

HOUSE BILL NO. 195
INTRODUCED BY YOUNKIN
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTIES FOR THE SECOND OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-421, 61-8-442, 61-8-714, 61-8-722, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- department to contract with private entities -- participation by offending drivers. (1) (a) The department shall establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

- (i) provide for the local program courses to be operated by private entities;
- (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;
- (iii) establish the criteria that private entities must meet in order to be certified by the department; and
- (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

- (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b);
- (b) revoked and they have:
 - (i) completed at least 3 months of a 1-year revocation or, except that if revocation is for a second or

subsequent violation of 61-8-401 or 61-8-406, ~~have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208~~ the person is not eligible to participate in the driver rehabilitation and improvement program; or

- (ii) completed 1 year of a 3-year revocation; and
- (iii) met the requirements for reobtaining a Montana driver's license; or
- (c) subject to suspension as provided in 61-11-204(3).

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

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

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

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

(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(10) (a) Except as provided in subsections (2)(b)(i) and (10)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

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

- (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or
- (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

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

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required allowed on second or subsequent first offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, 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) When a person is convicted or forfeits bail or collateral not vacated for ~~the~~ a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the~~ a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, ~~upon issuance of any restricted~~ may not issue a probationary license during the period of revocation, ~~restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device.~~ If the 1-year revocation period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

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

(3) (a) If ~~a~~ the person pays the reinstatement fee required in 61-2-107 and provides the department proof

of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

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

Section 3. Section 61-8-421, MCA, is amended to read:

"61-8-421. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a ~~third~~ second or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

Section 4. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under the influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device discretionary on first offense. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may ~~restrict for a defendant person convicted of a first offense under 61-8-401 or 61-8-406 and granted a probationary license~~ restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the period that the person is granted a probationary license and require the ~~defendant person~~ defendant person to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; and

(b) the ~~defendant's~~ person's blood alcohol concentration at the time of the arrest was 0.18% or greater; and

~~(c)(2) the~~ If a defendant has not been previously ~~person is~~ person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subjected to the forfeiture procedure provided under 61-8-421; or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if the court determines that approved ignition interlock devices are reasonably available.

~~(2)(3)~~ (3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

~~(3)(4)~~ (4) The duration of a restriction imposed under this section must ~~run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and~~

must be monitored by the department."

Section 5. 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 person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than ~~\$100~~ \$300 or more than ~~\$500~~ \$1,000. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the ~~defendant's~~ person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the ~~defendant~~ person.

(2) On a second conviction, the person shall be punished by a fine of not less than ~~\$300~~ \$600 or more than ~~\$500~~ \$1,000 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. ~~Three~~ The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended ~~unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.~~ Except for the initial ~~3~~ 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ person.

(3) On the third conviction, the person 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 less than ~~\$500~~ \$1,000 or more than ~~\$1,000~~ \$5,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ person."

Section 6. Section 61-8-722, MCA, is amended to read:

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

(1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than ~~\$400~~ \$300 or more than ~~\$500~~ \$1,000.

(2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than ~~\$300~~ \$600 or more than ~~\$500~~ \$1,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than ~~\$500~~ \$1,000 or more than ~~\$1,000~~ \$5,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended."

Section 7. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- forfeiture of vehicle. (1) On the ~~third~~ second or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order ~~the~~ that each motor vehicle owned ~~and operated~~ by the person at the time of the offense ~~to be~~ either seized and subjected to the procedure provided under 61-8-421 or equipped with an ignition interlock device as provided under 61-8-442.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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

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