

HOUSE BILL 92

Introduced by Dolezal

1/03	Introduced
1/03	Fiscal Note Requested
1/03	Referred to Judiciary
1/07	First Reading
1/11	Fiscal Note Received
1/15	Fiscal Note Printed
1/18	Hearing
1/21	Tabled in Committee

1 HOUSE BILL NO. 92
 2 INTRODUCED BY DOLEZAL
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
 4 ON ADULT AND JUVENILE DETENTION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A JUDGE TO
 7 REQUIRE A PERSON TO INSTALL AN IGNITION INTERLOCK DEVICE
 8 WHEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR
 9 DRUGS OR OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL
 10 CONCENTRATION OF 0.10 OR MORE; DIRECTING THE DEPARTMENT OF
 11 JUSTICE TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK
 12 DEVICE PRIOR TO ISSUANCE OF A RESTRICTED PROBATIONARY
 13 LICENSE TO A PERSON ORDERED BY THE COURT TO INSTALL THE
 14 DEVICE; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES
 15 PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES;
 16 ALLOCATING A PORTION OF THE DRIVER'S LICENSE REINSTATEMENT
 17 FEE TO FUND IGNITION INTERLOCK DEVICES FOR INDIGENTS;
 18 AMENDING SECTIONS 61-2-107, 61-2-302, 61-5-206, 61-8-714,
 19 AND 61-8-722, MCA; AND PROVIDING EFFECTIVE DATES."

20
 21 STATEMENT OF INTENT
 22 A statement of intent is required for this bill because
 23 [section 8] delegates authority to the department of justice
 24 to adopt rules concerning ignition interlock devices. It is
 25 the intent of the legislature that the rules be modeled on

1 rules implementing similar statutes adopted in Washington,
 2 Idaho, and Oregon.

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 5 NEW SECTION. **Section 1.** Ignition interlock device --
 6 definition. "Ignition interlock device" means ignition
 7 equipment that analyzes the breath to determine blood
 8 alcohol concentration, that is approved by the department
 9 pursuant to [section 8], and that is designed to prevent a
 10 motor vehicle from being operated by a person who has
 11 consumed a specific amount of an alcoholic beverage.

12 **Section 2.** Section 61-8-714, MCA, is amended to read:
 13 "61-8-714. Penalty for driving under the influence of
 14 alcohol or drugs. (1) A person convicted of a violation of
 15 61-8-401 shall be punished by imprisonment in the county
 16 jail for not less than 24 consecutive hours or more than 60
 17 days and ~~shall be punished~~ by a fine of not less than \$100
 18 or more than \$500. The jail sentence may not be suspended
 19 unless the judge finds that the imposition of the jail
 20 sentence will pose a risk to the defendant's physical or
 21 mental well-being.

22 (2) On a second conviction, he shall be punished by a
 23 fine of not less than \$300 or more than \$500 and by
 24 imprisonment for not less than 7 days, at least 48 hours of
 25 which must be served consecutively, or more than 6 months.



-2- INTRODUCED BILL
 HB 92

1 Three days of the jail sentence may not be suspended unless
 2 the judge finds that the imposition of the jail sentence
 3 will pose a risk to the defendant's physical or mental
 4 well-being.

5 (3) On the third or subsequent conviction, he shall be
 6 punished by imprisonment for a term of not less than 30
 7 days, at least 48 hours of which must be served
 8 consecutively, or more than 1 year, and by a fine of not
 9 less than \$500 or more than \$1,000. Notwithstanding any
 10 provision to the contrary providing for suspension of
 11 execution of a sentence imposed under this subsection, the
 12 imposition or execution of the first 10 days of the jail
 13 sentence imposed for a third or subsequent offense that
 14 occurred within 5 years of the first offense may not be
 15 deferred or suspended.

16 (4) In addition to the punishment provided in this
 17 section, regardless of disposition, the defendant shall
 18 complete an alcohol information course at an alcohol
 19 treatment program approved by the department of
 20 institutions, which may, in the sentencing court's
 21 discretion and upon recommendation of a certified chemical
 22 dependency counselor, include alcohol or drug treatment, or
 23 both. On conviction of a second or subsequent offense under
 24 this section, in addition to the punishment provided in this
 25 section, regardless of disposition, the defendant shall

1 complete an alcohol information course at an alcohol
 2 treatment program approved by the department of
 3 institutions, which must include alcohol or drug treatment,
 4 or both. Each counselor providing education or treatment
 5 shall, at the commencement of the education or treatment,
 6 notify the court that the defendant has been enrolled in a
 7 course or treatment program. If the defendant fails to
 8 attend the course or the treatment program, the counselor
 9 shall notify the court of the failure. As long as the
 10 alcohol information course and treatment program are
 11 approved as provided in this subsection, the defendant may
 12 attend the information course and treatment program of his
 13 choice. The treatment provided to the defendant at a
 14 treatment program must be at a level appropriate to his
 15 alcohol problem, as determined by the judge based upon the
 16 recommendation from the certified chemical dependency
 17 counselor.

18 (5) (a) In addition to the other punishment provided in
 19 this section, the court may order a person convicted of a
 20 violation of 61-8-401 to drive only a motor vehicle equipped
 21 with a functioning ignition interlock device. The
 22 requirement commences after any period of revocation or
 23 suspension imposed under Title 61, chapter 5, part 2. The
 24 court shall determine the period of time that the person is
 25 subject to the requirement. A court that imposes this

1 requirement retains jurisdiction over the person convicted
 2 until the end of the period of the requirement.

3 (b) If an ignition interlock device is ordered to be
 4 installed under this subsection (5), the court shall require
 5 the defendant to pay the reasonable costs of leasing,
 6 installing, and maintaining the device. A payment schedule
 7 may be established for the defendant by the court. If the
 8 court determines after a hearing that the defendant is
 9 unable to pay all or part of the costs for an ignition
 10 interlock device, the court may waive the defendant's
 11 responsibility for costs. If the defendant's responsibility
 12 for costs is waived, the costs must be paid from the
 13 driver's license reinstatement fee, as provided in 61-2-107.

14 (5)(6) For the purpose of determining the number of
 15 convictions under this section, "conviction" means a final
 16 conviction, as defined in 45-2-101, in this state,
 17 conviction for a violation of a similar statute in another
 18 state, or a forfeiture of bail or collateral deposited to
 19 secure the defendant's appearance in court in this state or
 20 another state, which forfeiture has not been vacated. An
 21 offender is considered to have been previously convicted for
 22 the purposes of this section if less than 5 years have
 23 elapsed between the commission of the present offense and a
 24 previous conviction. If there has been no additional
 25 conviction for an offense under this section for a period of

1 5 years after a prior conviction hereunder under this
 2 section, then all records and data relating to the prior
 3 conviction are confidential criminal justice information as
 4 defined in 44-5-103 and public access to the information may
 5 only be obtained by district court order upon good cause
 6 shown.

7 (6)(7) For the purpose of calculating subsequent
 8 convictions under this section, a conviction for a violation
 9 of 61-8-406 also constitutes a conviction for a violation of
 10 61-8-401."

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

12 "61-8-722. Penalty for driving with excessive blood
 13 alcohol concentration. (1) A person convicted of a violation
 14 of 61-8-406 shall be punished by imprisonment for not more
 15 than 10 days and ~~shall be punished~~ by a fine of not less
 16 than \$100 or more than \$500.

17 (2) On a second conviction of a violation of 61-8-406,
 18 he shall be punished by imprisonment for not less than 48
 19 consecutive hours or more than 30 days and by a fine of not
 20 less than \$300 or more than \$500.

21 (3) On a third or subsequent conviction of a violation
 22 of 61-8-406, he shall be punished by imprisonment for not
 23 less than 48 consecutive hours or more than 6 months and by
 24 a fine of not less than \$500 or more than \$1,000.

25 (4) The provisions of 61-5-205(2), 61-5-208(2), and

1 61-11-203(2)(d) relating to revocation and suspension of
 2 driver's licenses shall apply to any conviction under
 3 61-8-406.

4 (5) In addition to the punishment provided in this
 5 section, regardless of disposition, the defendant shall
 6 complete an alcohol information course at an alcohol
 7 treatment program approved by the department of
 8 institutions, which may include alcohol or drug treatment,
 9 or both, if considered necessary by the counselor conducting
 10 the program. Each counselor providing such education or
 11 treatment shall, at the commencement of the education or
 12 treatment, notify the court that the defendant has been
 13 enrolled in a course or treatment program. If the defendant
 14 fails to attend the course or the treatment program, the
 15 counselor shall notify the court of the failure.

16 (6) (a) In addition to the other punishment provided in
 17 this section, the court may order a person convicted of a
 18 violation of 61-8-406 to drive only a motor vehicle equipped
 19 with a functioning ignition interlock device. The
 20 requirement commences after any period of revocation or
 21 suspension imposed under Title 61, chapter 5, part 2. The
 22 court shall determine the period of time that the person is
 23 subject to the requirement. A court that imposes this
 24 requirement retains jurisdiction over the person convicted
 25 until the end of the period of the requirement.

1 (b) If an ignition interlock device is ordered to be
 2 installed under this subsection (6), the court shall require
 3 the defendant to pay the reasonable costs of leasing,
 4 installing, and maintaining the device. A payment schedule
 5 may be established for the defendant by the court. If the
 6 court determines after a hearing that the defendant is
 7 unable to pay all or part of the costs for an ignition
 8 interlock device, the court may waive the defendant's
 9 responsibility for costs. If the defendant's responsibility
 10 for costs is waived, the costs must be paid from the
 11 driver's license reinstatement fee, as provided in 61-2-107.

12 (6)(7) For the purpose of determining the number of
 13 convictions under this section, "conviction" means a final
 14 conviction, as defined in 45-2-101, in this state or a
 15 similar statute in another state or a forfeiture of bail or
 16 collateral deposited to secure the defendant's appearance in
 17 court in this state or another state, which forfeiture has
 18 not been vacated. An offender is considered to have been
 19 previously convicted for the purposes of this section if
 20 less than 5 years have elapsed between the commission of the
 21 present offense and a previous conviction. If there has been
 22 no additional conviction for an offense under this section
 23 for a period of 5 years after a prior conviction hereunder
 24 under this section, then such the prior offense shall must
 25 be expunged from the defendant's record."

1 NEW SECTION. **Section 4.** Ignition interlock devices --
 2 notation on driver's license. When a court orders a person
 3 to install an ignition interlock device under 61-8-714 or
 4 61-8-722, the court shall notify the department of its
 5 order. The department shall attach or imprint a notation on
 6 the person's driver's license stating that the person may
 7 operate only a motor vehicle equipped with an ignition
 8 interlock device.

9 NEW SECTION. **Section 5.** Ignition interlock devices --
 10 assisting in starting or operating -- circumventing --
 11 penalty. (1) It is unlawful for a person to knowingly assist
 12 a person who is restricted to the use of an ignition
 13 interlock device to start and operate the restricted
 14 person's vehicle.

15 (2) It is unlawful for a person to knowingly circumvent
 16 the operation of an ignition interlock device.

17 (3) A person convicted of a violation of this section
 18 shall be punished by a fine of not more than \$500 or by
 19 imprisonment for not more than 6 months, or both.

20 (4) This section does not apply if the starting of a
 21 motor vehicle or the request to start a motor vehicle
 22 equipped with an ignition interlock device is done for the
 23 purpose of safety or mechanical repair of the device or the
 24 vehicle and if the person subject to the requirement does
 25 not operate the vehicle.

1 **Section 6.** Section 61-2-302, MCA, is amended to read:

2 "61-2-302. Establishment of driver improvement program
 3 -- participation by offending drivers. (1) The department of
 4 justice may establish by administrative rules a driver
 5 rehabilitation and improvement program or programs which
 6 that may consist of classroom instruction in rules of the
 7 road, driving techniques, defensive driving, driver
 8 attitudes and habits, actual on-the-road driver's training,
 9 and other such subjects or tasks designed to contribute to
 10 proper driving attitudes, habits, and techniques.

11 (2) Official participation in such a driver
 12 rehabilitation and improvement program is limited to those
 13 persons whose license to operate a motor vehicle in the
 14 state of Montana is:

15 (a) subject to suspension or revocation as a result of
 16 a violation of the traffic laws of this state; or

17 (b) revoked and they have:

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

19 or

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

21 (iii) have met the requirements for reobtaining a
 22 Montana driver's license.

23 (3) Notwithstanding any provision of this part
 24 inconsistent with any other law of the state of Montana, the
 25 enforcement of any suspension or revocation order which that

1 constitutes the basis for any person's participation in the
 2 driver rehabilitation and improvement program provided for
 3 herein in this section may be stayed if that person complies
 4 with the requirements established for the driver improvement
 5 program and meets the eligibility requirements of subsection
 6 (2).

7 (4) In the event a person's driver's license has been
 8 surrendered prior to his selection for participation in the
 9 driver rehabilitation and improvement program, the license
 10 may be returned upon receipt of his agreement to participate
 11 in the program.

12 (5) The stay of enforcement of any suspension or
 13 revocation order ~~shall~~ must be terminated and the order of
 14 suspension or revocation enforced if a person declines to
 15 participate in the driver rehabilitation and improvement
 16 program or fails to meet the attendance or other
 17 requirements established for participation in the program.

18 (6) Nothing in this part creates a right to be included
 19 in any program established under this part.

20 (7) The department of justice may establish a schedule
 21 of fees which that may be charged those persons
 22 participating in the driver improvement and rehabilitation
 23 program, ~~which fees shall~~ that must be used to help defray
 24 costs of maintaining the program.

25 (8) A person may be referred to this program by a

1 driver improvement analyst, city judge, justice of the
 2 peace, judge of a district court of the state, or a hearing
 3 examiner of the department of justice.

4 (9) (a) The department of justice may issue a
 5 restricted probationary license to any person who enrolls
 6 and participates in the driver rehabilitation and
 7 improvement program. Upon issuance of a probationary license
 8 under this section, the licensee is subject to the
 9 restrictions set forth thereon on the license.

10 (b) If the department issues a restricted probationary
 11 license to any person whom the sentencing court has ordered
 12 to install an ignition interlock device, pursuant to
 13 61-8-714 or 61-8-722, the department shall require the
 14 person to install the ignition interlock device prior to
 15 issuance of the probationary license.

16 (10) It is a misdemeanor for any person to operate a
 17 motor vehicle in any manner in violation of the restrictions
 18 imposed on a restricted license issued to him under this
 19 section."

20 **Section 7.** Section 61-5-206, MCA, is amended to read:

21 "61-5-206. Authority of department to suspend license
 22 or driving privilege or issue probationary license. (1) The
 23 department is hereby authorized to suspend the driver's
 24 license, including the commercial vehicle operator's
 25 endorsement, or driving privilege of a driver without

1 preliminary hearing upon a showing by its records or other
2 sufficient evidence that the licensee:

3 (a) has been involved as a driver in any accident
4 resulting in the death or personal injury of another or
5 serious property damage;

6 (b) has been convicted with such frequency of serious
7 offenses against traffic regulations governing the movement
8 of vehicles as to indicate a disrespect for traffic laws and
9 a disregard for the safety of other persons on the highways;

10 (c) is an habitually reckless or negligent driver of a
11 motor vehicle;

12 (d) is incompetent to drive a motor vehicle;

13 (e) has committed or permitted an unlawful or
14 fraudulent use of such a license as specified in 61-5-302;

15 (f) has committed an offense in another state which
16 that if committed in this state would be grounds for
17 suspension or revocation; or

18 (g) has falsified his date of birth on his application
19 for a driver's license.

20 (2) (a) However, the department may, in its discretion
21 and in lieu of such suspension of license or driving
22 privilege, issue a probationary license to a driver, without
23 preliminary hearing, upon a showing by its records or other
24 sufficient evidence that the licensee's driving record is
25 such-as would authorize warrant suspension as provided in

1 subsection (1) hereof. Upon issuance of a probationary
2 license the licensee ~~shall be~~ is subject to the restrictions
3 set forth ~~thereon~~ on the license. The licensee's driving
4 privilege may be suspended upon conviction or forfeiture of
5 bail not vacated of any traffic violation during the period
6 of ~~such~~ probation. The licensee shall surrender to the
7 department all ~~driver~~ driver's licenses ~~heretofore~~
8 previously issued to him before such a probationary license
9 ~~shall~~ may be issued. His refusal or neglect to surrender
10 ~~such the~~ licenses upon demand ~~shall be~~ is ground for
11 suspending all ~~such~~ licenses. Probationary licenses may be
12 issued for a period not to exceed 12 months.

13 (b) If the department issues a restricted probationary
14 license to a person whom the sentencing court has ordered to
15 install an ignition interlock device, pursuant to 61-8-714
16 or 61-8-722, the department shall require the person to
17 install the ignition interlock device prior to issuance of
18 the probationary license.

19 (3) Upon suspending the license of any person or upon
20 placing ~~such the~~ person on probation, as ~~hereinbefore~~
21 authorized in this section ~~authorized~~, the department shall
22 immediately notify the licensee in writing and upon his
23 request shall afford him an opportunity for a hearing as
24 early as practical within ~~not-to-exceed~~ 20 days or less
25 after receipt of ~~such the~~ request in the county ~~wherein~~

1 where the licensee resides unless the department and the
 2 licensee agree that such the hearing may be held in some
 3 other county. ~~Upon--such~~ At the hearing, the department,
 4 through its duly authorized agent, may administer oaths and
 5 may issue subpoenas for the attendance of witnesses and the
 6 production of relevant books and papers and may require a
 7 reexamination of the licensee. Upon such the hearing, the
 8 department shall either rescind its order of suspension or
 9 probation, or, with good cause appearing--therefor, may
 10 affirm, reduce, or extend the period of probation or
 11 suspension of such the license."

12 NEW SECTION. Section 8. Department rules on ignition
 13 interlock devices. (1) The department shall adopt rules
 14 providing for the installation, repair, and removal of
 15 ignition interlock devices and shall publish a list of
 16 approved devices.

17 (2) The department shall establish specific calibration
 18 settings at which the ignition interlock device will prevent
 19 the motor vehicle from being started.

20 Section 9. Section 61-2-107, MCA, is amended to read:

21 "61-2-107. License reinstatement fee ~~to fund --~~ county
 22 drinking and driving prevention programs -- ignition
 23 interlock devices for indigents. (1) Notwithstanding the
 24 provisions of any other law of the state, a driver's license
 25 that has been suspended or revoked under 61-5-205 or

1 61-8-402 must remain suspended or revoked until the driver
 2 has paid to the department a fee of \$50 in addition to any
 3 other fines, forfeitures, and penalties assessed as a result
 4 of conviction for a violation of the traffic laws of the
 5 state.

6 (2) The department shall deposit the fees collected
 7 under subsection (1) in ~~the general fund~~ an account in the
 8 state special revenue fund for the purposes of:

9 (a) funding programs to prevent or reduce drinking and
 10 driving, as provided in 61-2-108; and

11 (b) funding the costs of ignition interlock devices for
 12 those unable to pay, as provided in 61-8-714 and 61-8-722."

13 NEW SECTION. Section 10. Codification instruction. (1)
 14 [Section 1] is intended to be codified as an integral part
 15 of Title 61, chapter 1, and the provisions of Title 61,
 16 chapter 1, apply to [section 1].

17 (2) [Sections 4, 5, and 8] are intended to be codified
 18 as an integral part of Title 61, and the provisions of Title
 19 61 apply to [sections 4, 5, and 8].

20 NEW SECTION. Section 11. Effective dates. (1)

21 [Sections 8 and 10] and this section are effective on
 22 passage and approval.

23 (2) [Sections 1 through 7 and 9] are effective July 1,
 24 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0092, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing a judge to require a person to install an ignition interlock device when convicted of driving under the influence of alcohol or drugs or operating a motor vehicle while having an alcohol concentration of 0.10 or more; directing the Department of Justice to require installation of an ignition interlock device prior to issuance of a restricted probationary license to a person ordered by the court to install the device; directing the Department of Justice to adopt rules providing for approval of ignition interlock devices allocating a portion of the driver's license reinstatement fee to fund ignition interlock devices for indigents; amending sections 61-8-722, MCA; and providing effective dates.

ASSUMPTIONS:

1. The 7,200 DUI convictions in FY90-91 represent the average DUI convictions in FY92-93. Approximately 5,000 of the DUI convictions will be first-time offenders and 2,200 convictions will be second-time offenders.
2. Approximately 10% of the first-time and 50% of the second-time offenders will be ordered to install the devices.
3. Approximately 10% of the first-time offenders and 20% of the second-time offenders will be unable to pay for the device.
4. First-time offenders will be ordered to install the device for six months at a cost of \$500 per device. Second-time offenders will be ordered to install the device for one year at a cost of \$1,000 per device.
5. Section 9 of HB0092 will amend 61-2-107, MCA, to change license reinstatement fees to an earmarked state special revenue.
6. The effective date of the penalties involving ignition interlock devices is July 1, 1992.
7. The Highway Traffic Safety DUI local assistance provided for in 61-2-108, MCA, is not impacted by the proposed bill.


ROD SUNDSTED, BUDGET DIRECTOR 1-11-91 DATE
Office of Budget and Program Planning


EDWARD J. DOLEZAL, PRIMARY SPONSOR 1/14/91 DATE

Fiscal Note for HB0092, as introduced.

HB 92

FISCAL IMPACT:

Dept. of Justice

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	0.00	0.00	0.00	.50	.50
Personal Services	0	0	0	0	9,000	9,000
Operating Costs	0	0	0	0	2,400	2,400
Equipment	0	0	0	0	2,200	2,200
Local Assistance	0	0	0	0	245,000	245,000
Total	0	0	0	0	258,600	258,600
<u>Funding:</u>						
General Fund (01)				0	13,600	13,600
License Reinstatement (02)	0	0	0	0	245,000	245,000
Total	0	0	0	0	258,600	258,600
<u>Revenue:</u>						
General Fund	250,000	250,000	0	260,000	0	(260,000)
State Special	0	0	0	0	260,000	260,000

Highway Traffic Safety

	FY 92			FY93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Local Assistance	200,000	200,000	0	200,000	200,000	0
Total	200,000	200,000	0	200,000	200,000	0
<u>Funding:</u>						
General Fund	200,000	200,000	0	200,000	0	(200,000)
State Special	0	0	0	0	200,000	200,000
Total	200,000	200,000	0	200,000	200,000	0

Revenue:

The revenue source is driver license reinstatement fees which are collected by the Department of Justice and shown above.

Net Impact:

The net impact of the proposed legislation is to add an estimated \$245,000 in expenditures for fiscal 1993 from driver license reinstatement fees without increasing the amount of fees to be collected. This will result in a situation where estimated expenses exceed the estimated revenue by \$185,000 (\$245,000 + \$200,000 - \$260,000).

Fiscal Note Request, HB0092, as introduced

Form BD-15

Page 3

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

61-2-108, MCA, requires the transmittal of proceeds of license reinstatement fees collected in that county to the county treasurer if the county has initiated and maintained an approved drinking and driving prevention program. This provision is not impacted in the proposed legislation although it is unclear how the deficit situation described in the Net Impact statement will be resolved.