

House BILL NO. 592

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INTRODUCED BY *Krenzler* *Doyle* *Seating*

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PLACEMENT OF A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL IN A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY; ALLOWING A CHEMICAL DEPENDENCY ASSESSMENT TO BE PERFORMED ON A PERSON WHO IS UNDER ARREST AND IN JAIL FOR INTOXICATION OR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 53-24-107 AND 61-8-722, MCA."

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

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public ~~commits no~~ does not commit a criminal offense solely by reason of being in ~~such~~ that condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by 53-24-303.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to ~~himself~~ self or others. A certified chemical dependency counselor may administer a chemical dependency evaluation to a person who appears to be intoxicated or incapacitated by alcohol or has been arrested and detained in jail for driving under the influence of drugs or alcohol, as provided in 61-8-401 or 61-8-406, while the person is detained in jail. The information obtained from the assessment may be used in the determination regarding alcohol or drug treatment as provided in 61-8-714. The cost of the chemical dependency assessment may be paid using funds generated by the taxation on alcoholic beverages as provided in 53-24-108.

(3) A peace officer, acting within the scope of ~~his~~ the peace officer's authority under this chapter, ~~shall is~~ is not be personally liable for ~~his~~ the peace officer's actions."

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



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

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

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

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

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

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

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

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

30           (6) In addition to the punishment provided in this section, regardless of disposition, the defendant

1 shall complete an alcohol information course at an alcohol treatment program approved by the department  
2 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
3 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
4 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
5 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
6 counselor shall notify the court of the failure.

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

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

20 (9) The court may order that a term of imprisonment imposed under this section be served in  
21 another facility made available by the county and approved by the sentencing court. The defendant, if  
22 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions  
23 on the defendant's ability to leave the premises of the facility and require that the defendant follow the  
24 rules of that facility. The facility may be, but is not required to be;

25 (a) a community-based prerelease center as provided for in 53-1-203. The prerelease center may  
26 accept or reject a defendant referred by the sentencing court.

27 (b) an approved public or private treatment facility providing inpatient treatment. A term of  
28 imprisonment served in a treatment facility must include a condition of probation that includes aftercare.

29 (10) 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 (11) A court may not defer imposition of sentence under this section."

3 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0592, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act allowing placement of a person convicted of driving under the influence of alcohol in a state-approved public or private treatment facility; allowing a chemical dependency assessment to be performed on a person who is under arrest and in jail for intoxication or driving under the influence of alcohol or drugs.

ASSUMPTIONS:


1. The Department of Corrections (DOC) assumes that costs associated with chemical dependency evaluations for persons detained in jail for appearing intoxicated or incapacitated by alcohol or for driving under the influence of drugs or alcohol would be paid using funds generated by the taxation on alcoholic beverages.
2. The DOC assumes that it would not be responsible for costs associated with inpatient treatment in public or private treatment facilities.
3. This bill stipulates that the Court may order a term of imprisonment be served in a public or private treatment facility "made available by the county". Because of this stipulation the DOC estimates there will not be any savings generated by this bill.
4. There is no fiscal impact to the Department of Public Health and Human Services.
5. There is no fiscal impact to the Department of Justice.

FISCAL IMPACT:

Based on the above assumptions, this bill would have no fiscal impact.

TECHNICAL NOTES:

The bill is unclear as to who is responsible for the costs of inpatient treatment in public or private treatment facilities.

 2-25-97

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

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BILLIE KRENZLER, PRIMARY SPONSOR      DATE

Fiscal Note for HB0592, as introduced

HB 592