

SENATE BILL NO. 333

INTRODUCED BY

Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ISSUANCE OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE UNTIL THE PERSON HAS COMPLETED THE ALCOHOL INFORMATION COURSE, TREATMENT PROGRAM, OR BOTH; REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE RECEIVE TREATMENT BASED UPON THE FINDINGS OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AND AMENDING SECTIONS 61-5-208, 61-8-714, AND 61-11-101, MCA."

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

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

**"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the revocation or suspension, the person may ~~make application~~ apply for a new license or endorsement as provided by law but the department may not issue a new license or endorsement ~~unless and~~ until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When ~~any~~ a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or ~~any~~ a drug or a combination of alcohol ~~or and~~ drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral

1 not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That  
2 person may not be issued a restricted probationary driver's license by the department under 61-2-302 until  
3 the person has completed the alcohol information course or treatment program, or both, as ordered by the  
4 sentencing court under 61-8-714 or 61-8-722. Upon receiving a report of a conviction or forfeiture of bail  
5 or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department  
6 shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year  
7 period passes and the person has not completed an alcohol information course, treatment, or both, as  
8 ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both  
9 are completed.

10 (3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in  
11 subsection (2).

12 (4) The period of revocation for ~~any~~ a person convicted of any offense which makes mandatory  
13 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

14 (5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial  
15 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and  
16 subsection (2) of this section."  
17

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

19 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
20 subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
21 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
22 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
23 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
24 or mental well-being.

25 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by  
26 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
27 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
28 (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
29 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

30 (3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall

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

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

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

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

19 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant  
20 shall complete an alcohol information course at an alcohol treatment program approved by the department  
21 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~  
22 ~~recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both.  
23 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical  
24 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
25 placement rules adopted by the department of corrections and human services. On conviction of a second  
26 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
27 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
28 approved by the department of corrections and human services, which must include alcohol or drug  
29 treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the~~  
30 ~~education or treatment, notify the court that the defendant has been enrolled in a course or treatment~~

1 ~~program. If the defendant fails to attend the course or the treatment program, the counselor shall notify~~  
2 ~~the court of the failure.~~ As long as the alcohol information course is approved as provided in this subsection  
3 and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
4 information course and treatment program of the defendant's choice. The treatment provided to the  
5 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
6 or both, as determined by ~~the judge based upon the recommendation from the~~ a certified chemical  
7 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of  
8 corrections and human services. Upon determination, the court shall order the defendant's appropriate level  
9 of treatment. If more than one counselor makes a determination as provided in this subsection, the court  
10 shall order an appropriate level of treatment based upon the determination of one of the counselors. Each  
11 counselor providing education or treatment shall, at the commencement of the education or treatment,  
12 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
13 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
14 court of the failure.

15 (5) For the purpose of determining the number of convictions under this section, "conviction"  
16 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
17 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
18 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
19 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
20 commission of the present offense and a previous conviction. If there has been no additional conviction for  
21 an offense under this section for a period of 5 years after a prior conviction under this section, then all  
22 records and data relating to the prior conviction are confidential criminal justice information, as defined in  
23 44-5-103, and public access to the information may only be obtained by district court order upon good  
24 cause shown.

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

27 (7) The court may order that a term of imprisonment imposed under this section be served in  
28 another facility made available by the county and approved by the sentencing court. The defendant, if  
29 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
30 on the defendant's ability to leave the premises of the facility and require that the defendant follow the

1 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
 2 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
 3 sentencing court.

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

7  
 8 **Section 3.** Section 61-11-101, MCA, is amended to read:

9 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**  
 10 **of licenses.** (1) Whenever ~~any~~ a person is convicted of ~~any~~ an offense for which chapter 5 makes  
 11 mandatory the suspension or revocation of the driver's license of the person by the department, the court  
 12 in which ~~such~~ that conviction ~~is had~~ occurs shall require the surrender to it of all driver's licenses then held  
 13 by the convicted person ~~so convicted~~. The court shall ~~thereupon~~, within 5 days, forward the license to the  
 14 department and at the same time forward a record of ~~such~~ the conviction to the department, ~~providing that~~  
 15 ~~if such~~ If that person does not possess a driver's license, the court shall ~~so~~ indicate that fact in its report  
 16 to the department. The court may also recommend, subject to the provisions of 61-5-208, that a person  
 17 whose driver's license is suspended due to a violation of 61-8-401 or 61-8-406 be issued a restricted  
 18 probationary license.

19 (2) ~~Every~~ Each court having jurisdiction over offenses committed under any act of this state or  
 20 municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days,  
 21 to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court  
 22 for a violation of ~~any such~~ those laws, other than regulations governing standing or parking, and may  
 23 recommend the suspension of the driver's license of the convicted person ~~so convicted~~. ~~The court may also~~  
 24 ~~recommend that the department issue a restricted probationary license on the condition that the individual~~  
 25 ~~comply with the requirement that he attend and complete an alcohol information course as provided in~~  
 26 ~~61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person~~  
 27 ~~otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee~~  
 28 ~~is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those~~  
 29 ~~restrictions.~~

30 (3) ~~Any~~ A court, ~~or other~~ an agency of this state, or a subdivision ~~thereof~~ of the state, ~~which that~~

1 has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report  
2 ~~any such~~ the action and the adjudication upon which it is based to the department within 5 days on forms  
3 furnished by the department."

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0333, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to prohibit issuing restricted probationary driving licenses to people convicted of driving under the influence of alcohol or other drugs until they complete an information or treatment program, and to require the treatment prescribed be that as diagnosed for them under uniform guidance from the Department of Corrections and Human Services.

ASSUMPTIONS:

1. There are some 7,000 DUI convictions annually.
2. About 60% or 4,200 are first-time offenders.
3. The Department of Corrections and Human Services (DCHS) currently provides uniform guidance for chemical dependency assessments and recommendations and certifies each counselor.
4. DCHS estimates an increase of 218 admissions to the Montana Chemical Dependency Center and state approved community treatment centers for first time DUI offenders. DCHS anticipates a reduction in repeat DUI treatment for second time offenders at the treatment centers for first offenders receiving treatment.
5. Each judge sentences a first-time DUI offender to attend an Assessment Counseling Treatment (ACT) class or chemical dependency treatment program to assess their dependency and counsel offender in ending a chemical dependency.
6. Each judge must use a certified chemical dependency counselor's recommendations for treatment; if more than one counselor assesses and recommends a treatment program, the judge decides which is the most appropriate for the offender.
7. The Department of Justice issues a probationary license only after being officially informed by each judge of the offender's completion of an ACT class or treatment program.

FISCAL IMPACT:

No additional impact by state or local governments or DCHS is anticipated.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. First-time DUI offenders will complete an ACT class or chemical dependency treatment program and obtain assistance to defeat a chemical dependency.
2. Judges uniformly will use certified chemical dependency counselor's recommendations to assist the first-time offender to avoid a subsequent DUI.
3. First-time DUI offenders will receive a probationary drivers license only after evidence of attending an ACT class or chemical dependency treatment program.
4. DCHS assumes passage of this bill should decrease the number of repeat DUI offenders needing treatment and could reduce the loss of life and property damage related to these offenders. This bill could also reduce the over-crowding in county jails for this population.

Dave Lewis 2-15-95

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

Al Bishop

AL BISHOP, PRIMARY SPONSOR

2-15-95  
DATE

Fiscal Note for SB0333, as introduced

**SB 333**

APPROVED BY COM  
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1 not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That  
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5 or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department  
6 shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year  
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9 are completed.

10 (3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in  
11 subsection (2).

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13 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

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15 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and  
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18 **Section 2.** Section 61-8-714, MCA, is amended to read:

19 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
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23 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
24 or mental well-being.

25 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by  
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27 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
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30 (3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall

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2 served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except  
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4 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of  
5 the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the  
6 first offense may not be deferred or suspended.

7 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
8 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
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11 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
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16 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
17 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
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19 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant  
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21 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~  
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16 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
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30 on the defendant's ability to leave the premises of the facility and require that the defendant follow the

1 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
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 6 UNTIL THE PERSON HAS COMPLETED THE ALCOHOL INFORMATION COURSE, TREATMENT PROGRAM,  
 7 OR BOTH; REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE WHO IS  
 8 DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT; REQUIRING THAT A PERSON  
 9 CONVICTED OF DRIVING UNDER THE INFLUENCE RECEIVE TREATMENT BASED UPON THE FINDINGS  
 10 OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT  
 11 PLACEMENT RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AND  
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 18 ~~driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year,~~  
 19 ~~except as otherwise permitted by law.~~

20 ~~(2) (1) A person whose license or privilege to drive a motor vehicle on the public highways has~~  
 21 ~~been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless~~  
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 23 ~~revocation or suspension, the person may make application apply for a new license or endorsement as~~  
 24 ~~provided by law but the department may not issue a new license or endorsement unless and until it is~~  
 25 ~~satisfied, after investigation of the driving ability of the person and upon a showing by its records or other~~  
 26 ~~sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any a person is~~  
 27 ~~convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical~~  
 28 ~~control of a motor vehicle while under the influence of alcohol or any a drug or a combination of alcohol~~  
 29 ~~or and drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of~~  
 30 ~~0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral~~

1 ~~not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That~~  
 2 ~~person may not be issued a restricted probationary driver's license by the department under 61-2-302 until~~  
 3 ~~the person has completed the alcohol information course or treatment program, or both, as ordered by the~~  
 4 ~~sentencing court under 61-8-714 or 61-8-722. Upon receiving a report of a conviction or forfeiture of bail~~  
 5 ~~or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department~~  
 6 ~~shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1 year~~  
 7 ~~period passes and the person has not completed an alcohol information course, treatment, or both, as~~  
 8 ~~ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both~~  
 9 ~~are completed.~~

10 ~~(3) (2) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided~~  
 11 ~~in subsection (2).~~

12 ~~(4) (3) The period of revocation for any a person convicted of any offense which makes mandatory~~  
 13 ~~the revocation of the driver's license commences from date of conviction or forfeiture of bail.~~

14 ~~(5) (4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial~~  
 15 ~~motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and~~  
 16 ~~subsection (2) of this section."~~

17  
 18 **Section 1.** Section 61-8-714, MCA, is amended to read:

19 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
 20 subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
 21 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
 22 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
 23 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
 24 or mental well-being.

25 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by  
 26 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
 27 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
 28 (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
 29 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

30 (3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall

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

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

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

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

19 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant  
20 shall complete an alcohol information course at an alcohol treatment program approved by the department  
21 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~  
22 ~~recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both.  
23 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical  
24 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
25 placement rules adopted by the department of corrections and human services. On conviction of a second  
26 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
27 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
28 approved by the department of corrections and human services, which must include alcohol or drug  
29 treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the~~  
30 ~~education or treatment, notify the court that the defendant has been enrolled in a course or treatment~~



1 ~~program. If the defendant fails to attend the course or the treatment program, the counselor shall notify~~  
2 ~~the court of the failure.~~ As long as the alcohol information course is approved as provided in this subsection  
3 and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
4 information course and treatment program of the defendant's choice. The treatment provided to the  
5 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
6 or both, as determined by ~~the judge based upon the recommendation from the~~ a certified chemical  
7 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of  
8 corrections and human services. Upon determination, the court shall order the defendant's appropriate level  
9 of treatment. If more than one counselor makes a determination as provided in this subsection, the court  
10 shall order an appropriate level of treatment based upon the determination of one of the counselors. Each  
11 counselor providing education or treatment shall, at the commencement of the education or treatment,  
12 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
13 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
14 court of the failure.

15 (5) For the purpose of determining the number of convictions under this section, "conviction"  
16 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
17 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
18 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
19 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
20 commission of the present offense and a previous conviction. If there has been no additional conviction for  
21 an offense under this section for a period of 5 years after a prior conviction under this section, then all  
22 records and data relating to the prior conviction are confidential criminal justice information, as defined in  
23 44-5-103, and public access to the information may only be obtained by district court order upon good  
24 cause shown.

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

27 (7) The court may order that a term of imprisonment imposed under this section be served in  
28 another facility made available by the county and approved by the sentencing court. The defendant, if  
29 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
30 on the defendant's ability to leave the premises of the facility and require that the defendant follow the

1 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
 2 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
 3 sentencing court.

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

7  
 8 ~~Section 3. Section 61-11-101, MCA, is amended to read:~~

9 ~~"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender~~  
 10 ~~of licenses. (1) Whenever any a person is convicted of any an offense for which chapter 5 makes~~  
 11 ~~mandatory the suspension or revocation of the driver's license of the person by the department, the court~~  
 12 ~~in which such that conviction is had occurs shall require the surrender to it of all driver's licenses then held~~  
 13 ~~by the convicted person so convicted. The court shall thereupon, within 5 days, forward the license to the~~  
 14 ~~department and at the same time forward a record of such the conviction to the department, providing that~~  
 15 ~~if such If that person does not possess a driver's license, the court shall so indicate that fact in its report~~  
 16 ~~to the department. The court may also recommend, subject to the provisions of 61-5-208, that a person~~  
 17 ~~whose driver's license is suspended due to a violation of 61-8-401 or 61-8-406 be issued a restricted~~  
 18 ~~probationary license.~~

19 ~~(2) Every Each court having jurisdiction over offenses committed under any act of this state or~~  
 20 ~~municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days,~~  
 21 ~~to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court~~  
 22 ~~for a violation of any such these laws, other than regulations governing standing or parking, and may~~  
 23 ~~recommend the suspension of the driver's license of the convicted person so convicted. The court may also~~  
 24 ~~recommend that the department issue a restricted probationary license on the condition that the individual~~  
 25 ~~comply with the requirement that he attend and complete an alcohol information course as provided in~~  
 26 ~~61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person~~  
 27 ~~otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee~~  
 28 ~~is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those~~  
 29 ~~restrictions.~~

30 ~~(3) Any A court, or other an agency of this state, or a subdivision thereof of the state, which that~~

1 ~~has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report~~  
2 ~~any such the action and the adjudication upon which it is based to the department within 5 days on forms~~  
3 ~~furnished by the department."~~

4 ~~-END-~~



## HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 333 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Hurdle

And, that such amendments read:

1. Title, lines 7 and 9.

Following: "INFLUENCE"

Insert: "OR WITH EXCESSIVE ALCOHOL CONCENTRATION"

2. Title, line 11.

Following: "SERVICES;"

Insert: "REQUIRING AT LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION;"

3. Title, line 12

Strike: "SECTION"

Insert: "SECTIONS"

Following: "~~61-11-101~~"

Insert: "AND 61-8-722"

4. Page 4, line 10.

Following: "counselors."

Insert: "On a second or subsequent conviction, the treatment program must include followup procedures determined necessary by the counselor for a period of at least 1 year from the date of admission to the program. A court may not order a defendant to attend or participate in a self-help program not specifically recommended by the approved program providing services to the defendant under this subsection."

SB 333

Committee Vote:  
Yes 18, No 0.

HOUSE

5. Page 6, line 4.

Insert: "Section 2. Section 61-8-722, MCA, is amended to read:

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

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

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

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

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

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

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

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, ~~if considered necessary by the counselor conducting the program in accordance with the provisions of 61-8-714.~~ Each counselor providing education or treatment shall, at the commencement of

the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

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

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

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

-END-

1 SENATE BILL NO. 333

2 INTRODUCED BY BISHOP

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING THE ISSUANCE OF A RESTRICTED~~  
 5 ~~PROBATIONARY DRIVER'S LICENSE TO A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE~~  
 6 ~~UNTIL THE PERSON HAS COMPLETED THE ALCOHOL INFORMATION COURSE, TREATMENT PROGRAM,~~  
 7 ~~OR BOTH;~~ REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH  
 8 EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE  
 9 TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH  
 10 EXCESSIVE ALCOHOL CONCENTRATION RECEIVE TREATMENT BASED UPON THE FINDINGS OF A  
 11 CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT  
 12 RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; REQUIRING AT  
 13 LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION; AND  
 14 AMENDING ~~SECTIONS 61-5-208, SECTION SECTIONS 61-8-714, AND 61-11-101 AND 61-8-722, MCA."~~

15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
 18 ~~Section 1. Section 61-5-208, MCA, is amended to read:~~

19 ~~"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke~~  
 20 ~~a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1~~  
 21 ~~year, except as otherwise permitted by law.~~

22 ~~(2)(1) A person whose license or privilege to drive a motor vehicle on the public highways has been~~  
 23 ~~suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the~~  
 24 ~~revocation was for a cause which that has been removed. After the expiration of the period of the~~  
 25 ~~revocation or suspension, the person may make application apply for a new license or endorsement as~~  
 26 ~~provided by law but the department may not issue a new license or endorsement unless and until it is~~  
 27 ~~satisfied, after investigation of the driving ability of the person and upon a showing by its records or other~~  
 28 ~~sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any a person is~~  
 29 ~~convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical~~  
 30 ~~control of a motor vehicle while under the influence of alcohol or any a drug or a combination of alcohol~~

1 ~~or and drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of~~  
2 ~~0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral~~  
3 ~~not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That~~  
4 ~~person may not be issued a restricted probationary driver's license by the department under 61-2-302 until~~  
5 ~~the person has completed the alcohol information course or treatment program, or both, as ordered by the~~  
6 ~~sentencing court under 61-8-714 or 61-8-722. Upon receiving a report of a conviction or forfeiture of bail~~  
7 ~~or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department~~  
8 ~~shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1 year~~  
9 ~~period passes and the person has not completed an alcohol information course, treatment, or both, as~~  
10 ~~ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both~~  
11 ~~are completed.~~

12 ~~(3)(2) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in~~  
13 ~~subsection (2).~~

14 ~~(4)(3) The period of revocation for any a person convicted of any offense which makes mandatory~~  
15 ~~the revocation of the driver's license commences from date of conviction or forfeiture of bail.~~

16 ~~(5)(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial~~  
17 ~~motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and~~  
18 ~~subsection (2) of this section."~~

19  
20 **Section 1.** Section 61-8-714, MCA, is amended to read:

21 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
22 subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
23 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
24 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
25 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
26 or mental well-being.

27 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by  
28 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
29 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
30 (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition



1 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

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

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

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

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

21 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant  
22 shall complete an alcohol information course at an alcohol treatment program approved by the department  
23 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~  
24 ~~recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both.  
25 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical  
26 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
27 placement rules adopted by the department of corrections and human services. On conviction of a second  
28 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
29 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
30 approved by the department of corrections and human services, which must include alcohol or drug

1 treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the~~  
2 ~~education or treatment, notify the court that the defendant has been enrolled in a course or treatment~~  
3 ~~program. If the defendant fails to attend the course or the treatment program, the counselor shall notify~~  
4 ~~the court of the failure.~~ As long as the alcohol information course is approved as provided in this  
5 subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may  
6 attend the information course and treatment program of the defendant's choice. The treatment provided  
7 to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug  
8 problem, or both, as determined by ~~the judge based upon the recommendation from the~~ a certified chemical  
9 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of  
10 corrections and human services. Upon determination, the court shall order the defendant's appropriate level  
11 of treatment. If more than one counselor makes a determination as provided in this subsection, the court  
12 shall order an appropriate level of treatment based upon the determination of one of the counselors. ON  
13 A SECOND OR SUBSEQUENT CONVICTION, THE TREATMENT PROGRAM MUST INCLUDE FOLLOWUP  
14 PROCEDURES DETERMINED NECESSARY BY THE COUNSELOR FOR A PERIOD OF AT LEAST 1 YEAR  
15 FROM THE DATE OF ADMISSION TO THE PROGRAM. A COURT MAY NOT ORDER A DEFENDANT TO  
16 ATTEND OR PARTICIPATE IN A SELF-HELP PROGRAM NOT SPECIFICALLY RECOMMENDED BY THE  
17 APPROVED PROGRAM PROVIDING SERVICES TO THE DEFENDANT UNDER THIS SUBSECTION. Each  
18 counselor providing education or treatment shall, at the commencement of the education or treatment,  
19 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
20 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
21 court of the failure.

22 (5) 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. If there has been no additional conviction for  
28 an offense under this section for a period of 5 years after a prior conviction under this section, then all  
29 records and data relating to the prior conviction are confidential criminal justice information, as defined in  
30 44-5-103, and public access to the information may only be obtained by district court order upon good

1 cause shown.

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

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

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

14  
15 ~~Section 3. Section 61-11-101, MCA, is amended to read:~~

16 ~~"61-11-101. Report of convictions and suspension or revocation of driver's licenses—surrender~~  
17 ~~of licenses. (1) Whenever any a person is convicted of any an offense for which chapter 5 makes~~  
18 ~~mandatory the suspension or revocation of the driver's license of the person by the department, the court~~  
19 ~~in which such that conviction is had occurs shall require the surrender to it of all driver's licenses then held~~  
20 ~~by the convicted person so convicted. The court shall thereupon, within 5 days, forward the license to the~~  
21 ~~department and at the same time forward a record of such the conviction to the department, providing that~~  
22 ~~if such if that person does not possess a driver's license, the court shall so indicate that fact in its report~~  
23 ~~to the department. The court may also recommend, subject to the provisions of 61-5-208, that a person~~  
24 ~~whose driver's license is suspended due to a violation of 61-8-401 or 61-8-406 be issued a restricted~~  
25 ~~probationary license.~~

26 ~~(2) Every Each court having jurisdiction over offenses committed under any act of this state or~~  
27 ~~municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days,~~  
28 ~~to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court~~  
29 ~~for a violation of any such those laws, other than regulations governing standing or parking, and may~~  
30 ~~recommend the suspension of the driver's license of the convicted person so convicted. The court may also~~

1 ~~recommend that the department issue a restricted probationary license on the condition that the individual~~  
 2 ~~comply with the requirement that he attend and complete an alcohol information course as provided in~~  
 3 ~~61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person~~  
 4 ~~otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee~~  
 5 ~~is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those~~  
 6 ~~restrictions.~~

7 ~~(3) Any A court, or other an agency of this state, or a subdivision thereof of the state, which that~~  
 8 ~~has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report~~  
 9 ~~any such the action and the adjudication upon which it is based to the department within 5 days on forms~~  
 10 ~~furnished by the department."~~

11  
 12 **SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:**

13 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
 14 subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
 15 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

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

19 (3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of  
 20 61-8-406, ~~he a~~ person shall be punished by imprisonment for not less than 48 consecutive hours or more  
 21 than 6 months and by a fine of not less than \$500 or more than \$1,000.

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

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

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

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

6 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
7 shall complete an alcohol information course at an alcohol treatment program approved by the department  
8 of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, if  
9 ~~considered necessary by the counselor conducting the program in accordance with the provisions of~~  
10 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education  
11 or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If  
12 the defendant fails to attend the course or the treatment program, the counselor shall notify the court of  
13 the failure.

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

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

29 (8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
30 subsequent offense, the court may order that a term of imprisonment imposed under this section be served

1 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

2 -END-

Conference Committee  
on SB 333  
Report No. 1, April 11, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 333, met and considered:

House Committee on Judiciary amendments to the third reading  
copy, dated March 23, 1995.

We recommend that SB 333 (reference copy - salmon) be amended as  
follows:

1. Page 4, lines 13 and 14.

Strike: "INCLUDE" on line 13 through "COUNSELOR" on line 14

Insert: "be followed by monthly monitoring"

2. Page 4, lines 15 through 17.

Strike: "MAY NOT" on line 15 through "SUBSECTION" on line 17

Insert: "or counselor may not require attendance at a self-help  
program other than at an "open meeting" as that term is defined  
by the self-help program. A defendant may voluntarily  
participate in self-help programs"

And that this Conference Committee report be adopted.

For the Senate:

Bishop

Bishop  
Chair

Jabs

Jabs  
Van Valkenburg

PV  
Amd. Coord.

SP  
Sec. of Senate

For the House:

Spomerville  
Chair

McGee  
Carey

ADOPT

REJECT

SB 333

CCR#1

831337CC.SPV

## 1 SENATE BILL NO. 333

2 INTRODUCED BY BISHOP

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING THE ISSUANCE OF A RESTRICTED~~  
 5 ~~PROBATIONARY DRIVER'S LICENSE TO A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE~~  
 6 ~~UNTIL THE PERSON HAS COMPLETED THE ALCOHOL INFORMATION COURSE, TREATMENT PROGRAM,~~  
 7 ~~OR BOTH;~~ REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH  
 8 EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE  
 9 TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH  
 10 EXCESSIVE ALCOHOL CONCENTRATION RECEIVE TREATMENT BASED UPON THE FINDINGS OF A  
 11 CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT  
 12 RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; REQUIRING AT  
 13 LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION; AND  
 14 AMENDING SECTIONS ~~61-5-208~~, SECTION SECTIONS 61-8-714, AND 61-11-101 AND 61-8-722, MCA."

15

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

17

18 **Section 1.** ~~Section 61-5-208, MCA, is amended to read:~~

19 ~~"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke~~  
 20 ~~a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1~~  
 21 ~~year, except as otherwise permitted by law.~~

22 ~~(2)(1) A person whose license or privilege to drive a motor vehicle on the public highways has been~~  
 23 ~~suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the~~  
 24 ~~revocation was for a cause which that has been removed. After the expiration of the period of the~~  
 25 ~~revocation or suspension, the person may make application apply for a new license or endorsement as~~  
 26 ~~provided by law but the department may not issue a new license or endorsement unless and until it is~~  
 27 ~~satisfied, after investigation of the driving ability of the person and upon a showing by its records or other~~  
 28 ~~sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any a person is~~  
 29 ~~convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical~~  
 30 ~~control of a motor vehicle while under the influence of alcohol or any a drug or a combination of alcohol~~



1 ~~or and drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of~~  
 2 ~~0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral~~  
 3 ~~not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That~~  
 4 ~~person may not be issued a restricted probationary driver's license by the department under 61-2-302 until~~  
 5 ~~the person has completed the alcohol information course or treatment program, or both, as ordered by the~~  
 6 ~~sentencing court under 61-8-714 or 61-8-722. Upon receiving a report of a conviction or forfeiture of bail~~  
 7 ~~or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department~~  
 8 ~~shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1 year~~  
 9 ~~period passes and the person has not completed an alcohol information course, treatment, or both, as~~  
 10 ~~ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both~~  
 11 ~~are completed.~~

12 ~~(3)(2) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in~~  
 13 ~~subsection (2).~~

14 ~~(4)(3) The period of revocation for any a person convicted of any offense which makes mandatory~~  
 15 ~~the revocation of the driver's license commences from date of conviction or forfeiture of bail.~~

16 ~~(5)(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial~~  
 17 ~~motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and~~  
 18 ~~subsection (2) of this section."~~

19  
 20 **Section 1.** Section 61-8-714, MCA, is amended to read:

21 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
 22 subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
 23 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
 24 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
 25 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
 26 or mental well-being.

27 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by  
 28 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
 29 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
 30 (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition

1 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

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

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

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

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

21 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant  
22 shall complete an alcohol information course at an alcohol treatment program approved by the department  
23 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~  
24 ~~recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both.  
25 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical  
26 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
27 placement rules adopted by the department of corrections and human services. On conviction of a second  
28 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
29 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
30 approved by the department of corrections and human services, which must include alcohol or drug

1 treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the~~  
2 ~~education or treatment, notify the court that the defendant has been enrolled in a course or treatment~~  
3 ~~program. If the defendant fails to attend the course or the treatment program, the counselor shall notify~~  
4 ~~the court of the failure.~~ As long as the alcohol information course is approved as provided in this  
5 subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may  
6 attend the information course and treatment program of the defendant's choice. The treatment provided  
7 to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug  
8 problem, or both, as determined by ~~the judge based upon the recommendation from the~~ a certified chemical  
9 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of  
10 corrections and human services. Upon determination, the court shall order the defendant's appropriate level  
11 of treatment. If more than one counselor makes a determination as provided in this subsection, the court  
12 shall order an appropriate level of treatment based upon the determination of one of the counselors. ON  
13 A SECOND OR SUBSEQUENT CONVICTION, THE TREATMENT PROGRAM MUST INCLUDE FOLLOWUP  
14 PROCEDURES DETERMINED NECESSARY BY THE COUNSELOR BE FOLLOWED BY MONTHLY  
15 MONITORING FOR A PERIOD OF AT LEAST 1 YEAR FROM THE DATE OF ADMISSION TO THE PROGRAM.  
16 A COURT MAY NOT ORDER A DEFENDANT TO ATTEND OR PARTICIPATE IN A SELF-HELP PROGRAM  
17 NOT SPECIFICALLY RECOMMENDED BY THE APPROVED PROGRAM PROVIDING SERVICES TO THE  
18 DEFENDANT UNDER THIS SUBSECTION OR COUNSELOR MAY NOT REQUIRE ATTENDANCE AT A  
19 SELF-HELP PROGRAM OTHER THAN AT AN "OPEN MEETING" AS THAT TERM IS DEFINED BY THE  
20 SELF-HELP PROGRAM. A DEFENDANT MAY VOLUNTARILY PARTICIPATE IN SELF-HELP PROGRAMS.  
21 Each counselor providing education or treatment shall, at the commencement of the education or treatment,  
22 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
23 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
24 court of the failure.

25 (5) 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, conviction for a violation of a similar statute  
27 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
28 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
29 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
30 commission of the present offense and a previous conviction. If there has been no additional conviction for

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

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

7 (7) 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) 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

18 ~~Section 3. Section 61-11-101, MCA, is amended to read:~~

19 ~~"61-11-101. Report of convictions and suspension or revocation of driver's licenses—surrender~~  
 20 ~~of licenses. (1) Whenever any a person is convicted of any an offense for which chapter 5 makes~~  
 21 ~~mandatory the suspension or revocation of the driver's license of the person by the department, the court~~  
 22 ~~in which such that conviction is had occurs shall require the surrender to it of all driver's licenses then held~~  
 23 ~~by the convicted person so convicted. The court shall thereupon, within 5 days, forward the license to the~~  
 24 ~~department and at the same time forward a record of such the conviction to the department, providing that~~  
 25 ~~if such If that person does not possess a driver's license, the court shall so indicate that fact in its report~~  
 26 ~~to the department. The court may also recommend, subject to the provisions of 61-5-208, that a person~~  
 27 ~~whose driver's license is suspended due to a violation of 61-8-401 or 61-8-406 be issued a restricted~~  
 28 ~~probationary license.~~

29 ~~(2) Every Each court having jurisdiction over offenses committed under any act of this state or~~  
 30 ~~municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days,~~

1 to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court  
 2 for a violation of any such those laws, other than regulations governing standing or parking, and may  
 3 recommend the suspension of the driver's license of the convicted person so convicted. The court may also  
 4 recommend that the department issue a restricted probationary license on the condition that the individual  
 5 comply with the requirement that he attend and complete an alcohol information course as provided in  
 6 61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person  
 7 otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee  
 8 is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those  
 9 restrictions.

10 ~~(3) Any A court, or other an agency of this state, or a subdivision thereof of the state, which that~~  
 11 ~~has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report~~  
 12 ~~any such the action and the adjudication upon which it is based to the department within 5 days on forms~~  
 13 ~~furnished by the department."~~

14  
 15 **SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:**

16 "61-8-722. **Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
 17 subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
 18 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

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

22 (3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of  
 23 61-8-406, he a person shall be punished by imprisonment for not less than 48 consecutive hours or more  
 24 than 6 months and by a fine of not less than \$500 or more than \$1,000.

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

28 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
 29 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
 30 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act

1 or omission established by the owner to have been committed or omitted by a person other than the owner  
2 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
3 criminal laws of this state or the United States.

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

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

9 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
10 shall complete an alcohol information course at an alcohol treatment program approved by the department  
11 of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, if  
12 ~~considered necessary by the counselor conducting the program in accordance with the provisions of~~  
13 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education  
14 or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If  
15 the defendant fails to attend the course or the treatment program, the counselor shall notify the court of  
16 the failure.

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

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

1 referred by the sentencing court.

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

5 -END-