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SENATE BILL NO. 316

INTRODUCED BY Bishop

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE, RENDER INOPERABLE, OR FORFEIT THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

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

**NEW SECTION. Section 1. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2].

(2) The results of a screening test may be used for determining whether probable cause exists to

1 believe a person has violated 61-8-401, 61-8-406, or [section 2].

2 (3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person  
3 submitting to a preliminary alcohol screening test pursuant to this section.

4 (4) The peace officer shall inform the person of the right to refuse the test and that the refusal to  
5 submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year  
6 of that person's driver's license.

7 (5) If the person refuses to submit to a test under this section, a test will not be given. However,  
8 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

9 (6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be  
10 limited to determining whether a peace officer had a particularized suspicion that the person was driving  
11 or in actual physical control of a vehicle upon ways of this state open to the public while under the  
12 influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

13 (7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable  
14 to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the  
15 same incident, the department shall consider each a separate refusal for purposes of suspension or  
16 revocation under 61-8-402.

17 (8) A test may not be conducted or requested under this section unless both the peace officer and  
18 the instrument used to conduct the preliminary alcohol screening test have been certified by the department  
19 pursuant to rules adopted under the authority of 61-8-405(6).

20

21 **NEW SECTION. Section 2. Operation of vehicle by person under twenty-one with alcohol**  
22 **concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol  
23 concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state  
24 open to the public.

25 (2) A person convicted of a violation of this section must be sentenced under the provisions of  
26 45-5-624.

27 (3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

28

29 **NEW SECTION. Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to**  
30 **seizure or forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under

1 61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's  
2 interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the  
3 time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of  
4 seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

5 (2) The prohibition against transfer of title may not be stayed pending the determination of an  
6 appeal from the conviction on the underlying charge.

7 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned  
8 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both.

9  
10 **Section 4.** Section 46-16-130, MCA, is amended to read:

11 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant  
12 who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a  
13 specified period of time based on one or more of the following conditions:

14 (i) that the defendant may not commit any offense;

15 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing  
16 a relationship to the conduct upon which the charge against the defendant is based;

17 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include  
18 treatment, counseling, training, or education;

19 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the  
20 offense; or

21 (v) any other reasonable conditions.

22 (b) The agreement must be in writing, must be signed by the parties, and must state that the  
23 defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations  
24 concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the  
25 prosecution is terminated and there is a trial on the charge.

26 (c) The prosecution must be deferred for the period specified in the agreement unless there has  
27 been a violation of its terms.

28 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice  
29 upon expiration and compliance with the terms of the agreement.

30 (2) After a charge has been filed, a deferral of prosecution may be entered into only with the

1 approval of the court.

2 (3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

3

4 **Section 5.** Section 61-5-212, MCA, is amended to read:

5 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure, rendering inoperable,**

6 **and forfeiture of vehicle.** (1) A person who drives a motor vehicle or commercial motor vehicle on any  
7 public highway of this state at a time when the person's privilege to do so is suspended or revoked in this  
8 state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment  
9 for not less than 2 days or more than 6 months and may be fined not more than \$500.

10 (2) The department upon receiving a record of the conviction of any person under this section upon  
11 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the  
12 period of suspension or revocation for an additional like period.

13 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
14 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
15 [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the  
16 county sheriff of the convicted person's county of residence for a period of 30 days.

17 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify  
18 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or  
19 rendered inoperable by the sheriff within 10 days after the conviction.

20 (5) A convicted person is responsible for all costs associated with actions taken under subsection  
21 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection  
22 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a  
23 joint owner who is determined to be without fault.

24 (6) Upon a second or subsequent conviction of a violation under the terms of subsection (3), the  
25 sentencing court shall order the motor vehicle owned and operated by the convicted person at the time of  
26 the offense to be seized and subjected to the forfeiture procedure provided in 61-8-421.

27 (7) A court may not suspend or defer imposition of penalties provided by this section."

28

29 **Section 6.** Section 61-8-402, MCA, is amended to read:

30 **"61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ A person who operates or is in actual physical

1 control of a vehicle upon ways of this state open to the public is considered to have given consent, subject  
2 to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of  
3 determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested  
4 by a peace officer for driving or for being in actual physical control of a vehicle while under the influence  
5 of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of  
6 a peace officer having reasonable grounds to believe the person to have been driving or in actual physical  
7 control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs,  
8 or a combination of the two. The arresting officer may designate which test or tests are administered. A  
9 test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an  
10 alcohol concentration of 0.10 or more, a test for drugs may not be given.

11 (2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person  
12 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this~~  
13 ~~section.~~

14 (3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests  
15 designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer  
16 shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall  
17 forward the license to the department, along with a sworn report that the peace officer had reasonable  
18 grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon  
19 ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the  
20 two, and that the person had refused to submit to the test or tests upon the request of the peace officer.  
21 Upon receipt of the report, the department shall suspend the license for the period provided in subsection  
22 (5).

23 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,  
24 a temporary driving permit, which is valid for 72 hours after the time of issuance.

25 (5) The following suspension and revocation periods are applicable upon refusal to submit to a test  
26 or tests:

27 (a) upon a first refusal, a suspension of ~~90 days~~ 6 months with no provision for a restricted  
28 probationary license;

29 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from  
30 the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

1 (6) A nonresident driver's license seized under this section must be sent by the department to the  
2 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to  
3 a test or tests.

4 (7) All suspensions are subject to review as provided in this part."  
5

6 **Section 7.** Section 61-8-421, MCA, is amended to read:

7 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-5-212, 61-8-714 or  
8 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as  
9 provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44,  
10 chapter 12, part 2, apply to the extent applicable.

11 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within  
12 20 days after the seizure of the motor vehicle.

13 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The  
14 owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or  
15 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a second or subsequent offense under  
16 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the  
17 convicted person owns the motor vehicle jointly with another person.

18 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be  
19 distributed first to the holders of security interests who have presented proper proof of their claims, up to  
20 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to  
21 the general fund of the arresting agency.

22 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor  
23 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated  
24 value of the motor vehicle.

25 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons  
26 include return of the motor vehicle without a sale to an owner who is unable to present an adequate  
27 defense under this section but is found by the court to be without fault."  
28

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

30 "**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in

1 subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person convicted of a violation of 61-8-401 shall be punished by  
2 imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be  
3 punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be  
4 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
5 defendant's physical or mental well-being.

6 (2) Except as provided in subsection ~~(7)~~ (8), on a second conviction, the person shall be punished  
7 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least  
8 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
9 ~~(7)~~ (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the  
10 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

11 (3) (a) Except as provided in subsection ~~(7)~~ (8), on the third ~~or subsequent~~ conviction, the person  
12 shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must  
13 be served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000.  
14 Except as provided in subsection ~~(7)~~ (8), notwithstanding any provision to the contrary providing for  
15 suspension of execution of a sentence imposed under this subsection, the imposition or execution of the  
16 first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within  
17 5 years of the first offense may not be ~~deferred or~~ suspended.

18 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
19 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
20 seized and subjected to the procedure provided under 61-8-421.

21 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
22 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
23 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
24 omission established by the owner to have been committed or omitted by a person other than the owner  
25 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
26 criminal laws of this state or the United States.

27 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
28 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
29 or other act on which the forfeiture is sought.

30 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be

1 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
2 than \$1,000 or more than \$10,000. Except as provided in subsection (8), notwithstanding any provision  
3 to the contrary providing for suspension of execution of a sentence imposed under this subsection, the  
4 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or  
5 subsequent offense may not be suspended.

6 ~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the  
7 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
8 department of corrections and human services, which may, in the sentencing court's discretion and upon  
9 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both.  
10 On conviction of a second or subsequent offense under this section, in addition to the punishment provided  
11 in this section, regardless of disposition, the defendant shall complete an alcohol information course at an  
12 alcohol treatment program approved by the department of corrections and human services, which must  
13 include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the  
14 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
15 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
16 counselor shall notify the court of the failure. As long as the alcohol information course is approved as  
17 provided in this subsection and the treatment is provided by a certified chemical dependency counselor,  
18 the defendant may attend the information course and treatment program of the defendant's choice. The  
19 treatment provided to the defendant at a treatment program must be at a level appropriate to the  
20 defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified  
21 chemical dependency counselor.

22 ~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction"  
23 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
24 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
25 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
26 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
27 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
28 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
29 there has not been ~~no~~ an additional conviction for an offense under this section for a period of 5 years after  
30 a prior conviction under this section, then all records and data relating to the prior conviction are



1 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
2 only be obtained by district court order upon good cause shown.

3 ~~(6)(7)~~ For the purpose of calculating subsequent convictions under this section, a conviction for  
4 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

5 ~~(7)(8)~~ The court may order that a term of imprisonment imposed under this section be served in  
6 another facility made available by the county and approved by the sentencing court. The defendant, if  
7 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
8 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
9 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
10 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
11 sentencing court.

12 ~~(8)(9)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
13 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
14 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

15 (10) A court may not defer imposition of sentence under this section."

16

17 **Section 9.** Section 61-8-722, MCA, is amended to read:

18 "**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
19 subsection ~~(7) (9)~~, a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
20 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

21 (2) Except as provided in subsection ~~(7) (9)~~, on a second conviction of a violation of 61-8-406, ~~he~~  
22 the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days  
23 and by a fine of not less than \$300 or more than \$500.

24 (3) (a) Except as provided in subsection ~~(7) (9)~~, on a third ~~or subsequent~~ conviction of a violation  
25 of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or  
26 more than 6 months and by a fine of not less than \$500 or more than \$1,000.

27 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
28 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
29 seized and subjected to the procedure provided under 61-8-421.

30 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common

1 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
2 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
3 omission established by the owner to have been committed or omitted by a person other than the owner  
4 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
5 criminal laws of this state or the United States.

6 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
7 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
8 or other act on which the forfeiture is sought.

9 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
10 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
11 than \$1,000 or more than \$10,000. Except as provided in subsection (9), notwithstanding any other  
12 provision providing for suspension of execution of a sentence imposed under this subsection, the imposition  
13 or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense  
14 may not be suspended.

15 (4)(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
16 suspension of driver's licenses, apply to any conviction under 61-8-406.

17 (5)(6) In addition to the punishment provided in this section, regardless of disposition, the  
18 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
19 department of corrections and human services, which may include alcohol or drug treatment, or both, if  
20 considered necessary by the counselor conducting the program. Each counselor providing education or  
21 treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
22 has been enrolled in a course or treatment program. If the defendant fails to attend the course or the  
23 treatment program, the counselor shall notify the court of the failure.

24 (6)(7) For the purpose of determining the number of convictions under this section, "conviction"  
25 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
26 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
27 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
28 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
29 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
30 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been

1 ~~an~~ an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
2 under this section. then ~~the prior offense must be expunged from the defendant's record~~ all records and  
3 data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103,  
4 and public access to the information may only be obtained by district court order upon good cause shown.

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

7 ~~(7)~~(9) The court may order that a term of imprisonment imposed under this section be served in  
8 another facility made available by the county and approved by the sentencing court. The defendant, if  
9 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
10 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
11 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
12 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
13 sentencing court.

14 ~~(8)~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
15 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
16 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

17 (11) A court may not defer imposition of sentence under this section."

18  
19 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 3] are intended to be  
20 codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4,  
21 apply to [sections 1 through 3].

22 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0316, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for the use of a preliminary alcohol screening test for a person suspected of driving under the influence; establishing an alcohol concentration limit of 0.02 for a driver under the age of 21; increasing to six months the suspension and revocation time period for a first refusal to submit to a blood, breath, or urine test; and providing that a fourth driving while under the influence offense or excessive alcohol concentration offense constitutes a felony.

ASSUMPTIONS:

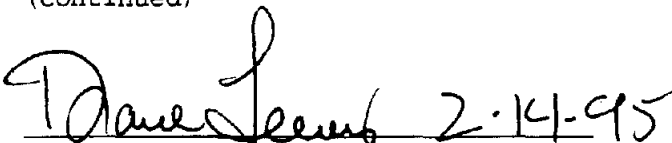
Department of Justice:

1. An additional 300-400 fourth offense driving under the influence (DUI) convictions would be processed annually. This additional workload would be absorbed by existing department staff.
2. Due to a lack of available statistics, the department is unable to determine the number of additional convictions due to persons under age 21 driving with an alcohol concentration of 0.02 or more.
3. The cost of computer programming changes required to implement this bill is estimated at \$7,200 (\$6,600 for contracted services and \$600 for computer processing time) in FY96 only.
4. The Highway Patrol Division would need to purchase 190 field alcohol analyzers at a cost of \$316 each (total cost of \$60,040) in FY96.
5. The bill requires the department to certify both the peace officer and the instrument used for preliminary alcohol screening.
6. The responsibilities of the Forensic Science Division would include:
  - (a) initially certifying each instrument by calibrating it at the forensic science lab;
  - (b) annual certification of each instrument;
  - (c) repairing the instruments and re-certifying them after the repair;
  - (d) certification recordkeeping to insure compliance;
  - (e) training peace officers in the use of the instruments (in conjunction with intoxilyzer training after all officers have received initial training);
  - (f) staff time in support of court challenges since prior experience suggests that probability initially with new instruments and new requirements.
7. Based upon assumption #6 and the assumption that the additional work required by the bill cannot be absorbed with existing staff, 1.00 FTE additional forensic scientist is needed at a cost of \$49,906 in FY96 and \$50,087 in FY97. The estimated cost is based upon the pay exception in effect for other forensic scientists. Operating expenses of \$1,500 each year are for travel and training.

Department of Corrections and Human Services (DCHS):

8. On a fourth or subsequent conviction of driving under the influence, as defined by this bill, a person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than one year or more than 10 years, and by a fine of not less than \$1,000 or more than \$10,000.

(continued)

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2-14-95  
AL BISHOP, PRIMARY SPONSOR      DATE

Fiscal Note for SB0316, as introduced

SB 316

(continued)

Department of Corrections and Human Services (continued):

9. The first six months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.
10. There were 389 fourth or subsequent convictions for driving under the influence during FY94. It is assumed that approximately the same number of convictions will occur during FY96 and FY97.
11. DCHS has no way of determining the number of additional offenders who would be sentenced to a term of longer than one year which would be served at the Montana State Prison (MSP) rather than the county facility. The cost of the additional confinements at MSP would be \$40.58 (FY94 actual) per day X 365 X the number of offenders sentenced to MSP. The MSP is presently operating at close to its maximum capacity and well over its designed capacity and may not be capable of housing the additional offenders.

Highway Traffic Safety Division:

12. Conducting preliminary alcohol screening tests is optional for law enforcement officers.
13. The bill may have inestimable long-term deterrent effects on activities addressed in the bill such as the sale or encumbrance of a vehicle subject to seizure or forfeiture, deferred prosecutions of DUI cases, the number of drivers rejecting blood, breath, and urine tests, and the number of fourth or subsequent convictions for DUI. The fiscal impact of these deterrent effects is not subject to reasonable estimate.

FISCAL IMPACT:

Department of Justice:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	49,906	50,087
Operating Expenses	8,700	1,500
Equipment	<u>60,040</u>	<u>0</u>
Total	118,646	51,587
<u>Funding:</u>		
General Fund (01)	58,606	51,587
Highways Special Revenue (02)	<u>60,040</u>	<u>0</u>
Total	118,646	51,587

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill could have a significant fiscal impact upon counties. As defined within this bill, the court may order that a term of imprisonment be served in another facility made available by the county and approved by the sentencing court. The facility may be, but is not required to be, a community based pre-release center as provided by 53-1-203, MCA. Estimated costs are \$40 per day for each offender sentenced in this manner. There may be other long-term fiscal impacts that are less subject to reasonable estimate such as increased cost to immobilize or seize vehicles, sell forfeited vehicles, and increased revenue from fines and forfeitures.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be long-range deterrent effects that will result in some decline in fourth and subsequent convictions for DUI offenses and improved traffic safety. These effects are neither definite nor subject to reasonable estimate.

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SENATE BILL NO. 316

INTRODUCED BY

Bishop

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE, RENDER INOPERABLE, OR FORFEIT THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

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

**NEW SECTION. Section 1. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2].

(2) The results of a screening test may be used for determining whether probable cause exists to

1 believe a person has violated 61-8-401, 61-8-406, or [section 2].

2 (3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person  
3 submitting to a preliminary alcohol screening test pursuant to this section.

4 (4) The peace officer shall inform the person of the right to refuse the test and that the refusal to  
5 submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year  
6 of that person's driver's license.

7 (5) If the person refuses to submit to a test under this section, a test will not be given. However,  
8 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

9 (6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be  
10 limited to determining whether a peace officer had a particularized suspicion that the person was driving  
11 or in actual physical control of a vehicle upon ways of this state open to the public while under the  
12 influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

13 (7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable  
14 to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the  
15 same incident, the department shall consider each a separate refusal for purposes of suspension or  
16 revocation under 61-8-402.

17 (8) A test may not be conducted or requested under this section unless both the peace officer and  
18 the instrument used to conduct the preliminary alcohol screening test have been certified by the department  
19 pursuant to rules adopted under the authority of 61-8-405(6).

20

21 **NEW SECTION. Section 2. Operation of vehicle by person under twenty-one with alcohol**  
22 **concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol  
23 concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state  
24 open to the public.

25 (2) A person convicted of a violation of this section must be sentenced under the provisions of  
26 45-5-624.

27 (3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

28

29 **NEW SECTION. Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to**  
30 **seizure or forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under

1 61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's  
2 interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the  
3 time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of  
4 seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

5 (2) The prohibition against transfer of title may not be stayed pending the determination of an  
6 appeal from the conviction on the underlying charge.

7 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned  
8 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both.

9

10 **Section 4.** Section 46-16-130, MCA, is amended to read:

11 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant  
12 who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a  
13 specified period of time based on one or more of the following conditions:

14 (i) that the defendant may not commit any offense;

15 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing  
16 a relationship to the conduct upon which the charge against the defendant is based;

17 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include  
18 treatment, counseling, training, or education;

19 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the  
20 offense; or

21 (v) any other reasonable conditions.

22 (b) The agreement must be in writing, must be signed by the parties, and must state that the  
23 defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations  
24 concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the  
25 prosecution is terminated and there is a trial on the charge.

26 (c) The prosecution must be deferred for the period specified in the agreement unless there has  
27 been a violation of its terms.

28 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice  
29 upon expiration and compliance with the terms of the agreement.

30 (2) After a charge has been filed, a deferral of prosecution may be entered into only with the



1 approval of the court.

2 (3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

3  
4 **Section 5.** Section 61-5-212, MCA, is amended to read:

5 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure, rendering inoperable,**  
6 **and forfeiture of vehicle.** (1) A person who drives a motor vehicle or commercial motor vehicle on any  
7 public highway of this state at a time when the person's privilege to do so is suspended or revoked in this  
8 state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment  
9 for not less than 2 days or more than 6 months and may be fined not more than \$500.

10 (2) The department upon receiving a record of the conviction of any person under this section upon  
11 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the  
12 period of suspension or revocation for an additional like period.

13 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
14 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
15 [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the  
16 county sheriff of the convicted person's county of residence for a period of 30 days.

17 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify  
18 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or  
19 rendered inoperable by the sheriff within 10 days after the conviction.

20 (5) A convicted person is responsible for all costs associated with actions taken under subsection  
21 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection  
22 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a  
23 joint owner who is determined to be without fault.

24 (6) Upon a second or subsequent conviction of a violation under the terms of subsection (3), the  
25 sentencing court shall order the motor vehicle owned and operated by the convicted person at the time of  
26 the offense to be seized and subjected to the forfeiture procedure provided in 61-8-421.

27 (7) A court may not suspend or defer imposition of penalties provided by this section."

28  
29 **Section 6.** Section 61-8-402, MCA, is amended to read:

30 **"61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ A person who operates or is in actual physical

1 control of a vehicle upon ways of this state open to the public is considered to have given consent, subject  
2 to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of  
3 determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested  
4 by a peace officer for driving or for being in actual physical control of a vehicle while under the influence  
5 of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of  
6 a peace officer having reasonable grounds to believe the person to have been driving or in actual physical  
7 control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs,  
8 or a combination of the two. The arresting officer may designate which test or tests are administered. A  
9 test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an  
10 alcohol concentration of 0.10 or more, a test for drugs may not be given.

11 (2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person  
12 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this~~  
13 ~~section.~~

14 (3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests  
15 designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer  
16 shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall  
17 forward the license to the department, along with a sworn report that the peace officer had reasonable  
18 grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon  
19 ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the  
20 two, and that the person had refused to submit to the test or tests upon the request of the peace officer.  
21 Upon receipt of the report, the department shall suspend the license for the period provided in subsection  
22 (5).

23 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,  
24 a temporary driving permit, which is valid for 72 hours after the time of issuance.

25 (5) The following suspension and revocation periods are applicable upon refusal to submit to a test  
26 or tests:

27 (a) upon a first refusal, a suspension of ~~90 days~~ 6 months with no provision for a restricted  
28 probationary license;

29 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from  
30 the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

1 (6) A nonresident driver's license seized under this section must be sent by the department to the  
2 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to  
3 a test or tests.

4 (7) All suspensions are subject to review as provided in this part."  
5

6 **Section 7.** Section 61-8-421, MCA, is amended to read:

7 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-5-212, 61-8-714 or  
8 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as  
9 provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44,  
10 chapter 12, part 2, apply to the extent applicable.

11 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within  
12 20 days after the seizure of the motor vehicle.

13 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The  
14 owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or  
15 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a second or subsequent offense under  
16 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the  
17 convicted person owns the motor vehicle jointly with another person.

18 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be  
19 distributed first to the holders of security interests who have presented proper proof of their claims, up to  
20 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to  
21 the general fund of the arresting agency.

22 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor  
23 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated  
24 value of the motor vehicle.

25 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons  
26 include return of the motor vehicle without a sale to an owner who is unable to present an adequate  
27 defense under this section but is found by the court to be without fault."  
28

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

30 "**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in

1 subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person convicted of a violation of 61-8-401 shall be punished by  
2 imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be  
3 punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be  
4 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
5 defendant's physical or mental well-being.

6 (2) Except as provided in subsection ~~(7)~~ (8), on a second conviction, the person shall be punished  
7 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least  
8 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
9 ~~(7)~~ (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the  
10 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

11 (3) (a) Except as provided in subsection ~~(7)~~ (8), on the third ~~or subsequent~~ conviction, the person  
12 shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must  
13 be served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000.  
14 Except as provided in subsection ~~(7)~~ (8), notwithstanding any provision to the contrary providing for  
15 suspension of execution of a sentence imposed under this subsection, the imposition or execution of the  
16 first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within  
17 5 years of the first offense may not be ~~deferred or~~ suspended.

18 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
19 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
20 seized and subjected to the procedure provided under 61-8-421.

21 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
22 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
23 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
24 omission established by the owner to have been committed or omitted by a person other than the owner  
25 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
26 criminal laws of this state or the United States.

27 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
28 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
29 or other act on which the forfeiture is sought.

30 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be

1 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
2 than \$1,000 or more than \$10,000. Except as provided in subsection (8), notwithstanding any provision  
3 to the contrary providing for suspension of execution of a sentence imposed under this subsection, the  
4 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or  
5 subsequent offense may not be suspended.

6 ~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the  
7 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
8 department of corrections and human services, which may, in the sentencing court's discretion and upon  
9 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both.  
10 On conviction of a second or subsequent offense under this section, in addition to the punishment provided  
11 in this section, regardless of disposition, the defendant shall complete an alcohol information course at an  
12 alcohol treatment program approved by the department of corrections and human services, which must  
13 include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the  
14 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
15 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
16 counselor shall notify the court of the failure. As long as the alcohol information course is approved as  
17 provided in this subsection and the treatment is provided by a certified chemical dependency counselor,  
18 the defendant may attend the information course and treatment program of the defendant's choice. The  
19 treatment provided to the defendant at a treatment program must be at a level appropriate to the  
20 defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified  
21 chemical dependency counselor.

22 ~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction"  
23 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
24 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
25 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
26 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
27 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
28 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
29 there has not been ~~no~~ an additional conviction for an offense under this section for a period of 5 years after  
30 a prior conviction under this section, then all records and data relating to the prior conviction are

1 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
2 only be obtained by district court order upon good cause shown.

3 ~~(6)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for  
4 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

5 ~~(7)~~(8) The court may order that a term of imprisonment imposed under this section be served in  
6 another facility made available by the county and approved by the sentencing court. The defendant, if  
7 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
8 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
9 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
10 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
11 sentencing court.

12 ~~(8)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
13 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
14 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

15 (10) A court may not defer imposition of sentence under this section."

16

17 **Section 9.** Section 61-8-722, MCA, is amended to read:

18 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
19 subsection ~~(7)~~ (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
20 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

21 (2) Except as provided in subsection ~~(7)~~ (9), on a second conviction of a violation of 61-8-406, ~~he~~  
22 the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days  
23 and by a fine of not less than \$300 or more than \$500.

24 (3) (a) Except as provided in subsection ~~(7)~~ (9), on a third ~~or subsequent~~ conviction of a violation  
25 of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or  
26 more than 6 months and by a fine of not less than \$500 or more than \$1,000.

27 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
28 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
29 seized and subjected to the procedure provided under 61-8-421.

30 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common

1 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
2 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
3 omission established by the owner to have been committed or omitted by a person other than the owner  
4 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
5 criminal laws of this state or the United States.

6 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
7 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
8 or other act on which the forfeiture is sought.

9 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
10 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
11 than \$1,000 or more than \$10,000. Except as provided in subsection (9), notwithstanding any other  
12 provision providing for suspension of execution of a sentence imposed under this subsection, the imposition  
13 or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense  
14 may not be suspended.

15 ~~(4)(5)~~ The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
16 suspension of driver's licenses, apply to any conviction under 61-8-406.

17 ~~(5)(6)~~ In addition to the punishment provided in this section, regardless of disposition, the  
18 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
19 department of corrections and human services, which may include alcohol or drug treatment, or both, if  
20 considered necessary by the counselor conducting the program. Each counselor providing education or  
21 treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
22 has been enrolled in a course or treatment program. If the defendant fails to attend the course or the  
23 treatment program, the counselor shall notify the court of the failure.

24 ~~(6)(7)~~ For the purpose of determining the number of convictions under this section, "conviction"  
25 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
26 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
27 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
28 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
29 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
30 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been

1 ~~As an~~ additional conviction for an offense under this section for a period of 5 years after a prior conviction  
2 under this section, then ~~the prior offense must be expunged from the defendant's record~~ all records and  
3 data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103,  
4 and public access to the information may only be obtained by district court order upon good cause shown.

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

7 ~~(7)~~(9) The court may order that a term of imprisonment imposed under this section be served in  
8 another facility made available by the county and approved by the sentencing court. The defendant, if  
9 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
10 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
11 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
12 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
13 sentencing court.

14 ~~(8)~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
15 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
16 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

17 (11) A court may not defer imposition of sentence under this section."

18  
19 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 3] are intended to be  
20 codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4,  
21 apply to [sections 1 through 3].

22 -END-



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SENATE BILL NO. 316

INTRODUCED BY

*Bishop*

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE, RENDER INOPERABLE, OR FORFEIT THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



## HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 316 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. McGee

And, that such amendments read:

1. Title, line 10.  
Following: "SEIZE"  
Strike: ", "  
Insert: "OR"
2. Title, line 11.  
Strike: ", OR FORFEIT"
3. Page 4, line 5.  
Following: "seizure"  
Strike: "\_"  
Insert: "of vehicle or"  
Following: "rendering"  
Insert: "vehicle"  
Following: "inoperable"  
Strike: "\_"
4. Page 4, line 6.  
Strike: "and forfeiture of vehicle"
5. Page 4, lines 24 through 26.  
Strike: subsection (6) in its entirety  
Renumber: subsequent subsection

-END-

Committee Vote:  
Yes 18, No 0

SB 316

HOUSE



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 316  
Representative Anderson

March 25, 1995 3:31 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 316 (third reading copy -- blue).

Signed:

*Phillip W. Anderson*  
Representative Anderson

And, that such amendments to Senate Bill 316 read as follows:

1. Page 2, line 15.  
Strike: "shall"  
Insert: "may not"

-END-

ADOPT

58-27

REJECT

SB 316

HOUSE

## 1 SENATE BILL NO. 316

2 INTRODUCED BY BISHOP

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL  
6 SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING  
7 THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION  
8 OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS  
9 SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING  
10 AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE, OR RENDER  
11 INOPERABLE, ~~OR FORFEIT~~ THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED  
12 OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S  
13 DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION  
14 TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING  
15 THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL  
16 CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS  
17 FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE  
18 INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE  
19 INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING  
20 SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

21

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

23

24 NEW SECTION. **Section 1. Preliminary alcohol screening test.** (1) A person who operates or is in  
25 actual physical control of a vehicle upon ways of this state open to the public is considered to have given  
26 consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the  
27 person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that  
28 the person was driving or in actual physical control of a vehicle upon ways of this state open to the public  
29 while under the influence of alcohol or in violation of [section 2].

30 (2) The results of a screening test may be used for determining whether probable cause exists to

1 believe a person has violated 61-8-401, 61-8-406, or [section 2].

2 (3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person  
3 submitting to a preliminary alcohol screening test pursuant to this section.

4 (4) The peace officer shall inform the person of the right to refuse the test and that the refusal to  
5 submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year  
6 of that person's driver's license.

7 (5) If the person refuses to submit to a test under this section, a test will not be given. However,  
8 the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

9 (6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be  
10 limited to determining whether a peace officer had a particularized suspicion that the person was driving  
11 or in actual physical control of a vehicle upon ways of this state open to the public while under the  
12 influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

13 (7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable  
14 to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the  
15 same incident, the department ~~shall~~ MAY NOT consider each a separate refusal for purposes of suspension  
16 or revocation under 61-8-402.

17 (8) A test may not be conducted or requested under this section unless both the peace officer and  
18 the instrument used to conduct the preliminary alcohol screening test have been certified by the department  
19 pursuant to rules adopted under the authority of 61-8-405(6).

20

21 **NEW SECTION. Section 2. Operation of vehicle by person under twenty-one with alcohol**  
22 **concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol  
23 concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state  
24 open to the public.

25 (2) A person convicted of a violation of this section must be sentenced under the provisions of  
26 45-5-624.

27 (3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

28

29 **NEW SECTION. Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to**  
30 **seizure or forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under

1 61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's  
2 interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the  
3 time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of  
4 seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

5 (2) The prohibition against transfer of title may not be stayed pending the determination of an  
6 appeal from the conviction on the underlying charge.

7 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned  
8 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both.

9  
10 **Section 4.** Section 46-16-130, MCA, is amended to read:

11 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant  
12 who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a  
13 specified period of time based on one or more of the following conditions:

14 (i) that the defendant may not commit any offense;

15 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing  
16 a relationship to the conduct upon which the charge against the defendant is based;

17 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include  
18 treatment, counseling, training, or education;

19 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the  
20 offense; or

21 (v) any other reasonable conditions.

22 (b) The agreement must be in writing, must be signed by the parties, and must state that the  
23 defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations  
24 concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the  
25 prosecution is terminated and there is a trial on the charge.

26 (c) The prosecution must be deferred for the period specified in the agreement unless there has  
27 been a violation of its terms.

28 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice  
29 upon expiration and compliance with the terms of the agreement.

30 (2) After a charge has been filed, a deferral of prosecution may be entered into only with the

1 approval of the court.

2 (3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

3

4 **Section 5.** Section 61-5-212, MCA, is amended to read:

5 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure, OF VEHICLE OR**  
6 **rendering VEHICLE inoperable, and forfeiture of vehicle.**

7 (1) A person who drives a motor vehicle or  
8 commercial motor vehicle on any public highway of this state at a time when the person's privilege to do  
9 so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction  
10 shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not  
11 more than \$500.

12 (2) The department upon receiving a record of the conviction of any person under this section upon  
13 a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the  
14 period of suspension or revocation for an additional like period.

15 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
16 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
17 [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the  
18 county sheriff of the convicted person's county of residence for a period of 30 days.

19 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify  
20 the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or  
21 rendered inoperable by the sheriff within 10 days after the conviction.

22 (5) A convicted person is responsible for all costs associated with actions taken under subsection  
23 (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection  
24 (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a  
25 joint owner who is determined to be without fault.

26 ~~(6) Upon a second or subsequent conviction of a violation under the terms of subsection (3), the~~  
27 ~~sentencing court shall order the motor vehicle owned and operated by the convicted person at the time of~~  
28 ~~the offense to be seized and subjected to the forfeiture procedure provided in 61-8-421.~~

29 ~~(7)(6) A court may not suspend or defer imposition of penalties provided by this section."~~

30

**Section 6.** Section 61-8-402, MCA, is amended to read:

1           **"61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ A person who operates or is in actual physical  
2 control of a vehicle upon ways of this state open to the public is considered to have given consent, subject  
3 to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of  
4 determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested  
5 by a peace officer for driving or for being in actual physical control of a vehicle while under the influence  
6 of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of  
7 a peace officer having reasonable grounds to believe the person to have been driving or in actual physical  
8 control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs,  
9 or a combination of the two. The arresting officer may designate which test or tests are administered. A  
10 test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an  
11 alcohol concentration of 0.10 or more, a test for drugs may not be given.

12           (2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person  
13 incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this~~  
14 ~~section.~~

15           (3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests  
16 designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer  
17 shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall  
18 forward the license to the department, along with a sworn report that the peace officer had reasonable  
19 grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon  
20 ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the  
21 two, and that the person had refused to submit to the test or tests upon the request of the peace officer.  
22 Upon receipt of the report, the department shall suspend the license for the period provided in subsection  
23 (5).

24           (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,  
25 a temporary driving permit, which is valid for 72 hours after the time of issuance.

26           (5) The following suspension and revocation periods are applicable upon refusal to submit to a test  
27 or tests:

28           (a) upon a first refusal, a suspension of ~~90 days~~ 6 months with no provision for a restricted  
29 probationary license;

30           (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from



1 the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

2 (6) A nonresident driver's license seized under this section must be sent by the department to the  
3 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to  
4 a test or tests.

5 (7) All suspensions are subject to review as provided in this part."  
6

7 **Section 7.** Section 61-8-421, MCA, is amended to read:

8 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-5-212, 61-8-714 or  
9 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as  
10 provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44,  
11 chapter 12, part 2, apply to the extent applicable.

12 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within  
13 20 days after the seizure of the motor vehicle.

14 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The  
15 owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or  
16 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a second or subsequent offense under  
17 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the  
18 convicted person owns the motor vehicle jointly with another person.

19 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be  
20 distributed first to the holders of security interests who have presented proper proof of their claims, up to  
21 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to  
22 the general fund of the arresting agency.

23 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor  
24 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated  
25 value of the motor vehicle.

26 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons  
27 include return of the motor vehicle without a sale to an owner who is unable to present an adequate  
28 defense under this section but is found by the court to be without fault."  
29

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

1           **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
2 subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person convicted of a violation of 61-8-401 shall be punished by  
3 imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be  
4 punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be  
5 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
6 defendant's physical or mental well-being.

7           (2) Except as provided in subsection ~~(7)~~ (8), on a second conviction, the person shall be punished  
8 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least  
9 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
10 ~~(7)~~ (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the  
11 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

12           (3) (a) Except as provided in subsection ~~(7)~~ (8), on the third ~~or subsequent~~ conviction, the person  
13 shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must  
14 be served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000.  
15 Except as provided in subsection ~~(7)~~ (8), notwithstanding any provision to the contrary providing for  
16 suspension of execution of a sentence imposed under this subsection, the imposition or execution of the  
17 first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within  
18 5 years of the first offense may not be ~~deferred or~~ suspended.

19           (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
20 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
21 seized and subjected to the procedure provided under 61-8-421.

22           (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
23 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
24 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
25 omission established by the owner to have been committed or omitted by a person other than the owner  
26 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
27 criminal laws of this state or the United States.

28           (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
29 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
30 or other act on which the forfeiture is sought.

1           (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
 2 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
 3 than \$1,000 or more than \$10,000. Except as provided in subsection (8), notwithstanding any provision  
 4 to the contrary providing for suspension of execution of a sentence imposed under this subsection, the  
 5 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or  
 6 subsequent offense may not be suspended.

7           ~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the  
 8 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
 9 department of corrections and human services, which may, in the sentencing court's discretion and upon  
 10 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both.  
 11 On conviction of a second or subsequent offense under this section, in addition to the punishment provided  
 12 in this section, regardless of disposition, the defendant shall complete an alcohol information course at an  
 13 alcohol treatment program approved by the department of corrections and human services, which must  
 14 include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the  
 15 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
 16 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
 17 counselor shall notify the court of the failure. As long as the alcohol information course is approved as  
 18 provided in this subsection and the treatment is provided by a certified chemical dependency counselor,  
 19 the defendant may attend the information course and treatment program of the defendant's choice. The  
 20 treatment provided to the defendant at a treatment program must be at a level appropriate to the  
 21 defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified  
 22 chemical dependency counselor.

23           ~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction"  
 24 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
 25 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
 26 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
 27 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
 28 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
 29 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
 30 there has not been ~~an~~ an additional conviction for an offense under this section for a period of 5 years after

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

4 ~~(6)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for  
 5 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

6 ~~(7)~~(8) The court may order that a term of imprisonment imposed under this section be served in  
 7 another facility made available by the county and approved by the sentencing court. The defendant, if  
 8 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
 9 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
 10 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
 11 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
 12 sentencing court.

13 ~~(8)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
 14 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
 15 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

16 (10) A court may not defer imposition of sentence under this section."

17

18 **Section 9.** Section 61-8-722, MCA, is amended to read:

19 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
 20 subsection ~~(7)~~ (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
 21 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

22 (2) Except as provided in subsection ~~(7)~~ (9), on a second conviction of a violation of 61-8-406, ~~he~~  
 23 the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days  
 24 and by a fine of not less than \$300 or more than \$500.

25 (3) (a) Except as provided in subsection ~~(7)~~ (9), on a third ~~or subsequent~~ conviction of a violation  
 26 of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or  
 27 more than 6 months and by a fine of not less than \$500 or more than \$1,000.

28 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
 29 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
 30 seized and subjected to the procedure provided under 61-8-421.

1 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
2 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
3 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
4 omission established by the owner to have been committed or omitted by a person other than the owner  
5 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
6 criminal laws of this state or the United States.

7 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
8 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
9 or other act on which the forfeiture is sought.

10 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
11 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
12 than \$1,000 or more than \$10,000. Except as provided in subsection (9), notwithstanding any other  
13 provision providing for suspension of execution of a sentence imposed under this subsection, the imposition  
14 or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense  
15 may not be suspended.

16 ~~(4)(5)~~ The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
17 suspension of driver's licenses, apply to any conviction under 61-8-406.

18 ~~(5)(6)~~ In addition to the punishment provided in this section, regardless of disposition, the  
19 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
20 department of corrections and human services, which may include alcohol or drug treatment, or both, if  
21 considered necessary by the counselor conducting the program. Each counselor providing education or  
22 treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
23 has been enrolled in a course or treatment program. If the defendant fails to attend the course or the  
24 treatment program, the counselor shall notify the court of the failure.

25 ~~(6)(7)~~ For the purpose of determining the number of convictions under this section, "conviction"  
26 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
27 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
28 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
29 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
30 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent

1 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
2 ~~an~~ an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
3 under this section, then ~~the prior offense must be expunged from the defendant's record~~ all records and  
4 data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103,  
5 and public access to the information may only be obtained by district court order upon good cause shown.

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

8 ~~(7)(9)~~ (9) The court may order that a term of imprisonment imposed under this section be served in  
9 another facility made available by the county and approved by the sentencing court. The defendant, if  
10 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
11 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
12 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
13 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
14 sentencing court.

15 ~~(8)(10)~~ (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
16 subsequent offense, the court may order that a term of imprisonment imposed under this section be served  
17 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

18 (11) A court may not defer imposition of sentence under this section."

19  
20 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 3] are intended to be  
21 codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4,  
22 apply to [sections 1 through 3].

23 -END-