

HOUSE BILL NO. 14

INTRODUCED BY M. MENAHAN

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ALCOHOL-RELATED AND

6 DRUG-RELATED DRIVING OFFENSES; ELIMINATING THE 5-YEAR LOOKBACK PROVISION FOR CERTAIN

7 ALCOHOL-RELATED AND DRUG-RELATED DRIVING OFFENSES; PROVIDING THAT ALL PRIOR

8 CONVICTIONS ARE COUNTED FOR DETERMINING THE NUMBER OF CONVICTIONS REGARDLESS OF

9 THE NUMBER OF YEARS BETWEEN PRIOR AND CURRENT CONVICTIONS; AMENDING SECTIONS

10 61-5-208 AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE

11 APPLICABILITY DATE, AND AN APPLICABILITY DATE."

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

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15 **Section 1.** Section 61-5-208, MCA, is amended to read:

16 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**

17 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to

18 drive a motor vehicle on the public highways, except as permitted by law.

19 (2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on

20 the public highways has been suspended or revoked may not have the license, endorsement, or privilege

21 renewed or restored until the revocation or suspension period has been completed.

22 (b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or

23 being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a

24 combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol

25 concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or

26 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months.

27 Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, ~~third~~, or subsequent offense

28 ~~within 5 years of the first offense~~, the department shall suspend the license or driving privilege of the person for

29 a period of 1 year and may not issue a probationary license during the period of suspension unless the person

30 completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from

1 the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year
2 suspension period passes and the person has not completed a chemical dependency education course,
3 treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course,
4 treatment, or both, are completed.

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

8 (3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person
9 convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license
10 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 (4) 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 (5) (a) A driver's license that is issued after a license revocation to a person described in subsection
16 (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

17 (b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has
18 reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the
19 person may not operate a motor vehicle unless:

20 (i) operation is authorized by the person's probation officer; or

21 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."
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23 **Section 2.** Section 61-8-734, MCA, is amended to read:

24 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
25 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
26 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses
27 referred to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in
28 this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized
29 Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in
30 this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

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

5 ~~(c)(b)~~ A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
 6 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
 7 61-8-406.

8 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under
 9 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the
 10 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The
 11 court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the
 12 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based
 13 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred
 14 by the sentencing court.

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

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

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

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23 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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25 NEW SECTION. Section 4. Retroactive applicability. For the purpose of determining the number of
 26 convictions for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731, [this act] applies retroactively, within
 27 the meaning of 1-2-109, to convictions that occurred before [the effective date of this act].

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29 NEW SECTION. Section 5. Applicability. [This act] applies to offenses committed on or after [the
 30 effective date of this act].

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