

HOUSE BILL NO. 199
INTRODUCED BY C. HARRIS
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A DRIVER TO POST A DRIVER'S LICENSE IN LIEU OF BAIL FOR TRAFFIC OFFENSES; REVISING LAW ENFORCEMENT AND DRIVER'S LICENSE LAWS TO COORDINATE WITH THE PRIVILEGE OF POSTING A LICENSE IN LIEU OF BAIL; REPLACING THE DRIVER'S LICENSE REINSTATEMENT FEE WITH AN ADMINISTRATIVE FEE; AND AMENDING SECTIONS 44-1-1101, 44-1-1102, 46-9-302, 46-9-401, 61-5-214, 61-5-215, AND 61-5-216, MCA."

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

Section 1. Section 44-1-1101, MCA, is amended to read:

"44-1-1101. Duty of patrol officer upon making an arrest. Upon making an arrest, a patrol officer shall:

- (1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;
- (2) give the offender a summons describing the nature of the offense with instructions ~~thereon~~ for the offender to report to the nearest justice of the peace; or
- (3) (a) accept bail determined pursuant to Title 46, chapter 9, part 3; or
(b) accept the offender's driver's license in lieu of bail, in the officer's discretion, if the summons describes a violation of any offense in Title 61, chapters 3 through 10, and if the offender is the holder of an unexpired driver's license."

Section 2. Section 44-1-1102, MCA, is amended to read:

"44-1-1102. Procedure when patrol officer accepts bail or driver's license in lieu of bail. (1) If the patrol officer accepts bail, ~~he~~ the patrol officer shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

(2) If the patrol officer accepts an unexpired driver's license in lieu of bail, the patrol officer shall give the

offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The patrol officer shall deliver the driver's license to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may extend the date of the driving permit for a period up to 6 months from the defendant's initial appearance date.

- (3) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:
- (a) the required bail has been posted or there has been a final determination of the charge; and
 - (b) a \$25 administrative fee has been paid to the court."

Section 3. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

- (a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;
- (b) stalking, as defined in 45-5-220; or
- (c) violation of an order of protection, as defined in 45-5-626.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

~~(a)~~(i) in accordance with the bail schedule established under subsection (1); or

~~(b)~~(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) in the officer's discretion, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge

the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) a \$25 administrative fee has been paid to the court."

Section 4. Section 46-9-401, MCA, is amended to read:

"46-9-401. Forms of bail. (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; ~~or~~

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company; or

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any offense in Title 61, chapters 3 through 10, and if the offender is the holder of an unexpired driver's license.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) ~~Nothing in this~~ This chapter prohibits ~~does not prohibit~~ a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

(4) Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to the defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) a \$25 administrative fee has been paid to the court."

Section 5. Section 61-5-214, MCA, is amended to read:

"61-5-214. Mandatory suspension for failure to appear or pay fine -- administrative fee -- notice.

(1) The department shall suspend the driver's license or driving privilege of a person ~~immediately~~ upon receipt of a ~~certified copy of a docket page or other sufficient evidence~~ report from the court, certified under penalty of law and in a form prescribed by the department, that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title;

(b) (i) failed to post the set bond amount or appear upon an issued complaint, summons, or court order;

or

(ii) after posting a driver's license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or

~~(ii)~~(iii) when assessed a fine, costs, or restitution of \$100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver's license or driving privileges of the person ~~will~~ would be suspended upon:

(i) a failure to post bond or appear on an issued complaint, summons, or court order;

(ii) failure to appear after posting a driver's license in lieu of bond; or

(iii) upon a failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that:

(a) the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution; and

(b) the person has paid the court an administrative fee of \$25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.

(4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund."

Section 6. Section 61-5-215, MCA, is amended to read:

"61-5-215. Provisional licenses prohibited --reinstatement fee. ~~(1) No~~ A provisional, restricted, or probationary license may not be issued upon a suspension under 61-5-214.

~~(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of \$25 to the court for deposit in the state general fund."~~

Section 7. Section 61-5-216, MCA, is amended to read:

"61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and, if applicable, the ~~reinstatement administrative~~ fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement."

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