drug Task Force (HIDTA) office. He stated that a location has been identified. He discussed the need to keep the physical location confidential. Location information is contained in a confidential memorandum. Funding is to be provided by Office of National Drug Control Policy grants. This source of funding has been in effect since about 2003. In order to get a favorable rental rate and a long-term lease agreement, negotiations were made with the owner to finance some the remodeling expenses. \$120,000 will be held in reserve in a construction account to be disbursed as necessary. \$60,000 of the construction reserves will be funded by drug forfeiture funds, and \$60,000 of the construction reserves will be funded by one-time HIDTA grant expenditure.

John Masterson, chair of the Community Oversight Committee discussed his concerns regarding the source of funds for the HIDTA relocation. He expressed his concerns regarding asset forfeiture and stated that under Federal law, property can be seized without a conviction. He is concerned that assets seized from medicinal marijuana operations that were complying with State law are being used to fund this project. He also asked if MT Marijuana Eradication Program funding was going to be used.

Mark Muir stated that the funds being used were not from assets seized from medicinal marijuana operations. Mark stated that the HIDTA funding predated any of the recent medical marijuana forfeitures. Mark also stated that MT Marijuana Eradication Program funding was not used.

Dave Strohmaier moved to authorize the Mayor to sign a lease agreement with between City of Missoula and Inspiring Development LLC for commercial office space to be occupied by the multi-agency drug task force.

Adam Hertz stated that he would be abstaining from the vote due to possible conflicts of interest.

Motion passed unanimously with Adam Hertz abstaining.

2. Presentation and discussion of City of Missoula Police Dept. response to sexual assault crimes. ([memo](#))—Regular Agenda (Caitlin Copple, Adam Hertz, Bob Jaffe, Marilyn Marler, Dave

Strohmaier, Alex Taft, Cynthia Wolken, Ed Childers) (Referred to committee: 01/23/12)  
**(REMOVE FROM AGENDA)**

Cynthia Wolken introduced the presentation and discussion of the City of Missoula Police Dept. response to sexual assault crimes.

Mark Muir recognized the stakeholders involved in the issue of sexual assault. He provided an outline of the topics to be covered. He described Felony sexual intercourse w/o consent. He cautioned that this is a difficult discussion. He described the 5 forms of Felony Sexual Intercourse without Consent (SIWOC) in Montana. Mark said that despite teamwork with other agencies, statistical data gathering is not uniform. He wants to focus on people, not numbers. He provided Missoula Police Department statistics ([detailed in a handout](#)) regarding SIWOC. Mark cited the need to avoid using identifying information, or disclose information regarding ongoing investigations. Privacy rights of victims and suspects need to be considered. Mark wanted to focus on the question: What are the Missoula police doing to investigate sexual assault in our community? He stated that rape is the worst crime that can happen to a person, and have them live to tell about it. He discussed partnerships with MPD, and organization such as First Step, hospitals, the Crime Victim Advocate's Office, Curry Health Center, Student Assault Resource Center (SARC), Child and Family Services, the Missoula County Sheriff's Office, the FBI, and the YWCA. Mark provided some background regarding the MPD's efforts to address the issue of sexual assault. He described the founding of the School Resource Officer program (SRO) in the late 1990's He discussed the effort to assist students. Lessons on date rape were provided for two years. YWCA partnered with MPD to deliver the lessons. He discussed crime prevention philosophy. He discussed the need to look at these situations from a problem solving perspective. He described the need to develop a response, and analyze the impact of the response. He described the 'three legs to this stool': Remove the offender from society; control the environments where sexual assaults tend to occur; educate potential victims. Mark described a high-profile false report and its impact on future cases. Mark asked if the gender of the investigator impacts the outcome of investigation or prosecution. He discussed working with the University to analyze the PD process. Some of the key findings were that the highest risk for victimization was for females, 18-29 years of age, in a residential setting. Offenders tend to know victim, alcohol is involved, and the offender has control of the environment. Mark stated that prompt reporting resulted in a ten fold increase in arrest rates. Mark related a personal experience regarding an incident that occurred in September 2009, when a young woman he was acquainted with appeared in station to report a rape. Mark felt that the MPD needed to do more. Mark stated that he serves on First Step Advisory Board. He said that outcomes are reviewed, and improvements are made. He described the Leadership Institute that he attended in Seattle. He discussed developing an action plan for this issue. There is a recognition that the MPD did not have a clear idea of how cases are cleared. Training improvements and identification of issues have been implemented. Interpersonal communications skills need to be improved. Failure to communicate can cause substantial harm. The Police Department has completed a review of all rape data for the last two years. Detective Captain Mike Colyer determined that the MPD referred every victim to First step or a local hospital for forensic exam. Strengths identified were the follow-up investigations consisting of many interviews. Identifying witnesses and interview them is crucial. Interviewing victims is very sensitive. Questions need to be asked that may seem callous to the victim. He discussed evidence gathering, the Duty Detective position and the Initial Report. He said that during business hours, a victim is more likely be able to speak to a detective rather than a patrol officer. Speaking with a detective is not always an option, particularly after hours or weekends. Perceptions play a significant role, and that is a crucial issue for the Police. There are two critical elements of a SIWOC : penetration and lack of consent. Penetration is not hard to prove, but

lack of consent can be difficult to establish. 72 SWIOC cases have been investigated by the MPD in the past two years. Mark discussed the statistics in the handout that he provided. Mark described the eight different ways that cases can be cleared: arrest/prosecution, warrant, unfounded as a criminal offense, inactive pending further information, complainant refuses to cooperate, prosecution declined, exceptional clearance (death of offender), charging decisions pending with prosecutor's office. Other agency assist is classified as agency assist when the UMPD submits their own statistics to the FBI. A Memorandum of Understanding exists between the MPD, the MCSO, and UMPD regarding felony crimes against persons and felony drug offenses. MPD has the specialized training and investigators. He discussed case statistics: 37% closed by arrest or pending prosecutorial decision, 1 unfounded case, 23% refused to cooperate, 13% closed as inactive. Mark admitted that the system can work slowly. He stated that a September 25, 2010 incident had not initially reported to the MPD. Mark feels that more definitive sexual assault procedures are needed. Communication between members of Police Department and the community is crucial. The expectations of victim need to be addressed. Procedures are currently in place for the investigative process. The Police Department is working to improve the policy that is currently in place by March 15th

Mike O'Herron asked for a clarification of policy.

Mark responded that the Police Department strives to provide officers with good policy, guidance, and the ability to determine the significant factors to prioritize. The victim needs to be priority. Mark described the MPD as the best trained Police Department in the State. Basic training encompasses 480 hours at the Montana Law Enforcement Academy (MLEA). There are 37 hours dedicated to interfacing with the community and human behavior, and community policing. 80 hours are spent learning how to conduct investigations. Mark described some of the coursework at MLEA. Mark described additional training that has been provided. Mark pointed out that the last 10 officers hired did not receive the two hour block on domestic violence due to training changes. He stated that this will be will be rectified. Officers also have Field Training Officer (FTO) training, which includes sexual assault investigations. Mark pointed out that an officer might be on the job for over a year without encountering a SIWOC case. Mark discussed the new briefing training for patrol officers and investigators. The most significant training need identified by the Police Department is for interpersonal communications. The MPD needs to challenge officers to become better communicators. Mark described the process of investigating a SIWOC: Call 911, patrol officer responds, officer conducts an assessment of immediate medical aid, if not required, attempt to determine what occurred. Witnesses and the crime scene need to be secured. An assumption that a crime has occurred must be the responding officer's first stance. Sometimes there is an inaccurate story. Involved parties may lie to cover up certain possible illegal activities. The Legislature has made improvements to laws. The threat of a MIP citation for victim of sexual assault is not an issue any more, as it presented an obstacle to reporting. Office report writing needs to be thorough in order to secure prosecution. The victim interview and suspect interrogation is in the hands of investigators. If a case goes to First Step first, it is restricted from going any further without the victim's consent. Mark discussed confidentiality issues. UMPD will summon the MPD if the crime is reported to them. Occasionally a direct referral is made. The vast majority of victims do not report SIWOC. One of the goals of the MPD is customer satisfaction. Cases turned down by prosecutor because of a poor investigation needs to be referred to Mark for follow up. MPD has an established complaint policy that is available on the City web site. Contact information is available. The Office of Professional Standards investigates complaints. A summary is provided every 3 months, and the Missoula Police Commission reviews complaints and findings. Issues are forwarded to the Mayor. Hearings may occur in a public setting to contest findings or

corrective actions. There are many 'next steps' to take. Officers need to be provided with more training. Feedback is needed from victims of domestic violence and sex crimes. The Center for Disease Control (CDC) released new statistics regarding binge drinking. There is a significant correlation between alcohol consumption and sexual assault. MT ranks high on list of binge drinking states. Binge drinking is a big problem here. The use of Rohypnol (a date rape drug) in the current rash of sexual assaults is currently unfounded. Mark stated that the date rape drug of choice is alcohol. Abuse of prescription drugs also a notable problem. More education is needed. Parents need to be more responsible for educating their children. Individuals cannot wait until college age to learn that it is not acceptable to rape someone.

Dave Strohmaier asked about the differences in policy between the MPD and UMPD, and jurisdictional issues.

Mark Muir replied that the UMPD jurisdiction limits their law enforcement to physical UofM properties. They do not respond off-campus except for the Greek houses. The protocol for UMPD regarding SIWOC is to contact the MPD. The next option is to report incidents to the MCSO.

Dave Strohmaier asked about the MPD's jurisdiction on UofM property.

Mark Muir replied that the Missoula Police Department has jurisdiction on the university of Montana campus.

Dick Haines asked about the University's Title 9 requirements.

Mark Muir stated that needs to research, but provided a general overview. Title 9 requirements are separate from criminal statutes.

Dick Haines is concerned about alleged felonies involving students. He asked why theis MPD not involved. He wants more disclosure by the University.

Mark Muir state that it is not uncommon for unrelated parallel administrative and criminal investigations occurring regarding an incident. Mark provided an example of an Officer involved shooting investigation.

Bob Jaffe sees room for improvement with the interaction between social service agencies and police, impediments to reporting. He feels that the number of prosecutions declined needs more probing.

Michelle Fogarty feels threatened and harassed by the Police Department. She provided a brief biography. She recounted sexual assault on the airbase that she worked at. She stated that the Air guard lost a lawsuit regarding sexual assault. She feels that the system can be hard on the victim. She recounted her negative experiences at the Poverello Center in Missoula. She described her frustration with the system.

Tanya Campbell with the Crime Victim Advocate's Office discussed the difficult position SIWOC victims are in. She stated that 95% of the time the rapist is an acquaintance. delayed reporting is a problem. Reporting the crime can be difficult. Having the victim recount the incident multiple times with multiple people is intimidating and traumatic.

Fred VanValkenberg addressed the concerns with declined prosecutions. He stated that many cases are brought to the County Attorney's Office for confirmation that a case cannot be prosecuted due to lack of evidence. He stated that his office shares in a difficult decision. He stated that the Police Department and Prosecutor are typically in agreement regarding prosecution decisions. He cited confidential Criminal Justice information. He said that the primary reason for declined prosecutions is that SWIOC is one of the most difficult to convict. Prosecutors have to prove a negative concept (no consent). The acquaintance issue can complicate a prosecution. In many cases it is unlikely or impossible to prove the lack of consent.

Shantelle Gaynor with the Office of Planning and Grants discussed the need to improve prevention, education, and victim services.

Kerry Barrett discussed her status as a victim of sexual assault. She described her experience with reporting the assault. She agreed with Mark Muir's statement that communications between law enforcement and victims needs to improve. She expressed her dissatisfaction with the way that her case was handled. She stated that the detective that she spoke to stated that it was 'he said' 'she said' case. She did not feel that the investigation was thorough. She discussed her distress about Kirsten Pabst-LaCroix appearing at a University hearing to defend a rapist. She discussed the issue of re-victimization and asked if it is worth going through with an investigation.

Mark Muir acknowledged that he felt that prevention efforts had failed (Mark felt that he had failed). He described the referral process as a collaborative process. He stated that probable cause is a profoundly lower standard than what prosecutors need for a conviction. Mark offered his apologies to Kerry for her dissatisfaction with the Police Department's investigation.

Bob Jaffe asked if there are any possible benefits, beyond convictions, from encouraging reporting. He feels that there is value to reporting that can help statistically, and provide a 'piece of puzzle' in other investigations. He asked if the Crime Victim Advocate's office can make sure that the Police Department is following up after an intake?

Mark Muir responded that the Police Department cannot get involved absent a specific request from the victim. If initial report is not the first point of contact, it can be more difficult for the Police. Mark stated that the average individual who commits rape rapes more than once. He discussed patterns. He feels that reporting sexual assaults certainly helps.

Dick Haines discussed deficiencies at the University regarding the handling of sexual assaults. He discussed routine, process, and peers. He sees a need for training and orientation for new students that address this issue. He would like to see the relationship between campus police and the MPD improved. Incoming freshmen need to be educated regarding their options.

Mike O'Herron thanked the individuals who showed up for this discussion. He offered his appreciation for Kerry's courage in joining the discussion.

Marilyn Marler thanked the individuals who showed up for this discussion. She discussed roadblocks to successful prosecutions. She discussed the process. She mentioned [the 'Men Can Stop Rape'](#) campaign and associated handout.

Cynthia Wolken discussed the prevention campaign. She would like to see more prevention, identify correlations, and focus on offender responsibility.

Jon Wilkins feels that sensitivity towards the victim is paramount. Addressing the issue of desensitization within the detective division needs to be looked at.

#### **IV. REGULAR AGENDA ITEM**

#### **V. HELD AND ON-GOING AGENDA ITEMS**

1. Police Department Update – Ongoing in Committee. (Mark Muir)
2. Fire Department Update – Ongoing in Committee (Jason Diehl)
3. Health Department Update – Ongoing in Committee. (Ellen Leahy)
4. Eat Smart Coalition information. ([memo](#))—Regular Agenda (Jason Wiener) (Referred to committee: 07/11/11)
5. Consider Discuss revisiting cell phone restrictions. ([memo](#)) – Regular Agenda (Dave Strohmaier) (Referred to committee: 10/17/11)
6. Discuss air quality issues related to railroad operations in and through Missoula. ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 10/24/11)

#### **VI. ADJOURNMENT**

The meeting adjourned at 3:33 PM. Submitted by Gregg Schonbachler.