

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY Senate BILL NO. 222
Mr. Steve Clark

A BILL FOR AN ACT ENTITLED: "AN ACT CRIMINALIZING THE INGESTION OF A DANGEROUS DRUG; ELIMINATING THE REQUIREMENT THAT A DRIVER MAY NOT BE TESTED FOR DRUGS UNLESS THE DRIVER HAS PASSED AN ALCOHOL TEST; ELIMINATING A PROVISION THAT FAILURE OF A TEST IS NOT ALONE SUFFICIENT TO CONVICT A PERSON OF DRIVING UNDER THE INFLUENCE; CREATING A PER SE OFFENSE OF DRIVING WITH ANY AMOUNT OF AN ILLEGALLY POSSESSED DANGEROUS DRUG IN THE BODY; AND AMENDING SECTIONS 45-9-102, 61-5-205, 61-5-208, 61-8-402, 61-8-404, 61-8-406, AND 61-11-203, MCA."

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

Section 1. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession or ingestion of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if ~~he~~ the person purposely or knowingly possesses or inhales, injects, swallows, or otherwise ingests any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000, ~~or~~ imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years, ~~or both such fine and imprisonment.~~

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500, ~~or~~ by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined

1 not more than \$50,000, except as provided in 46-18-222.

2 (5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in
3 subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years, ~~or~~ be
4 fined an amount not to exceed \$50,000, or both.

5 (6) A person of the age of 21 years or under convicted of a first violation under this section is
6 presumed to be entitled to a deferred imposition of sentence of imprisonment.

7 (7) Ultimate users and practitioners and agents under their supervision acting in the course of a
8 professional practice, as defined by 50-32-101, are exempt from this section."

9

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

11 **"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper
12 authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record
13 of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the
14 conviction or forfeiture has become final:

15 (1) negligent homicide resulting from the operation of a motor vehicle;

16 (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of
17 alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with ~~a blood~~
18 an alcohol concentration of 0.10 or more or with any amount of an illegally possessed dangerous drug in
19 the person's body;

20 (3) any felony in the commission of which a motor vehicle is used;

21 (4) failure to stop and render aid as required under the laws of this state in the event of a motor
22 vehicle accident resulting in the death or personal injury of another;

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

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

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

28

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

30 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke

1 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1
2 year, except as otherwise permitted by law.

3 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been
4 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the
5 revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the
6 revocation or suspension, the person may make application for a new license or endorsement as provided
7 by law but the department may not issue a new license or endorsement unless ~~and until~~ it is satisfied, after
8 investigation of the driving ability of the person and upon a showing by its records or other sufficient
9 evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or
10 forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a
11 motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for
12 the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more or with
13 any amount of an illegally possessed dangerous drug in the person's body, the department shall, upon
14 receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license
15 or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or
16 forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense,
17 the department shall revoke the license or driving privilege of the person for a period of 1 year, ~~except that~~
18 if if the 1-year period passes and the person has not completed an alcohol information course, treatment,
19 or both, as ordered by the sentencing court, the license revocation remains in effect until the course,
20 treatment, or both are completed.

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

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

25 (5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
26 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and
27 subsection (2) of this section."
28

29 **Section 4.** Section 61-8-402, MCA, is amended to read:

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

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

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

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

22 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
23 a temporary driving permit, which is valid for 5 days following the date of issuance, and shall provide the
24 driver with written notice of the license suspension or revocation and the right to a hearing provided in
25 61-8-403.

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

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

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

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

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

5 (7) The department may recognize the seizure of a license of a tribal member by a peace officer
6 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
7 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
8 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
9 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
10 Action by the department under this subsection is not reviewable under 61-8-403.

11 (8) All suspensions are subject to review as provided in this part."
12

13 **Section 5.** Section 61-8-404, MCA, is amended to read:

14 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of any criminal
15 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
16 of 61-8-401 or 61-8-406:

17 (a) evidence of any measured amount or detected presence of alcohol or drugs in the person at the
18 time of the act alleged, as shown by an analysis of the person's blood, breath, or urine, is admissible. A
19 positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at
20 the time that the person was in control of a motor vehicle. ~~A person may not be convicted of a violation~~
21 ~~of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent~~
22 ~~evidence exists that tends to establish that the person was under the influence of a drug or drugs while~~
23 ~~driving or in actual physical control of a motor vehicle within this state. However, an inference may be~~
24 drawn from a positive test result that the person was in control of a motor vehicle while a dangerous drug
25 was in the person's body.

26 (b) a report of the facts and results of any test or tests of a person's blood, breath, or urine
27 administered under 61-8-402 is admissible in evidence if:

28 (i) the breath test was performed by a person certified by the forensic sciences division of the
29 department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis
30 was done in a laboratory operated by the department or by any other laboratory or facility certified or

1 exempt from certification under the rules of the department; and

2 (ii) the test was on a blood sample, the person withdrawing the blood was competent to do so
3 under 61-8-405(1).

4 (2) If the person under arrest refused to submit to the test or tests as provided in this section,
5 proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been
6 committed while the person was driving or in actual physical control of a vehicle upon the ways of this
7 state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

8 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
9 on the question of whether the person was under the influence of alcohol, drugs, or a combination of the
10 two."

11

12 **Section 6.** Section 61-8-406, MCA, is amended to read:

13 "61-8-406. **Operation of vehicle by a person with alcohol concentration of 0.10 or more --**
14 **dangerous drugs.** (1) It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person
15 to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while;

16 (a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or
17 urine, is 0.10 or more; or

18 (b) there is any amount of a dangerous drug, as defined in 50-32-101, except a dangerous drug
19 that the person legally possessed and used, in the person's body, as shown by analysis of the person's
20 blood or urine.

21 (2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."
22

23 **Section 7.** Section 61-11-203, MCA, is amended to read:

24 "61-11-203. **Definitions.** As used in this part, the following definitions apply:

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

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

- 1 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
- 2 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,
3 or negligent vehicular assault, 12 points;
- 4 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in
5 the commission of which a motor vehicle is used, 12 points;
- 6 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or
7 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more or with any amount
8 of an illegally possessed dangerous drug in the person's body, 10 points;
- 9 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;
- 10 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
11 person to stop at the scene of the accident and give the required information and assistance, as defined
12 in 61-7-105, 8 points;
- 13 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop
14 at the scene of the accident and give the required information or failure to otherwise report an accident in
15 violation of the law, 4 points;
- 16 (h) reckless driving, 5 points;
- 17 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
- 18 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302,
19 5 points;
- 20 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (2)(k) does not
21 apply to operating a motor vehicle within a period of 180 days from the date on which the license expired);
- 22 (l) speeding, 3 points;
- 23 (m) all other moving violations, 2 points.
- 24 (3) There may not be multiple application of cumulative points when two or more charges are filed
25 involving a single occurrence. If there are two or more convictions involving a single occurrence, only the
26 number of points for the specific conviction carrying the highest points is chargeable against that
27 defendant.
- 28 (4) "License" means any type of license or permit to operate a motor vehicle."

29

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0222, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act criminalizing the ingestion of a dangerous drug; eliminating the requirement that a driver may not be tested for drugs unless the driver has passed an alcohol test; eliminating the provision that failure of a test is not alone sufficient to convict a person of driving under the influence; creating a per se offense of driving with any amount of an illegally possessed dangerous drug in the body.

ASSUMPTIONS:

1. During calendar 1996 the Department of Justice processed a total of 20 dangerous drug felony suspensions/revocations of driver licenses and is assuming that a similar number of actions would be taken in fiscal 1998 and fiscal 1999.
2. The department is estimating that one-time operating expenses would be approximately \$800 for 40 hours of computer programming to add new action codes, add a pointer to serious violations in the Problem Driver Pointer System and the Commercial Driver License Information System.
3. The department is assuming that all other operating expenses could be absorbed in base operating budget as presented in the Governor's Executive Budget.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expenses	800	0
<u>Funding:</u>		
General Fund (01)	800	0
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
General Fund (01)	(800)	0

David Lewis 2-5-97

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

William Glaser 2/5/97

WILLIAM GLASER, PRIMARY SPONSOR DATE

Fiscal Note for SB0222, as introduced

SB 222

APPROVED BY COM
ON JUDICIARY

1
2
3
4
5
6
7
8
9
10
11
12

Senate BILL NO. 222

INTRODUCED BY

Monte Glass Clark

A BILL FOR AN ACT ENTITLED: "AN ACT CRIMINALIZING THE INGESTION OF A DANGEROUS DRUG;
ELIMINATING THE REQUIREMENT THAT A DRIVER MAY NOT BE TESTED FOR DRUGS UNLESS THE
DRIVER HAS PASSED AN ALCOHOL TEST; ELIMINATING A PROVISION THAT FAILURE OF A TEST IS NOT
ALONE SUFFICIENT TO CONVICT A PERSON OF DRIVING UNDER THE INFLUENCE; CREATING A PER SE
OFFENSE OF DRIVING WITH ANY AMOUNT OF AN ILLEGALLY POSSESSED DANGEROUS DRUG IN THE
BODY; AND AMENDING SECTIONS 45-9-102, 61-5-205, 61-5-208, 61-8-402, 61-8-404, 61-8-406, AND
61-11-203, MCA."

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 INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

1 Senate BILL NO. 222
2 INTRODUCED BY Mr. Gary Clark

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CRIMINALIZING THE INGESTION OF A DANGEROUS DRUG;
5 ELIMINATING THE REQUIREMENT THAT A DRIVER MAY NOT BE TESTED FOR DRUGS UNLESS THE
6 DRIVER HAS PASSED AN ALCOHOL TEST; ELIMINATING A PROVISION THAT FAILURE OF A TEST IS NOT
7 ALONE SUFFICIENT TO CONVICT A PERSON OF DRIVING UNDER THE INFLUENCE; CREATING A PER SE
8 OFFENSE OF DRIVING WITH ANY AMOUNT OF AN ILLEGALLY POSSESSED DANGEROUS DRUG IN THE
9 BODY; AND AMENDING SECTIONS 45-9-102, 61-5-205, 61-5-208, 61-8-402, 61-8-404, 61-8-406, AND
10 61-11-203, MCA."

11
12 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 INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY Senate BILL NO. 222
Mike Glenn Clark

A BILL FOR AN ACT ENTITLED: "AN ACT CRIMINALIZING THE INGESTION OF A DANGEROUS DRUG; ELIMINATING THE REQUIREMENT THAT A DRIVER MAY NOT BE TESTED FOR DRUGS UNLESS THE DRIVER HAS PASSED AN ALCOHOL TEST; ELIMINATING A PROVISION THAT FAILURE OF A TEST IS NOT ALONE SUFFICIENT TO CONVICT A PERSON OF DRIVING UNDER THE INFLUENCE; CREATING A PER SE OFFENSE OF DRIVING WITH ANY AMOUNT OF AN ILLEGALLY POSSESSED DANGEROUS DRUG IN THE BODY; AND AMENDING SECTIONS 45-9-102, 61-5-205, 61-5-208, 61-8-402, 61-8-404, 61-8-406, AND 61-11-203, MCA."

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

Section 1. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession or ingestion of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if ~~he~~ the person purposely or knowingly possesses or inhales, injects, swallows, or otherwise ingests any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000, ~~or~~ imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years, ~~or both such fine and imprisonment.~~

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500, ~~or~~ by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined

1 not more than \$50,000, except as provided in 46-18-222.

2 (5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in
3 subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years, ~~or~~ be
4 fined an amount not to exceed \$50,000, or both.

5 (6) A person of the age of 21 years or under convicted of a first violation under this section is
6 presumed to be entitled to a deferred imposition of sentence of imprisonment.

7 (7) Ultimate users and practitioners and agents under their supervision acting in the course of a
8 professional practice, as defined by 50-32-101, are exempt from this section."
9

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

11 **"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper
12 authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record
13 of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the
14 conviction or forfeiture has become final:

15 (1) negligent homicide resulting from the operation of a motor vehicle;

16 (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of
17 alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with ~~a blood~~
18 an alcohol concentration of 0.10 or more or with any amount of an illegally possessed dangerous drug in
19 the person's body;

20 (3) any felony in the commission of which a motor vehicle is used;

21 (4) failure to stop and render aid as required under the laws of this state in the event of a motor
22 vehicle accident resulting in the death or personal injury of another;

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

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

27 (7) negligent vehicular assault as defined in 45-5-205."
28

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

30 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke

1 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1
2 year, except as otherwise permitted by law.

3 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been
4 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the
5 revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the
6 revocation or suspension, the person may make application for a new license or endorsement as provided
7 by law but the department may not issue a new license or endorsement unless ~~and until~~ it is satisfied, after
8 investigation of the driving ability of the person and upon a showing by its records or other sufficient
9 evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or
10 forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a
11 motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for
12 the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more or with
13 any amount of an illegally possessed dangerous drug in the person's body, the department shall, upon
14 receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license
15 or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or
16 forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense,
17 the department shall revoke the license or driving privilege of the person for a period of 1 year, ~~except that~~
18 ~~#~~ if the 1-year period passes and the person has not completed an alcohol information course, treatment,
19 or both, as ordered by the sentencing court, the license revocation remains in effect until the course,
20 treatment, or both are completed.

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

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

25 (5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
26 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and
27 subsection (2) of this section."
28

29 **Section 4.** Section 61-8-402, MCA, is amended to read:

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

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

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

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

22 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
23 a temporary driving permit, which is valid for 5 days following the date of issuance, and shall provide the
24 driver with written notice of the license suspension or revocation and the right to a hearing provided in
25 61-8-403.

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

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

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

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

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

5 (7) The department may recognize the seizure of a license of a tribal member by a peace officer
6 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking,
7 or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law
8 or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the
9 actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state.
10 Action by the department under this subsection is not reviewable under 61-8-403.

11 (8) All suspensions are subject to review as provided in this part."
12

13 **Section 5.** Section 61-8-404, MCA, is amended to read:

14 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of any criminal
15 action or other proceeding arising out of acts alleged to have been committed by ~~any~~ a person in violation
16 of 61-8-401 or 61-8-406:

17 (a) evidence of any measured amount or detected presence of alcohol or drugs in the person at the
18 time of the act alleged, as shown by an analysis of the person's blood, breath, or urine, is admissible. A
19 positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at
20 the time that the person was in control of a motor vehicle. ~~A person may not be convicted of a violation~~
21 ~~of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent~~
22 ~~evidence exists that tends to establish that the person was under the influence of a drug or drugs while~~
23 ~~driving or in actual physical control of a motor vehicle within this state. However, an inference may be~~
24 drawn from a positive test result that the person was in control of a motor vehicle while a dangerous drug
25 was in the person's body.

26 (b) a report of the facts and results of any test or tests of a person's blood, breath, or urine
27 administered under 61-8-402 is admissible in evidence if:

28 (i) the breath test was performed by a person certified by the forensic sciences division of the
29 department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis
30 was done in a laboratory operated by the department or by any other laboratory or facility certified or

1 exempt from certification under the rules of the department; and

2 (ii) the test was on a blood sample, the person withdrawing the blood was competent to do so
3 under 61-8-405(1).

4 (2) If the person under arrest refused to submit to the test or tests as provided in this section,
5 proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been
6 committed while the person was driving or in actual physical control of a vehicle upon the ways of this
7 state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

8 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
9 on the question of whether the person was under the influence of alcohol, drugs, or a combination of the
10 two."

11

12 **Section 6.** Section 61-8-406, MCA, is amended to read:

13 **"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more --**
14 **dangerous drugs.** (1) It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person
15 to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while;

16 (a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or
17 urine, is 0.10 or more; or

18 (b) there is any amount of a dangerous drug, as defined in 50-32-101, except a dangerous drug
19 that the person legally possessed and used, in the person's body, as shown by analysis of the person's
20 blood or urine.

21 (2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."
22

23 **Section 7.** Section 61-11-203, MCA, is amended to read:

24 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

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

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

- 1 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
- 2 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,
3 or negligent vehicular assault, 12 points;
- 4 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in
5 the commission of which a motor vehicle is used, 12 points;
- 6 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or
7 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more or with any amount
8 of an illegally possessed dangerous drug in the person's body, 10 points;
- 9 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;
- 10 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
11 person to stop at the scene of the accident and give the required information and assistance, as defined
12 in 61-7-105, 8 points;
- 13 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop
14 at the scene of the accident and give the required information or failure to otherwise report an accident in
15 violation of the law, 4 points;
- 16 (h) reckless driving, 5 points;
- 17 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
- 18 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302,
19 5 points;
- 20 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (2)(k) does not
21 apply to operating a motor vehicle within a period of 180 days from the date on which the license expired);
- 22 (l) speeding, 3 points;
- 23 (m) all other moving violations, 2 points.
- 24 (3) There may not be multiple application of cumulative points when two or more charges are filed
25 involving a single occurrence. If there are two or more convictions involving a single occurrence, only the
26 number of points for the specific conviction carrying the highest points is chargeable against that
27 defendant.
- 28 (4) "License" means any type of license or permit to operate a motor vehicle."

29

-END-