

HOUSE BILL NO. 178

INTRODUCED BY M. MONFORTON

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE ADMISSIBILITY IN A DUI TRIAL OF EVIDENCE OF A PERSON'S COMMISSION OF OTHER ACTS; AMENDING SECTION 61-8-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 61-8-404, MCA, is amended to read:

**"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, 61-8-411, 61-8-465, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of 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 admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

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

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

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by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

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



1           (2) If the person under arrest refused to submit to one or more tests under 61-8-402, whether or not a  
2 sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or  
3 proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical  
4 control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or  
5 a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the  
6 influence. The inference is rebuttable.

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

10           (4) Evidence of the person's commission of other acts in violation of 61-8-401, 61-8-406, 61-8-410,  
11 61-8-411, 61-8-465, or 61-8-805 is not made inadmissible by either Rule 404 or Rule 609 of the Montana Rules  
12 of Evidence if the evidence is not excluded under Rule 403. Evidence of acts occurring more than 10 years  
13 before the charged offense is inadmissible under this section unless the court determines that the admission of  
14 the evidence is in the interests of justice."

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16           NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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18           NEW SECTION. Section 3. Applicability. [This act] applies to cases filed on or after [the effective date  
19 of this act].

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