

HOUSE BILL NO. 69

INTRODUCED BY M. MENAHAN

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING DUI COURT PARTICIPATION; REVISING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ALLOWING DUI COURTS TO SUSPEND ALL OR A PORTION OF IMPRISONMENT SENTENCES; DEFINING A DUI COURT; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Suspension of imprisonment sentence for DUI court participation --

DUI court defined. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and ~~the imprisonment~~ ANY sentence SUBSEQUENTLY IMPOSED must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration.

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

(1) (a) Except as provided in subsection (4), a person convicted of a first violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~6 months~~ 1-year 6 MONTHS and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48

1 consecutive hours or more than ~~42 months~~ 1 year and by a fine of not less than \$600 or more than \$2,000.

2 ~~(b) The initial 24 hours of the mandatory minimum imprisonment term must be served and may not be~~
 3 ~~served under home arrest. The mandatory imprisonment sentence and~~ may not be suspended unless the judge
 4 finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental
 5 well-being.

6 ~~(c) Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the~~ The
 7 remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful
 8 completion of court-ordered chemical dependency assessment, education, or treatment by the person.

9 (2) (a) Except as provided in subsection (4), ~~on a second conviction, the person~~ a person convicted of
 10 a second violation of 61-8-401 shall be punished by a fine of not less than \$600 or more than \$1,000 and by
 11 imprisonment for not less than 7 days or more than ~~6 months~~ 1 year, except that if one or more passengers under
 12 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less
 13 than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than ~~42 months~~ 1 year.

14 ~~(b) At least 48 hours of the~~ The mandatory minimum imprisonment term ~~must be served and served~~
 15 ~~consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the~~
 16 ~~imprisonment sentence may not be suspended~~ and may not be suspended unless the judge finds that the
 17 imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

18 ~~(c) Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the~~ The
 19 remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's
 20 successful completion of a chemical dependency treatment program ~~by the person~~ pursuant to 61-8-732.

21 (3) (a) Except as provided in subsection (4), ~~on the third conviction, the person~~ a person convicted of
 22 a third violation of 61-8-401 shall be punished by imprisonment for a term of not less than 30 days or more than
 23 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under
 24 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for
 25 a term of not less than 60 days or more than ~~42 months~~ 1 year and by a fine of not less than \$2,000 or more than
 26 \$10,000.

27 ~~(b) At least 48 hours of the~~ The mandatory minimum imprisonment term ~~must be served and served~~
 28 ~~consecutively and may not be served under home arrest~~ and may not be suspended unless the judge finds that
 29 the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. ~~The~~
 30 ~~imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.~~

1 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
 2 the person's successful completion of a chemical dependency treatment program ~~by the person pursuant to~~
 3 61-8-732.

4 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
 5 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
 6 alcohol concentration."

7
 8 **Section 3.** Section 61-8-722, MCA, is amended to read:

9 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

10 (1) Except as provided in subsection (4), a person convicted of a FIRST violation of 61-8-406 shall be punished
 11 by imprisonment for not more than ~~40 days~~ 1 year 6 MONTHS and by a fine of not less than \$300 or more than
 12 \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
 13 offense, the person shall be punished by imprisonment for not more than ~~20 days~~ 1 year 6 MONTHS and by a fine
 14 of not less than \$600 or more than \$2,000.

15 (2) (a) Except as provided in subsection (4), ~~on a second conviction~~ a person convicted of a second
 16 violation of 61-8-406, ~~the person~~ shall be punished by imprisonment for not less than 5 days, ~~to be served in the~~
 17 ~~county jail and not on home arrest~~, or more than ~~30 days~~ 1 YEAR and by a fine of not less than \$600 or more than
 18 \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
 19 offense, the person shall be punished by imprisonment for not less than 10 days, ~~which may not be served on~~
 20 ~~home arrest~~, or more than ~~60 days~~ 1 year and by a fine of not less than \$1,200 or more than \$2,000.

21 (b) ~~The imposition or execution of the first 5 days of the mandatory minimum~~ imprisonment sentence may
 22 not be served under home arrest and may not be suspended unless the judge finds that imposition of the
 23 imprisonment sentence will pose a risk to the person's physical or mental well-being.

24 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
 25 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

26 (3) (a) Except as provided in subsection (4), ~~on a third conviction~~ a person convicted of a THIRD violation
 27 of 61-8-406, ~~the person~~ shall be punished by imprisonment for not less than ~~40~~ 30 days, ~~to be served in the~~
 28 ~~county jail and not on home arrest~~, or more than ~~6 months~~ 1 year and by a fine of not less than \$1,000 or more
 29 than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
 30 offense, the person shall be punished by imprisonment for not less than ~~20~~ 60 days, ~~which may not be served~~

1 ~~on home arrest~~, or more than ~~12 months~~ 1 year and by a fine of not less than \$2,000 or more than \$10,000.

2 (b) The imposition or execution of the first 10 days of the imprisonment sentence mandatory minimum
3 imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds
4 that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

5 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
6 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

7 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
8 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
9 alcohol concentration."

10
11 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
12 integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

13
14 NEW SECTION. Section 5. Applicability. [This act] applies to offenses committed on or after [the
15 effective date of this act].

16 - END -