

SENATE BILL NO. 315

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR FOR DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION IS A FELONY; AND AMENDING SECTIONS 61-5-208, 61-8-714, 61-8-722, 61-8-731, AND 61-8-732, MCA."

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

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

**"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, 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) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, or 61-8-411, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, or 61-8-411 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

1           ~~(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third~~  
 2 ~~or subsequent offense of violating 61-8-401, 61-8-406, or 61-8-411 within the time period specified in 61-8-734,~~  
 3 ~~the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may~~  
 4 ~~not issue a probationary license during the period of suspension unless the person completes at least 90 days~~  
 5 ~~of the 1-year suspension and the report of conviction includes a recommendation from the court that a~~  
 6 ~~probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period~~  
 7 ~~passes and the person has not completed a chemical dependency education course or treatment, or both, as~~  
 8 ~~required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are~~  
 9 ~~completed.~~

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

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

15           (4) If a person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 while operating a  
 16 commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

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

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

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

23           (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."  
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25           **Section 2.** Section 61-8-714, MCA, is amended to read:

26           **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third or second**  
 27 **offense.** (1) (a) Except as provided in subsection ~~(4)~~ (3) or ~~(5)~~ (4), a person convicted of a first violation of  
 28 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and  
 29 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  
 30 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 1 year and by a fine of not less than \$600 or more than \$2,000.

2 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not be  
3 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
4 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 successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

7 (2) (a) Except as provided in subsection ~~(4)~~ (3) or ~~(5)~~ (4), a person convicted of a second violation of  
8 61-8-401 shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less  
9 than 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle  
10 at the time of the offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and  
11 by imprisonment for not less than 14 days or more than 1 year.

12 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not be  
13 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
14 physical or mental well-being.

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

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

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

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

27 ~~(4)~~(3) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
28 61-8-731 for a ~~fourth~~ or subsequent felony offense of driving under the influence of alcohol or drugs or with an  
29 excessive alcohol concentration.

30 ~~(5)~~(4) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall

1 be punished as provided in 61-8-465."

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

4 **"61-8-722. Penalty for driving with excessive alcohol concentration or**  
 5 **delta-9-tetrahydrocannabinol level -- first through third or second offense.** (1) Except as provided in  
 6 subsection ~~(4)~~ (3) or ~~(5)~~ (4), a person convicted of a first violation of 61-8-406 or 61-8-411 shall be punished by  
 7 imprisonment for not more than 6 months and by a fine of not less than \$300 or more than \$1,000, except that  
 8 if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall  
 9 be punished by imprisonment for not more than 6 months and by a fine of not less than \$600 or more than  
 10 \$2,000.

11 (2) (a) Except as provided in subsection ~~(4)~~ (3) or ~~(5)~~ (4), a person convicted of a second violation of  
 12 61-8-406 or 61-8-411 shall be punished by imprisonment for not less than 5 days or more than 1 year and by a  
 13 fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were  
 14 in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days  
 15 or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.

16 (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not  
 17 be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's  
 18 physical or mental well-being.

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

21 ~~(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or~~  
 22 ~~61-8-411 shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not~~  
 23 ~~less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the~~  
 24 ~~vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more~~  
 25 ~~than 1 year and by a fine of not less than \$2,000 or more than \$10,000.~~

26 ~~———— (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not~~  
 27 ~~be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's~~  
 28 ~~physical or mental well-being.~~

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

1           ~~(4)~~(3) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
 2 61-8-731 for a ~~fourth or subsequent~~ felony offense of driving under the influence of alcohol or drugs or with an  
 3 excessive alcohol concentration.

4           ~~(5)~~(4) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall  
 5 be punished as provided in 61-8-465."

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7           **Section 4.** Section 61-8-731, MCA, is amended to read:

8           **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 9 **concentration -- penalty for ~~fourth~~ third or subsequent offense.** (1) Except as provided in subsection (3), if  
 10 a person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, the person has either a single conviction  
 11 under 45-5-106 or any combination of ~~three~~ two or more prior convictions under 45-5-104, 45-5-205, 61-8-401,  
 12 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while  
 13 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided  
 14 in 61-8-401(1), the person is guilty of a felony and shall be punished by:

15           (a) sentencing the person to the department of corrections for placement in an appropriate correctional  
 16 facility or program for a term of 13 months. The court shall order that if the person successfully completes a  
 17 residential alcohol treatment program operated or approved by the department of corrections, the remainder of  
 18 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may  
 19 not be deferred or suspended, and the person is not eligible for parole.

20           (b) sentencing the person to either the department of corrections or the Montana state prison or Montana  
 21 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the  
 22 term imposed under subsection (1)(a); and

23           (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

24           (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a  
 25 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

26           (3) If a person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, the person has either a  
 27 single conviction under 45-5-106 or any combination of ~~four~~ three or more prior convictions under 45-5-104,  
 28 45-5-205, 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was  
 29 operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination  
 30 of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential

1 alcohol treatment program under subsection (2), whether or not the person successfully completed the program,  
2 the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than  
3 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

4 (4) The court shall, as a condition of probation, order:

5 (a) that the person abide by the standard conditions of probation promulgated by the department of  
6 corrections;

7 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment  
8 under this section;

9 (c) that the person may not frequent an establishment where alcoholic beverages are served;

10 (d) that the person may not consume alcoholic beverages;

11 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

12 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the  
13 probationary period;

14 (g) that the person submit to random or routine drug and alcohol testing; and

15 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition  
16 interlock system.

17 (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions  
18 during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

19 (a) payment of a fine as provided in 46-18-231;

20 (b) payment of costs as provided in 46-18-232 and 46-18-233;

21 (c) payment of costs of assigned counsel as provided in 46-8-113;

22 (d) community service;

23 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
24 protection of society; or

25 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

26 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department  
27 of corrections may, at its discretion, place the offender in another facility or program.

28 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and  
29 46-23-1031 apply to persons sentenced under this section."

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1           **Section 5.** Section 61-8-732, MCA, is amended to read:

2           **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
3 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments provided  
4 in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401,  
5 61-8-406, or 61-8-411 shall complete:

6           (a) a chemical dependency assessment;

7           (b) a chemical dependency education course; and

8           (c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a  
9 ~~fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program~~ as  
10 provided under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

11           (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical  
12 dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before  
13 sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

14           (3) The chemical dependency assessment and the chemical dependency education course must be  
15 completed at a treatment program approved by the department of public health and human services and must  
16 be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the  
17 defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The  
18 defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

19           (4) The assessment must describe the defendant's level of addiction, if any, and contain a  
20 recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may,  
21 at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program  
22 approved by the department of public health and human services.

23           (5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the  
24 defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to  
25 diagnosis and patient placement rules adopted by the department of public health and human services. Upon  
26 determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor  
27 makes a determination as provided in this subsection, the court shall order an appropriate level of treatment  
28 based upon the determination of one of the counselors.

29           (6) Each counselor providing education or treatment shall, at the commencement of the education or  
30 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or

1 treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall  
2 notify the court of the failure.

3 (7) A court or counselor may not require attendance at a self-help program other than at an "open  
4 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help  
5 programs.

6 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of  
7 61-8-401, 61-8-406, or 61-8-411 upon a finding of chemical dependency made by a licensed addiction counselor  
8 pursuant to diagnosis and patient placement rules adopted by the department of public health and human  
9 services.

10 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must  
11 be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

12 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court  
13 shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may  
14 include additional monthly monitoring for up to an additional 1 year.

15 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and  
16 orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction  
17 to impose any suspended sentence for up to 1 year."

18 - END -