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

LC1j08

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act to strengthen and clarify the chemical dependency assessment, educational course, and treatment requirements for impaired driving offenders; amending section 61-8-732, MCA; and providing an applicability date."

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

Section 1. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course, unless the person is completing a treatment program ordered pursuant to this section and the education course would be redundant; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

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1 (2) The sentencing judge may, in the judge's discretion,
2 require the defendant to complete the chemical dependency
3 assessment prior to sentencing the defendant. If the assessment
4 is not ordered or completed before sentencing, the judge shall
5 order the chemical dependency assessment as part of the sentence
6 and that the assessment be completed within 10 days of the
7 sentencing. The judge shall also order that the defendant enroll
8 in any required treatment within 20 days after the assessment or
9 the sentencing, whichever is later.

10 (3) The chemical dependency assessment and the chemical
11 dependency education course must be completed at a treatment
12 program approved by the department of public health and human
13 services and must be conducted by a licensed addiction counselor.
14 The defendant may attend a treatment program of the defendant's
15 choice as long as the treatment services are provided by a
16 licensed addiction counselor. The defendant shall pay the cost of
17 the assessment, the education course, and chemical dependency
18 treatment.

19 (4) The assessment must consider the person's driving
20 record and prior impaired driving offenses. The driving record
21 must be sent to the counselor by the law enforcement agency
22 associated with the person's arrest. The counselor shall take
23 precautions to ensure that the driving record is kept
24 confidential and used only for the purposes of the assessment.
25 The assessment must describe the defendant's level of addiction,
26 if any, and contain a recommendation as to education, treatment,
27 or both. A defendant who disagrees with the initial assessment

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1 may, at the defendant's cost, obtain a second assessment provided
2 by a licensed addiction counselor or a program approved by the
3 department of public health and human services.

4 (5) The treatment provided to the defendant at a treatment
5 program must be at a level appropriate to the defendant's alcohol
6 or drug problem, or both, as determined by a licensed addiction
7 counselor pursuant to diagnosis and patient placement rules
8 adopted by the department of public health and human services.
9 Upon determination, the court shall order the defendant's
10 appropriate level of treatment. If more than one counselor makes
11 a determination as provided in this subsection, the court shall
12 order an appropriate level of treatment based upon the
13 determination of one of the counselors.

14 (6) Each counselor providing education or treatment shall,
15 at the commencement of the education or treatment, notify the
16 court that the defendant has been enrolled in a chemical
17 dependency education course or treatment program. If the
18 defendant fails to attend the education course, if required, or
19 to comply with the treatment program, the counselor shall notify
20 the court and the prosecuting attorney's office of the failure.

21 (7) A court or counselor may not require attendance at a
22 self-help program other than at an "open meeting", as that term
23 is defined by the self-help program. A defendant may voluntarily
24 participate in self-help programs.

25 (8) Chemical dependency treatment must be ordered for a
26 first-time offender convicted of a violation of 61-8-401 or
27 61-8-406 upon a finding of chemical dependency made by a licensed

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1 addiction counselor pursuant to diagnosis and patient placement
2 rules adopted by the department of public health and human
3 services.

4 (9) (a) On a second or subsequent conviction, the treatment
5 program provided for in subsection (5) must be followed by
6 monthly monitoring for a period of at least 1 year from the date
7 of admission to the program.

8 (b) If a defendant fails to comply with the monitoring
9 program imposed under subsection (9)(a), the court shall revoke
10 the suspended sentence, if any, impose any remaining portion of
11 the suspended sentence to commence on the effective date of the
12 revocation, and may include additional monthly monitoring for up
13 to an additional 1 year.

14 (10) Notwithstanding 46-18-201(2), whenever a judge suspends
15 a sentence imposed under 61-8-714 or 61-8-722 and orders the
16 person to complete chemical dependency treatment under this
17 section, the judge retains ~~jurisdiction~~ authority for up to 1
18 year from the date of sentencing to impose any suspended sentence
19 ~~for up to 1 year."~~

20 {Internal References to 61-8-732:
21 61-5-208 61-8-401* 61-8-401* 61-8-406*
22 61-8-410 61-11-101}

23
24 NEW SECTION. Section 2. {standard} Applicability. [This
25 act] applies to offenses committed on or after [the effective
26 date of this act].

27 - END -

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