

HOUSE BILL NO. 197

INTRODUCED BY BECKER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- ~~department to contract with private entities -- participation by offending drivers.~~ (1) ~~(a) The department shall~~ may establish by administrative rules a driver rehabilitation and improvement program or programs. ~~that~~ The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and

habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

~~(b) The rules must:~~

~~—— (i) provide for the local program courses to be operated by private entities;~~

~~—— (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;~~

~~—— (iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

~~—— (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.~~

(2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana~~ Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or;

(ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or

(b) ~~revoked and they have~~ the person has:

(i) ~~completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or~~

(ii) ~~completed 1 year of a 3-year revocation; and~~

(iii) ~~met the requirements for reobtaining a Montana driver's license; or~~

~~—— (c) subject to suspension as provided in 61-11-204(3).~~

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) ~~In the event that~~ If a person's driver's license has been surrendered before the person's selection

1 for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt
2 of the person's agreement to participate in the program.

3 (5) The stay of enforcement of any suspension or revocation ~~order~~ action must be terminated and the
4 ~~order of~~ suspension or revocation ~~enforced~~ action must be reinstated if a person declines to participate in the
5 driver rehabilitation and improvement program or fails to meet the attendance or other requirements established
6 for participation in the program.

7 (6) This part does not create a right to be included in any program established under this part.

8 ~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall~~
9 ~~establish separate fee schedules that may be charged to those persons participating in the driver improvement~~
10 ~~and rehabilitation program. The fees must be collected separately by the department and by the entity with which~~
11 ~~the department contracts under subsection (1)(b).~~

12 ~~—— (8) The fees collected by the department under subsection (7) must be used to help defray costs~~
13 ~~incurred by the department in administering the program and in contracting with private entities as provided in~~
14 ~~subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.~~

15 (7) The department may establish a schedule of fees that may be charged to those persons participating
16 in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining
17 the program.

18 ~~(9)(8)~~ A person may be referred to this program by a driver improvement analyst, city judge, justice of
19 the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

20 ~~(10)(9)~~ (a) Except as provided in ~~(10)(b)~~ subsection (9)(b), the department may issue a restricted
21 probationary license to any person who enrolls and participates in the driver rehabilitation and improvement
22 program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions
23 set forth on the license.

24 (b) The department may not issue a restricted probationary license that would permit an individual to
25 drive a commercial motor vehicle during a period in which:

26 (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law;
27 or

28 (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

29 ~~(11)(10)~~ It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
30 restrictions imposed on a restricted license issued to the person under this section."

1
2 **Section 2.** Section 61-5-107, MCA, is amended to read:

3 **"61-5-107. Application for license, instruction permit, or motorcycle endorsement.** (1) Each
4 application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form
5 furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee
6 entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from
7 the date of application. A voter registration form for mail registration as prescribed by the secretary of state must
8 be attached to each driver's license application. If the applicant wishes to register to vote, the department shall
9 accept the registration and forward the form to the election administrator.

10 (2) Each application must include the full legal name, date of birth, sex, residence address of the
11 applicant [and the applicant's social security number], must include a brief description of the applicant, and must
12 include a statement that allows the department to determine if:

13 (a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so,
14 when and by what state or country;

15 (b) any commercial driver's license has ever been suspended or revoked;

16 (c) an application has ever been denied and, if so, the date of and reason for suspension, revocation,
17 or denial;

18 (d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair
19 the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the
20 highway; and

21 (e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions
22 to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the
23 highway, including the nature of the equipment or restrictions.

24 [(3) The department shall keep the applicant's social security number from this source confidential,
25 except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise
26 permitted by state law administered by the department and may be provided to the department of public health
27 and human services for use in administering Title IV-D of the Social Security Act.]

28 (4) (a) When an application is received from an applicant who is not ineligible for licensure under
29 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the
30 applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually

1 or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state~~
2 ~~with the same force and effect as though entered on the driver's record in this state in the original instance.~~

3 (b) When received, the driving records must be appended to the driver's record created and maintained
4 in this state. The department may rely on information contained in driving records received under this section
5 to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a
6 conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed
7 language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

8
9 **Section 3.** Section 61-5-205, MCA, is amended to read:

10 **"61-5-205. Mandatory revocation or suspension of license upon ~~proper authority~~ certain**
11 **convictions -- duration of action -- exceptions.** (1) ~~The department upon proper authority shall revoke the an~~
12 ~~individual's driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction~~
13 ~~of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become~~
14 ~~final or driving privilege if the department receives notice from a court or another licensing jurisdiction that the~~
15 individual has been convicted of any of the following offenses:

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

17 ~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol~~
18 ~~or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol~~
19 ~~concentration of 0.10 or more;~~

20 ~~(c)~~(b) any felony in the commission of which a motor vehicle is used;

21 ~~(d)~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor
22 vehicle accident resulting in the death or personal injury of another;

23 ~~(e)~~(d) perjury or the making of a false affidavit or statement under oath to the department under this
24 chapter or under any other law relating to the ownership or operation of motor vehicles; or

25 ~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within~~
26 ~~a period of 12 months; or~~

27 ~~(g)~~(e) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

28 (2) ~~The department upon proper authority shall suspend the driver's license or the operating privilege~~
29 ~~of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for~~ The department
30 shall suspend an individual's driver's license or driving privilege if the department receives notice from a court

1 or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

2 (a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol
3 or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

4 (b) three reckless driving offenses committed within a period of 12 months; or

5 (c) a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft
6 consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The
7 suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or
8 subsequent offense.

9 (3) A revocation under subsection (1) must be for a period of 1 year.

10 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be
11 for a period of 1 year.

12 (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

13 (c) A suspension under subsection (2)(c) must be for one of the following periods:

14 (i) 30 days for a first offense;

15 (ii) 6 months for a second offense; and

16 (iii) 1 year for a third or subsequent offense."

17
18 **Section 4.** Section 61-5-206, MCA, is amended to read:

19 **"61-5-206. Authority of department to suspend license or driving privilege or issue probationary**
20 **license.** (1) The department may suspend the driver's license or driving privilege of a driver without preliminary
21 hearing upon a showing by its records or other sufficient evidence that the licensee:

22 ~~(a) has been involved as a driver in any accident resulting in the death or personal injury of another or~~
23 ~~serious property damage;~~

24 ~~—— (b) has been convicted with such frequency of serious offenses against traffic regulations governing~~
25 ~~the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other~~
26 ~~persons on the highways;~~

27 ~~—— (c) is a habitually reckless or negligent driver of a motor vehicle;~~

28 ~~—— (d) is incompetent to drive a motor vehicle;~~

29 ~~(e)(a)~~ (a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

30 ~~(f) has committed an offense in another state that if committed in this state would be grounds for~~

1 ~~suspension or revocation;~~

2 ~~(g)(b)~~ has falsified the licensee's date of birth on the application for a driver's license;

3 ~~(h)(c)~~ is under 21 years of age and has altered the licensee's or another's driver's license or
4 identification card to obtain alcohol; or

5 ~~(i)(d)~~ has authorized another to use the licensee's driver's license or identification card to obtain alcohol;

6 ~~or~~

7 ~~—— (j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and~~
8 ~~has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement~~
9 ~~course or other appropriate course determined by the department as provided in 61-11-204.~~

10 (2) However, the department may, in lieu of suspending the license or driving privilege, issue a
11 probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient
12 evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon
13 issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license.
14 The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic
15 violation during the period of probation. The licensee shall surrender to the department all driver's licenses that
16 have been issued to the licensee before the probationary license may be issued. The licensee's refusal or
17 neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses
18 may be issued for a period not to exceed 12 months.

19 (3) Upon suspending the license of any person or upon placing the person on probation, as authorized
20 in this section, the department shall immediately notify the licensee in writing and upon the licensee's request
21 shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the
22 request, in the county in which the licensee resides unless the department and the licensee agree that the
23 hearing may be held in some other county. At the hearing, the department through its authorized agent may
24 administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books
25 and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind
26 its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation
27 or suspension of the license."

28
29 **Section 5.** Section 61-5-208, MCA, is amended to read:

30 **"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device**

required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

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

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

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

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder

1 of the time period. The department may not issue a probationary driver's license to a person whose license
2 suspension has been reinstated because of violation of an ignition interlock restriction.

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

5 ~~(5)(4)~~ (a) The Except as provided in subsection (4)(b), the period of suspension or revocation for a
6 person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's
7 license commences from the date of conviction or forfeiture of bail.

8 (b) A suspension commences from the last day of the prior suspension or revocation period if the
9 suspension is for a conviction of driving with a suspended or revoked license.

10 ~~(6)(5)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor
11 vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

12
13 **Section 6.** Section 61-5-212, MCA, is amended to read:

14 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**
15 **vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway
16 of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state
17 is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or
18 more than 6 months and may be fined not more than \$500.

19 (2) The department upon receiving a record of the conviction of any person under this section upon a
20 charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period
21 of suspension or revocation for an additional ~~like~~ 1-year period.

22 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
23 driver's license is suspended ~~or revoked~~ for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409,
24 or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the
25 convicted person's county of residence for a period of 30 days.

26 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the
27 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered
28 inoperable by the sheriff within 10 days after the conviction.

29 (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).
30 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3)

1 unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner
2 who is determined to be without fault.

3 (6) A court may not suspend or defer imposition of penalties provided by this section."
4

5 **Section 7.** Section 61-7-103, MCA, is amended to read:

6 **"61-7-103. Accidents involving death or personal injuries.** (1) The driver of any vehicle involved in
7 an accident resulting in injury to or death of any person shall immediately stop ~~such the~~ vehicle at the scene of
8 ~~such the~~ accident or as close ~~thereto~~ to the accident as possible; but shall then ~~forthwith~~ return to and in every
9 event ~~shall~~ remain at the scene of the accident until ~~he~~ the driver has fulfilled the requirements of 61-7-105.
10 ~~Every such stop shall~~ Each stop at the scene of the accident must be made without obstructing traffic more than
11 is necessary.

12 (2) ~~Any person~~ A driver failing to stop or to comply with ~~said the~~ requirements ~~under such circumstances~~
13 of subsection (1) shall upon conviction be punished by imprisonment for not less than 30 days or more than 1
14 year, ~~or~~ by a fine of not less than \$100 or more than \$5,000, ~~or by both such~~ fine and imprisonment.

15 (3) The department shall revoke the license or permit to drive of any resident and any nonresident
16 operating privilege of ~~any a~~ person ~~so~~ convicted of violating this section for the period prescribed in ~~61-5-208~~
17 61-5-205."
18

19 **Section 8.** Section 61-8-402, MCA, is amended to read:

20 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in
21 actual physical control of a vehicle upon ways of this state open to the public is considered to have given
22 consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount
23 or detected presence of alcohol or drugs in the person's body.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
26 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,
27 drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

28 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

29 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
30 a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision

1 resulting in property damage, bodily injury, or death.

2 (b) The arresting or investigating officer may designate which test or tests are administered.

3 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
4 refusal is considered not to have withdrawn the consent provided by subsection (1).

5 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
6 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
7 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
8 license to the department, along with a report certified under penalty of law stating which of the conditions set
9 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
10 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
11 department shall suspend the license for the period provided in subsection (6).

12 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
13 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
14 issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right
15 to a hearing provided in 61-8-403.

16 (6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or
17 more tests:

18 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

19 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
20 records of the department, a ~~revocation~~ suspension of 1 year with no provision for a restricted probationary
21 license.

22 (7) A nonresident driver's license seized under this section must be sent by the department to the
23 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
24 more tests.

25 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
26 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
27 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
28 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
29 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
30 under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 9. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension ~~or revocation~~ under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

1
2 **Section 10.** Section 61-8-734, MCA, is amended to read:

3 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
4 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
5 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714 or

6 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101,
7 in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized
8 Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
9 in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

10 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less
11 than 5 years have elapsed between the commission of the present offense and a previous conviction, unless
12 the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used
13 for sentencing purposes.

14 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
15 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
16 61-8-406.

17 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under
18 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing
19 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may
20 impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant
21 follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease
22 center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
23 sentencing court.

24 (3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of
25 imprisonment, the court may order that a term of imprisonment imposed under either section be served by
26 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

27 (4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

28 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(1)(b)(2), and 61-5-208(2), relating to suspension
29 and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under
30 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

1

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

3 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

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

8 ~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period~~
9 ~~accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

10 ~~(3)~~(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more
11 conviction points according to the schedule specified in this subsection:

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

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

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

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

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

20 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
21 person to stop at the scene of the accident and give the required information and assistance, as defined in
22 61-7-105, 8 points;

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

26 (h) reckless driving, 5 points;

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

28 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5
29 points;

30 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to

operating a motor vehicle within a period of 180 days from the date the license expired);

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

(m) all other moving violations, 2 points.

~~(4)~~(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

~~(5)~~(4) "License" means any type of license or permit to operate a motor vehicle.

~~(6)~~(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

~~(7)~~(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 12. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

~~(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

~~—— (a) declare the person a driver in need of rehabilitation and improvement;~~

~~—— (b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully~~

1 completed the course, whichever occurs first;

2 ~~—— (c) provide the person with a list of certified driver rehabilitation and improvement courses and~~
3 ~~information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation~~
4 ~~and improvement program does not exist near the person's residence; and~~

5 ~~—— (d) send the notice as provided in subsection (2).~~

6 ~~—— (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to~~
7 ~~successfully complete the program or an appropriate substitute within 90 days, the department may suspend~~
8 ~~the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has~~
9 ~~successfully completed the course, whichever occurs first."~~

10
11 **Section 13.** Section 61-13-104, MCA, is amended to read:

12 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 shall be fined \$20,
13 but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of
14 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under
15 61-11-203(3)(m)(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

16 (2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person
17 violating 61-13-103.

18 (3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the
19 insured's premiums due to a violation of 61-13-103."

20
21 **NEW SECTION. SECTION 14. DISCOUNT ON LICENSE REINSTATEMENT FEE -- COMPLETION OF DRIVER**
22 **REHABILITATION PROGRAM.** (1) A PERSON WHO SUBMITS A CERTIFICATE OF COMPLETION FROM A DEPARTMENT-APPROVED
23 DRIVER REHABILITATION PROGRAM MUST RECEIVE A 50% REDUCTION ON THE LICENSE REINSTATEMENT FEE DUE UNDER
24 61-2-107 OR [SECTION 1 OF HOUSE BILL NO. 215].

25 (2) FOR PURPOSES OF THIS SECTION, A DRIVER REHABILITATION PROGRAM MAY BE APPROVED BY THE
26 DEPARTMENT IF THE PROGRAM PROVIDER ANNUALLY CERTIFIES TO THE DEPARTMENT THAT THE PROVIDER'S PROGRAM:

27 (A) PROVIDES A PARTICIPANT WITH A MINIMUM OF 4 HOURS OF INSTRUCTION ON MONTANA DRIVING LAWS, THE
28 IMPORTANCE OF POSITIVE DRIVING ATTITUDES AND HABITS, DEFENSIVE DRIVING TECHNIQUES, AND THE RESPONSIBLE USE
29 OF DRUGS AND ALCOHOL;

30 (B) INCLUDES PREINSTRUCTION AND POSTINSTRUCTION TESTING OF EACH PARTICIPANT;

1 (C) PROVIDES A CERTIFICATE OF COMPLETION TO EACH PERSON WHO SUCCESSFULLY COMPLETES THE
2 PROGRAM; AND

3 (D) REPORTS TO THE DEPARTMENT, IN A TIMELY MANNER, THE NAME, DATE OF BIRTH, AND DRIVER'S LICENSE
4 NUMBER OF EACH PERSON TO WHOM THE PROVIDER HAS ISSUED A CERTIFICATE OF COMPLETION.

5
6 **NEW SECTION. SECTION 15. COORDINATION INSTRUCTION. (1) IF A SENATE OR HOUSE BILL IS PASSED AND**
7 **APPROVED THAT AMENDS 61-8-406(1)(A) BY SUBSTITUTING "0.08" FOR "0.10", THEN "0.08" IS SUBSTITUTED FOR "0.10"**
8 **IN 61-5-205(2)(A) AS AMENDED BY [THIS ACT].**

9 **(2) IF HOUSE BILL NO. 215 IS NOT PASSED AND APPROVED, THEN THE BRACKETED LANGUAGE IN [SECTION 14(1)**
10 **OF THIS ACT] IS VOID.**

11 **(3) IF HOUSE BILL NO. 185 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SUBSECTION (4)(A) OF**
12 **61-5-107 AS AMENDED BY [THIS ACT] MUST READ AS FOLLOWS:**

13 **"(4) (a) When an application is received from an applicant who is not ineligible for licensure under**
14 **61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the**
15 **applicant's driving record from ~~the previous licensing jurisdiction~~ each jurisdiction in which the applicant was**
16 **licensed in the preceding 10-year period.** The driving record may be transmitted manually or by electronic
17 medium. ~~When received, the driving records become a part of the driver's record in this state with the same force~~
18 ~~and effect as though entered on the driver's record in this state in the original instance."~~

19 **(4) IF SENATE BILL NO. 13 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 1 OF SENATE BILL**
20 **NO. 13], AMENDING 61-5-205, IS VOID.**

21 **(5) IF SENATE BILL NO. 37 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SUBSECTION (3) OF**
22 **61-5-205 IN [THIS ACT] MUST READ AS FOLLOWS:**

23 **"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for**
24 **a period of 1 year."**

25 **(6) IF SENATE BILL NO. 37 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN 61-5-208 MUST READ AS**
26 **FOLLOWS:**

27 **"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device**
28 **required ~~on second or subsequent offense~~.** (1) The department may not suspend or revoke a driver's license
29 or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year,~~ except as otherwise
30 permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

~~(b)(3) When~~ If the department receives a report from a court or another licensing jurisdiction that a person is ~~has been~~ convicted or ~~forfeits~~ has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, ~~upon receiving a report of conviction or forfeiture of bail or collateral not vacated;~~

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon~~ Upon issuance of any restricted probationary license during the period of ~~revocation~~ suspension, the department shall restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater;

or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

1 ~~(4)~~ If the ~~4-year~~ period of revocation under subsection (3)(b) or (3)(c) passes and the person has not
2 completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court,
3 the license revocation remains in effect until the course, treatment, or both, are completed.

4 ~~(e)(5)~~ For the purposes of subsection ~~(2)(b)~~ (3), a person is considered to have committed a second,
5 third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in
6 a prior conviction and the date of the offense that resulted in the most recent conviction.

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

12 ~~(b)(6)~~ If When an ignition interlock restriction is imposed under subsection (3) and the department
13 receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the
14 ~~court-imposed~~ ignition interlock restriction by, including but not limited to such acts as operating a motor vehicle
15 not equipped with the device, tampering with the device, or removing the device before the period of restriction
16 has expired, the department shall ~~lift the stay and reinstate the license suspension~~ suspend the person's license
17 or driving privilege for the remainder of the ~~time~~ restriction period. The department may not issue a restricted
18 probationary driver's license to a person whose license ~~suspension~~ has been ~~reinstated~~ suspended because
19 of violation of an ignition 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)(7)~~ (a) The Except as provided in subsection (7)(b), the period of suspension or revocation for a
23 person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's
24 license commences from the date of conviction or forfeiture of bail.

25 ~~(b)~~ A suspension commences from the last day of the prior suspension or revocation period if the
26 suspension is for a conviction of driving with a suspended or revoked license.

27 ~~(6)(8)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor
28 vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

29 (7) IF HOUSE BILL NO. 195 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 1 OF HOUSE BILL
30 NO. 195], AMENDING 61-2-302, IS VOID.

(8) IF HOUSE BILL NO. 195 AND [THIS ACT] ARE BOTH PASSED AND APPROVED AND SENATE BILL NO. 37 IS NOT PASSED AND APPROVED, THEN 61-5-208 MUST READ AS FOLLOWS:

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

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for ~~the a first~~ offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the a first~~ offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the person for a period of 1 year and, ~~upon issuance of any restricted~~ may not issue a probationary license during the period of ~~revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~ suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension remains in effect until the course, treatment, or both, are completed.

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

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

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the

1 person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a
2 motor vehicle not equipped with the device, tampering with the device, or removing the device before the period
3 of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder
4 of the time period. The department may not issue a probationary driver's license to a person whose license
5 suspension has been reinstated because of violation of an ignition interlock restriction.

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

8 ~~(5)(4) (a) The~~ Except as provided in subsection (4)(b), the period of suspension or revocation for a
9 person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's
10 license commences from the date of conviction or forfeiture of bail.

11 (b) A suspension commences from the last day of the prior suspension or revocation period if the
12 suspension is for a conviction of driving with a suspended or revoked license.

13 ~~(6)(5)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor
14 vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

15
16 NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

17 - END -