

HOUSE BILL 582

Introduced by Eudaily, et al.

2/04	Introduced
2/06	Referred to Judiciary
2/07	Fiscal Note Requested
2/13	Fiscal Note Received
2/15	Fiscal Note Printed
2/16	Hearing
2/18	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed as Amended
2/21	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Judiciary
3/16	Hearing
	Died in Committee

1 *House* BILL NO. *582*
 2 INTRODUCED BY *Anthony Vincent Mercer*
 3 *John Doe*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A JUDGE TO
 5 REQUIRE A PERSON TO INSTALL AN IGNITION INTERLOCK DEVICE
 6 WHEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR
 7 DRUGS OR OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL
 8 CONCENTRATION OF 0.10 OR MORE; DIRECTING THE DEPARTMENT OF
 9 JUSTICE TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK
 10 DEVICE PRIOR TO ISSUANCE OF A RESTRICTED PROBATIONARY
 11 LICENSE TO A PERSON ORDERED BY THE COURT TO INSTALL THE
 12 DEVICE; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES
 13 PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AND
 14 AMENDING SECTIONS 61-2-302, 61-5-206, 61-8-714, AND
 15 61-8-722, MCA."

16
 17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because
 19 [section 8] delegates authority to the department of justice
 20 to adopt rules concerning ignition interlock devices. It is
 21 the intent of the legislature that the rules be modeled on
 22 rules implementing similar statutes adopted in Washington,
 23 Idaho, and Oregon.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1 NEW SECTION. Section 1. Ignition interlock device --
 2 definition. "Ignition interlock device" means ignition
 3 equipment that analyzes the breath to determine blood
 4 alcohol concentration, that is approved by the department
 5 pursuant to [section 8], and that is designed to prevent a
 6 motor vehicle from being operated by a person who has
 7 consumed a specific amount of an alcoholic beverage.

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

9 "61-8-714. Penalty for driving under the influence of
 10 alcohol or drugs. (1) A person convicted of a violation of
 11 61-8-401 shall be punished by imprisonment in the county
 12 jail for not less than 24 consecutive hours or more than 60
 13 days, and ~~shall be punished~~ by a fine of not less than \$100
 14 or more than \$500. The jail sentence may not be suspended
 15 unless the judge finds that the imposition of the jail
 16 sentence will pose a risk to the defendant's physical or
 17 mental well-being.

18 (2) On a second conviction, he shall be punished by a
 19 fine of not less than \$300 or more than \$500 and by
 20 imprisonment for not less than 7 days, at least 48 hours of
 21 which must be served consecutively, or more than 6 months.
 22 Three days of the jail sentence may not be suspended unless
 23 the judge finds that the imposition of the jail sentence
 24 will pose a risk to the defendant's physical or mental
 25 well-being.

INTRODUCED BILL
 HB 582

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

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

(5) (a) In addition to the other punishment provided in this section, the court may order a person convicted of a

violation of 61-8-401 to drive only a motor vehicle equipped with a functioning ignition interlock device. The restriction, which commences after any period of revocation or suspension imposed under Title 61, chapter 5, part 2, may be imposed for a period not to exceed 60 days upon a first conviction, 6 months upon a second conviction, and 1 year upon a third or subsequent conviction. The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and shall determine the period of time that the person is subject to the restriction. A court that imposes this restriction retains jurisdiction over the person convicted until the end of the period of the restriction.

(b) If an ignition interlock device is ordered to be installed under this subsection (5), the court shall require the defendant to pay the reasonable costs of leasing, installing, and maintaining the device. A payment schedule may be established for the defendant by the court. If the defendant is unable to pay all or part of the costs for an ignition interlock device, the court may waive the defendant's responsibility for costs. If the defendant's responsibility for costs is waived, the costs must be paid from the driver improvement program.

(6) For the purpose of determining the number of

1 convictions under this section, "conviction" means a final
2 conviction, as defined in 45-2-101, in this state or a
3 similar statute in another state or a forfeiture of bail or
4 collateral deposited to secure the defendant's appearance in
5 court in this state or another state, which forfeiture has
6 not been vacated. An offender is considered to have been
7 previously convicted for the purposes of this section if
8 less than 5 years have elapsed between the commission of the
9 present offense and a previous conviction. If there has been
10 no additional conviction for an offense under this section
11 for a period of 5 years after a prior conviction hereunder,
12 then such prior offense shall be expunged from the
13 defendant's record."

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

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

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

24 (3) On a third or subsequent conviction of a violation
25 of 61-8-406, he shall be punished by imprisonment for not

1 less than 48 consecutive hours or more than 6 months and by
2 a fine of not less than \$500 or more than \$1,000.

3 (4) The provisions of 61-5-205(2), 61-5-208(2), and
4 61-11-203(2)(d) relating to revocation and suspension of
5 driver's licenses shall apply to any conviction under
6 61-8-406.

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

19 (6) (a) In addition to the other punishment provided
20 in this section, the court may order a person convicted of a
21 violation of 61-8-406 to drive only a motor vehicle equipped
22 with a functioning ignition interlock device. The
23 restriction, which commences after any period of revocation
24 or suspension imposed under Title 61, chapter 5, part 2, may
25 be imposed for a period not to exceed 60 days upon a first

conviction, 6 months upon a second conviction, and 1 year upon a third or subsequent conviction. The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and shall determine the period of time that the person is subject to the restriction. A court that imposes this restriction retains jurisdiction over the person convicted until the end of the period of the restriction.

(b) If an ignition interlock device is ordered to be installed under this subsection (6), the court shall require the defendant to pay the reasonable costs of leasing, installing, and maintaining the device. A payment schedule may be established for the defendant by the court. If the defendant is unable to pay all or part of the costs for an ignition interlock device, the court may waive the defendant's responsibility for costs. If the defendant's responsibility for costs is waived, the costs must be paid from the driver improvement program.

{6}{7} For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has

not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

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

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

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

(3) A person convicted of a violation of this section

shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

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

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

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

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

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

(b) revoked and they have:

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

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

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

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

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

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

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

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

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice.

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

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

(10) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions

imposed on a restricted license issued to him under this section."

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

"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department is hereby authorized to suspend the driver's license, including the commercial vehicle operator's endorsement, or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

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

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

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

(d) is incompetent to drive a motor vehicle;

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

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

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

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

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

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

(3) Upon suspending the license of any person or upon placing such the person on probation, as hereinbefore authorized in this section ~~authorized~~, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the department through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license."

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

(2) The list of approved devices must include only devices that:

(a) do not impede safe operation of the vehicle;

- 1 (b) correlate well with the level established for
2 alcohol impairment;
- 3 (c) work accurately and reliably in an unsupervised
4 environment;
- 5 (d) require a deep lung breath sample or other
6 accurate measure of blood alcohol content equivalence;
- 7 (e) resist tampering and show evidence if tampering is
8 attempted;
- 9 (f) are difficult to circumvent and require
10 premeditation to do so;
- 11 (g) minimize inconvenience to a sober user;
- 12 (h) operate reliably over the range of automobile
13 environments and in connection with various manufacturing
14 standards;
- 15 (i) are manufactured by a person who is adequately
16 insured for product liability;
- 17 (j) have a label affixed in a prominent location
18 warning that any person tampering with, circumventing, or
19 otherwise misusing the device is subject to criminal
20 prosecution.

21 NEW SECTION. **Section 9.** Codification instruction. (1)
22 [Section 1] is intended to be codified as an integral part
23 of Title 61, chapter 1, and the provisions of Title 61,
24 chapter 1, apply to [section 1].

25 (2) [Sections 4, 5, and 8] are intended to be codified

- 1 as an integral part of Title 61 and the provisions of Title
2 61 apply to [sections 4, 5, and 8].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB582, 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 for approval of ignition interlock devices; and amending Sections 61-2-302, 61-5-206, 61-8-714 and 61-8-722, MCA.

ASSUMPTIONS:

1. There will be 7,300 DUI convictions in each year of the biennium, and the judge will order ignition interlock devices placed in 90% of the cases.
2. Of the total 7,300 DUI convictions, 70% are first offense; and 30% are second offense or more.
3. Of the total 7,300 DUI convictions, 10% are indigent, or cannot afford to install an ignition interlock device.
4. The cost of leasing (including installation and removal) of an ignition interlock device is \$400 for first offense and \$500 for second offense or more.

FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY90 Proposed Law	Difference
Expenditures:						
Operating Expenses	\$ -0-	\$284,000	\$ 284,000	\$ -0-	\$ 284,000	\$ 284,000

Funding: General Fund

Ray Shackelford

DATE

2/13/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE

2/14/89

RALPH S. EUDAILY, PRIMARY SPONSOR

Fiscal Note for HB582, as introduced

HB 582

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 582

INTRODUCED BY EUDAILY, VINCENT, MERCER,

GOULD, STRIZICH, D. BROWN

A BILL FOR AN ACT ENTITLED: "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; AND AMENDING SECTIONS 61-2-302, 61-5-206, 61-8-714, AND 61-8-722, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] delegates authority to the department of justice to adopt rules concerning ignition interlock devices. It is the intent of the legislature that the rules be modeled on rules implementing similar statutes adopted in Washington, Idaho, and Oregon.

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

NEW SECTION. Section 1. Ignition interlock device -- definition. "Ignition interlock device" means ignition equipment that analyzes the breath to determine blood alcohol concentration, that is approved by the department pursuant to [section 8], and that is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

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

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days, and ~~shall be punished~~ by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental

1 well-being.

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

13 (4) In addition to the punishment provided in this
14 section, regardless of disposition, the defendant shall
15 complete an alcohol information course at an alcohol
16 treatment program approved by the department of
17 institutions, which may include alcohol or drug treatment,
18 or both, if considered necessary by the counselor conducting
19 the program. Each counselor providing such education or
20 treatment shall, at the commencement of the education or
21 treatment, notify the court that the defendant has been
22 enrolled in a course or treatment program. If the defendant
23 fails to attend the course or the treatment program, the
24 counselor shall notify the court of the failure.

25 (5) (a) In addition to the other punishment provided

1 in this section, the court may order a person convicted of a
2 violation of 61-8-401 to drive only a motor vehicle equipped
3 with a functioning ignition interlock device. The
4 restriction--which commences after any period of revocation
5 or suspension imposed under Title 61, chapter 5, part 2, may
6 be imposed for a period not to exceed 60 days upon a first
7 conviction, 6 months upon a second conviction, and 1 year
8 upon a third or subsequent conviction. The court shall
9 establish a specific calibration setting at which the
10 ignition interlock device will prevent the motor vehicle
11 from being started and shall determine the period of time
12 that the person is subject to the restriction. A court that
13 imposes this restriction retains jurisdiction over the
14 person convicted until the end of the period of the
15 restriction.

16 (b) If an ignition interlock device is ordered to be
17 installed under this subsection (5), the court shall require
18 the defendant to pay the reasonable costs of leasing,
19 installing, and maintaining the device. A payment schedule
20 may be established for the defendant by the court. If the
21 defendant is unable to pay all or part of the costs for an
22 ignition interlock device, the court may waive the
23 defendant's responsibility for costs. if the defendant's
24 responsibility for costs is waived, the costs must be paid
25 from the driver improvement program.

1 ~~(5)~~(6) For the purpose of determining the number of
 2 convictions under this section, "conviction" means a final
 3 conviction, as defined in 45-2-101, in this state or a
 4 similar statute in another state or a forfeiture of bail or
 5 collateral deposited to secure the defendant's appearance in
 6 court in this state or another state, which forfeiture has
 7 not been vacated. An offender is considered to have been
 8 previously convicted for the purposes of this section if
 9 less than 5 years have elapsed between the commission of the
 10 present offense and a previous conviction. If there has been
 11 no additional conviction for an offense under this section
 12 for a period of 5 years after a prior conviction hereunder,
 13 then such prior offense shall be expunged from the
 14 defendant's record."

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

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

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

25 (3) On a third or subsequent conviction of a violation

1 of 61-8-406, he shall be punished by imprisonment for not
 2 less than 48 consecutive hours or more than 6 months and by
 3 a fine of not less than \$500 or more than \$1,000.

4 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 5 61-11-203(2)(d) relating to revocation and suspension of
 6 driver's licenses shall apply to any conviction under
 7 61-8-406.

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

20 (6) (a) In addition to the other punishment provided
 21 in this section, the court may order a person convicted of a
 22 violation of 61-8-406 to drive only a motor vehicle equipped
 23 with a functioning ignition interlock device. The
 24 restriction--which commences after any period of revocation
 25 or suspension imposed under Title 61, chapter 5, part 27--may

~~be imposed for a period not to exceed 60 days upon a first conviction, 6 months upon a second conviction, and 1 year upon a third or subsequent conviction.~~ The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and shall determine the period of time that the person is subject to the restriction. A court that imposes this restriction retains jurisdiction over the person convicted until the end of the period of the restriction.

(b) If an ignition interlock device is ordered to be installed under this subsection (6), the court shall require the defendant to pay the reasonable costs of leasing, installing, and maintaining the device. A payment schedule may be established for the defendant by the court. If the defendant is unable to pay all or part of the costs for an ignition interlock device, the court may waive the defendant's responsibility for costs. If the defendant's responsibility for costs is waived, the costs must be paid from the driver improvement program.

{6}(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in

court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

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

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

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

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

4 (4) This section does not apply if the starting of a
5 motor vehicle or the request to start a motor vehicle
6 equipped with an ignition interlock device is done for the
7 purpose of safety or mechanical repair of the device or the
8 vehicle and if the person subject to the restriction does
9 not operate the vehicle.

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

11 "61-2-302. Establishment of driver improvement program
12 -- participation by offending drivers. (1) The department of
13 justice may establish by administrative rules a driver
14 rehabilitation and improvement program or programs which may
15 consist of classroom instruction in rules of the road,
16 driving techniques, defensive driving, driver attitudes and
17 habits, actual on-the-road driver's training, and other such
18 subjects or tasks designed to contribute to proper driving
19 attitudes, habits, and techniques.

20 (2) Official participation in such a driver
21 rehabilitation and improvement program is limited to those
22 persons whose license to operate a motor vehicle in the
23 state of Montana is:

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

1 (b) revoked and they have:

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

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

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

7 (3) Notwithstanding any provision of this part
8 inconsistent with any other law of the state of Montana, the
9 enforcement of any suspension or revocation order which
10 constitutes the basis for any person's participation in the
11 driver rehabilitation and improvement program provided for
12 herein in this section may be stayed if that person complies
13 with the requirements established for the driver improvement
14 program and meets the eligibility requirements of subsection
15 (2).

16 (4) In the event a person's driver's license has been
17 surrendered prior to his selection for participation in the
18 driver rehabilitation and improvement program, the license
19 may be returned upon receipt of his agreement to participate
20 in the program.

21 (5) The stay of enforcement of any suspension or
22 revocation order shall be terminated and the order of
23 suspension or revocation enforced if a person declines to
24 participate in the driver rehabilitation and improvement
25 program or fails to meet the attendance or other

1 requirements established for participation in the program.

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

4 (7) The department of justice may establish a schedule
5 of fees which may be charged those persons participating in
6 the driver improvement and rehabilitation program, which
7 fees shall be used to help defray costs of maintaining the
8 program.

9 (8) A person may be referred to this program by a
10 driver improvement analyst, city judge, justice of the
11 peace, judge of a district court of the state, or a hearing
12 examiner of the department of justice.

13 (9) (a) The department of justice may issue a
14 restricted probationary license to any person who enrolls
15 and participates in the driver rehabilitation and
16 improvement program. Upon issuance of a probationary license
17 under this section, the licensee is subject to the
18 restrictions set forth thereon on the license.

19 (b) If the department issues a restricted probationary
20 license to any person whom the sentencing court has ordered
21 to install an ignition interlock device, pursuant to
22 61-8-714 or 61-8-722, the department shall require the
23 person to install the ignition interlock device prior to
24 issuance of the probationary license.

25 (10) It is a misdemeanor for any person to operate a

1 motor vehicle in any manner in violation of the restrictions
2 imposed on a restricted license issued to him under this
3 section."

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

5 "61-5-206. Authority of department to suspend license
6 or driving privilege or issue probationary license. (1) The
7 department is hereby authorized to suspend the driver's
8 license, including the commercial vehicle operator's
9 endorsement, or driving privilege of a driver without
10 preliminary hearing upon a showing by its records or other
11 sufficient evidence that the licensee:

12 (a) has been involved as a driver in any accident
13 resulting in the death or personal injury of another or
14 serious property damage;

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

19 (c) is an habitually reckless or negligent driver of a
20 motor vehicle;

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

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

24 (f) has committed an offense in another state which if
25 committed in this state would be grounds for suspension or

1 revocation; or

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

4 (2) (a) However, the department may, in its discretion
5 and in lieu of such suspension of license or driving
6 privilege, issue a probationary license to a driver, without
7 preliminary hearing, upon a showing by its records or other
8 sufficient evidence that the licensee's driving record is
9 such as would authorize suspension as provided in subsection

10 (1) hereof. Upon issuance of a probationary license the
11 licensee shall be subject to the restrictions set forth
12 thereon. The licensee's driving privilege may be suspended
13 upon conviction or forfeiture of bail not vacated of any
14 traffic violation during the period of such probation. The
15 licensee shall surrender to the department all driver
16 licenses theretofore previously issued to him before such
17 probationary license shall be issued. His refusal or neglect
18 to surrender such the licenses upon demand shall be is
19 ground for suspending all such licenses. Probationary
20 licenses may be issued for a period not to exceed 12 months.

21 (b) If the department issues a restricted probationary
22 license to any person whom the sentencing court has ordered
23 to install an ignition interlock device, pursuant to
24 61-8-714 or 61-8-722, the department shall require the
25 person to install the ignition interlock device prior to

1 issuance of the probationary license.

2 (3) Upon suspending the license of any person or upon
3 placing such the person on probation, as hereinbefore
4 authorized in this section ~~authorized~~, the department shall
5 immediately notify the licensee in writing and upon his
6 request shall afford him an opportunity for a hearing as
7 early as practical within not to exceed 20 days after
8 receipt of such request in the county wherein the licensee
9 resides unless the department and the licensee agree that
10 such hearing may be held in some other county. Upon such
11 hearing the department through its duly authorized agent may
12 administer oaths and may issue subpoenas for the attendance
13 of witnesses and the production of relevant books and papers
14 and may require a reexamination of the licensee. Upon such
15 hearing the department shall either rescind its order of
16 suspension or probation, or, good cause appearing therefor,
17 may affirm, reduce, or extend the period of probation or
18 suspension of such license."

19 NEW SECTION. Section 8. Department rules on ignition
20 interlock devices. (1) The department shall adopt rules
21 providing for the installation, repair, and removal of
22 ignition interlock devices and shall publish a list of
23 approved devices.

24 (2) The list of approved devices must include only
25 devices that:

1 (a) do not impede safe operation of the vehicle;
 2 (b) correlate well with the level established for
 3 alcohol impairment;
 4 (c) work accurately and reliably in an unsupervised
 5 environment;
 6 (d) require a deep lung breath sample or other
 7 accurate measure of blood alcohol content equivalence;
 8 (e) resist tampering and show evidence if tampering is
 9 attempted;
 10 (f) are difficult to circumvent and require
 11 premeditation to do so;
 12 (g) minimize inconvenience to a sober user;
 13 (h) operate reliably over the range of automobile
 14 environments and in connection with various manufacturing
 15 standards;
 16 (i) are manufactured by a person who is adequately
 17 insured for product liability;
 18 (j) have a label affixed in a prominent location
 19 warning that any person tampering with, circumventing, or
 20 otherwise misusing the device is subject to criminal
 21 prosecution.

22 NEW SECTION. Section 9. Codification instruction. (1)
 23 [Section 1] is intended to be codified as an integral part
 24 of Title 61, chapter 1, and the provisions of Title 61,
 25 chapter 1, apply to [section 1].

1 (2) [Sections 4, 5, and 8] are intended to be codified
 2 as an integral part of Title 61 and the provisions of Title
 3 61 apply to [sections 4, 5, and 8].
 4 NEW SECTION. SECTION 10. EFFECTIVE DATES. (1)
 5 [SECTIONS 8 AND 9] AND THIS SECTION ARE EFFECTIVE ON PASSAGE
 6 AND APPROVAL.
 7 (2) [SECTIONS 1 THROUGH 7] ARE EFFECTIVE JULY 1, 1990.

-End-

1 HOUSE BILL NO. 582

2 INTRODUCED BY EUDAILY, VINCENT, MERCER,

3 GOULD, STRIZICH, D. BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A JUDGE TO
6 REQUIRE A PERSON TO INSTALL AN IGNITION INTERLOCK DEVICE
7 WHEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR
8 DRUGS OR OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL
9 CONCENTRATION OF 0.10 OR MORE; DIRECTING THE DEPARTMENT OF
10 JUSTICE TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK
11 DEVICE PRIOR TO ISSUANCE OF A RESTRICTED PROBATIONARY
12 LICENSE TO A PERSON ORDERED BY THE COURT TO INSTALL THE
13 DEVICE; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES
14 PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AND
15 AMENDING SECTIONS 61-2-302, 61-5-206, 61-8-714, AND
16 61-8-722, MCA; AND PROVIDING EFFECTIVE DATES."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
20 [section 8] delegates authority to the department of justice
21 to adopt rules concerning ignition interlock devices. It is
22 the intent of the legislature that the rules be modeled on
23 rules implementing similar statutes adopted in Washington,
24 Idaho, and Oregon.

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

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

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

10 **"61-8-714. Penalty for driving under the influence of**
11 **alcohol or drugs.** (1) A person convicted of a violation of
12 61-8-401 shall be punished by imprisonment in the county
13 jail for not less than 24 consecutive hours or more than 60
14 days, and ~~shall be punished~~ by a fine of not less than \$100
15 or more than \$500. The jail sentence may not be suspended
16 unless the judge finds that the imposition of the jail
17 sentence will pose a risk to the defendant's physical or
18 mental well-being.

19 (2) On a second conviction, he shall be punished by a
20 fine of not less than \$300 or more than \$500 and by
21 imprisonment for not less than 7 days, at least 48 hours of
22 which must be served consecutively, or more than 6 months.
23 Three days of the jail sentence may not be suspended unless
24 the judge finds that the imposition of the jail sentence
25 will pose a risk to the defendant's physical or mental

1 well-being.

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

13 (4) In addition to the punishment provided in this
14 section, regardless of disposition, the defendant shall
15 complete an alcohol information course at an alcohol
16 treatment program approved by the department of
17 institutions, which may include alcohol or drug treatment,
18 or both, if considered necessary by the counselor conducting
19 the program. Each counselor providing such education or
20 treatment shall, at the commencement of the education or
21 treatment, notify the court that the defendant has been
22 enrolled in a course or treatment program. If the defendant
23 fails to attend the course or the treatment program, the
24 counselor shall notify the court of the failure.

25 (5) (a) In addition to the other punishment provided

1 in this section, the court may order a person convicted of a
2 violation of 61-8-401 to drive only a motor vehicle equipped
3 with a functioning ignition interlock device. The
4 restriction,--which commences after any period of revocation
5 or suspension imposed under Title 61, chapter 5, part 27--may
6 be imposed for a period not to exceed 60 days upon a--first
7 conviction,--6--months--upon a second conviction,--and 1 year
8 upon a third--or--subsequent--conviction. The court shall
9 establish a specific calibration setting at which the
10 ignition interlock device will prevent the motor vehicle
11 from being started and shall determine the period of time
12 that the person is subject to the restriction. A court that
13 imposes this restriction retains jurisdiction over the
14 person convicted until the end of the period of the
15 restriction.

16 (b) If an ignition interlock device is ordered to be
17 installed under this subsection (5), the court shall require
18 the defendant to pay the reasonable costs of leasing,
19 installing, and maintaining the device. A payment schedule
20 may be established for the defendant by the court. if--the
21 defendant--is--unable-to-pay-all-or-part-of-the-costs-for-an
22 ignition--interlock--device,--the--court--may--waive--the
23 defendant's--responsibility--for--costs; if the defendant's
24 responsibility for costs is waived, the costs must--be--paid
25 from the driver improvement program;

1 ~~(5)~~(6) For the purpose of determining the number of
 2 convictions under this section, "conviction" means a final
 3 conviction, as defined in 45-2-101, in this state or a
 4 similar statute in another state or a forfeiture of bail or
 5 collateral deposited to secure the defendant's appearance in
 6 court in this state or another state, which forfeiture has
 7 not been vacated. An offender is considered to have been
 8 previously convicted for the purposes of this section if
 9 less than 5 years have elapsed between the commission of the
 10 present offense and a previous conviction. If there has been
 11 no additional conviction for an offense under this section
 12 for a period of 5 years after a prior conviction hereunder,
 13 then such prior offense shall be expunged from the
 14 defendant's record."

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

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

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

25 (3) On a third or subsequent conviction of a violation

1 of 61-8-406, he shall be punished by imprisonment for not
 2 less than 48 consecutive hours or more than 6 months and by
 3 a fine of not less than \$500 or more than \$1,000.

4 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 5 61-11-203(2)(d) relating to revocation and suspension of
 6 driver's licenses shall apply to any conviction under
 7 61-8-406.

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

20 (6) (a) In addition to the other punishment provided
 21 in this section, the court may order a person convicted of a
 22 violation of 61-8-406 to drive only a motor vehicle equipped
 23 with a functioning ignition interlock device. The
 24 restriction--which commences after any period of revocation
 25 or suspension imposed under Title 61, chapter 5, part 27--may

1 ~~be imposed for a period not to exceed 60 days upon a first~~
 2 ~~conviction, 6 months upon a second conviction, and 1 year~~
 3 ~~upon a third or subsequent conviction.~~ The court shall
 4 establish a specific calibration setting at which the
 5 ignition interlock device will prevent the motor vehicle
 6 from being started and shall determine the period of time
 7 that the person is subject to the restriction. A court that
 8 imposes this restriction retains jurisdiction over the
 9 person convicted until the end of the period of the
 10 restriction.

11 (b) If an ignition interlock device is ordered to be
 12 installed under this subsection (6), the court shall require
 13 the defendant to pay the reasonable costs of leasing,
 14 installing, and maintaining the device. A payment schedule
 15 may be established for the defendant by the court. If the
 16 defendant is unable to pay all or part of the costs for an
 17 ignition interlock device, the court may waive the
 18 defendant's responsibility for costs. ~~if the defendant's~~
 19 ~~responsibility for costs is waived, the costs must be paid~~
 20 ~~from the driver improvement program.~~

21 {6}(7) For the purpose of determining the number of
 22 convictions under this section, "conviction" means a final
 23 conviction, as defined in 45-2-101, in this state or a
 24 similar statute in another state or a forfeiture of bail or
 25 collateral deposited to secure the defendant's appearance in

1 court in this state or another state, which forfeiture has
 2 not been vacated. An offender is considered to have been
 3 previously convicted for the purposes of this section if
 4 less than 5 years have elapsed between the commission of the
 5 present offense and a previous conviction. If there has been
 6 no additional conviction for an offense under this section
 7 for a period of 5 years after a prior conviction hereunder,
 8 then such prior offense shall be expunged from the
 9 defendant's record."

10 **NEW SECTION. Section 4.** Ignition interlock devices --
 11 notation on driver's license. When a court orders a person
 12 to install an ignition interlock device under 61-8-714 or
 13 61-8-722, the court shall notify the department of its
 14 order. The department shall attach or imprint a notation on
 15 the person's driver's license stating that the person may
 16 operate only a motor vehicle equipped with an ignition
 17 interlock device.

18 **NEW SECTION. Section 5.** Ignition interlock devices --
 19 assisting in starting or operating -- circumventing --
 20 penalty. (1) It is unlawful for a person to knowingly assist
 21 a person who is restricted to the use of an ignition
 22 interlock device to start and operate the restricted
 23 person's vehicle.

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

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

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

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

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

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

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

(b) revoked and they have:

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

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

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

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

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

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other

1 requirements established for participation in the program.

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

4 (7) The department of justice may establish a schedule
5 of fees which may be charged those persons participating in
6 the driver improvement and rehabilitation program, which
7 fees shall be used to help defray costs of maintaining the
8 program.

9 (8) A person may be referred to this program by a
10 driver improvement analyst, city judge, justice of the
11 peace, judge of a district court of the state, or a hearing
12 examiner of the department of justice.

13 (9) (a) The department of justice may issue a
14 restricted probationary license to any person who enrolls
15 and participates in the driver rehabilitation and
16 improvement program. Upon issuance of a probationary license
17 under this section, the licensee is subject to the
18 restrictions set forth thereon on the license.

19 (b) If the department issues a restricted probationary
20 license to any person whom the sentencing court has ordered
21 to install an ignition interlock device, pursuant to
22 61-8-714 or 61-8-722, the department shall require the
23 person to install the ignition interlock device prior to
24 issuance of the probationary license.

25 (10) It is a misdemeanor for any person to operate a

1 motor vehicle in any manner in violation of the restrictions
2 imposed on a restricted license issued to him under this
3 section."

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

5 "61-5-206. Authority of department to suspend license
6 or driving privilege or issue probationary license. (1) The
7 department is hereby authorized to suspend the driver's
8 license, including the commercial vehicle operator's
9 endorsement, or driving privilege of a driver without
10 preliminary hearing upon a showing by its records or other
11 sufficient evidence that the licensee:

12 (a) has been involved as a driver in any accident
13 resulting in the death or personal injury of another or
14 serious property damage;

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

19 (c) is an habitually reckless or negligent driver of a
20 motor vehicle;

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

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

24 (f) has committed an offense in another state which if
25 committed in this state would be grounds for suspension or

1 revocation; or

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

4 (2) (a) However, the department may, in its discretion
5 and in lieu of such suspension of license or driving
6 privilege, issue a probationary license to a driver, without
7 preliminary hearing, upon a showing by its records or other
8 sufficient evidence that the licensee's driving record is
9 such as would authorize suspension as provided in subsection
10 (1) hereof. Upon issuance of a probationary license the
11 licensee shall be subject to the restrictions set forth
12 thereon. The licensee's driving privilege may be suspended
13 upon conviction or forfeiture of bail not vacated of any
14 traffic violation during the period of such probation. The
15 licensee shall surrender to the department all driver
16 licenses theretofore previously issued to him before such
17 probationary license shall be issued. His refusal or neglect
18 to surrender such the licenses upon demand ~~shall be~~ is
19 ground for suspending all such licenses. Probationary
20 licenses may be issued for a period not to exceed 12 months.

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22 license to any person whom the sentencing court has ordered
23 to install an ignition interlock device, pursuant to
24 61-8-714 or 61-8-722, the department shall require the
25 person to install the ignition interlock device prior to

1 issuance of the probationary license.

2 (3) Upon suspending the license of any person or upon
3 placing such the person on probation, as ~~hereinbefore~~
4 authorized in this section ~~authorized~~, the department shall
5 immediately notify the licensee in writing and upon his
6 request shall afford him an opportunity for a hearing as
7 early as practical within not to exceed 20 days after
8 receipt of such request in the county wherein the licensee
9 resides unless the department and the licensee agree that
10 such hearing may be held in some other county. Upon such
11 hearing the department through its duly authorized agent may
12 administer oaths and may issue subpoenas for the attendance
13 of witnesses and the production of relevant books and papers
14 and may require a reexamination of the licensee. Upon such
15 hearing the department shall either rescind its order of
16 suspension or probation, or, good cause appearing therefor,
17 may affirm, reduce, or extend the period of probation or
18 suspension of such license."

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20 interlock devices. (1) The department shall adopt rules
21 providing for the installation, repair, and removal of
22 ignition interlock devices and shall publish a list of
23 approved devices.

24 (2) The list of approved devices must include only
25 devices that:

1 (a) do not impede safe operation of the vehicle;
 2 (b) correlate well with the level established for
 3 alcohol impairment;
 4 (c) work accurately and reliably in an unsupervised
 5 environment;
 6 (d) require a deep lung breath sample or other
 7 accurate measure of blood alcohol content equivalence;
 8 (e) resist tampering and show evidence if tampering is
 9 attempted;
 10 (f) are difficult to circumvent and require
 11 premeditation to do so;
 12 (g) minimize inconvenience to a sober user;
 13 (h) operate reliably over the range of automobile
 14 environments and in connection with various manufacturing
 15 standards;
 16 (i) are manufactured by a person who is adequately
 17 insured for product liability;
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 19 warning that any person tampering with, circumventing, or
 20 otherwise misusing the device is subject to criminal
 21 prosecution.

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 23 [Section 1] is intended to be codified as an integral part
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1 (2) [Sections 4, 5, and 8] are intended to be codified
 2 as an integral part of Title 61 and the provisions of Title
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 5 [SECTIONS 8 AND 9] AND THIS SECTION ARE EFFECTIVE ON PASSAGE
 6 AND APPROVAL.

7 (2) [SECTIONS 1 THROUGH 7] ARE EFFECTIVE JULY 1, 1990.

-End-