

SENATE BILL NO. 15

INTRODUCED BY L. JENT

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-101, 61-8-402, 61-8-404, 61-8-409, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. Section 1. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

- (a) the person's blood alcohol concentration is 0.20 or more;
- (b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;
- (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, or 61-8-406;
- (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense;
- (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 3 years of the commission of the present offense, or two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 7 years of the commission of the present offense; or
- (f) the person is involved in a motor vehicle accident or collision resulting in damage to property belonging to another or bodily injury to another.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

- (a) a probationary term of not less than 1 year or more than 3 years;
- (b) a fine of not less than \$1,000 or more than \$5,000; and



1 (c) a term of imprisonment of not more than 1 year, part or all of which may be suspended, to be served
2 concurrently with the initial probationary term imposed in subsection (2)(a).

3 (3) During the probationary term imposed by the court under subsection (2)(a):

4 (a) the person is subject to all conditions of probation, including mandatory participation in drug or DUI
5 courts if available; and

6 (b) if the person violates any condition of probation or any treatment requirement, the court may impose
7 the remainder of any imprisonment term that was imposed and suspended.

8 (4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

9

10 **Section 2.** Section 61-8-101, MCA, is amended to read:

11 **"61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public"
12 means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public
13 travel that is in common use by the public.

14 (2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation
15 of vehicles upon highways except:

16 (a) where a different place is specifically referred to in a given section;

17 (b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2), with regard to operating a vehicle while
18 under the influence of drugs, apply anywhere within this state;

19 (c) the provisions of 61-8-301 and 61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, ~~and~~
20 61-8-402 through 61-8-405, and [section 1], with regard to operating a vehicle while under the influence of
21 alcohol, apply upon all ways of this state open to the public.

22 (3) The operation of motor vehicles directly across the public roads and highways of this state, especially
23 as required in the transportation of natural resource products, including agricultural products and livestock, shall
24 not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways
25 of this state open to the public, provided that such crossings are adequately marked with warning signs or
26 devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any
27 damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the
28 public highway involved."

29

30 **Section 3.** Section 61-8-402, MCA, is amended to read:

1 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual
2 physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a
3 test or tests of the person's blood or breath for the purpose of determining any measured amount or detected
4 presence of alcohol or drugs in the person's body.

5 (2) (a) The test or tests must be administered at the direction of a peace officer when:

6 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
7 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
8 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or [section
9 1];

10 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

11 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
12 a vehicle:

13 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
14 resulting in property damage; ~~or~~

15 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
16 45-2-101, or death; or

17 (C) in violation of [section 1].

18 (b) The arresting or investigating officer may designate which test or tests are administered.

19 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
20 refusal is considered not to have withdrawn the consent provided by subsection (1).

21 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
22 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
23 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
24 license to the department, along with a report certified under penalty of law stating which of the conditions set
25 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
26 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
27 department shall suspend the license for the period provided in subsection (6).

28 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
29 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
30 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing

1 provided in 61-8-403.

2 (6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon
3 refusal to submit to one or more tests:

4 (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

5 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
6 records of the department, a suspension of 1 year with no provision for a restricted probationary license.

7 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
8 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,
9 the department shall:

10 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

11 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
12 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
13 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
14 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
15 effect as a previous testing refusal for purposes of this subsection (6)(b).

16 (7) A nonresident driver's license seized under this section must be sent by the department to the
17 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
18 more tests.

19 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
20 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
21 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
22 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
23 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
24 under this subsection is not reviewable under 61-8-403.

25 (9) A suspension under this section is subject to review as provided in this part.

26 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of
27 medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
28 offense not in this part."

29

30 **Section 4.** Section 61-8-404, MCA, is amended to read:

1 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action
2 or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401,
3 61-8-406, 61-8-410, section 1, or 61-8-805:

4 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
5 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is
6 admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or
7 drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of
8 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists
9 that tends to establish that the person was under the influence of a drug or drugs while driving or in actual
10 physical control of a motor vehicle within this state.

11 (b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in
12 evidence if:

13 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic
14 sciences division of the department to administer the test;

15 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory
16 exempt from certification under the rules of the department and the blood was withdrawn from the person by a
17 person competent to do so under 61-8-405(1);

18 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person
19 is admissible in evidence if it was made by a person trained by the department or by a person who has received
20 training recognized by the department.

21 (2) If the person under arrest refused to submit to one or more tests as provided in this section, proof
22 of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed
23 while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the
24 public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may
25 infer from the refusal that the person was under the influence. The inference is rebuttable.

26 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing on
27 the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
28 drugs."
29

30 **Section 5.** Section 61-8-409, MCA, is amended to read:

1 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
2 control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary
3 alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration,
4 upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual
5 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
6 violation of 61-8-410 or [section 1].

7 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
8 to a preliminary alcohol screening test pursuant to this section.

9 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
10 to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's
11 license.

12 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the
13 refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

14 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
15 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
16 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
17 violation of 61-8-410 and whether the person refused to submit to the test.

18 (6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to
19 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
20 incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

21 (7) A test may not be conducted or requested under this section unless both the peace officer and the
22 instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant
23 to rules adopted under the authority of 61-8-405(5)."
24

25 **Section 6.** 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 offense.**

27 (1) Except as provided in subsection (4) or (5), a person convicted of a violation of 61-8-401 shall be punished
28 by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$300
29 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time
30 of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than

1 12 months and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the imprisonment term
2 must be served and may not be served under home arrest. The mandatory imprisonment sentence 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. Except for the initial 24 hours of the imprisonment term, notwithstanding
5 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful
6 completion of court-ordered chemical dependency assessment, education, or treatment by the person.

7 (2) Except as provided in subsection (4) or (5), on a second conviction, the person shall be punished
8 by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than
9 6 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
10 offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment
11 for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served
12 and served consecutively and may not be served under home arrest. The imposition or execution of the first 5
13 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term,
14 notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending
15 successful completion of a chemical dependency treatment program by the person.

16 (3) Except as provided in subsection (4) or (5), on the third conviction, the person shall be punished by
17 imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or
18 more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time
19 of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than
20 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term
21 must be served and served consecutively and may not be served under home arrest. The imposition or execution
22 of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment
23 sentence may be suspended for a period of up to 1 year pending successful completion of a chemical
24 dependency treatment program by the person.

25 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
26 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
27 alcohol concentration.

28 (5) If the person has a prior conviction or pending charge for a violation of [section 1], the person shall
29 be punished as provided in [section 1]."

30

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

2 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

3 (1) Except as provided in subsection (4) or (5), a person convicted of a violation of 61-8-406 shall be punished
4 by imprisonment for not more than 10 days and by a fine of not less than \$300 or more than \$1,000, except that
5 if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall
6 be punished by imprisonment for not more than 20 days and by a fine of not less than \$600 or more than \$2,000.

7 (2) Except as provided in subsection (4) or (5), on a second conviction of a violation of 61-8-406, the
8 person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on
9 home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000, except that if one
10 or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be
11 punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60
12 days and by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days
13 of the imprisonment sentence may not be suspended.

14 (3) Except as provided in subsection (4) or (5), on a third conviction of a violation of 61-8-406, the person
15 shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home
16 arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or
17 more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be
18 punished by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12
19 months and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10
20 days of the imprisonment sentence may not be suspended.

21 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
22 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
23 alcohol concentration.

24 (5) If the person has a prior conviction or pending charge for a violation of [section 1], the person shall
25 be punished as provided in [section 1]."

26

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

28 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
29 **concentration -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a
30 person is convicted of a violation of 61-8-401 or 61-8-406 and, the person has either a single conviction under

1 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, ~~or~~ 61-8-406,
2 or [section 1], and the offense under 45-5-104 occurred while the person was operating a vehicle while under the
3 influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in
4 61-8-401(1), the person is guilty of a felony and shall be punished by:

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

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

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

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

16 (3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single
17 conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,
18 61-8-401, ~~or~~ 61-8-406, or [section 1], and the offense under 45-5-104 occurred while the person was operating
19 a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,
20 as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment
21 program under subsection (2), whether or not the person successfully completed the program, the person shall
22 be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be
23 fined an amount of not less than \$1,000 or more than \$10,000, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (d) community service;

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

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

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

18 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
19 46-23-1031 apply to persons sentenced under this section."

20

21 **Section 9.** Section 61-8-734, MCA, is amended to read:

22 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
23 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
24 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses
25 referred to in [section 1], 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in
26 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally
27 recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance
28 in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not
29 been vacated.

30 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less

1 than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the
2 offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for
3 sentencing purposes.

4 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
5 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
6 61-8-406.

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

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

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

18 (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
19 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a
20 violation of 61-8-401 or 61-8-406."

21
22 **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an
23 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

24
25 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

26
27 **NEW SECTION. Section 12. Applicability -- retroactive applicability.** (1) [This act] applies to offenses
28 committed on or after [the effective date of this act].

29 (2) For the purpose of determining the number of prior refusals to submit to testing under 61-8-402 and
30 of convictions for prior offenses referred to in [section 1], [this act] applies retroactively, within the meaning of

1 1-2-109, to refusals made and to violations of 45-5-106, 45-5-205, 61-8-401, or 61-8-406 committed prior to [the
2 effective date of this act].

3 - END -