

HOUSE BILL NO. 141

INTRODUCED BY M. DUNWELL

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COURT'S APPROVAL OF A PROBATION OFFICER RECOMMENDATION TO ALLOW A FELONY DUI OFFENDER TO OPERATE A MOTOR VEHICLE WHILE ON PROBATION; AMENDING SECTIONS 61-5-208 AND 61-8-731, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

1 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

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

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

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

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

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

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

23 (i) ~~operation is authorized~~ the court approves a recommendation by the person's probation officer that
 24 the person may operate a motor vehicle; or

25 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."
 26

27 **Section 2.** 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, 61-8-406, or 61-8-411, the person has either a single conviction

1 under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401,
2 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while
3 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided
4 in 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, 61-8-406, or 61-8-411, the person has either a
17 single 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, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a
19 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~~ except upon the court's approval
2 of a recommendation by the person's probation officer;

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

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

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

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

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

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

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

13 (d) community service;

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

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

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

19 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
20 46-23-1031 apply to persons sentenced under this section."

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22 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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