

House BILL NO. 208

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INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING FINES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR WITH AN ILLEGAL ALCOHOL OR DRUG CONTENT IN THE BLOOD; PROVIDING THAT NO PART OF THE FINE MAY BE SUSPENDED; INCREASING THE PERIOD OF REVOCATION OF A DRIVER'S LICENSE UPON A THIRD OR SUBSEQUENT OFFENSE; INCREASING THE PENALTY FOR DRIVING WHILE THE DRIVER'S LICENSE WAS SUSPENDED OR REVOKED FOR A FIRST OR SUBSEQUENT OFFENSE; AND AMENDING SECTIONS 61-5-208, 61-5-212, 61-8-714, AND 61-8-722, 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 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 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 drug or a combination of alcohol or 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 not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a ~~second, third, or subsequent~~ offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a

1 period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol  
2 information course, treatment, or both, as ordered by the sentencing court, the license revocation remains  
3 in effect until the course, treatment, or both are completed. Upon receiving a report of a conviction or  
4 forfeiture of bail or collateral for a third or subsequent offense within 5 years of the first offense, the  
5 department shall revoke the license or driving privilege and may not issue the person a license or driving  
6 privilege unless 5 years have passed since the person's last conviction.

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

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

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

14  
15 **Section 2.** Section 61-5-212, MCA, is amended to read:

16 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**  
17 **vehicle inoperable.** (1) (a) A Except as provided in subsection (1)(b), a person who drives a motor vehicle  
18 or commercial motor vehicle on any public highway of this state at a time when the person's privilege to  
19 do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon  
20 conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be  
21 fined not more than \$500.

22 (b) If the license was suspended or revoked for a violation of 61-8-401 or 61-8-406, the court shall  
23 impose any fine and incarceration period that can be imposed for the underlying offense.

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

27 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
28 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
29 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the  
30 county sheriff of the convicted person's county of residence for a period of 30 days.

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

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

8 (6) A court may not suspend or defer imposition of penalties provided by this section."  
9

10 **Section 3.** Section 61-8-714, MCA, is amended to read:

11 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
12 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
13 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
14 fine of ~~not less than \$100 or more than \$500.~~ No part of the fine may be suspended. The imprisonment  
15 sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence  
16 will pose a risk to the defendant's physical or mental well-being.

17 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
18 a fine of ~~not less than \$300 or more than \$500~~ \$1,000, no part of which may be suspended, and by  
19 imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more  
20 than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be  
21 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
22 defendant's physical or mental well-being.

23 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
24 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
25 consecutively, or more than 1 year and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. No  
26 part of the fine may be suspended. Except as provided in subsection (8), notwithstanding any provision to  
27 the contrary providing for suspension of execution of a sentence imposed under this subsection, the  
28 imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that  
29 occurred within 5 years of the first offense may not be suspended.

30 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

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

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

12 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
13 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
14 than ~~\$1,000~~ \$1,500 or more than \$10,000. No part of the fine may be suspended. Except as provided  
15 in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of  
16 a sentence imposed under this subsection, the imposition or execution of the first 6 months of the  
17 imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

18 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
19 shall complete an alcohol information course at an alcohol treatment program approved by the department  
20 of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
21 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made  
22 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
23 by the department of public health and human services. On conviction of a second or subsequent offense  
24 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
25 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
26 department of public health and human services, ~~which that~~ which that must include alcohol or drug treatment, or  
27 both. As long as the alcohol information course is approved as provided in this subsection and the  
28 treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
29 information course and treatment program of the defendant's choice. The treatment provided to the  
30 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,

1 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient  
2 placement rules adopted by the department of corrections. Upon determination, the court shall order the  
3 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided  
4 in this subsection, the court shall order an appropriate level of treatment based upon the determination of  
5 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by  
6 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or  
7 counselor may not require attendance at a self-help program other than at an "open meeting" as that term  
8 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each  
9 counselor providing education or treatment shall, at the commencement of the education or treatment,  
10 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
11 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
12 court of the failure.

13 (6) For the purpose of determining the number of convictions under this section, "conviction"  
14 means a final conviction, as defined in 45-2-101, in this state; a conviction for a violation of a similar statute  
15 in another state; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
16 in this state or another state, ~~which~~ when the forfeiture has not been vacated. An offender is considered  
17 to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between  
18 the commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
19 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
20 there has not been an additional conviction for an offense under this section for a period of 5 years after  
21 a prior conviction under this section, then all records and data relating to the prior conviction are  
22 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
23 only be obtained by district court order upon good cause shown.

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

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

1 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
2 sentencing court.

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

6 (10) A court may not defer imposition of sentence under this section."  
7

8 **Section 4.** Section 61-8-722, MCA, is amended to read:

9 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
10 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
11 more than 10 days and shall be punished by a fine of ~~not less than \$100 or more than \$500.~~ No part of  
12 the fine may be suspended.

13 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
14 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
15 by a fine of ~~not less than \$300 or more than \$500~~ \$1,000. No part of the fine may be suspended.

16 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
17 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
18 and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. No part of the fine may be 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~~ \$1,500 or more than \$10,000. No part of the fine may be suspended. Except as provided  
4 in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence  
5 imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment  
6 sentence imposed for a fourth or subsequent offense may not be suspended.

7 (5) 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 (6) 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 public health and human services, which must include alcohol or drug treatment, or both, in accordance  
12 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
13 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
14 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
15 counselor shall notify the court of the failure.

16 (7) For the purpose of determining the number of convictions under this section, "conviction"  
17 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
18 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
19 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
20 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
21 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
22 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
23 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
24 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
25 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
26 court order upon good cause shown.

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

29 (9) The court may order that a term of imprisonment imposed under this section be served in  
30 another facility made available by the county and approved by the sentencing court. The defendant, if

1 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
2 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
3 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center  
4 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the  
5 sentencing court.

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

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

10

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0208, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill increasing fines for driving under the influence of alcohol or drugs or with an illegal alcohol or drug content in the blood.

ASSUMPTIONS:

Department of Corrections: (DOC)

1. Since October 1995, there have been 51 offenders convicted of a fourth offense DUI who have been committed to the DOC. There also have been 43 offenders who went directly to probation.
2. According to the Department of Justice, in 1996 there were 2,509 license revocations. For the same period there were 396 citations issued for driving with a revoked license. The percentage of people cited for driving with a revoked license out of the total population of revocations is 15.8%.
3. It is assumed that fourth DUI offenders were convicted as habitual traffic offenders; therefore, the period of revocation is 3 years. It is further assumed that these offenders will apply for a probationary license at 1 year of the revocation.
4. According to Montana Board of Crime Control figures, 56% of all DUI offenders complete the required treatment program. Therefore, 44% of the offenders will continue to have a revoked license.
5. The DOC estimates that the average sentence served by offenders committed to the department for fourth offense DUI is 2 years.
6. It is assumed that 4 of the 51 fourth offense DUI offenders released in 1998 will be subsequently charged with driving on a revoked license ( $51 \times .44 \times .158 = 4$ ). It is also assumed that 3 probationers will be convicted under this bill ( $43 \times .44 \times .158 = 3$ ). It is assumed all 7 offenders will be convicted for the maximum sentence of 10 years and will serve 34% of the time at Montana State Prison (MSP). It is assumed an additional 7 offenders will enter the prison in fiscal year 1999.
7. The average annual cost at the MSP, including outside medical costs, is \$16,200. Therefore, the annual cost to MSP is \$113,400 ( $7 \times \$16,200$ ).

Department of Justice: (DOJ)

8. Approximately 50% of DUI arrests result in court action. Roughly half of these result in a warrant for arrest being issued due to violation of a time/pay agreement or to individual failing to complete treatment. Of the total 6,697 DUI convictions in FY96, the Highway Patrol is responsible for 2,600. Of the 2,600, an estimated 650 ( $2,600 \times 50\% \times 50\%$ ) were incarcerated and unable to pay their fine. Thus, while the individual is incarcerated, the Highway Patrol would be responsible for paying the prisoner per diem costs to the county. In other words, the Patrol would actually be paying the individual's fine in the form of prisoner per diem costs.
9. Using the 650 incarcerations and the facts of the revenue assumptions shown in assumption #10, the DOJ estimates expanded incarceration costs of \$225,000 each year of the biennium.
10. To calculate the revenue impact of the bill, there were 6,697 DUI convictions in FY96. Of this total, the sampling percentage follows: 1st conviction - 65%, 2nd - 27%, 3rd - 6%, 4th or more - 2%. It was then assumed that the average increase in fines was: \$200 for 1st conviction, \$600 for 2nd, \$750 for 3rd, and \$500 for 4th or more. It is assumed that 50% of the fines go to the state general fund and 50% go to the county general fund.

(continued)

Dave Lewis 1-17-97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Rod Marshall 1-20-97  
ROD MARSHALL, PRIMARY SPONSOR DATE

Fiscal Note for HB0208, as introduced

**HB 208**

FISCAL IMPACT:

<u>Department of Corrections:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expenses	113,200	227,200
<u>Funding:</u>		
General Fund (01)	113,200	227,200
<u>Department of Justice:</u>		
<u>Expenditures:</u>		
H.P. Prisoner Costs	225,000	225,000
<u>Funding:</u>		
Highway State Special (02)	225,000	225,000
<u>Revenues:</u>		
Fines (01)	1,162,000	1,162,000
<u>Net Impact on Fund Balance: (revenue minus expense)</u>		
General fund (01)	1,048,800	934,800
Highway State Special (02)	(225,000)	(225,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties receive 50% of fines revenue. Thus they would receive \$1,162,000 additional revenue each year of the biennium.

## 1 HOUSE BILL NO. 208

2 INTRODUCED BY MARSHALL, MASOLO, WALTERS, TROPILA, DEVANEY, BOOKOUT, DENNY,  
3 BARNETT, BOHLINGER, ROSE, EWER, SMITH, HAYNE, HARPER, OHS, CLARK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING FINES FOR DRIVING UNDER THE INFLUENCE OF  
6 ALCOHOL OR DRUGS OR WITH AN ILLEGAL ALCOHOL OR DRUG CONTENT IN THE BLOOD; PROVIDING  
7 THAT NO PART OF THE FINE MAY BE SUSPENDED; INCREASING THE PERIOD OF REVOCATION OF A  
8 DRIVER'S LICENSE UPON A THIRD OR SUBSEQUENT OFFENSE; INCREASING THE PENALTY FOR DRIVING  
9 WHILE THE DRIVER'S LICENSE WAS SUSPENDED OR REVOKED FOR A FIRST OR SUBSEQUENT  
10 OFFENSE; AND AMENDING SECTIONS 61-5-208, 61-5-212, 61-8-714, AND 61-8-722, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 **Section 1.** Section 61-5-208, MCA, is amended to read:

15 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke  
16 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1  
17 year, except as otherwise permitted by law.

18 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been  
19 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the  
20 revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the  
21 revocation or suspension, the person may make application for a new license or endorsement as provided  
22 by law but the department may not issue a new license or endorsement unless and until it is satisfied, after  
23 investigation of the driving ability of the person and upon a showing by its records or other sufficient  
24 evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or  
25 forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a  
26 motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for  
27 the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the  
28 department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated,  
29 suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a  
30 report of a conviction or forfeiture of bail or collateral for a second, ~~third, or subsequent~~ offense within 5

1 years of the first offense, the department shall revoke the license or driving privilege of the person for a  
 2 period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol  
 3 information course, treatment, or both, as ordered by the sentencing court, the license revocation remains  
 4 in effect until the course, treatment, or both are completed. Upon receiving a report of a conviction or  
 5 forfeiture of bail or collateral for a third or subsequent offense within 5 years of the first offense, the  
 6 department shall revoke the license or driving privilege and may not issue the person a license or driving  
 7 privilege unless 5 years have passed since the person's last conviction.

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

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

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

16 **Section 2.** Section 61-5-212, MCA, is amended to read:

17 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**  
 18 **vehicle inoperable.** (1) (a) Except as provided in subsection (1)(b), a person who drives a motor vehicle  
 19 or commercial motor vehicle on any public highway of this state at a time when the person's privilege to  
 20 do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon  
 21 conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be  
 22 fined not more than \$500.

23 (b) If the license was suspended or revoked for a violation of 61-8-401 or 61-8-406, the court shall  
 24 impose any fine and incarceration period that can be imposed for the underlying offense.

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

28 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
 29 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
 30 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the

1 county sheriff of the convicted person's county of residence for a period of 30 days.

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

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

9 (6) A court may not suspend or defer imposition of penalties provided by this section."  
10

11 **Section 3.** Section 61-8-714, MCA, is amended to read:

12 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
13 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
14 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
15 fine of ~~not less than \$100 or more than \$500~~ NOT LESS THAN \$100 OR MORE THAN \$500. No part of the fine  
16 may be suspended. The imprisonment sentence may not be suspended unless the judge finds that the  
17 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

18 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
19 a fine of ~~not less than \$300 or more than \$500~~ \$1,000, no part of which may be suspended, and by  
20 imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more  
21 than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be  
22 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
23 defendant's physical or mental well-being.

24 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
25 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
26 consecutively, or more than 1 year and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. No  
27 part of the fine may be suspended. Except as provided in subsection (8), notwithstanding any provision to  
28 the contrary providing for suspension of execution of a sentence imposed under this subsection, the  
29 imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that  
30 occurred within 5 years of the first offense may not be suspended.

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

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

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

13 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
14 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
15 than ~~\$1,000~~ \$1,500 or more than \$10,000. No part of the fine may be suspended. Except as provided  
16 in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of  
17 a sentence imposed under this subsection, the imposition or execution of the first 6 months of the  
18 imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

19 (5) 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 public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
22 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made  
23 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
24 by the department of public health and human services. On conviction of a second or subsequent offense  
25 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
26 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
27 department of public health and human services, ~~which that~~ must include alcohol or drug treatment, or  
28 both. As long as the alcohol information course is approved as provided in this subsection and the  
29 treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
30 information course and treatment program of the defendant's choice. The treatment provided to the

1 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
2 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient  
3 placement rules adopted by the department of corrections. Upon determination, the court shall order the  
4 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided  
5 in this subsection, the court shall order an appropriate level of treatment based upon the determination of  
6 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by  
7 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or  
8 counselor may not require attendance at a self-help program other than at an "open meeting" as that term  
9 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each  
10 counselor providing education or treatment shall, at the commencement of the education or treatment,  
11 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
12 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
13 court of 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; a conviction for a violation of a similar statute  
16 in another state; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
17 in this state or another state, ~~which~~ when the forfeiture has not been vacated. An offender is considered  
18 to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between  
19 the commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
20 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
21 there has not been an additional conviction for an offense under this section for a period of 5 years after  
22 a prior conviction under this section, then all records and data relating to the prior conviction are  
23 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
24 only be obtained by district court order upon good cause shown.

25 (7) 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 (8) 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 (9) 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 (10) A court may not defer imposition of sentence under this section."  
 8

9 **Section 4.** Section 61-8-722, MCA, is amended to read:

10 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
 11 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
 12 more than 10 days and shall be punished by a fine of ~~not less than \$100 or more than~~ NOT LESS THAN  
 13 \$100 OR MORE THAN \$500. No part of the fine may be suspended.

14 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
 15 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
 16 by a fine of ~~not less than \$300 or more than \$500~~ \$1,000. No part of the fine may be suspended.

17 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
 18 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
 19 and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. No part of the fine may be suspended.

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

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

29 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
 30 interest if the person did not know and could not have reasonably known of the unlawful possession, use,



1 or other act on which the forfeiture is sought.

2 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
3 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
4 than ~~\$1,000~~ \$1,500 or more than \$10,000. No part of the fine may be suspended. Except as provided  
5 in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence  
6 imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment  
7 sentence imposed for a fourth or subsequent offense may not be suspended.

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

10 (6) In addition to the punishment provided in this section, regardless of disposition, the defendant  
11 shall complete an alcohol information course at an alcohol treatment program approved by the department  
12 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
13 with the provisions of 61-8-714. 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.

17 (7) 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, unless the offense is the offender's fourth or subsequent  
23 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
24 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
25 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
26 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
27 court order upon good cause shown.

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

30 (9) The court may order that a term of imprisonment imposed under this section be served in

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

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

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

11

-END-

## 1 HOUSE BILL NO. 208

2 INTRODUCED BY MARSHALL, MASOLO, WALTERS, TROPILA, DEVANEY, BOOKOUT, DENNY,  
3 BARNETT, BOHLINGER, ROSE, EWER, SMITH, HAYNE, HARPER, OHS, CLARK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING FINES FOR DRIVING UNDER THE INFLUENCE OF  
6 ALCOHOL OR DRUGS OR WITH AN ILLEGAL ALCOHOL OR DRUG CONTENT IN THE BLOOD; PROVIDING  
7 THAT NO PART OF THE FINE MAY BE SUSPENDED; PROVIDING THAT A PERSON UNABLE TO PAY A  
8 FINE MAY BE SENTENCED TO COMMUNITY SERVICE; INCREASING THE PERIOD OF REVOCATION OF  
9 A DRIVER'S LICENSE UPON A THIRD OR SUBSEQUENT OFFENSE; INCREASING THE PENALTY FOR  
10 DRIVING WHILE THE DRIVER'S LICENSE WAS SUSPENDED OR REVOKED FOR A FIRST OR SUBSEQUENT  
11 OFFENSE; AND AMENDING SECTIONS 61-5-208, 61-5-212, 61-8-714, AND 61-8-722, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 61-5-208, MCA, is amended to read:

16 "61-5-208. **Period of suspension or revocation.** (1) The department may not suspend or revoke  
17 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1  
18 year, except as otherwise permitted by law.

19 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been  
20 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the  
21 revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the  
22 revocation or suspension, the person may make application for a new license or endorsement as provided  
23 by law but the department may not issue a new license or endorsement unless and until it is satisfied, after  
24 investigation of the driving ability of the person and upon a showing by its records or other sufficient  
25 evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or  
26 forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a  
27 motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for  
28 the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the  
29 department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated,  
30 suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a

1 report of a conviction or forfeiture of bail or collateral for a second, ~~third, or subsequent~~ offense within 5  
2 years of the first offense, the department shall revoke the license or driving privilege of the person for a  
3 period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol  
4 information course, treatment, or both, as ordered by the sentencing court, the license revocation remains  
5 in effect until the course, treatment, or both are completed. Upon receiving a report of a conviction or  
6 forfeiture of bail or collateral for a third or subsequent offense within 5 years of the first offense, the  
7 department shall revoke the license or driving privilege and may not issue the person a license or driving  
8 privilege unless 5 years have passed since the person's last conviction.

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

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

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

17 **Section 2.** Section 61-5-212, MCA, is amended to read:

18 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**  
19 **vehicle inoperable. (1) (a) Except as provided in subsection (1)(b), a person who drives a motor vehicle**  
20 **or commercial motor vehicle on any public highway of this state at a time when the person's privilege to**  
21 **do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon**  
22 **conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be**  
23 **fined not more than \$500.**

24 **(b) If the license was suspended or revoked for a violation of 61-8-401 or 61-8-406, the court shall**  
25 **impose any fine and incarceration period that can be imposed for the underlying offense. IF THE COURT**  
26 **DETERMINES THAT THE PERSON IS UNABLE TO PAY THE FINE, THE COURT MAY SENTENCE THE**  
27 **PERSON TO SUPERVISED COMMUNITY SERVICE.**

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

1 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
 2 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406,  
 3 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the  
 4 county sheriff of the convicted person's county of residence for a period of 30 days.

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

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

12 (6) A court may not suspend or defer imposition of penalties provided by this section."  
 13

14 **Section 3.** Section 61-8-714, MCA, is amended to read:

15 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
 16 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
 17 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
 18 fine of ~~not less than \$100 or more than \$500~~ **NOT LESS THAN \$100 OR MORE THAN \$500. No EXCEPT UPON**  
 19 **WRITTEN FINDINGS OF EXTENUATING AND MITIGATING CIRCUMSTANCES BY THE JUDGE, NO part of**  
 20 **the fine may be suspended.** The imprisonment sentence may not be suspended unless the judge finds that  
 21 the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental  
 22 well-being.

23 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
 24 a fine of ~~not less than \$300 or more than \$500~~ **\$1,000, no part of which may be suspended EXCEPT**  
 25 **UPON WRITTEN FINDINGS OF EXTENUATING AND MITIGATING CIRCUMSTANCES BY THE JUDGE,** and  
 26 by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more  
 27 than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be  
 28 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
 29 defendant's physical or mental well-being.

30 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished

1 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
2 consecutively, or more than 1 year and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. ~~No~~  
3 EXCEPT UPON WRITTEN FINDINGS OF EXTENUATING AND MITIGATING CIRCUMSTANCES BY THE  
4 JUDGE, NO part of the fine may be suspended. Except as provided in subsection (8), notwithstanding any  
5 provision to the contrary providing for suspension of execution of a sentence imposed under this  
6 subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a  
7 third offense that occurred within 5 years of the first offense may not be suspended.

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

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

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

20 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
21 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
22 than ~~\$1,000~~ \$1,500 or more than \$10,000. ~~No~~ EXCEPT UPON WRITTEN FINDINGS OF EXTENUATING  
23 AND MITIGATING CIRCUMSTANCES BY THE JUDGE, NO part of the fine may be suspended. Except as  
24 provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of  
25 execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months  
26 of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

27 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
28 shall complete an alcohol information course at an alcohol treatment program approved by the department  
29 of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
30 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made

1 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
2 by the department of public health and human services. On conviction of a second or subsequent offense  
3 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
4 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
5 department of public health and human services, ~~which that~~ must include alcohol or drug treatment, or  
6 both. As long as the alcohol information course is approved as provided in this subsection and the  
7 treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
8 information course and treatment program of the defendant's choice. The treatment provided to the  
9 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
10 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient  
11 placement rules adopted by the department of corrections. Upon determination, the court shall order the  
12 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided  
13 in this subsection, the court shall order an appropriate level of treatment based upon the determination of  
14 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by  
15 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or  
16 counselor may not require attendance at a self-help program other than at an "open meeting" as that term  
17 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. 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 (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; a 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~~ when the forfeiture has not been vacated. An offender is considered  
26 to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between  
27 the 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 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 (7) For the purpose of calculating subsequent convictions under this section, a conviction for a  
4 violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

5 (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 (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 (11) IF THE COURT DETERMINES THAT A PERSON IS UNABLE TO PAY A FINE IMPOSED  
17 PURSUANT TO THIS SECTION, THE COURT MAY SENTENCE THE PERSON TO SUPERVISED COMMUNITY  
18 SERVICE."

19

20 **Section 4.** Section 61-8-722, MCA, is amended to read:

21 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
22 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
23 more than 10 days and shall be punished by a fine of ~~not less than \$100 or more than~~ NOT LESS THAN  
24 \$100 OR MORE THAN \$500. No EXCEPT UPON WRITTEN FINDINGS OF EXTENUATING AND MITIGATING  
25 CIRCUMSTANCES BY THE JUDGE, NO part of the fine may be suspended.

26 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
27 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
28 by a fine of ~~not less than \$300 or more than \$500~~ \$1,000. No EXCEPT UPON WRITTEN FINDINGS OF  
29 EXTENUATING AND MITIGATING CIRCUMSTANCES BY THE JUDGE, NO part of the fine may be  
30 suspended.



1 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
2 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
3 and by a fine of ~~not less than \$500 or more than \$1,000~~ \$1,500. No EXCEPT UPON WRITTEN FINDINGS  
4 OF EXTENUATING AND MITIGATING CIRCUMSTANCES BY THE JUDGE, NO part of the fine may be  
5 suspended.

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

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

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

18 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
19 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
20 than ~~\$1,000~~ \$1,500 or more than \$10,000. No EXCEPT UPON WRITTEN FINDINGS OF EXTENUATING  
21 AND MITIGATING CIRCUMSTANCES BY THE JUDGE, NO part of the fine may be suspended. Except as  
22 provided in subsection (9), notwithstanding any other provision providing for suspension of execution of  
23 a sentence imposed under this subsection, the imposition or execution of the first 6 months of the  
24 imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

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

27 (6) In addition to the punishment provided in this section, regardless of disposition, the defendant  
28 shall complete an alcohol information course at an alcohol treatment program approved by the department  
29 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
30 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the

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

4 (7) For the purpose of determining the number of convictions under this section, "conviction"  
5 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
6 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
7 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
8 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
9 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
10 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
11 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
12 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
13 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
14 court order upon good cause shown.

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

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

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

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

28 (12) IF THE COURT DETERMINES THAT A PERSON IS UNABLE TO PAY A FINE IMPOSED  
29 PURSUANT TO THIS SECTION, THE COURT MAY SENTENCE THE PERSON TO SUPERVISED COMMUNITY  
30 SERVICE."

-END-

## 1 HOUSE BILL NO. 208

2 INTRODUCED BY MARSHALL, MASOLO, WALTERS, TROPILA, DEVANEY, BOOKOUT, DENNY,  
3 BARNETT, BOHLINGER, ROSE, EWER, SMITH, HAYNE, HARPER, OHS, CLARK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING FINES FOR DRIVING UNDER THE INFLUENCE OF  
6 ALCOHOL OR DRUGS OR WITH AN ILLEGAL ALCOHOL OR DRUG CONTENT IN THE BLOOD; PROVIDING  
7 THAT NO PART OF THE FINE MAY BE SUSPENDED; PROVIDING THAT A PERSON UNABLE TO PAY A  
8 FINE MAY BE SENTENCED TO COMMUNITY SERVICE; INCREASING THE PERIOD OF REVOCATION OF  
9 A DRIVER'S LICENSE UPON A THIRD OR SUBSEQUENT OFFENSE; INCREASING THE PENALTY FOR  
10 DRIVING WHILE THE DRIVER'S LICENSE WAS SUSPENDED OR REVOKED FOR A FIRST OR SUBSEQUENT  
11 OFFENSE; AND AMENDING SECTIONS 61-5-208, 61-5-212, 61-8-714, AND 61-8-722, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0208, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act increasing fines for driving under the influence of alcohol or drugs or with an illegal alcohol or drug content in the blood; providing that no part of the fine may be suspended; increasing the period of revocation of a driver's license upon a third or subsequent offense; increasing the penalty for driving while the driver's license was suspended or revoked for a first or subsequent offense.

ASSUMPTIONS:

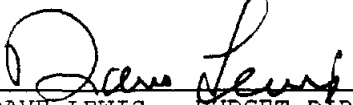
**Department of Corrections (DOC):**

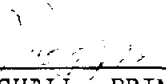
1. Changes in this bill to the fines imposed for driving under the influence of alcohol, drugs or illegal alcohol or drug content in the blood does not impact DOC.
2. Since October 1995, there have been 124 offenders convicted of a fourth offense DUI which have been committed to the DOC. It is estimated that 9 of these offenders will be convicted of driving with a revoked license (124 x .44 x .158).
3. There have also been 8 offenders who received suspended sentences, county jail time or home arrest. It is assumed that one of these offenders will be convicted of driving with a revoked license (8 x .158)
4. According to the Motor Vehicle Division of the Department of Justice, in 1996 there were 2,509 license revocations. For the same period there were 396 citations issued for driving with a revoked license. The percentage of people cited for driving with a revoked license out of the total population of revocations is 15.8%.
5. It is assumed that fourth DUI offenders were convicted as habitual traffic offenders; therefore, the period of revocation is 3 years. It is further assumed that these offenders will apply for a probationary license at 1 year of the revocation.
6. According to Montana Board of Crime Control (MBCC) figures, 56% of all DUI offenders complete the required treatment program. Therefore, 44% of the offenders will continue to have a revoked license.
7. The DOC estimates that the average sentence served by offenders committed to the DOC for fourth offense DUI is 2 years.
8. It is assumed all 10 offenders will be convicted for the maximum sentence of 10 years, will serve 34% of the time at Montana State Prison (MSP), and will enter the prison in fiscal year 1999.
9. The average daily cost at MSP including outside medical costs is \$44.47.
10. The effective date of this bill is assumed to be 10/1/97. Because of the length of time between commission of the offense and sentencing, there will be no effect of this legislation in fiscal year 1998.

**Department of Justice (DOJ):**

11. Approximately 50% of DUI arrests result in court action. Roughly half of these result in a warrant for arrest being issued due to violation of a time/pay agreement or to individual failing to complete treatment. Of the total 6,697 DUI convictions in fiscal 1996, the Montana Highway Patrol (MHP) is responsible for 2,600. Of the 2,600, an estimated 650 (2,600 x 50% x 50%) were incarcerated and unable to pay their fine. This results in the MHP being responsible for paying the individual's fine in the form of prisoner per diem costs.
12. Using the 650 incarcerations and the revenue assumptions shown in assumption 13, the DOJ estimates expanded incarceration costs of \$225,000 each year of the biennium.
13. To calculate the revenue impact of the bill, there were 6,697 DUI convictions in fiscal 1996. Of the total, the sampling percentage follows: first conviction 65%, second is 27%, third is 6%, fourth or more is 2%. It was also assumed the average increase in fines was: \$200 for first conviction, \$600 for second, \$750 for third, and \$500 for fourth or more. It is assumed that 50% of the fines go to the state general fund and 50% to the county general fund.

(Continued)

 3.14.97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

 3-15-97  
ROD MARSHALL, PRIMARY SPONSOR DATE

Fiscal Note for HB0208, third reading

HB 208 #2

FISCAL IMPACT:

<u>Department of Corrections:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Additional Care and Custody	0	162,316
 <u>Funding:</u>		
General Fund (01)	0	162,316
 <u>Department of Justice:</u>		
<u>Expenditures:</u>		
H.P. Prisoner Costs	168,750	225,000
 <u>Funding:</u>		
State Special Revenue (02)	168,750	225,000
 <u>Revenues:</u>		
Fines (01)	871,500	1,162,000
 <u>Net Impact on Fund Balance: (revenue minus expense)</u>		
General Fund (01)	871,500	999,684
Highway State Special (02)	(168,750)	(225,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The Department of Corrections estimates that when the felony fourth offense DUI law is fully implemented there could be 400 convictions per year. This would increase the fiscal impact of this bill in future years.

There would be additional costs to the Department of Corrections in subsequent years for continued supervision of these offenders when they enter pre-release or parole services.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties receive 50% of fines revenue. Thus they would receive about \$871,500 for three-quarters of FY98 and \$1,162,000 for all of FY99.