

**Unofficial Draft Copy**

As of: June 29, 2010 (5:48pm)

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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 allowing DUI courts to suspend all or a portion of imprisonment sentences for impaired driving offenses; defining a DUI court; revising and clarifying incarceration penalties for impaired driving; amending sections 61-8-714 and 61-8-722, MCA; and providing an applicability date."

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

NEW SECTION. **Section 1. Suspension of imprisonment**

**sentence for DUI court participation -- DUI court defined.** (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and the imprisonment sentence must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to

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1 assist a participant to complete treatment ordered pursuant to  
2 61-8-732 and to end the participant's criminal behavior  
3 associated with driving under the influence of drugs or alcohol  
4 or with excessive blood alcohol concentration.

5  
6 **Section 2.** Section 61-8-714, MCA, is amended to read:

7 **"61-8-714. Penalty for driving under influence of alcohol**  
8 **or drugs -- first through third offense.** (1) (a) Except as  
9 provided in subsection (4), a person convicted of a first  
10 violation of 61-8-401 shall be punished by imprisonment for not  
11 less than 24 consecutive hours or more than ~~6 months~~ 1 year and  
12 by a fine of not less than \$300 or more than \$1,000, except that  
13 if one or more passengers under 16 years of age were in the  
14 vehicle at the time of the offense, the person shall be punished  
15 by imprisonment for not less than 48 consecutive hours or more  
16 than ~~12 months~~ 1 year and by a fine of not less than \$600 or more  
17 than \$2,000.

18 (b) ~~The initial 24 hours of the mandatory minimum~~  
19 ~~imprisonment term must be served and may not be served under home~~  
20 ~~arrest. The mandatory imprisonment sentence and~~ may not be  
21 suspended unless the judge finds that the imposition of the  
22 imprisonment sentence will pose a risk to the person's physical  
23 or mental well-being.

24 (c) ~~Except for the initial 24 hours of the imprisonment~~  
25 ~~term, notwithstanding 46-18-201(2), the~~ The remainder of the  
26 imprisonment sentence may be suspended for a period of up to 1  
27 year pending successful completion of court-ordered chemical

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1 dependency assessment, education, or treatment by the person.

2 (2)(a) Except as provided in subsection (4), on a second  
3 conviction, the person shall be punished by a fine of not less  
4 than \$600 or more than \$1,000 and by imprisonment for not less  
5 than 7 days or more than ~~6 months~~ 1 year, except that if one or  
6 more passengers under 16 years of age were in the vehicle at the  
7 time of the offense, the person shall be punished by a fine of  
8 not less than \$1,200 or more than \$2,000 and by imprisonment for  
9 not less than 14 days or more than ~~12 months~~ 1 year.

10 (b) ~~At least 48 hours of the 7-day~~ The mandatory minimum  
11 imprisonment term must be served and served consecutively and may  
12 not be served under home arrest. The imposition or execution of  
13 the first 5 days of the imprisonment sentence may not be  
14 suspended and may not be suspended unless the judge finds that  
15 the imposition of the imprisonment sentence will pose a risk to  
16 the person's physical or mental well-being.

17 (c) ~~Except for the initial 5 days of the imprisonment term,~~  
18 ~~notwithstanding 46-18-201(2), the~~ The remainder of the  
19 imprisonment sentence may be suspended for a period of up to 1  
20 year pending the person's successful completion of a chemical  
21 dependency treatment program by the person pursuant to 61-8-732.

22 (3)(a) Except as provided in subsection (4), on the third  
23 conviction, the person shall be punished by imprisonment for a  
24 term of not less than 30 days or more than 1 year and by a fine  
25 of not less than \$1,000 or more than \$5,000, except that if one  
26 or more passengers under 16 years of age were in the vehicle at  
27 the time of the offense, the person shall be punished by

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1 imprisonment for a term of not less than 60 days or more than ~~12~~  
2 ~~months~~ 1 year and by a fine of not less than \$2,000 or more than  
3 \$10,000.

4 (b) At least 48 hours of the The mandatory minimum  
5 ~~imprisonment term must be served and served consecutively and may~~  
6 ~~not be served under home arrest and may not be suspended unless~~  
7 ~~the judge finds that the imposition of the imprisonment sentence~~  
8 ~~will pose a risk to the person's physical or mental well-being.~~  
9 ~~The imposition or execution of the first 10 days of the~~  
10 ~~imprisonment sentence may not be suspended.~~

11 (c) The remainder of the imprisonment sentence may be  
12 suspended for a period of up to 1 year pending the person's  
13 successful completion of a chemical dependency treatment program  
14 by the person pursuant to 61-8-732.

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

19 {Internal References to 61-8-714:  
20 61-8-401 61-8-401 61-8-442 61-8-442  
21 61-8-732 61-8-732 61-8-733 61-8-734  
22 61-8-734 61-8-734 61-8-734 61-8-734  
23 61-8-734}

24  
25 **Section 3.** Section 61-8-722, MCA, is amended to read:

26 **"61-8-722. Penalty for driving with excessive alcohol**  
27 **concentration -- first through third offense.** (1) (a) Except as  
28 provided in subsection (4), a person convicted of a violation of  
29 61-8-406 shall be punished by imprisonment for not more than ~~10~~

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1 ~~days~~ 1 year and by a fine of not less than \$300 or more than  
2 \$1,000, except that if one or more passengers under 16 years of  
3 age were in the vehicle at the time of the offense, the person  
4 shall be punished by imprisonment for not more than ~~20 days~~ 1  
5 year and by a fine of not less than \$600 or more than \$2,000.

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

16 (b) ~~The imposition or execution of the first 5 mandatory~~  
17 ~~minimum days of the imprisonment sentence may not be served under~~  
18 ~~home arrest and may not be suspended unless the judge finds that~~  
19 ~~imposition of the imprisonment sentence will pose a risk to the~~  
20 ~~person's physical or mental well-being.~~

21 (c) The remainder of the imprisonment sentence may be  
22 suspended for a period of up to 1 year pending the person's  
23 successful completion of a chemical dependency treatment program  
24 pursuant to 61-8-732.

25 (3)(a) Except as provided in subsection (4), on a third  
26 conviction of a violation of 61-8-406, the person shall be  
27 punished by imprisonment for not less than ~~10~~ 30 days, ~~to be~~

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1 ~~served in the county jail and not on home arrest,~~ or more than 6  
2 months 1 year and by a fine of not less than \$1,000 or more than  
3 \$5,000, except that if one or more passengers under 16 years of  
4 age were in the vehicle at the time of the offense, the person  
5 shall be punished by imprisonment for not less than 20 days,  
6 ~~which may not be served on home arrest,~~ or more than ~~12 months~~ 1  
7 year and by a fine of not less than \$2,000 or more than \$10,000.

8 (b) The imposition or execution of the first 10 days of the  
9 imprisonment sentence mandatory minimum imprisonment sentence may  
10 not be served on home arrest and may not be suspended unless the  
11 judge finds that imposition of the imprisonment sentence will  
12 pose a risk to the person's physical or mental well-being.

13 (c) The remainder of the imprisonment sentence may be  
14 suspended for a period of up to 1 year pending the person's  
15 successful completion of a chemical dependency treatment program  
16 pursuant to 61-8-732.

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

21 {Internal References to 61-8-722:  
22 61-8-401 61-8-406 61-8-442 61-8-442  
23 61-8-732 61-8-733 61-8-734 61-8-734  
24 61-8-734 61-8-734 61-8-734 61-8-734}

25  
26 NEW SECTION. Section 4. {standard} Codification  
27 **instruction.** [Section 1] is intended to be codified as an  
28 integral part of Title 61, chapter 8, part 7, and the provisions

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1 of Title 61, chapter 8, part 7, apply to [section 1].

2

3 NEW SECTION. **Section 5. {standard} Applicability.** [This  
4 act] applies to offenses committed on or after [the effective  
5 date of this act].

6

- END -

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