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As of: June 29, 2010 (5:28pm)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act revising and clarifying probationary and suspended driver's license provisions for alcohol and drug related driving offenses; defining a "DUI court" and allowing DUI courts to authorize probationary driver's licenses for misdemeanor impaired driving offenders who participate in treatment; disallowing the Department of Justice to issue probationary drivers' licenses to alcohol or drug related driving offenders who participate in the department's driver rehabilitation program; amending sections 61-2-302, 61-5-205, 61-5-208, and 61-8-734, MCA; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. DUI court may authorize**

**probationary license -- DUI court definition.** (1) If a person convicted of a second or subsequent misdemeanor driving under the influence offense under 61-8-401 or driving with excessive blood alcohol concentration under 61-8-406 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

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1 (2) If a person fails to comply with the court's  
2 conditions, the court may revoke the probationary driver's  
3 license and impose a driver's license suspension for the time  
4 period established pursuant to 61-5-208 commencing from the date  
5 of the court's revocation of the probationary license.

6 (3) For purposes of this section, "DUI court" means any  
7 court that has established a special docket for handling cases  
8 involving persons convicted under 61-8-401 or 61-8-406 and that  
9 implements a program of incentives and sanctions intended to  
10 assist a participant to complete treatment ordered pursuant to  
11 61-8-732 and to end the participant's criminal behavior  
12 associated with driving under the influence of drugs or alcohol  
13 or with excessive blood alcohol concentration.

14  
15 **Section 2.** Section 61-2-302, MCA, is amended to read:

16 **"61-2-302. Establishment of driver rehabilitation and**  
17 **improvement program -- participation by offending drivers. (1)**

18 The department may establish by administrative rules a driver  
19 rehabilitation and improvement program or programs. The programs  
20 may consist of classroom instruction in rules of the road,  
21 driving techniques, defensive driving, driver attitudes and  
22 habits, actual on-the-road driver's training, and other subjects  
23 or tasks designed to contribute to proper driving attitudes,  
24 habits, and techniques and must include the requirements for  
25 obtaining a restricted probationary driver's license.

26 (2) Except when otherwise provided or restricted by  
27 statute, a person whose driver's license is suspended or revoked

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1 by the department may participate in any driver rehabilitation  
2 and improvement program established under this section if the  
3 person's license is:

4 (a) suspended as a result of a violation of the traffic  
5 laws of this state, unless the suspension was imposed under the  
6 authority provided in Title 61, chapter 8, part 8 or for an  
7 offense under 61-8-401 or 61-8-406; or

8 (b) revoked and the person has:

9 (i) completed at least 3 months of a 1-year revocation; or

10 (ii) completed 1 year of a 3-year revocation; and

11 (iii) met the requirements for reobtaining a Montana  
12 driver's license.

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

21 (4) If a person's driver's license has been surrendered  
22 before the person's selection for participation in the driver  
23 rehabilitation and improvement program, the license may be  
24 returned upon receipt of the person's agreement to participate in  
25 the program.

26 (5) The stay of enforcement of any suspension or revocation  
27 action must be terminated and the suspension or revocation action

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1 must be reinstated if a person declines to participate in the  
2 driver rehabilitation and improvement program or fails to meet  
3 the attendance or other requirements established for  
4 participation in the program.

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

7 (7) The department may establish a schedule of fees that  
8 may be charged to those persons participating in the driver  
9 improvement and rehabilitation program. The fees must be used to  
10 help defray costs of maintaining the program.

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

15 (9) (a) Except as provided in subsection (9) (b), the  
16 department may issue a restricted probationary license to any  
17 person who enrolls and participates in the driver rehabilitation  
18 and improvement program. Upon issuance of a probationary license  
19 under this section, the licensee is subject to the restrictions  
20 set forth on the license.

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

24 (i) the individual is disqualified from operating a  
25 commercial motor vehicle under state or federal law; or

26 (ii) the individual's driver's license or driving privilege  
27 is revoked, suspended, or canceled.

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

4 {Internal References to 61-2-302:

5 45-9-203

61-5-206

61-5-208

61-8-734

6 61-11-211

61-11-212}

7  
8 **Section 3.** Section 61-5-205, MCA, is amended to read:

9 **"61-5-205. Mandatory revocation or suspension of license**  
10 **upon certain convictions -- duration of action -- exceptions.** (1)

11 The department shall revoke an individual's driver's license or  
12 driving privilege if the department receives notice from a court  
13 or another licensing jurisdiction that the individual has been  
14 convicted of any of the following offenses:

15 (a) negligent homicide resulting from the operation of a  
16 motor vehicle;

17 (b) any felony in the commission of which a motor vehicle  
18 is used;

19 (c) failure to stop and render aid as required under the  
20 laws of this state in the event of a motor vehicle accident  
21 resulting in the death or personal injury of another;

22 (d) perjury or the making of a false affidavit or statement  
23 under oath to the department under this chapter or under any  
24 other law relating to the ownership or operation of motor  
25 vehicles;

26 (e) fleeing from or eluding a peace officer; or

27 (f) negligent vehicular assault as defined in 45-5-205  
28 involving a motor vehicle.

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1           (2) The department shall suspend an individual's driver's  
2 license or driving privilege if the department receives notice  
3 from a court or another licensing jurisdiction that the  
4 individual has been convicted of any of the following offenses:

5           (a) ~~driving a motor vehicle while under the influence of~~  
6 ~~alcohol or any drug or a combination of alcohol or drugs or~~  
7 ~~operating a motor vehicle with a blood alcohol concentration of~~  
8 ~~0.08 or more~~ driving under the influence under 61-8-401 or  
9 driving with excessive blood alcohol concentration under 61-8-  
10 406;

11           (b) three reckless driving offenses committed within a  
12 period of 12 months; or

13           (c) a theft offense under 45-6-301 if the theft consisted  
14 of theft of motor vehicle fuel and a motor vehicle was used in  
15 the commission of the offense.

16           (3) A revocation under subsections (1)(a), (1)(b), and  
17 (1)(d) through (1)(f) must be for a period of 1 year. A  
18 revocation under subsection (1)(c) must be for a period of 2  
19 years if the offender received a felony conviction under  
20 61-7-103.

21           (4) (a) Except as provided in subsections (4)(b) and  
22 (4)(c), a suspension under subsection (2) must be for a period of  
23 1 year.

24           (b) A suspension under subsection (2)(a) must be for the  
25 period set forth in 61-5-208~~(2)(b)~~.

26           (c) A suspension under subsection (2)(c) must be for one of  
27 the following periods:

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- 1 (i) 30 days for a first offense;
- 2 (ii) 6 months for a second offense; and
- 3 (iii) 1 year for a third or subsequent offense."

4 {Internal References to 61-5-205:  
5 61-2-107 61-5-218 61-7-103 61-8-734}

6

7 **Section 4.** Section 61-5-208, MCA, is amended to read:

8 **"61-5-208. Period of suspension or revocation -- limitation**  
9 **on issuance of probationary license -- notation on driver's**

10 **license.** (1) The department may not suspend or revoke a driver's  
11 license or privilege to drive a motor vehicle on the public  
12 highways, except as permitted by law.

13 (2) (a) Except as provided in 61-2-302 and this section, a  
14 person whose license or privilege to drive a motor vehicle on the  
15 public highways has been suspended or revoked may not have the  
16 license, endorsement, or privilege renewed or restored until the  
17 revocation or suspension period has been completed.

18 (b) ~~(i) When a person is convicted or forfeits bail or~~  
19 ~~collateral not vacated for a first offense of operating or being~~  
20 ~~in actual physical control of a motor vehicle while under the~~  
21 ~~influence of alcohol or any drug or a combination of alcohol or~~  
22 ~~drugs or for a first offense of operation of a motor vehicle by a~~  
23 ~~person with alcohol concentration of 0.08 or more, the department~~  
24 ~~shall,~~ Subject to [section 1] and except as provided in  
25 subsection (4), upon receiving a report of a person's conviction  
26 or forfeiture of bail or collateral not vacated for a first  
27 offense under 61-8-401 or 61-8-406, the department shall suspend

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1 the driver's license or driving privilege of the person for a  
2 period of 6 months.

3 (ii) Upon Subject to [section 1] and except as provided in  
4 subsection (4), upon receiving a report of a person's conviction  
5 or forfeiture of bail or collateral not vacated for a second,  
6 third, or subsequent offense under 61-8-401 or 61-8-406 within 5  
7 years of the first offense the time period specified in 61-8-734,  
8 the department shall suspend the license or driving privilege of  
9 the person for a period of 1 year and may not issue a  
10 probationary license during the period of suspension unless the  
11 person completes at least 45 days of the 1-year suspension and  
12 the report of conviction includes a recommendation from the court  
13 that a probationary driver's license be issued subject to the  
14 requirements of 61-8-442. If the 1-year suspension period passes  
15 and the person has not completed a chemical dependency education  
16 course, treatment, or both, as required under 61-8-732, the  
17 license suspension remains in effect until the course, treatment,  
18 or both, are completed.

19 (iii) Subject to [section 1] and except as provided in  
20 subsection (4), upon receiving a report of a person's conviction  
21 or forfeiture of bail or collateral not vacated for a third  
22 offense under 61-8-401 or 61-8-406 within the time period  
23 specified in 61-8-734, the department shall suspend the  
24 offender's drivers' license for a period of 1 year and may not  
25 issue a probationary license during the period of suspension  
26 unless the person completes at least 90 days of the 1-year  
27 suspension and the report of conviction includes a recommendation



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1 from the court that a probationary driver's license be issued  
2 subject to the requirements of 61-8-442. If the 1-year suspension  
3 period passes and the person has not completed a chemical  
4 dependency education course, treatment, or both, as required  
5 under 61-8-732, the license suspension remains in effect until  
6 the course, treatment, or both, are completed.

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

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

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

20 (4) If a person is convicted of a violation of 61-8-401 or  
21 61-8-406 while operating a commercial motor vehicle, the  
22 department shall suspend the person's driver's license as  
23 provided in 61-8-802.

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

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

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

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

10 {Internal References to 61-5-208:  
11 61-5-205 61-8-734}

12  
13 **Section 5.** Section 61-8-734, MCA, is amended to read:

14 **"61-8-734. Driving under influence of alcohol or drugs --**  
15 **driving with excessive alcohol concentration -- conviction**  
16 **defined -- place of imprisonment -- home arrest -- exceptions --**  
17 **deferral of sentence not allowed.** (1) (a) For the purpose of  
18 determining the number of convictions for prior offenses referred  
19 to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final  
20 conviction, as defined in 45-2-101, in this state, conviction for  
21 a violation of a similar statute or regulation in another state  
22 or on a federally recognized Indian reservation, or a forfeiture  
23 of bail or collateral deposited to secure the defendant's  
24 appearance in court in this state, in another state, or on a  
25 federally recognized Indian reservation, which forfeiture has not  
26 been vacated.

27 (b) An offender is considered to have been previously

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

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

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

22 (3) Subject to the limitations set forth in 61-8-714 and  
23 61-8-722 concerning minimum periods of imprisonment, the court  
24 may order that a term of imprisonment imposed under either  
25 section be served by imprisonment under home arrest, as provided  
26 in Title 46, chapter 18, part 10.

27 (4) A court may not defer imposition of sentence under

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1 61-8-714, 61-8-722, or 61-8-731.

2 (5) The provisions of 61-2-107, ~~61-2-302~~, 61-5-205(2), and  
3 61-5-208(2), relating to suspension of driver's licenses and  
4 later reinstatement of driving privileges, apply to any  
5 conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401  
6 or 61-8-406."

7 {Internal References to 61-8-734:  
8 61-8-401 61-8-401 61-8-406}

9

10 NEW SECTION. **Section 6. {standard} Codification**  
11 **instruction.** [Section 1] is intended to be codified as an  
12 integral part of Title 61, chapter 5, part 2, and the provisions  
13 of Title 61, chapter 5, part 2 apply to [section 1].

14

15 NEW SECTION. **Section 7. {standard} Applicability.** [This  
16 act] applies to offenses committed on or after [the effective  
17 date of this act].

18

- END -

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