

1 HOUSE BILL NO. 102

2 INTRODUCED BY M. MENAHAN

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING PROBATIONARY AND SUSPENDED
6 DRIVER'S LICENSE PROVISIONS AND PROVISIONS RELATED TO DRIVER REHABILITATION CLASSES
7 FOR OFFENSES OF DRIVING UNDER THE INFLUENCE; SPECIFYING DUI COURT AUTHORITY
8 CONCERNING DRIVER'S LICENSES; AMENDING SECTIONS 61-2-302, 61-5-205, 61-5-208, AND 61-8-734,
9 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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13 **NEW SECTION. Section 1. Authorization of probationary license by DUI court -- definition.** (1) If
14 a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or
15 drugs under 61-8-401 or driving with excessive alcohol concentration under 61-8-406 is participating in a DUI
16 court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject
17 to 61-8-442 and any other conditions imposed within the scope of the court's authority.

18 (2) If the participant fails to comply with the court's conditions, the court may revoke the probationary
19 driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208
20 commencing from the date of the court's revocation of the probationary license.

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

26
27 **Section 2.** Section 61-2-302, MCA, is amended to read:

28 **"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by**
29 **offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and
30 improvement program or programs. The programs may consist of classroom instruction in rules of the road,

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

4 (2) Except when otherwise provided or restricted by statute, a person whose driver's license is
5 suspended or revoked by the department, unless the suspension or revocation was for an offense under 61-8-401
6 or 61-8-406, may participate in any driver rehabilitation and improvement program established under this section
7 if the person's license is:

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

10 (b) revoked and the person has:

11 (i) completed at least 3 months of a 1-year revocation; or

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

13 (iii) met the requirements for reobtaining a Montana driver's license.

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

19 (4) If a person's driver's license has been surrendered before the person's selection for participation in
20 the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's
21 agreement to participate in the program.

22 (5) The stay of enforcement of any suspension or revocation action must be terminated and the
23 suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation
24 and improvement program or fails to meet the attendance or other requirements established for participation in
25 the program.

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

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

30 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the

1 peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

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

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

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

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

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

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

14 **"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration**
15 **of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the
16 department receives notice from a court or another licensing jurisdiction that the individual has been convicted
17 of any of the following offenses:

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

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

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

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

24 (e) fleeing from or eluding a peace officer; or

25 (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

26 (2) The department shall suspend an individual's driver's license or driving privilege if the department
27 receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the
28 following offenses:

29 (a) ~~driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol~~
30 ~~or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more~~ a driving offense under

1 61-8-401 or 61-8-406;

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

3 (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle
4 was used in the commission of the offense.

5 (3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year.

6 A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction
7 under 61-7-103.

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

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

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

12 (i) 30 days for a first offense;

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

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

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16 **Section 4.** Section 61-5-208, MCA, is amended to read:

17 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**

18 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to
19 drive a motor vehicle on the public highways, except as permitted by law.

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

23 (b) ~~When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or~~
24 ~~being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a~~
25 ~~combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol~~
26 ~~concentration of 0.08 or more, the department shall, Subject to [section 1] and except as provided in subsection~~
27 (4) of this section:

28 (i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first
29 offense under 61-8-401 or 61-8-406, the department shall suspend the driver's license or driving privilege of the
30 person for a period of 6 months;

1 (ii) ~~Upon~~ upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for
2 a second, third, or subsequent offense under 61-8-401 or 61-8-406 within 5 years of the first offense the time
3 period specified in 61-8-734, the department shall suspend the license or driving privilege of the person for a
4 period of 1 year and may not issue a probationary license during the period of suspension unless the person
5 completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from
6 the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year
7 suspension period passes and the person has not completed a chemical dependency education course,
8 treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course,
9 treatment, or both, are completed.

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

13 (iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third
14 offense under 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend
15 the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during
16 the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report
17 of conviction includes a recommendation from the court that a probationary driver's license be issued subject to
18 the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a
19 chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension
20 remains in effect until the course, treatment, or both, are completed.

21 (3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person
22 convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license
23 commences from the date of conviction or forfeiture of bail.

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

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

28 (5) (a) A driver's license that is issued after a license revocation to a person described in subsection
29 (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

30 (b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has

1 reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the
2 person may not operate a motor vehicle unless:

- 3 (i) operation is authorized by the person's probation officer; or
4 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."
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6 **Section 5.** Section 61-8-734, MCA, is amended to read:

7 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
8 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
9 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses
10 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
11 this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized
12 Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in
13 this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

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

18 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
19 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
20 61-8-406.

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

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

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

2 (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
3 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a
4 violation of 61-8-401 or 61-8-406."

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6 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an
7 integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2 apply to [section 1].

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9 **NEW SECTION. Section 7. Applicability.** [This act] applies to offenses committed on or after [the
10 effective date of this act].

11 - END -