SENATE JUDICIARY
Exhibit No. 3
Date 3-9-07
Bill No. HB 28

# DEPARTMENT OF JUSTICE
# HB 28: Amending Laws Relating to Driver Revocations and Suspensions

**Background**
The Montana Department of Justice, through the Motor Vehicle Division, regularly suspends or revokes the driver licenses or driving privileges of individuals who engage in certain conduct, like failure to appear on or pay a traffic citation or fine, refusal to take a breath or blood test, or failure to pay child support; or who have been convicted of certain offenses such as:

- driving under the influence or with a blood alcohol content (BAC) of .08 or more,
- felony dangerous drugs, or
- vehicular homicide or assault.

**Effect of Supreme Court Decision**
HB 28 proposes several amendments to Montana law in response to a January 2006 Montana Supreme Court decision. City of Billings v. Gonzales addressed the consolidated appeal of five defendants who had been found guilty in district court of driving while suspended or revoked under MCA 61-5-212.

Of the five defendants in the Gonzales case:

- three had never applied for a driver's license, but their driver records showed a suspension for failing to appear on a traffic citation or pay a prior traffic fine (authorized under MCA 61-5-214);
- another had applied for a license years ago but never passed the exam; his driver record showed a suspension as a result of a conviction for operating a motor vehicle under age 21 with a BAC of .02 or greater (authorized under MCA 61-5-410); and
- the fifth defendant had a driver's license that had expired 20 years ago; he had a three-year revocation on his driver record for being an habitual traffic offender.

Based primarily on the definition of "driver's license," the Supreme Court reversed their convictions, ruling that a person who does not have a privilege to drive, either through a driver's license or statutory licensure exemption, cannot be charged with driving while their privilege has been suspended or revoked (DWS/R).

In effect, this means that people who drive without a license will accumulate the points used to declare someone an habitual traffic offender more slowly than a driver who is licensed, for exactly the same traffic offenses or conduct.

**Discrepancies in Penalties**
Under the Supreme Court's decision in Gonzales, unlicensed individuals who have engaged in the same conduct or been convicted of the same offenses and for whom the Motor Vehicle Division has entered a suspension or revocation against their driver record because of such conduct, may only:

- be charged with driving with no license under MCA 61-5-102,
- be subject to a maximum fine of $500, up to six months in jail, or by both, and
- accumulate two conviction points toward being declared a habitual traffic offender.

In contrast, individuals who continue to drive after their driver's license has been suspended or revoked, may be:

- found guilty of driving while suspended or revoked under MCA 61-5-215,
- jailed for a minimum of two days to six months, fined up to $500 or, for certain offenders, fined as much as $2,000; and
- accumulate six points toward being declared a habitual traffic offender and have their suspension or revocation period extended by one year.

**Provisions of HB 28**

In the interest of fairness, HB 28 would:

- amend the definitions of suspension and revocation to specifically authorize the withdrawal of the privilege to apply for and be issued a driver's license for a time period specified in law. (Page 9, lines 6-10, page 10, lines 23-25.)
- give the Department explicit authority to treat unlicensed persons the same as licensed nonresidents in terms of imposing a suspension or revocation against the unlicensed person because of the person's conduct or a conviction. (Page 12, lines 26-28.)
- expand the offense of driving while license is suspended or revoked to include driving while the privilege to apply for and obtain a driver's license is suspended or revoked. (Page 13, lines 5 and 8.)

**House Amendment**

At the request of the department, the House Judiciary Committee reinstated, with minor adjustments to respond to the Gonzales issue, the current law, automatic one-year extension of a person's underlying suspension or revocation upon the imposition of an additional driving while suspended/revoked conviction, originally proposed for elimination. See page 13, lines 17-23.

HB 28 passed the House on third reading, 90-4.

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