

## HOUSE BILL NO. 299

INTRODUCED BY K. HANSEN, HOWARD, O'HARA, READ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A THIRD CONVICTION FOR DRIVING UNDER  
5 THE INFLUENCE OF ALCOHOL OR DRUGS OR FOR DRIVING WITH EXCESSIVE ALCOHOL  
6 CONCENTRATION IS A FELONY; PROVIDING FOR ALCOHOL TESTING AS A CONDITION OF CERTAIN  
7 SENTENCES; AND AMENDING SECTIONS 61-5-208, 61-8-714, 61-8-722, 61-8-731, 61-8-732, AND 61-8-734,  
8 MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 61-5-208, MCA, is amended to read:

13 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**  
14 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to  
15 drive a motor vehicle on the public highways, except as permitted by law.

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

19 (b) When a person is convicted or forfeits bail or collateral not vacated for a first offense ~~of operating or~~  
20 ~~being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a~~  
21 ~~combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol~~  
22 ~~concentration of 0.08 or more~~ under 61-8-401 or 61-8-406, the department shall, upon receiving a report of  
23 conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the  
24 person for a period of 6 months.

25 (c) Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, ~~third, or~~  
26 ~~subsequent offense within 5 years of the first offense~~ within the time period specified in 61-8-734, the department  
27 shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary  
28 license during the period of suspension unless the person completes at least 45 days of the 1-year suspension  
29 and the report of conviction includes a recommendation from the court that a probationary driver's license be  
30 issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not

1 completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license  
 2 suspension remains in effect until the course, treatment, or both, are completed.

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

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

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

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

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

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

- 18 (i) operation is authorized by the person's probation officer; or
- 19 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

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

22 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third or second**

23 **offense.** (1) Except as provided in subsection ~~(4)~~ (3), a person convicted of a violation of 61-8-401 shall be  
 24 punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less  
 25 than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle  
 26 at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours  
 27 or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the  
 28 imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment  
 29 sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose  
 30 a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term,

1 notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending  
 2 successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

3 (2) Except as provided in subsection ~~(4)~~ (3), on a second conviction, the person shall be punished by  
 4 a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6  
 5 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the  
 6 offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment  
 7 for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served  
 8 and served consecutively and may not be served under home arrest. The imposition or execution of the first 5  
 9 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term,  
 10 notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending  
 11 successful completion of a chemical dependency treatment program by the person.

12 ~~—— (3) Except as provided in subsection (4), on the third conviction, the person shall be punished by~~  
 13 ~~imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or~~  
 14 ~~more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time~~  
 15 ~~of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than~~  
 16 ~~12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term~~  
 17 ~~must be served and served consecutively and may not be served under home arrest. The imposition or execution~~  
 18 ~~of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment~~  
 19 ~~sentence may be suspended for a period of up to 1 year pending successful completion of a chemical~~  
 20 ~~dependency treatment program by the person.~~

21 ~~(4)~~(3) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
 22 61-8-731 for a ~~fourth or subsequent~~ felony offense of driving under the influence of alcohol or drugs or with an  
 23 excessive alcohol concentration."  
 24

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

26 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third or second**  
 27 **offense.** (1) Except as provided in subsection ~~(4)~~ (3), a person convicted of a violation of 61-8-406 shall be  
 28 punished by imprisonment for not more than 10 days and by a fine of not less than \$300 or more than \$1,000,  
 29 except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the  
 30 person shall be punished by imprisonment for not more than 20 days and by a fine of not less than \$600 or more

1 than \$2,000.

2 (2) Except as provided in subsection ~~(4)~~ (3), on a second conviction of a violation of 61-8-406, the person  
3 shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest,  
4 or more than 30 days and by a fine of not less than \$600 or more than \$1,000, except that if one or more  
5 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished  
6 by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and  
7 by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the  
8 imprisonment sentence may not be suspended.

9 ~~—————(3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall~~  
10 ~~be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest,~~  
11 ~~or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more~~  
12 ~~passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished~~  
13 ~~by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months~~  
14 ~~and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of~~  
15 ~~the imprisonment sentence may not be suspended.~~

16 ~~(4)~~(3) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
17 61-8-731 for a ~~fourth~~ or subsequent felony offense of driving under the influence of alcohol or drugs or with an  
18 excessive alcohol concentration."

19

20 **Section 4.** Section 61-8-731, MCA, is amended to read:

21 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
22 **concentration -- penalty for ~~fourth~~ third or subsequent offense.** (1) Except as provided in subsection (3), if  
23 a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single conviction under  
24 45-5-106 or any combination of ~~three~~ two or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or  
25 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the  
26 influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in  
27 61-8-401(1), the person is guilty of a felony and shall be punished by:

28 (A) FOR A THIRD OFFENSE, SENTENCING THE PERSON AS PROVIDED UNDER SUBSECTIONS (1)(B) THROUGH (1)(D),  
29 WHICH MUST BE SUSPENDED ON THE CONDITION THAT THE PERSON NOT CONSUME ALCOHOL AND PARTICIPATE IN A  
30 PROGRAM OF ALCOHOL TESTING FOR A PERIOD OF 13 CONSECUTIVE MONTHS. THE REQUIREMENT FOR ALCOHOL TESTING

1 MAY NOT BE SUSPENDED OR DEFERRED, AND COMPLIANCE WITH THE TESTING CONDITION MUST BE MONITORED BY  
 2 DEPARTMENT PROBATION PROGRAM OFFICERS AS AUTHORIZED BY 46-23-1004. THE COURT MAY ALSO IMPOSE  
 3 ADDITIONAL CONDITIONS AS APPROPRIATE. IF AN OFFENDER VIOLATES A CONDITION UPON WHICH THE SENTENCE WAS  
 4 SUSPENDED AS PROVIDED IN THIS SUBSECTION (1)(A), THE SUSPENSION MUST BE REVOKED BY THE METHOD PROVIDED  
 5 FOR IN 46-18-203.

6 ~~(a)~~(B) sentencing the person to the department of corrections for placement in an appropriate correctional  
 7 facility or program for a term of 13 months. The court shall order that if the person successfully completes a  
 8 residential alcohol treatment program operated or approved by the department of corrections, the remainder of  
 9 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may  
 10 not be deferred or suspended, and the person is not eligible for parole.

11 ~~(b)~~(C) sentencing the person to either the department of corrections or the Montana state prison or  
 12 Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run  
 13 consecutively to the term imposed under subsection ~~(1)(a)~~ (1)(B); and

14 ~~(c)~~(D) a fine in an amount of not less than \$1,000 or more than \$10,000.

15 (2) The department of corrections may place an offender sentenced under subsection ~~(1)(a)~~ (1)(B) in a  
 16 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

17 (3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single  
 18 conviction under 45-5-106 or any combination of ~~four~~ three or more prior convictions under 45-5-104, 45-5-205,  
 19 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while  
 20 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided  
 21 in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program  
 22 under subsection (2), whether or not the person successfully completed the program, the person shall be  
 23 sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined  
 24 an amount of not less than \$1,000 or more than \$10,000, or both.

25 (4) The court shall, as a condition of probation, order:

26 (a) that the person abide by the standard conditions of probation promulgated by the department of  
 27 corrections;

28 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment  
 29 under this section;

30 (c) that the person may not frequent an establishment where alcoholic beverages are served;

- 1 (d) that the person may not consume alcoholic beverages;
- 2 (e) that the person may not operate a motor vehicle unless authorized 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."

21

22 **Section 5.** Section 61-8-732, MCA, is amended to read:

23 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

24 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments provided

25 in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401

26 or 61-8-406 shall complete:

- 27 (a) a chemical dependency assessment;
- 28 (b) a chemical dependency education course; and
- 29 (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except ~~a fourth or~~
- 30 ~~subsequent conviction for which the defendant completes a residential alcohol treatment program~~ as provided

1 under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

2 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical  
3 dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before  
4 sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

5 (3) The chemical dependency assessment and the chemical dependency education course must be  
6 completed at a treatment program approved by the department of public health and human services and must  
7 be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the  
8 defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The  
9 defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

10 (4) The assessment must describe the defendant's level of addiction, if any, and contain a  
11 recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may,  
12 at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program  
13 approved by the department of public health and human services.

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

20 (6) Each counselor providing education or treatment shall, at the commencement of the education or  
21 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or  
22 treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall  
23 notify the court of the failure.

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

27 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of  
28 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a licensed addiction counselor pursuant  
29 to diagnosis and patient placement rules adopted by the department of public health and human services.

30 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must

1 be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

2 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court  
3 shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may  
4 include additional monthly monitoring for up to an additional 1 year.

5 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and  
6 orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction  
7 to impose any suspended sentence for up to 1 year."  
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9 **Section 6.** Section 61-8-734, MCA, is amended to read:

10 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

11 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**

12 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses

13 referred to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in

14 this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized

15 Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in

16 this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

17 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less

18 than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the

19 offense is the offender's ~~fourth~~ third or subsequent offense, in which case all previous convictions must be used

20 for sentencing purposes.

21 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be

22 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or

23 61-8-406.

24 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under

25 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the

26 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The

27 court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the

28 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based

29 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred

30 by the sentencing court.



