

## 1 HOUSE BILL NO. 512

2 INTRODUCED BY R. SOMERVILLE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT UNLAWFUL FOR A DRIVER TO REFUSE TO SUBMIT  
5 TO BLOOD, BREATH, OR URINE TESTING; AND AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-714,  
6 61-8-731, 61-11-203, AND 61-13-104, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 NEW SECTION. **Section 1. Refusal to submit to chemical test -- misdemeanor -- multiple**  
11 **convictions prohibited.** (1) It is unlawful and punishable, as provided in 61-8-714 and 61-8-731, for a  
12 person to purposely or knowingly refuse to submit to a chemical test of the person's blood, breath, or  
13 urine under 61-8-402 or 61-8-806.

14 (2) A person may be charged and prosecuted for a violation of 61-8-401 and this section or of  
15 61-8-406 as a result of the same transaction or incident. However, the person may be convicted and  
16 sentenced only for a violation of 61-8-401, 61-8-406, or this section, whichever is applicable.

17

18 **Section 2.** Section 61-5-205, MCA, is amended to read:

19 **"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper  
20 authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record  
21 of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the  
22 conviction or forfeiture has become final:

23 (1) negligent homicide resulting from the operation of a motor vehicle;

24 (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of  
25 alcohol or drugs, except as provided in 61-5-208, ~~or~~ operation of a motor vehicle by a person with a blood  
26 alcohol concentration of 0.10 or more, or refusal to submit to a chemical test as required by 61-8-402 or  
27 61-8-806;

28 (3) any felony in the commission of which a motor vehicle is used;

29 (4) failure to stop and render aid as required under the laws of this state in the event of a motor  
30 vehicle accident resulting in the death or personal injury of another;

1 (5) perjury or the making of a false affidavit or statement under oath to the department under this  
2 chapter or under any other law relating to the ownership or operation of motor vehicles;

3 (6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed  
4 within a period of 12 months; or

5 (7) negligent vehicular assault as defined in 45-5-205."  
6

7 **Section 3.** Section 61-5-208, MCA, is amended to read:

8 **"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device**  
9 **required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's  
10 license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year,  
11 except as otherwise permitted by law.

12 (2) (a) A person whose license or privilege to drive a motor vehicle on the public highways has  
13 been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless  
14 the revocation was for a cause that has been removed. After the expiration of the period of the revocation  
15 or suspension, the person may apply for a new license or endorsement as provided by law, but the  
16 department may not issue a new license or endorsement unless it is satisfied, after investigation of the  
17 driving ability of the person and upon a showing by its records or other sufficient evidence, that the person  
18 is eligible to be licensed to drive in Montana.

19 (b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating  
20 or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or  
21 a combination of alcohol or drugs, ~~or~~ for the offense of operation of a motor vehicle by a person with  
22 alcohol concentration of 0.10 or more, or for the offense of refusing to submit to a chemical test as  
23 provided in [section 1], the department shall, upon receiving a report of conviction or forfeiture of bail or  
24 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6  
25 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or  
26 subsequent offense within 5 years of the first offense, the department shall revoke the license or driving  
27 privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license  
28 during the period of revocation, restrict the person to driving only a motor vehicle equipped with a  
29 functioning ignition interlock device. If the 1-year period passes and the person has not completed a  
30 chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license

1 revocation remains in effect until the course, treatment, or both, are completed. A period of suspension  
2 or revocation arising as a result of a conviction or forfeiture of bail or collateral for the offense of refusing  
3 to submit to a chemical test must be in addition to, and may not run concurrently with, any suspension  
4 or revocation imposed under 61-8-402 or 61-8-806.

5 (c) For the purposes of subsection (2)(b), a person is considered to have committed a second,  
6 third, or subsequent offense if fewer than 5 years have passed between the date of an offense that  
7 resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

8 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department  
9 proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall  
10 stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406  
11 and return the person's driver's license. The stay must remain in effect until the period of suspension has  
12 expired and any required chemical dependency education course, treatment, or both, have been completed.

13 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that  
14 the person has violated the court-imposed ignition interlock restriction by, including but not limited to  
15 operating a motor vehicle not equipped with the device, tampering with the device, or removing the device  
16 before the period of restriction has expired, the department shall lift the stay and reinstate the license  
17 suspension for the remainder of the time period. The department may not issue a probationary driver's  
18 license to a person whose license suspension has been reinstated because of violation of an ignition  
19 interlock restriction.

20 (4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in  
21 subsection (2).

22 (5) The period of revocation for a person convicted of any offense that makes mandatory the  
23 revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

24 (6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial  
25 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and  
26 subsection (2) of this section."

27

28 **Section 4.** Section 61-8-714, MCA, is amended to read:

29 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense --**  
30 **refusal to take blood, breath, or urine test.** (1) A person convicted of a violation of 61-8-401 or [section

1 1] shall be punished by imprisonment for not less than 24 consecutive hours or for a term of not more than  
 2 6 months and shall be punished by a fine in an amount of not less than \$100 or more than \$500. The  
 3 initial 24 hours of the imprisonment term must be served in the county jail and may not be served under  
 4 home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the  
 5 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.  
 6 Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended  
 7 for a period of up to 6 months pending successful completion of court-ordered chemical dependency  
 8 assessment, education, or treatment by the defendant.

9 (2) On a second conviction, the person shall be punished by a fine in an amount of not less than  
 10 \$300 or more than \$500 and by imprisonment for a term of not less than 7 days or more than 6 months.  
 11 At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not  
 12 be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the  
 13 judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
 14 or mental well-being. Except for the initial 3 days of the imprisonment term, the imprisonment sentence  
 15 may be suspended for a period of up to 6 months pending successful completion of a chemical  
 16 dependency treatment program by the defendant.

17 (3) On the third conviction, the person shall be punished by imprisonment for a term of not less  
 18 than 30 days or more than 1 year and by a fine in an amount of not less than \$500 or more than \$1,000.  
 19 At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not  
 20 be served under home arrest. The imposition or execution of the first 10 days of the imprisonment  
 21 sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a  
 22 period of up to 1 year pending successful completion of a chemical dependency treatment program by the  
 23 defendant."

24

25 **Section 5.** Section 61-8-731, MCA, is amended to read:

26 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 27 **concentration -- penalty for fourth or subsequent offense.** (1) On the fourth or subsequent conviction under  
 28 61-8-714 or 61-8-722 for a violation of 61-8-401, ~~or~~ 61-8-406, or [section 1], the person is guilty of a  
 29 felony and shall be punished by:

30 (a) imprisonment for a term of not less than 6 months or more than 13 months, for which the

1 imposition or execution of the first 6 months may not be suspended, and during which the person is not  
2 eligible for parole;

3 (b) probation for a term of not less than 1 year or more than 4 years; and

4 (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

5 (2) The court shall, subject to sentencing restrictions:

6 (a) specify one of the following facilities as the initial place in which the term of imprisonment  
7 must be served:

8 (i) a state prison;

9 (ii) a regional correctional facility;

10 (iii) a county jail;

11 (iv) a boot camp, provided the prior approval of the department of corrections has been obtained;

12 or

13 (v) a prerelease center or, upon acceptance by the facility, a state-approved public or private  
14 treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior  
15 approval of the department of corrections has been obtained; or

16 (b) sentence the person to the department of corrections for placement in an appropriate  
17 correctional institution or program; and

18 (c) order a person who is financially able to pay the costs of imprisonment, probation, and  
19 chemical dependency treatment under this section.

20 (3) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
21 during the period of probation. Reasonable restrictions or conditions may include:

22 (a) payment of a fine as provided in 46-18-231;

23 (b) payment of costs as provided in 46-18-232 and 46-18-233;

24 (c) payment of costs of court-appointed counsel as provided in 46-8-113;

25 (d) community service;

26 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for  
27 the protection of society;

28 (f) treatment in a state-approved public or private treatment facility; or

29 (g) any combination of the restrictions or conditions listed in subsections (3)(a) through (3)(f).

30 (4) (a) Following initial placement of a defendant in a boot camp, prerelease center, or treatment

1 facility under subsection (2)(a), the department of corrections may, at its discretion, place the offender  
2 in another facility or program.

3 (b) The department of corrections may order all or any portion of the term of probation to be  
4 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation,  
5 apply to the probation.

6 (5) If a violation of the restrictions or conditions of the probation is established, the court may  
7 continue the period of probation or may require the defendant to serve the remainder of the probation  
8 sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder  
9 of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part  
10 of the time already served on probation."

11

12 **Section 6.** Section 61-11-203, MCA, is amended to read:

13 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

14 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or  
15 nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person  
16 charged with having committed any offense relating to the use or operation of a motor vehicle that is  
17 prohibited by law, ordinance, or administrative order.

18 (2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or  
19 more conviction points according to the schedule specified in this subsection:

20 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

21 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,  
22 or negligent vehicular assault, 12 points;

23 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in  
24 the commission of which a motor vehicle is used, 12 points;

25 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or  
26 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

27 (e) refusal to submit to a chemical test, as required by 61-8-402 or 61-8-806, 10 points;

28 ~~(e)(f)~~ operating a motor vehicle while the license to do so has been suspended or revoked, 6  
29 points;

30 ~~(f)(g)~~ failure of the driver of a motor vehicle involved in an accident resulting in death or injury to

1 any person to stop at the scene of the accident and give the required information and assistance, as  
2 defined in 61-7-105, 8 points;

3 ~~(g)~~(h) willful failure of the driver involved in an accident resulting in property damage of \$250 to  
4 stop at the scene of the accident and give the required information or failure to otherwise report an  
5 accident in violation of the law, 4 points;

6 ~~(h)~~(i) reckless driving, 5 points;

7 ~~(i)~~(j) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

8 ~~(j)~~(k) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and  
9 61-6-302, 5 points;

10 ~~(k)~~(l) operating a motor vehicle without a license to do so, 2 points (this subsection ~~(k)~~ (2)(l) does  
11 not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

12 ~~(l)~~(m) speeding, except as provided in 61-8-725(2), 3 points;

13 ~~(m)~~(n) all other moving violations, 2 points.

14 (3) There may not be multiple application of cumulative points when two or more charges are filed  
15 involving a single occurrence. If there are two or more convictions involving a single occurrence, only the  
16 number of points for the specific conviction carrying the highest points is chargeable against that  
17 defendant.

18 (4) "License" means any type of license or permit to operate a motor vehicle.

19 (5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction  
20 by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a  
21 highway, as the term is defined in 61-1-201.

22 (6) A traffic regulation includes any provision governing motor vehicle operation, equipment,  
23 safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions  
24 governing vehicle registration or local parking."

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26 **Section 7.** Section 61-13-104, MCA, is amended to read:

27 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 must be fined  
28 \$20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711.  
29 A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's  
30 license under 61-11-203(2)~~(m)~~. Bond for this offense is \$20, and ~~no~~ a jail sentence may not be imposed.

1           (2) ~~No~~ A violation of 61-13-103 may not be recorded or charged against the driver's record of a  
2 person violating 61-13-103, ~~and no~~ an insurance company ~~shall~~ may not hold a violation of 61-13-103  
3 against the insured, and there may not be ~~no~~ an increase in premiums ~~due to~~ because of a violation of  
4 61-13-103."

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6           NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an  
7 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to  
8 [section 1].

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