

SB BILL NO. 210

INTRODUCED BY

*Cole*

*Philip D. Hartwig*  
*State Representative*  
*Bozeman*

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT UNLAWFUL FOR A DRIVER TO REFUSE TO SUBMIT TO BLOOD, BREATH, OR URINE TESTING; AND AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-714, 61-8-722, 61-11-203, AND 61-13-104, MCA."

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

NEW SECTION. **Section 1. Refusal to submit to chemical test -- misdemeanor -- multiple convictions prohibited.** (1) It is unlawful and punishable, as provided in 61-8-714, for a person to refuse to submit to a chemical test of the person's blood, breath, or urine under 61-8-402 or 61-8-806.

(2) A person may be charged and prosecuted for a violation of 61-8-401 and this section or of 61-8-406 as a result of the same transaction or incident. However, the person may be convicted and sentenced only for a violation of 61-8-401, 61-8-406, or this section, whichever is applicable.

(3) Absolute liability as provided in 45-2-104 must be imposed as a violation of this section.

**Section 2.** Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

- (1) negligent homicide resulting from the operation of a motor vehicle;
- (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, ~~or~~ operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more, or refusal to submit to a chemical test as required by 61-8-402 or 61-8-806;
- (3) any felony in the commission of which a motor vehicle is used;
- (4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

1 (5) perjury or the making of a false affidavit or statement under oath to the department under this  
2 chapter or under any other law relating to the ownership or operation of motor vehicles;

3 (6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed  
4 within a period of 12 months; or

5 (7) negligent vehicular assault as defined in 45-5-205."  
6

7 **Section 3.** Section 61-5-208, MCA, is amended to read:

8 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke  
9 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1  
10 year, except as otherwise permitted by law.

11 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been  
12 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the  
13 revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the  
14 revocation or suspension, the person may make application for a new license or endorsement as provided  
15 by law but the department may not issue a new license or endorsement unless ~~and until~~ it is satisfied, after  
16 investigation of the driving ability of the person and upon a showing by its records or other sufficient  
17 evidence, that the person is eligible to be licensed to drive in Montana.

18 (3) When ~~any a~~ a person is convicted or forfeits bail or collateral not vacated for the offense of  
19 operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any  
20 drug or a combination of alcohol or drugs ~~or for~~, the offense of operation of a motor vehicle by a person  
21 with alcohol concentration of 0.10 or more, or the offense of refusing to submit to a chemical test as  
22 provided in [section 1], the department shall, upon receiving a report of conviction or forfeiture of bail or  
23 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6  
24 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or  
25 subsequent offense within 5 years of the first offense, the department shall revoke the license or driving  
26 privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has  
27 not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the  
28 license revocation remains in effect until the course, treatment, or both, are completed. A period of  
29 suspension or revocation arising as a result of a conviction or forfeiture of bail or collateral for the offense  
30 of refusing to submit to a chemical test must be in addition to, and may not run concurrent with, any

1 suspension or revocation imposed under 61-8-402 or 61-8-806.

2 ~~(3)~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in  
3 subsection ~~(2)~~ (3).

4 ~~(4)~~(5) The period of revocation for ~~any~~ a person convicted of any offense ~~which~~ that makes  
5 mandatory the revocation of the driver's license commences from the date of conviction or forfeiture of bail.

6 ~~(5)~~(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial  
7 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and  
8 subsection ~~(2)~~ (3) of this section."

9

10 **Section 4.** Section 61-8-714, MCA, is amended to read:

11 **"61-8-714. Penalty for -- driving under influence of alcohol or drugs -- refusal to take blood,**

12 **breath, or urine test.** (1) Except as provided in subsections (8) and (9), a person convicted of a violation  
13 of 61-8-401 or [section 1] shall be punished by imprisonment in the county jail for not less than 24  
14 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than  
15 \$500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the  
16 imprisonment sentence 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 and by imprisonment for not less than 7 days, at least 48  
19 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
20 (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
21 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

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

29 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
30 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be

1 seized and subjected to the procedure provided under 61-8-421.

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

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

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

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

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

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

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

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

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

4 (10) A court may not defer imposition of sentence under this section."  
5

6 **Section 5.** Section 61-8-722, MCA, is amended to read:

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

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

13 (3) (a) Except as provided in subsection (9), on a third 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 6 months  
15 and by a fine of not less than \$500 or more than \$1,000.

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

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

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

28 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be  
29 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less  
30 than \$1,000 or more than \$10,000. Except as provided in subsection (9), notwithstanding any other

1 provision providing for suspension of execution of a sentence imposed under this subsection, the imposition  
2 or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense  
3 may not be suspended.

4 (5) 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 (6) 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 public health and human services, which must include alcohol or drug treatment, or both, in accordance  
9 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
10 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
11 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
12 counselor shall notify the court of the failure.

13 (7) 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, ~~or conviction for a violation of~~ a similar  
15 statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance  
16 in court in this state or another state, which forfeiture has not been vacated. An offender is considered to  
17 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 45-5-103, and public access to the information may  
23 ~~only~~ be obtained only by district court order upon good cause shown.

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

26 (9) 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 (10) 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 (11) A court may not defer imposition of sentence under this section."  
7

8 **Section 6.** Section 61-11-203, MCA, is amended to read:

9 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

10 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or  
11 a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having  
12 committed any offense relating to the use or operation of a motor vehicle ~~which~~ that is prohibited by law,  
13 ordinance, or administrative order.

14 (2) "Habitual traffic offender" means ~~any~~ a person who within a 3-year period accumulates 30 or  
15 more conviction points according to the schedule specified in this subsection:

16 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

17 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,  
18 or negligent vehicular assault, 12 points;

19 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in  
20 the commission of which a motor vehicle is used, 12 points;

21 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or  
22 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

23 (e) refusal to submit to a chemical test as required by 61-8-402 or 61-8-806, 10 points;

24 ~~(e)~~(f) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

25 ~~(f)~~(g) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to  
26 any person to stop at the scene of the accident and give the required information and assistance, as defined  
27 in 61-7-105, 8 points;

28 ~~(g)~~(h) willful failure of the driver involved in an accident resulting in property damage of \$250 to  
29 stop at the scene of the accident and give the required information or failure to otherwise report an accident  
30 in violation of the law, 4 points;





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0210, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act making it unlawful for a driver to refuse to submit to blood, breath, or urine testing.

ASSUMPTIONS:

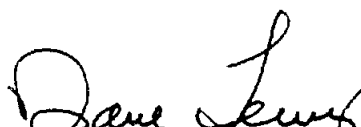
**Montana Highway Patrol:**

1. The Montana Highway Patrol (MHP) would incur additional prisoner per diem costs for violations of this statute.
2. State and local governments would receive additional revenues from penalties related to convictions under this statute.
3. Penalties of 24 hours jail time and a \$320 fine would be imposed for a first conviction of this statute. A judge could impose a jail term of 24 hours to 60 days and a fine of \$100 to \$500 for a first offense.
4. Of all DUI arrests made by the MHP, 36.6% are for second or subsequent DUI related offenses.
5. Based on 644 DUI refusals experienced by the MHP in 1996, and an 80% conviction rate, 47 or 36.6% of the remaining 20% DUI refusals would be convicted for a second or subsequent offense. ( $644 \times 80\% = 515$  DUI convictions,  $644 - 515 = 129 \times 36.6\% = 47$  second or subsequent offense).
6. The 47 second or subsequent convictions would receive the minimum jail term of 24 hours and the maximum fine of \$320. The current negotiated prisoner per diem cost is \$43.21 per day for MHP prisoners. Increased costs per year for MHP prisoner per diem would be \$2,031 per year. ( $47 \times \$43.21 = \$2,031$ ) Revenues from fines would be \$15,040 each year. ( $47 \times \$320 = \$15,040$ ) Revenues would be deposited 50% to the state general fund and 50% to local governments.

**Motor Vehicle Division:**

7. The effective date of this bill would be October 1, 1997; therefore, the Department of Justice, Motor Vehicle Division increased work load and personal services and operating costs in fiscal 1998 would be approximately 75% of an annualized year.
8. During calendar 1996 the Department of Justice processed a total of 2,227 implied consent refusal driver license suspensions and revocations. Assuming a 60% conviction rate under the provisions of this bill, the number of driver license revocations the department would be required to process would be approximately 1,002 in fiscal 1998 ( $2,227 \times 60\% = 1,336 \times 75\% = 1,002$ ) and approximately 1,336 ( $2,227 \times 60\% = 1,336$ ) in fiscal 1999.
9. The department's work load would increase approximately 334 hours in fiscal 1998 and 445 hours in fiscal 1999 to implement the provisions of this bill. (20 minutes/revocation  $\times$  1,336 revocations/year = 445 hours/year or approximately a 0.25 FTE) At grade 8 level (\$9.85 per hour) this would result in an increase to the department's personal service costs of \$3,290 in fiscal 1998 ( $334 \text{ hours} \times \$9.85/\text{hr} = \$3,290$ ) and \$4,383 in fiscal 1999 ( $445 \times \$9.85/\text{hr} = \$4,383$ ).
10. Operating costs would be approximately \$3,255 in fiscal 1998 and \$4,370 in fiscal 1999. Annualized operating costs are approximately \$660 for computer access, printing forms and pamphlets \$2,980, postage \$400, and telephone communications \$300.
11. One-time operating expenses would include \$800 for approximately 40 hours of computer programming to change the existing driver control system and \$200 to install additional mainframe and telephone access lines.

(Continued)

 1-30-97  
DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

 1/31/97  
MACK COLE, PRIMARY SPONSOR DATE

Fiscal Note for SB0210, as introduced

**SB 210**

(continued)

12. To calculate the fines revenue impact of the bill, assume the sampling percentage applicable to DUI convictions would apply to the refusals to submit to testing -- first conviction 65 percent, second - 27 percent, third - 6 percent, fourth or more - 2 percent. It was then assumed that the average increase in fines was: \$250 for first conviction, \$400 for second, \$750 for third, and \$1,000 for fourth or more. It is assumed that 50 percent of the fines go to the state general fund and 50 percent go to the county general fund.
13. To calculate the reinstatement fee revenue impact of the bill, assume that a similar 56 percent of all offenders complete the required treatment program according to the Montana Board of Crime Control figures for DUI. It is further assumed that 44 percent of the offenders would continue to have a suspended or revoked license. According to 61-2-107, MCA, 100 percent of the reinstatement fees are deposited to the county general fund and one-half of the fees must be appropriated and used for funding county drinking and driving prevention programs.

**Department of Corrections:**

14. Assuming that SB 210 does not cause any increase in DUI convictions, there would be no fiscal impact to the Department of Corrections.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
<b>Highway Patrol Division:</b>		
Operating Expenses	2,031	2,031
<u>Funding:</u>		
General Fund (01)	2,031	2,031
<b>Motor Vehicle Division:</b>		
FTE	0.19	0.25
Personal Services	3,290	4,383
Operating Expenses	<u>4,255</u>	<u>4,340</u>
Total	7,545	8,723
<u>Funding:</u>		
General Fund (01)	7,545	8,723
<u>Revenue:</u>		
<b>Highway Patrol Division:</b>		
State General Fund (01)	7,520	7,520
Local Government General Fund	7,520	7,520
<b>Motor Vehicle Division:</b>		
State General Fund (01)	168,086	224,144
County General Fund	224,198	298,960
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
General Fund (01)	166,030	220,910

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would receive increased revenues from fines and reinstatement fees. Counties receive 100% of reinstatement fees. Counties would incur similar increased prisoner per diem costs.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

SB 210 would result in some cost savings in time committed to preparing for and prosecuting DUI offenses. Savings are possible in law enforcement officer time, county prosecutor time, and court time due to decreased numbers and time involved in trials.