

Senate BILL NO. 303

INTRODUCED BY

Cocchiarella

Wilson *Christensen* *DeHoff* *LeVine* *Quinn*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A JUDGE TO REQUIRE A PERSON TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18 PERCENT OR MORE; REQUIRING THE DEPARTMENT OF JUSTICE TO INDICATE ON AN OFFENDER'S DRIVER'S LICENSE RECORD THAT THE PERSON MAY DRIVE ONLY A VEHICLE WITH AN IGNITION INTERLOCK DEVICE; PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT THE DEVICE; DIRECTING THE SENTENCING COURT TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK DEVICE INSTEAD OF REVOKING OR SUSPENDING A PERSON'S LICENSE; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING SECTIONS 61-2-302, 61-5-205, 61-8-714, AND 61-8-722, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, since the early 1980s, strict laws and extensive public awareness campaigns have helped reduce the traffic death toll attributed to drunken driving; and

WHEREAS, despite the progress that has been made in the battle against drunken driving, there remain on Montana's roads and highways a small group of hard-core drinkers who regularly drink to high levels of intoxication (over 0.15%) and still drive; and

WHEREAS, on a weekend night, these hard-core drunk drivers make up only 1% of all drivers, yet account for almost half of the driving fatalities; and

WHEREAS, approximately 80% of all drunk drivers killed on the nation's highways in 1995 had a blood alcohol concentration of 0.15% or higher, and to get to that level, a 160-pound man would have to consume more than six drinks in 1 hour; and

WHEREAS, approximately 50% of all fatally injured drunk drivers in 1995 had a blood alcohol concentration of 0.20% or higher, more than twice the legal limit in Montana; and

WHEREAS, these hard-core drinkers continue to drive even after steps have been taken, including license suspensions, fines, and incarceration, to remove them from the road; and

WHEREAS, proven technological approaches, such as court-ordered ignition interlocks, exist for

1 limiting the opportunity of hard-core drinkers to drink and drive; and

2 WHEREAS, ignition interlock devices prevent a car from starting if the driver fails a car-mounted
3 Breathalyzer test, and ignition interlock devices are a reliable, fair, and effective means of reducing repeat
4 driving under the influence (DUI) offenses; and

5 WHEREAS, reduction of repeat DUI offenses will, over time, reduce one of the growing pressures
6 for increased incarceration expenses impacting our local and state corrections systems; and

7 WHEREAS, ignition interlock devices can be an effective complement to treatment of
8 alcohol-dependent persons and their families who also drive on the roads and highways of this state; and

9 WHEREAS, the incidence of recidivism is lower among offenders with ignition interlock devices in
10 their vehicles; and

11 WHEREAS, the device serves as a constant reminder to a driver of the driver's drinking problem and
12 the difficulties that have arisen from it; and

13 WHEREAS, having an ignition interlock device installed forces a driver to develop and practice
14 strategies to avoid drinking and driving; and

15 WHEREAS, the device allows an offender to re-enter the driver licensing system legally, sober, and
16 with insurance; and

17 WHEREAS, ignition interlock devices allow more offenders the opportunity to maintain employment;
18 and

19 WHEREAS, regular maintenance of the ignition interlock device facilitates the monitoring of
20 offenders and allows for periodic checks on attempts to circumvent the device; and

21 WHEREAS, the use of ignition interlock devices is legal in Montana, but the devices are not
22 currently available throughout the state nor will they be consistently used in the state until installation of
23 these devices is required by Montana courts responsible for sentencing DUI offenders.

24
25 STATEMENT OF INTENT

26 A statement of intent is required for this bill because [section 4] delegates authority to the
27 department of justice to adopt rules regarding ignition interlock devices. The legislature intends that the
28 department model rules after rules that have implemented similar statutes adopted in Washington, Idaho,
29 Oregon, North Dakota, and 31 other states. The legislature further intends that the rules adopted governing
30 approval of the ignition interlock devices be based on federal standards issued by the national highway

1 traffic safety administration on "model specifications for breath alcohol ignition interlock devices", published
 2 in the Federal Register on April 7, 1992. Any changes in the federal standards regarding standards for
 3 alcohol ignition interlock devices must be reflected in the department's rules.

4

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

6

7 **NEW SECTION. Section 1. Ignition interlock device -- definition.** "Ignition interlock device" means
 8 ignition equipment that:

9 (1) analyzes the breath to determine blood alcohol concentration;

10 (2) is approved by the department pursuant to [section 4]; and

11 (3) is designed to prevent a motor vehicle from being operated by a person who has consumed a
 12 specific amount of an alcoholic beverage.

13

14 **NEW SECTION. Section 2. Ignition interlock device -- notation on driver's license record.** When
 15 a court orders a person to have an ignition interlock device installed under 61-8-714(6) or 61-8-722(7), the
 16 court shall notify the department of its order. The department shall note on the person's driver's license
 17 record that the person may operate only a motor vehicle equipped with an ignition interlock device.

18

19 **NEW SECTION. Section 3. Ignition interlock device -- assisting in starting and operating --**
 20 **circumventing -- penalty.** (1) A person may not knowingly assist a person who is restricted to the use of
 21 an ignition interlock device to start and operate the restricted person's vehicle.

22 (2) A person may not knowingly circumvent the operation of an ignition interlock device.

23 (3) A person convicted of a violation of this section shall be punished by a fine of not more than
 24 \$500 or by imprisonment for not more than 6 months or both.

25 (4) This section does not apply if:

26 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition
 27 interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

28 (b) the person subject to the restriction does not operate the vehicle.

29

30 **NEW SECTION. Section 4. Department rules regarding ignition interlock devices.** (1) The

1 department shall adopt rules providing for the approval of ignition interlock devices and the installation,
2 repair, and removal of approved devices.

3 (2) The department's rules must be based upon federal standards issued for similar devices.

4 (3) An ignition interlock device that is approved by the department must also:

5 (a) be designed so it does not impede safe operation of the vehicle;

6 (b) correlate well with the level established for alcohol impairment;

7 (c) work accurately and reliably in an unsupervised environment and under extreme weather
8 conditions;

9 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol
10 concentration equivalence;

11 (e) resist tampering and show evidence of tampering if it is attempted;

12 (f) be difficult to circumvent;

13 (g) minimize inconvenience of a sober user;

14 (h) operate reliably over the range of automobile environments and in connection with various
15 manufacturing standards;

16 (i) be manufactured by a person who is adequately insured for product liability; and

17 (j) have a label affixed in a prominent location warning that a person who knowingly tampers with,
18 circumvents, or otherwise misuses the device is subject to criminal prosecution.

19

20 **Section 5.** Section 61-2-302, MCA, is amended to read:

21 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers. (1)**

22 The department may establish by administrative rules a driver rehabilitation and improvement program or
23 programs that may consist of classroom instruction in rules of the road, driving techniques, defensive
24 driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed
25 to contribute to proper driving attitudes, habits, and techniques.

26 (2) Official participation in the driver rehabilitation and improvement program is limited to those
27 persons whose license to operate a motor vehicle in the state of Montana is:

28 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
29 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

30 (b) revoked and they have:

- 1 (i) completed at least 3 months of a 1-year revocation; or
2 (ii) completed 1 year of a 3-year revocation; and
3 (iii) met the requirements for reobtaining a Montana driver's license.

4 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
5 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's
6 participation in the driver rehabilitation and improvement program provided for in this section may be stayed
7 if that person complies with the requirements established for the driver improvement program and meets
8 the eligibility requirements of subsection (2).

9 (4) In the event that a person's driver's license has been surrendered ~~prior to~~ before the person's
10 selection for participation in the driver rehabilitation and improvement program, the license may be returned
11 upon receipt of the person's agreement to participate in the program.

12 (5) The stay of enforcement of any suspension or revocation order must be terminated and the
13 order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and
14 improvement program or fails to meet the attendance or other requirements established for participation
15 in the program.

16 (6) ~~Nothing in this~~ This part does not create a right to be included in any program
17 established under this part.

18 (7) The department may establish a schedule of fees that may be charged those persons
19 participating in the driver improvement and rehabilitation program. The fees must be used to help defray
20 costs of maintaining the program.

21 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice
22 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
23 department.

24 (9) (a) The department may issue a restricted probationary license to any person who enrolls and
25 participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license
26 under this section, the licensee is subject to the restrictions set forth on the license.

27 (b) When a sentencing court orders a person to have an ignition interlock device installed pursuant
28 to 61-8-714(6) or 61-8-722(7), the department shall issue that person a probationary license.

29 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
30 restrictions imposed on a restricted license issued to the person under this section."

1 **Section 6.** Section 61-5-205, MCA, is amended to read:

2 **"61-5-205. Mandatory revocation of license upon proper authority.** The Except as provided in
3 61-8-714(6) and 61-8-722(7), the department upon proper authority shall revoke the driver's license or the
4 operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not
5 vacated of any of the following offenses, when the conviction or forfeiture has become final:

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

7 (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of
8 alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood
9 alcohol concentration of 0.10 or more;

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

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

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

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

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

18

19 **Section 7.** Section 61-8-714, MCA, is amended to read:

20 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in
21 subsections ~~(8)~~ (9) and ~~(9)~~ (10), a person convicted of a violation of 61-8-401 shall be punished by
22 imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be
23 punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be
24 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
25 defendant's physical or mental well-being.

26 (2) Except as provided in subsection ~~(8)~~ (9), on a second conviction, the person shall be punished
27 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least
28 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection
29 ~~(8)~~ (9), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the
30 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

1 (3) (a) Except as provided in subsection ~~(8)~~ (9), on the third conviction, the person shall be
2 punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served
3 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as
4 provided in subsection ~~(8)~~ (9), notwithstanding any provision to the contrary providing for suspension of
5 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of
6 the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may
7 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 or more than \$10,000. Except as provided in subsection ~~(8)~~ (9), notwithstanding any provision
23 to the contrary providing for suspension of execution of a sentence imposed under this subsection, the
24 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
25 subsequent offense may not be suspended.

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

1 by the department of public health and human services. On conviction of a second or subsequent offense
2 under this section, in addition to the punishment provided in this section, regardless of disposition, the
3 defendant shall complete an alcohol information course at an alcohol treatment program approved by the
4 department of public health and human services, ~~which~~ that must include alcohol or drug treatment, or
5 both. As long as the alcohol information course is approved as provided in this subsection and the
6 treatment is provided by a certified chemical dependency counselor, the defendant may attend the
7 information course and treatment program of the defendant's choice. The treatment provided to the
8 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
9 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
10 placement rules adopted by the department of corrections. Upon determination, the court shall order the
11 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided
12 in this subsection, the court shall order an appropriate level of treatment based upon the determination of
13 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by
14 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or
15 counselor may not require attendance at a self-help program other than at an "open meeting" as that term
16 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each
17 counselor providing education or treatment shall, at the commencement of the education or treatment,
18 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.
19 If the defendant fails to attend the information course or treatment program, the counselor shall notify the
20 court of the failure.

21 (6) In addition to the other punishment provided in this section for a violation of 61-8-401, when
22 an offender is convicted of the second or subsequent offense or the offender's blood alcohol concentration
23 at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock
24 devices are reasonably available, the court shall:

25 (a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock
26 device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;

27 (b) establish a specific calibration setting at which the ignition interlock device will prevent the
28 motor vehicle from starting;

29 (c) determine the period of time that the offender must have the ignition interlock device in the
30 motor vehicle;

1 (d) retain jurisdiction over the offender convicted of the violation until the end of the period of the
 2 restriction;

3 (e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.

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

15 ~~(7)~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for
 16 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

17 ~~(8)~~(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 ~~(9)~~(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 ~~(10)~~(11) A court may not defer imposition of sentence under this section."

28

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

30 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in

1 subsection ~~(9)~~ (10), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for
2 not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

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

6 (3) (a) Except as provided in subsection ~~(9)~~ (10), on a third conviction of a violation of 61-8-406,
7 the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6
8 months and by a fine of not less than \$500 or more than \$1,000.

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

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

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

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

27 (5) ~~The~~ Except as provided in subsection (7), the provisions of 61-5-205(2), 61-5-208(2), and
28 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under
29 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) In addition to the other punishment provided in this section for a violation of 61-8-401, when
8 an offender is convicted of the second or subsequent offense, or the offender's blood alcohol concentration
9 at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock
10 devices are reasonably available, the court shall:

11 (a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock
12 device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;

13 (b) establish a specific calibration setting at which the ignition interlock device will prevent the
14 motor vehicle from starting;

15 (c) determine the period of time that the offender must have the ignition interlock device in the
16 motor vehicle;

17 (d) retain jurisdiction over the offender convicted of the violation until the end of the period of the
18 restriction;

19 (e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.

20 ~~(7)~~(8) For the purpose of determining the number of convictions under this section, "conviction"
21 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a
22 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or
23 another state, which forfeiture has not been vacated. An offender is considered to have been previously
24 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the
25 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent
26 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been
27 an additional conviction for an offense under this section for a period of 5 years after a prior conviction
28 under this section, then all records and data relating to the prior conviction are confidential criminal justice
29 information, as defined in 45-5-103, and public access to the information may only be obtained by district
30 court order upon good cause shown.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0303, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring a judge to require a person to have an ignition interlock device installed when the person is convicted two or more times of driving under the influence of alcohol or drugs or is convicted for the first time of operating a motor vehicle while having an alcohol concentration of 0.18 percent or more; requiring the Department of Justice to indicate on an offender's driver's license record that the person may drive only a vehicle with an ignition interlock device; providing a penalty for tampering with or attempting to circumvent the device; directing the sentencing court to require installation of an ignition interlock device instead of revoking or suspending a person's license; directing the Department of Justice to adopt rules providing for approval of ignition interlock devices.

ASSUMPTIONS:

1. In calendar 1996 the Department of Justice processed 4,601 first offense and 1,462 second and subsequent offense DUI and BAC driver license suspension actions. It is estimated that 60% of the first offense actions involved an alcohol level of 0.18% or more or approximately 2,760. ($4,601 \times 60\% = 2,760$). Approximately, 50% ($2760 + 1462 = 4,222$) or 2,100 individuals may be required by the courts to install the ignition interlock devices. All costs associated with installation, monthly maintenance and removal of the devices would be the responsibility of the individual, not the state.
2. The Department of Justice is estimating that one-third of those individuals ordered to install the ignition interlock devices would fall out of compliance and require department action to suspend the driver's licenses adding approximately 1.5 hours work daily, which the department would absorb. ($2,100 \times 1/3 = 700 \times 1/2 \text{ hr} = 350 \text{ hours}$)
3. One-time costs in fiscal 1998 to implement SB 303 are estimated at \$1,550 for the Department of Justice which includes \$250 for rulemaking advertisements, \$500 for services to record and transcribe the rulemaking hearing, and \$800 required for 40 hours of programming necessary to revise the motor vehicle system adding new codes, tables, and requirements.
4. SB 303 could potentially reduce the number of fourth time DUI offenders, thereby reducing incarceration and supervision costs. As there is no data available on the effectiveness of the ignition interlock devices, significant savings cannot be projected.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	1,550	0
<u>Funding:</u>		
General Fund (01)	1,550	0
<u>Net Impact on Fund Balance:</u>		
General Fund (01)	(1,550)	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties may receive an increase in revenues from fines assessed to those who attempt to circumvent the ignition interlock devices.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

SB 303 could have a long-range impact to significantly reduce incarceration costs.

TECHNICAL NOTES:

SB 303 does not provide for any penalty when an offender does not comply with an order to install an ignition interlock system or drives a vehicle that is not equipped with the device.

Dave Lewis 2.13.97
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Bill Wilson 2/15/97
 BILL WILSON, PRIMARY SPONSOR DATE

1 SENATE BILL NO. 303

2 INTRODUCED BY WILSON, RYAN, CHRISTIAENS, SWYSGOOD, VAN VALKENBURG, KEATING,
3 COCCHIARELLA

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A JUDGE TO REQUIRE A PERSON TO HAVE AN
6 IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE TIMES OF
7 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST TIME OF
8 OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18 PERCENT OR
9 MORE; ~~REQUIRING THE DEPARTMENT OF JUSTICE TO INDICATE ON AN OFFENDER'S DRIVER'S LICENSE~~
10 ~~RECORD THAT THE PERSON MAY DRIVE ONLY A VEHICLE WITH AN IGNITION INTERLOCK DEVICE;~~
11 PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT THE DEVICE;
12 ~~DIRECTING THE SENTENCING COURT TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK DEVICE~~
13 ~~INSTEAD OF REVOKING OR SUSPENDING A PERSON'S LICENSE;~~ ALLOWING THE DEPARTMENT OF
14 JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK RESTRICTED OFFENDER
15 UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION INTERLOCK RESTRICTIONS TO
16 RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE SUSPENSION OR REVOCATION FOR
17 DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES PROVIDING
18 FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING SECTIONS 61-2-302, ~~61-5-205,~~
19 ~~61-8-714~~ 61-5-208, 61-8-401, AND ~~61-8-722~~ 61-8-406, MCA; AND PROVIDING EFFECTIVE DATES."

20
21 WHEREAS, since the early 1980s, strict laws and extensive public awareness campaigns have
22 helped reduce the traffic death toll attributed to drunken driving; and

23 WHEREAS, despite the progress that has been made in the battle against drunken driving, there
24 remain on Montana's roads and highways a small group of hard-core drinkers who regularly drink to high
25 levels of intoxication (over 0.15%) and still drive; and

26 WHEREAS, on a weekend night, these hard-core drunk drivers make up only 1% of all drivers, yet
27 account for almost half of the driving fatalities; and

28 WHEREAS, approximately 80% of all drunk drivers killed on the nation's highways in 1995 had a
29 blood alcohol concentration of 0.15% or higher, and to get to that level, a 160-pound man would have
30 to consume more than six drinks in 1 hour; and

1 WHEREAS, approximately 50% of all fatally injured drunk drivers in 1995 had a blood alcohol
2 concentration of 0.20% or higher, more than twice the legal limit in Montana; and

3 WHEREAS, these hard-core drinkers continue to drive even after steps have been taken, including
4 license suspensions, fines, and incarceration, to remove them from the road; and

5 WHEREAS, proven technological approaches, such as court-ordered ignition interlocks, exist for
6 limiting the opportunity of hard-core drinkers to drink and drive; and

7 WHEREAS, ignition interlock devices prevent a car from starting if the driver fails a car-mounted
8 Breathalyzer test, and ignition interlock devices are a reliable, fair, and effective means of reducing repeat
9 driving under the influence (DUI) offenses; and

10 WHEREAS, reduction of repeat DUI offenses will, over time, reduce one of the growing pressures
11 for increased incarceration expenses impacting our local and state corrections systems; and

12 WHEREAS, ignition interlock devices can be an effective complement to treatment of
13 alcohol-dependent persons and their families who also drive on the roads and highways of this state; and

14 WHEREAS, the incidence of recidivism is lower among offenders with ignition interlock devices in
15 their vehicles; and

16 WHEREAS, the device serves as a constant reminder to a driver of the driver's drinking problem and
17 the difficulties that have arisen from it; and

18 WHEREAS, having an ignition interlock device installed forces a driver to develop and practice
19 strategies to avoid drinking and driving; and

20 WHEREAS, the device allows an offender to re-enter the driver licensing system legally, sober, and
21 with insurance; and

22 WHEREAS, ignition interlock devices allow more offenders the opportunity to maintain employment;
23 and

24 WHEREAS, regular maintenance of the ignition interlock device facilitates the monitoring of
25 offenders and allows for periodic checks on attempts to circumvent the device; and

26 WHEREAS, the use of ignition interlock devices is legal in Montana, but the devices are not
27 currently available throughout the state nor will they be consistently used in the state until installation of
28 these devices is required by Montana courts responsible for sentencing DUI offenders.

29
30

STATEMENT OF INTENT

1 A statement of intent is required for this bill because [section 4] delegates authority to the
 2 department of justice to adopt rules regarding ignition interlock devices. The legislature intends that the
 3 department model rules after rules that have implemented similar statutes adopted in Washington, Idaho,
 4 Oregon, North Dakota, and 31 other states. The legislature further intends that the rules adopted governing
 5 approval of the ignition interlock devices be based on federal standards issued by the national highway
 6 traffic safety administration on "model specifications for breath alcohol ignition interlock devices", published
 7 in the Federal Register on April 7, 1992. Any changes in the federal standards regarding standards for
 8 alcohol ignition interlock devices must be reflected in the department's rules.

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
 12 **NEW SECTION. Section 1. Ignition interlock device -- definition.** "Ignition interlock device" means
 13 ignition equipment that:

- 14 (1) analyzes the breath to determine blood alcohol concentration;
 15 (2) is approved by the department pursuant to [section 4]; and
 16 (3) is designed to prevent a motor vehicle from being operated by a person who has consumed a
 17 specific amount of an alcoholic beverage.

18
 19 ~~**NEW SECTION. Section 2. Ignition interlock device -- notation on driver's license record.**~~ When
 20 a court orders a person to have an ignition interlock device installed under 61-8-714(6) or 61-8-722(7), the
 21 court shall notify the department of its order. The department shall note on the person's driver's license
 22 record that the person may operate only a motor vehicle equipped with an ignition interlock device.

23
 24 **NEW SECTION. Section 2. Ignition interlock device -- assisting in starting and operating --**
 25 **circumventing -- penalty. (1) IT IS UNLAWFUL FOR A PERSON WHO IS SUBJECT TO A RESTRICTION**
 26 **UNDER [SECTION 8] TO OPERATE A MOTOR VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK**
 27 **DEVICE.**

28 ~~(1)(2)~~ A person may not knowingly assist a person who is restricted to the use of an ignition
 29 interlock device to start and operate the restricted person's vehicle.

30 ~~(2)(3)~~ A person may not knowingly circumvent the operation of an ignition interlock device.

1 ~~(3)~~(4) A person convicted of a violation of this section shall be punished by a fine of not more than
2 \$500 or by imprisonment for not more than 6 months or both.

3 ~~(4)~~(5) This section does not apply if:

- 4 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition
5 interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and
6 (b) the person subject to the restriction does not operate the vehicle.

7
8 **NEW SECTION. Section 3. Department rules regarding ignition interlock devices.** (1) The
9 department shall adopt rules providing for the approval of ignition interlock devices and the installation,
10 **CALIBRATION,** repair, and removal of approved devices.

11 (2) The department's rules must be based upon federal standards issued for similar devices.

12 (3) An ignition interlock device that is approved by the department must also:

- 13 (a) be designed so it does not impede safe operation of the vehicle;
14 (b) correlate well with the level established for alcohol impairment;
15 (c) work accurately and reliably in an unsupervised environment and under extreme weather
16 conditions;
17 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol
18 concentration equivalence;
19 (e) resist tampering and show evidence of tampering if it is attempted;
20 (f) be difficult to circumvent;
21 (g) minimize inconvenience of a sober user;
22 (h) operate reliably over the range of automobile environments and in connection with various
23 manufacturing standards;
24 (i) be manufactured by a person who is adequately insured for product liability; and
25 (j) have a label affixed in a prominent location warning that a person who knowingly tampers with,
26 circumvents, or otherwise misuses the device is subject to criminal prosecution.

27
28 **Section 4.** Section 61-2-302, MCA, is amended to read:

29 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers.** (1)
30 The department may establish by administrative rules a driver rehabilitation and improvement program or

1 programs that may consist of classroom instruction in rules of the road, driving techniques, defensive
2 driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed
3 to contribute to proper driving attitudes, habits, and techniques.

4 (2) Official participation in the driver rehabilitation and improvement program is limited to those
5 persons WHO ARE NOT SUBJECT TO AN IGNITION INTERLOCK RESTRICTION IMPOSED UNDER SECTION
6 8] AND whose license to operate a motor vehicle in the state of Montana is:

7 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
8 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

9 (b) revoked and they have:

10 (i) completed at least 3 months of a 1-year revocation; or

11 (ii) completed 1 year of a 3-year revocation; and

12 (iii) met the requirements for reobtaining a Montana driver's license.

13 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
14 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's
15 participation in the driver rehabilitation and improvement program provided for in this section may be stayed
16 if that person complies with the requirements established for the driver improvement program and meets
17 the eligibility requirements of subsection (2).

18 (4) In the event that a person's driver's license has been surrendered ~~prior to~~ before the person's
19 selection for participation in the driver rehabilitation and improvement program, the license may be returned
20 upon receipt of the person's agreement to participate in the program.

21 (5) The stay of enforcement of any suspension or revocation order must be terminated and the
22 order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and
23 improvement program or fails to meet the attendance or other requirements established for participation
24 in the program.

25 (6) ~~Nothing in this~~ This part does not create ~~creates~~ create a right to be included in any program
26 established under this part.

27 (7) The department may establish a schedule of fees that may be charged those persons
28 participating in the driver improvement and rehabilitation program. The fees must be used to help defray
29 costs of maintaining the program.

30 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice

1 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
2 department.

3 (9) ~~(a)~~ The department may issue a restricted probationary license to any person who enrolls and
4 participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license
5 under this section, the licensee is subject to the restrictions set forth on the license.

6 ~~(b) When a sentencing court orders a person to have an ignition interlock device installed pursuant~~
7 ~~to 61-8-714(6) or 61-8-722(7), the department shall issue that person a probationary license.~~

8 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
9 restrictions imposed on a restricted license issued to the person under this section."
10

11 ~~Section 6. Section 61-5-205, MCA, is amended to read:~~

12 ~~"61-5-205. Mandatory revocation of license upon proper authority. The Except as provided in~~
13 ~~61-8-714(6) and 61-8-722(7), the department upon proper authority shall revoke the driver's license or the~~
14 ~~operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not~~
15 ~~vacated of any of the following offenses, when the conviction or forfeiture has become final:~~

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

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

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 7. Section 61-8-714, MCA, is amended to read:~~

30 ~~"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in~~

1 ~~subsections (8) (9) and (9) (10), a person convicted of a violation of 61-8-401 shall be punished by~~
2 ~~imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be~~
3 ~~punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be~~
4 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the~~
5 ~~defendant's physical or mental well-being.~~

6 ~~(2) Except as provided in subsection (8) (9), on a second conviction, the person shall be punished~~
7 ~~by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least~~
8 ~~48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection~~
9 ~~(8) (9), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the~~
10 ~~imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.~~

11 ~~(3) (a) Except as provided in subsection (8) (9), on the third conviction, the person shall be~~
12 ~~punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served~~
13 ~~consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as~~
14 ~~provided in subsection (8) (9), notwithstanding any provision to the contrary providing for suspension of~~
15 ~~execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of~~
16 ~~the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may~~
17 ~~not be suspended.~~

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

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

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

30 ~~(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be~~

1 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
2 than \$1,000 or more than \$10,000. Except as provided in subsection (8) ~~(9)~~, notwithstanding any provision
3 to the contrary providing for suspension of execution of a sentence imposed under this subsection, the
4 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
5 subsequent offense may not be suspended.

6 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
7 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
8 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
9 ~~treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made~~
10 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
11 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
12 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
13 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
14 ~~department of public health and human services, which that must include alcohol or drug treatment, or~~
15 ~~both. As long as the alcohol information course is approved as provided in this subsection and the~~
16 ~~treatment is provided by a certified chemical dependency counselor, the defendant may attend the~~
17 ~~information course and treatment program of the defendant's choice. The treatment provided to the~~
18 ~~defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,~~
19 ~~or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient~~
20 ~~placement rules adopted by the department of corrections. Upon determination, the court shall order the~~
21 ~~defendant's appropriate level of treatment. If more than one counselor makes a determination as provided~~
22 ~~in this subsection, the court shall order an appropriate level of treatment based upon the determination of~~
23 ~~one of the counselors. On a second or subsequent conviction, the treatment program must be followed by~~
24 ~~monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or~~
25 ~~counselor may not require attendance at a self help program other than at an "open meeting" as that term~~
26 ~~is defined by the self help program. A defendant may voluntarily participate in self help programs. Each~~
27 ~~counselor providing education or treatment shall, at the commencement of the education or treatment,~~
28 ~~notify the court that the defendant has been enrolled in an alcohol information course or treatment program.~~
29 ~~If the defendant fails to attend the information course or treatment program, the counselor shall notify the~~
30 ~~court of the failure.~~

1 ~~(6) In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
 2 ~~an offender is convicted of the second or subsequent offense or the offender's blood alcohol concentration~~
 3 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
 4 ~~devices are reasonably available, the court shall:~~

5 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
 6 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-6-206;~~

7 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
 8 ~~motor vehicle from starting;~~

9 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
 10 ~~motor vehicle;~~

11 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
 12 ~~restriction;~~

13 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device;~~

14 ~~(6)(7) 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, 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 forfeiture has not been vacated. An offender is considered to have~~
 18 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
 19 ~~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)(8) For the purpose of calculating subsequent convictions under this section, a conviction for~~
 26 ~~a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

27 ~~(8)(9) 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)(10)~~ 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)(11)~~ A court may not defer imposition of sentence under this section."

8
 9 **Section 8.** 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) (10), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for~~
 12 ~~not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.~~

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

16 ~~(3) (a) Except as provided in subsection (9) (10), on a third conviction of a violation of 61-8-406,~~
 17 ~~the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6~~
 18 ~~months and by a fine of not less than \$500 or more than \$1,000.~~

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 that is owned and operated by the person at the time of the offense~~
 21 ~~to be 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 or more than \$10,000. Except as provided in subsection (9) (10), notwithstanding any other~~
4 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the imposition~~
5 ~~or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense~~
6 ~~may not be suspended.~~

7 (5) ~~The Except as provided in subsection (7), the provisions of 61-5-205(2), 61-5-208(2), and~~
8 ~~61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under~~
9 ~~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) ~~In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
18 ~~an offender is convicted of the second or subsequent offense, or the offender's blood alcohol concentration~~
19 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
20 ~~devices are reasonably available, the court shall:~~

21 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
22 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;~~

23 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
24 ~~motor vehicle from starting;~~

25 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
26 ~~motor vehicle;~~

27 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
28 ~~restriction;~~

29 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.~~

30 (7)(8) For the purpose of determining the number of convictions under this section, "conviction"

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

11 ~~(8)(9)~~ For the purpose of calculating subsequent convictions under this section, a conviction for
 12 a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

13 ~~(9)(10)~~ The court may order that a term of imprisonment imposed under this section be served in
 14 another facility made available by the county and approved by the sentencing court. The defendant, if
 15 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions
 16 on the defendant's ability to leave the premises of the facility and require that the defendant follow the
 17 rules of that facility. The facility may be, but is not required to be, a community based prerelease center
 18 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
 19 sentencing court.

20 ~~(10)(11)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
 21 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
 22 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

23 ~~(11)(12)~~ A court may not defer imposition of sentence under this section."
 24

25 **SECTION 5. SECTION 61-5-208, MCA, IS AMENDED TO READ:**

26 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke
 27 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1
 28 year, except as otherwise permitted by law.

29 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been
 30 suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the

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

16 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department
17 proof of compliance with any ignition interlock restriction imposed under [section 8], the department shall
18 stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401
19 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of
20 suspension or revocation has expired and any required alcohol information course, treatment, or both, have
21 been completed.

22 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that
23 the person has violated the ignition interlock restriction by, including but not limited to, operating a motor
24 vehicle not equipped with the device, tampering with the device, or removing the device before the period
25 of restriction has expired, the department shall lift the stay and reinstate the license suspension or
26 revocation for the remainder of the time period. The department may not issue a probationary driver's
27 license to a person whose license suspension or revocation has been reinstated due to violation of an
28 ignition interlock restriction.

29 ~~(3)~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in
30 subsection (2).

1 ~~(4)~~(5) The period of revocation for any person convicted of any offense which makes mandatory
2 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

3 ~~(5)~~(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
4 motor vehicle, the department shall suspend the person's driver's license as provided in 61-3-211 and
5 subsection (2) of this section."

6
7 **SECTION 6. SECTION 61-8-401, MCA, IS AMENDED TO READ:**

8 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
9 provided in 61-8-714, ~~and 61-8-723,~~ and [section 8] for any person who is under the influence of:

10 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
11 to the public;

12 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

13 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

14 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
15 within this state.

16 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
17 use alcohol or such a drug under the laws of this state does not constitute a defense against any charge
18 of violating subsection (1).

19 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
20 combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

21 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
22 been committed by any person driving or in actual physical control of a vehicle while under the influence
23 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
24 person's blood, urine, or breath, shall give rise to the following inferences:

25 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
26 person was not under the influence of alcohol.

27 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
28 fact shall not give rise to any inference that the person was or was not under the influence of alcohol but
29 such fact may be considered with other competent evidence in determining the guilt or innocence of the
30 person.

1 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
2 person was under the influence of alcohol. The inference is rebuttable.

3 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
4 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
5 of the two.

6 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
7 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and
8 subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of
9 the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

10 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
11

12 **SECTION 7. 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. It is
14 unlawful and punishable as provided in 61-8-722, ~~and 61-8-723,~~ and [section 8], for any person to drive
15 or be in actual physical control of a vehicle upon the ways of this state open to the public while the
16 person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or
17 more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
18

19 **NEW SECTION. SECTION 8. DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS --**
20 **DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION -- IGNITION INTERLOCK DEVICE REQUIRED. (1)**
21 **IN ADDITION TO THE PUNISHMENTS PROVIDED IN 61-8-714 AND 61-8-722, REGARDLESS OF**
22 **DISPOSITION, THE COURT SHALL RESTRICT A DEFENDANT TO ONLY DRIVING A MOTOR VEHICLE**
23 **EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AND REQUIRE THE DEFENDANT TO PAY**
24 **THE REASONABLE COST OF LEASING, INSTALLING, AND MAINTAINING THE DEVICE IF:**

25 **(A) THE COURT DETERMINES THAT APPROVED IGNITION INTERLOCK DEVICES ARE**
26 **REASONABLY AVAILABLE; AND**

27 **(B) (I) THE DEFENDANT'S BLOOD ALCOHOL CONCENTRATION AT THE TIME OF THE ARREST**
28 **WAS 0.18% OR GREATER; OR**

29 **(II) THE DEFENDANT PREVIOUSLY HAS BEEN CONVICTED OF A VIOLATION OF 61-8-401 OR**
30 **61-8-406.**

1 (2) ANY RESTRICTION IMPOSED UNDER THIS SECTION MUST BE INCLUDED IN A REPORT OF
2 THE CONVICTION MADE BY THE COURT TO THE DEPARTMENT IN ACCORDANCE WITH 61-11-101 AND
3 PLACED UPON THE PERSON'S DRIVING RECORD MAINTAINED BY THE DEPARTMENT IN ACCORDANCE
4 WITH 61-11-102.

5 (3) THE DURATION OF A RESTRICTION IMPOSED UNDER THIS SECTION MUST RUN PARALLEL
6 TO THE TIME PERIOD FOR SUSPENSION OR REVOCATION OF THE DRIVER'S LICENSE OF THE
7 DEFENDANT IN ACCORDANCE WITH 61-2-107, 61-5-205, AND 61-5-208 AND MUST BE MONITORED
8 BY THE DEPARTMENT.

9
10 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as
11 an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to
12 [section 1].

13 (2) [Sections 2, 3, and 4 8] are intended to be codified as an integral part of Title 61, chapter 8,
14 and the provisions of Title 61, chapter 8, apply to [sections 2, 3, and 4 8].

15
16 **NEW SECTION. Section 10. Effective date DATES.** (1) Except as provided in subsection (2), [this
17 act] is effective July 1, 1997.

18 (2) [Section 4 3 and this section] are effective on passage and approval.

19 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0303, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing a judge to require a person to have an ignition interlock device installed when the person is convicted two or more times of driving under the influence of alcohol or drugs or is convicted for the first time of operating a motor vehicle while having an alcohol concentration of 0.18 percent or more; providing a penalty for tampering with or attempting to circumvent the device; allowing the Department of Justice to reinstate the driving privileges of an ignition-interlock restricted offender upon proof of installation of the device; requiring ignition interlock restrictions to run parallel to time periods and conditions for license suspension or revocation for DUI and BAC offenders; directing the Department of Justice to adopt rules providing for approval of ignition interlock devices.

ASSUMPTIONS:

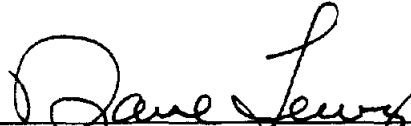
1. Thirty-nine states have laws providing for the installation of alcohol ignition interlock devices in the vehicles of the convicted DUI offenders.
2. The interlock devices are intended to provide an additional option for preventing repeat offenders.
3. In calendar 1996 the Department of Justice processed 4,601 first offense and 1,462 second and subsequent offense DUI and BAC driver license suspension actions. It is estimated that 60% of the first offense actions involved an alcohol level of .18% or more or approximately 2,760. (4,601 x 60% = 2,760). Approximately 50% or 2,100 individuals may be required by the courts to install the ignition interlock devices. All costs associated with installation, monthly maintenance, and removal of the devices would be the responsibility of the individual, not the state.
4. The Department of Justice estimates that one-third of those individuals ordered to install the ignition interlock devices would fall out of compliance and require department action to suspend the driver's licenses adding approximately 1.5 hours work daily which the department would try to absorb. (2,100 x 1/3 = 700 x 1/2 hr = 350 hours)
3. Operating costs would increase by \$3,780 for costs associated with issuing new photo driver's licenses with the restriction for those required to utilize the ignition interlock device.
4. One-time costs in fiscal 1998 to implement this bill are estimated at \$1,550 for the Department of Justice which includes \$250 for rulemaking advertisements, \$500 for services to record and transcribe the rulemaking hearing, and \$800 required for 40 hours of programming necessary to revise the motor vehicle system adding new codes, tables and requirements.
5. SB 303 could potentially reduce the number of fourth time DUI offenders, thereby reducing incarceration and supervision costs. Studies completed in California and Ohio indicated a reduction in rearrests of approximately 2% of those offenders who had the interlock device installed versus a control group of offenders who were not offered the device.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expenses	5,330	3,780
 <u>Funding:</u>		
General Fund	5,330	3,780

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties may receive an increase in revenues from fines assessed to those who attempt to circumvent the ignition interlock devices.

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

 3-15-97
 WILLIAM WILSON, PRIMARY SPONSOR DATE

SENATE BILL NO. 303

INTRODUCED BY WILSON, RYAN, CHRISTIAENS, SWYSGOOD, VAN VALKENBURG, KEATING,
COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING~~ ALLOWING A JUDGE TO REQUIRE A PERSON TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18 PERCENT OR MORE; ~~REQUIRING THE DEPARTMENT OF JUSTICE TO INDICATE ON AN OFFENDER'S DRIVER'S LICENSE RECORD THAT THE PERSON MAY DRIVE ONLY A VEHICLE WITH AN IGNITION INTERLOCK DEVICE;~~ PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT THE DEVICE; ~~DIRECTING THE SENTENCING COURT TO REQUIRE INSTALLATION OF AN IGNITION INTERLOCK DEVICE INSTEAD OF REVOKING OR SUSPENDING A PERSON'S LICENSE;~~ ALLOWING THE DEPARTMENT OF JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK RESTRICTED OFFENDER UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION INTERLOCK RESTRICTIONS TO RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE SUSPENSION OR REVOCATION FOR DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING SECTIONS 61-2-302, ~~61-5-205, 61-8-714~~ 61-5-208, 61-8-401, AND ~~61-8-722~~ 61-8-406, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, since the early 1980s, strict laws and extensive public awareness campaigns have helped reduce the traffic death toll attributed to drunken driving; and

WHEREAS, despite the progress that has been made in the battle against drunken driving, there remain on Montana's roads and highways a small group of hard-core drinkers who regularly drink to high levels of intoxication (over 0.15%) and still drive; and

WHEREAS, on a weekend night, these hard-core drunk drivers make up only 1% of all drivers, yet account for almost half of the driving fatalities; and

WHEREAS, approximately 80% of all drunk drivers killed on the nation's highways in 1995 had a blood alcohol concentration of 0.15% or higher, and to get to that level, a 160-pound man would have

1 to consume more than six drinks in 1 hour; and

2 WHEREAS, approximately 50% of all fatally injured drunk drivers in 1995 had a blood alcohol
3 concentration of 0.20% or higher, more than twice the legal limit in Montana; and

4 WHEREAS, these hard-core drinkers continue to drive even after steps have been taken, including
5 license suspensions, fines, and incarceration, to remove them from the road; and

6 WHEREAS, proven technological approaches, such as court-ordered ignition interlocks, exist for
7 limiting the opportunity of hard-core drinkers to drink and drive; and

8 WHEREAS, ignition interlock devices prevent a car from starting if the driver fails a car-mounted
9 Breathalyzer test, and ignition interlock devices are a reliable, fair, and effective means of reducing repeat
10 driving under the influence (DUI) offenses; and

11 WHEREAS, reduction of repeat DUI offenses will, over time, reduce one of the growing pressures
12 for increased incarceration expenses impacting our local and state corrections systems; and

13 WHEREAS, ignition interlock devices can be an effective complement to treatment of
14 alcohol-dependent persons and their families who also drive on the roads and highways of this state; and

15 WHEREAS, the incidence of recidivism is lower among offenders with ignition interlock devices in
16 their vehicles; and

17 WHEREAS, the device serves as a constant reminder to a driver of the driver's drinking problem and
18 the difficulties that have arisen from it; and

19 WHEREAS, having an ignition interlock device installed forces a driver to develop and practice
20 strategies to avoid drinking and driving; and

21 WHEREAS, the device allows an offender to re-enter the driver licensing system legally, sober, and
22 with insurance; and

23 WHEREAS, ignition interlock devices allow more offenders the opportunity to maintain employment;
24 and

25 WHEREAS, regular maintenance of the ignition interlock device facilitates the monitoring of
26 offenders and allows for periodic checks on attempts to circumvent the device; and

27 WHEREAS, the use of ignition interlock devices is legal in Montana, but the devices are not
28 currently available throughout the state nor will they be consistently used in the state until installation of
29 these devices is required by Montana courts responsible for sentencing DUI offenders.

30

1 STATEMENT OF INTENT

2 A statement of intent is required for this bill because [section 4] delegates authority to the
 3 department of justice to adopt rules regarding ignition interlock devices. The legislature intends that the
 4 department model rules after rules that have implemented similar statutes adopted in Washington, Idaho,
 5 Oregon, North Dakota, and 31 other states. The legislature further intends that the rules adopted governing
 6 approval of the ignition interlock devices be based on federal standards issued by the national highway
 7 traffic safety administration on "model specifications for breath alcohol ignition interlock devices", published
 8 in the Federal Register on April 7, 1992. Any changes in the federal standards regarding standards for
 9 alcohol ignition interlock devices must be reflected in the department's rules.

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
 13 NEW SECTION. Section 1. Ignition interlock device -- definition. "Ignition interlock device" means
 14 ignition equipment that:

- 15 (1) analyzes the breath to determine blood alcohol concentration;
 16 (2) is approved by the department pursuant to [section 4]; and
 17 (3) is designed to prevent a motor vehicle from being operated by a person who has consumed a
 18 specific amount of an alcoholic beverage.

19
 20 ~~NEW SECTION. Section 2. Ignition interlock device -- notation on driver's license record. When~~
 21 ~~a court orders a person to have an ignition interlock device installed under 61-8-714(6) or 61-8-722(7), the~~
 22 ~~court shall notify the department of its order. The department shall note on the person's driver's license~~
 23 ~~record that the person may operate only a motor vehicle equipped with an ignition interlock device.~~

24
 25 NEW SECTION. Section 2. Ignition interlock device -- assisting in starting and operating --
 26 circumventing -- penalty. (1) IT IS UNLAWFUL FOR A PERSON WHO IS SUBJECT TO A RESTRICTION
 27 UNDER [SECTION 8] TO OPERATE A MOTOR VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK
 28 DEVICE.

29 ~~(1)(2)~~ A person may not knowingly assist a person who is restricted to the use of an ignition
 30 interlock device to start and operate the restricted person's vehicle.

1 ~~(2)~~(3) A person may not knowingly circumvent the operation of an ignition interlock device.
2 ~~(3)~~(4) A person convicted of a violation of this section shall be punished by a fine of not more than
3 \$500 or by imprisonment for not more than 6 months or both.

4 ~~(4)~~(5) This section does not apply if:

- 5 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition
6 interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and
7 (b) the person subject to the restriction does not operate the vehicle.

8

9 NEW SECTION. **Section 3. Department rules regarding ignition interlock devices.** (1) The
10 department shall adopt rules providing for the approval of ignition interlock devices and the installation,
11 CALIBRATION, repair, and removal of approved devices.

12 (2) The department's rules must be based upon federal standards issued for similar devices.

13 (3) An ignition interlock device that is approved by the department must also:

14 (a) be designed so it does not impede safe operation of the vehicle;

15 (b) correlate well with the level established for alcohol impairment;

16 (c) work accurately and reliably in an unsupervised environment and under extreme weather
17 conditions;

18 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol
19 concentration equivalence;

20 (e) resist tampering and show evidence of tampering if it is attempted;

21 (f) be difficult to circumvent;

22 (g) minimize inconvenience of a sober user;

23 (h) operate reliably over the range of automobile environments and in connection with various
24 manufacturing standards;

25 (i) be manufactured by a person who is adequately insured for product liability; and

26 (j) have a label affixed in a prominent location warning that a person who knowingly tampers with,
27 circumvents, or otherwise misuses the device is subject to criminal prosecution.

28

29 **Section 4.** Section 61-2-302, MCA, is amended to read:

30 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers.** (1)

1 The department may establish by administrative rules a driver rehabilitation and improvement program or
2 programs that may consist of classroom instruction in rules of the road, driving techniques, defensive
3 driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed
4 to contribute to proper driving attitudes, habits, and techniques.

5 (2) Official participation in the driver rehabilitation and improvement program is limited to those
6 persons WHO ARE NOT SUBJECT TO AN IGNITION INTERLOCK RESTRICTION IMPOSED UNDER SECTION
7 8] AND whose license to operate a motor vehicle in the state of Montana is:

8 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
9 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

10 (b) revoked and they have:

11 (i) completed at least 3 months of a 1-year revocation; or

12 (ii) completed 1 year of a 3-year revocation; and

13 (iii) met the requirements for reobtaining a Montana driver's license.

14 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
15 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's
16 participation in the driver rehabilitation and improvement program provided for in this section may be stayed
17 if that person complies with the requirements established for the driver improvement program and meets
18 the eligibility requirements of subsection (2).

19 (4) In the event that a person's driver's license has been surrendered ~~prior to~~ before the person's
20 selection for participation in the driver rehabilitation and improvement program, the license may be returned
21 upon receipt of the person's agreement to participate in the program.

22 (5) The stay of enforcement of any suspension or revocation order must be terminated and the
23 order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and
24 improvement program or fails to meet the attendance or other requirements established for participation
25 in the program.

26 (6) ~~Nothing in this~~ This part does not create a right to be included in any program
27 established under this part.

28 (7) The department may establish a schedule of fees that may be charged those persons
29 participating in the driver improvement and rehabilitation program. The fees must be used to help defray
30 costs of maintaining the program.

1 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice
 2 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
 3 department.

4 (9) ~~(a)~~ The department may issue a restricted probationary license to any person who enrolls and
 5 participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license
 6 under this section, the licensee is subject to the restrictions set forth on the license.

7 ~~(b) When a sentencing court orders a person to have an ignition interlock device installed pursuant~~
 8 ~~to 61-8-714(6) or 61-8-722(7), the department shall issue that person a probationary license.~~

9 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
 10 restrictions imposed on a restricted license issued to the person under this section."

11
 12 **Section 6.** ~~Section 61-5-205, MCA, is amended to read:~~

13 ~~"61-5-205. Mandatory revocation of license upon proper authority. The Except as provided in~~
 14 ~~61-8-714(6) and 61-8-722(7), the department upon proper authority shall revoke the driver's license or the~~
 15 ~~operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not~~
 16 ~~vacated of any of the following offenses, when the conviction or forfeiture has become final:~~

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

18 ~~(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of~~
 19 ~~alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood~~
 20 ~~alcohol concentration of 0.10 or more;~~

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

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

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

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

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

29
 30 **Section 7.** ~~Section 61-8-714, MCA, is amended to read:~~

1 ~~"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in~~
2 ~~subsections (8) (9) and (9) (10), a person convicted of a violation of 61-8-401 shall be punished by~~
3 ~~imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be~~
4 ~~punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be~~
5 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the~~
6 ~~defendant's physical or mental well being.~~

7 ~~(2) Except as provided in subsection (8) (9), on a second conviction, the person shall be punished~~
8 ~~by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least~~
9 ~~48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection~~
10 ~~(8) (9), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the~~
11 ~~imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well being.~~

12 ~~(3) (a) Except as provided in subsection (8) (9), on the third conviction, the person shall be~~
13 ~~punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served~~
14 ~~consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as~~
15 ~~provided in subsection (8) (9), notwithstanding any provision to the contrary providing for suspension of~~
16 ~~execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of~~
17 ~~the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may~~
18 ~~not 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 or more than \$10,000. Except as provided in subsection (8) (9), notwithstanding any provision~~
4 ~~to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~
5 ~~imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or~~
6 ~~subsequent offense may not be suspended.~~

7 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
8 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
9 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
10 ~~treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made~~
11 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
12 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
13 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
14 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
15 ~~department of public health and human services, which that must include alcohol or drug treatment, or~~
16 ~~both. As long as the alcohol information course is approved as provided in this subsection and the~~
17 ~~treatment is provided by a certified chemical dependency counselor, the defendant may attend the~~
18 ~~information course and treatment program of the defendant's choice. The treatment provided to the~~
19 ~~defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,~~
20 ~~or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient~~
21 ~~placement rules adopted by the department of corrections. Upon determination, the court shall order the~~
22 ~~defendant's appropriate level of treatment. If more than one counselor makes a determination as provided~~
23 ~~in this subsection, the court shall order an appropriate level of treatment based upon the determination of~~
24 ~~one of the counselors. On a second or subsequent conviction, the treatment program must be followed by~~
25 ~~monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or~~
26 ~~counselor may not require attendance at a self-help program other than at an "open meeting" as that term~~
27 ~~is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each~~
28 ~~counselor providing education or treatment shall, at the commencement of the education or treatment,~~
29 ~~notify the court that the defendant has been enrolled in an alcohol information course or treatment program.~~
30 ~~If the defendant fails to attend the information course or treatment program, the counselor shall notify the~~

1 court of the failure.

2 ~~(6) In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
3 ~~an offender is convicted of the second or subsequent offense or the offender's blood alcohol concentration~~
4 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
5 ~~devices are reasonably available, the court shall:~~

6 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
7 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;~~

8 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
9 ~~motor vehicle from starting;~~

10 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
11 ~~motor vehicle;~~

12 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
13 ~~restriction;~~

14 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.~~

15 ~~(6)(7) For the purpose of determining the number of convictions under this section, "conviction"~~
16 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
17 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
18 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
19 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
20 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
21 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
22 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
23 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
24 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
25 ~~only be obtained by district court order upon good cause shown.~~

26 ~~(7)(8) For the purpose of calculating subsequent convictions under this section, a conviction for~~
27 ~~a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

28 ~~(8)(9) The court may order that a term of imprisonment imposed under this section be served in~~
29 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
30 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~

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

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

8 ~~(10)(11) A court may not defer imposition of sentence under this section."~~

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

11 ~~"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in~~
12 ~~subsection (9) (10), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for~~
13 ~~not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.~~

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

17 ~~(3) (a) Except as provided in subsection (9) (10), on a third conviction of a violation of 61-8-406,~~
18 ~~the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6~~
19 ~~months and by a fine of not less than \$500 or more than \$1,000.~~

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 that is owned and operated by the person at the time of the offense~~
22 ~~to be 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 or more than \$10,000. Except as provided in subsection (9) (10), notwithstanding any other~~
5 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the imposition~~
6 ~~or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense~~
7 ~~may not be suspended.~~

8 ~~(5) The Except as provided in subsection (7), the provisions of 61-5-205(2), 61-5-208(2), and~~
9 ~~61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under~~
10 ~~61-8-406.~~

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

18 ~~(7) In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
19 ~~an offender is convicted of the second or subsequent offense, or the offender's blood alcohol concentration~~
20 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
21 ~~devices are reasonably available, the court shall:~~

22 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
23 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;~~

24 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
25 ~~motor vehicle from starting;~~

26 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
27 ~~motor vehicle;~~

28 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
29 ~~restriction;~~

30 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.~~

1 ~~(7)(8)~~ For the purpose of determining the number of convictions under this section, "conviction"
 2 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a
 3 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or
 4 another state, which forfeiture has not been vacated. An offender is considered to have been previously
 5 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the
 6 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent
 7 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been
 8 an additional conviction for an offense under this section for a period of 5 years after a prior conviction
 9 under this section, then all records and data relating to the prior conviction are confidential criminal justice
 10 information, as defined in 45-5-103, and public access to the information may only be obtained by district
 11 court order upon good cause shown.

12 ~~(8)(9)~~ For the purpose of calculating subsequent convictions under this section, a conviction for
 13 a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

14 ~~(9)(10)~~ The court may order that a term of imprisonment imposed under this section be served in
 15 another facility made available by the county and approved by the sentencing court. The defendant, if
 16 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions
 17 on the defendant's ability to leave the premises of the facility and require that the defendant follow the
 18 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center
 19 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
 20 sentencing court.

21 ~~(10)(11)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
 22 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
 23 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

24 ~~(11)(12)~~ A court may not defer imposition of sentence under this section."

26 **SECTION 5. SECTION 61-5-208, MCA, IS AMENDED TO READ:**

27 **"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke
 28 a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1
 29 year, except as otherwise permitted by law.

30 (2) A person whose license or privilege to drive a motor vehicle on the public highways has been

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

17 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department
18 proof of compliance with any ignition interlock restriction imposed under [section 8], the department shall
19 stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401
20 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of
21 suspension or revocation has expired and any required alcohol information course, treatment, or both, have
22 been completed.

23 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that
24 the person has violated the ignition interlock restriction by, including but not limited to, operating a motor
25 vehicle not equipped with the device, tampering with the device, or removing the device before the period
26 of restriction has expired, the department shall lift the stay and reinstate the license suspension or
27 revocation for the remainder of the time period. The department may not issue a probationary driver's
28 license to a person whose license suspension or revocation has been reinstated due to violation of an
29 ignition interlock restriction.

30 ~~(3)~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in

1 subsection (2).

2 ~~4~~(5) The period of revocation for any person convicted of any offense which makes mandatory
3 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

4 ~~5~~(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
5 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and
6 subsection (2) of this section."
7

8 **SECTION 6. SECTION 61-8-401, MCA, IS AMENDED TO READ:**

9 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
10 provided in 61-8-714, ~~and 61-8-723,~~ and [section 8] for any person who is under the influence of:

11 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
12 to the public;

13 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

14 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

15 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
16 within this state.

17 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
18 use alcohol or such a drug under the laws of this state does not constitute a defense against any charge
19 of violating subsection (1).

20 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
21 combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

22 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
23 been committed by any person driving or in actual physical control of a vehicle while under the influence
24 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
25 person's blood, urine, or breath, shall give rise to the following inferences:

26 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
27 person was not under the influence of alcohol.

28 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
29 fact shall not give rise to any inference that the person was or was not under the influence of alcohol but
30 such fact may be considered with other competent evidence in determining the guilt or innocence of the

1 person.

2 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
3 person was under the influence of alcohol. The inference is rebuttable.

4 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
5 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
6 of the two.

7 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
8 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and
9 subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of
10 the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

11 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
12

13 **SECTION 7. SECTION 61-8-406, MCA, IS AMENDED TO READ:**

14 "61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is
15 unlawful and punishable as provided in 61-8-722, ~~and 61-8-723,~~ and [section 8], for any person to drive
16 or be in actual physical control of a vehicle upon the ways of this state open to the public while the
17 person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or
18 more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
19

20 **NEW SECTION. SECTION 8. DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS --**
21 **DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION -- IGNITION INTERLOCK DEVICE REQUIRED. (1)**
22 **IN ADDITION TO THE PUNISHMENTS PROVIDED IN 61-8-714 AND 61-8-722, REGARDLESS OF**
23 **DISPOSITION, THE COURT ~~SHALL~~ MAY RESTRICT A DEFENDANT TO ONLY DRIVING A MOTOR VEHICLE**
24 **EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AND REQUIRE THE DEFENDANT TO PAY**
25 **THE REASONABLE COST OF LEASING, INSTALLING, AND MAINTAINING THE DEVICE IF:**

26 **(A) THE COURT DETERMINES THAT APPROVED IGNITION INTERLOCK DEVICES ARE**
27 **REASONABLY AVAILABLE; AND**

28 **(B) (I) THE DEFENDANT'S BLOOD ALCOHOL CONCENTRATION AT THE TIME OF THE ARREST**
29 **WAS 0.18% OR GREATER; OR**

30 **(II) THE DEFENDANT PREVIOUSLY HAS BEEN CONVICTED OF A VIOLATION OF 61-8-401 OR**

1 61-8-406.

2 (2) ANY RESTRICTION IMPOSED UNDER THIS SECTION MUST BE INCLUDED IN A REPORT OF
3 THE CONVICTION MADE BY THE COURT TO THE DEPARTMENT IN ACCORDANCE WITH 61-11-101 AND
4 PLACED UPON THE PERSON'S DRIVING RECORD MAINTAINED BY THE DEPARTMENT IN ACCORDANCE
5 WITH 61-11-102.

6 (3) THE DURATION OF A RESTRICTION IMPOSED UNDER THIS SECTION MUST RUN PARALLEL
7 TO THE TIME PERIOD FOR SUSPENSION OR REVOCATION OF THE DRIVER'S LICENSE OF THE
8 DEFENDANT IN ACCORDANCE WITH 61-2-107, 61-5-205, AND 61-5-208 AND MUST BE MONITORED
9 BY THE DEPARTMENT.

10
11 NEW SECTION. Section 9. Codification instruction. (1) [Section 1] is intended to be codified as
12 an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to
13 [section 1].

14 (2) [Sections 2, 3, and 4 <aa>8] are intended to be codified as an integral part of Title 61,
15 chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 2, 3, and 4 8].

16
17 NEW SECTION. Section 10. Effective date DATES. (1) Except as provided in subsection (2), [this
18 act] is effective July 1, 1997.

19 (2) [Section 4 3 and this section] are effective on passage and approval.

20 -END-

1 SENATE BILL NO. 303

2 INTRODUCED BY WILSON, RYAN, CHRISTIAENS, SWYSGOOD, VAN VALKENBURG, KEATING,
3 COCCHIARELLA4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING~~ ALLOWING A JUDGE TO REQUIRE A PERSON TO
6 HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE
7 TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST
8 TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18
9 PERCENT OR MORE; ~~REQUIRING THE DEPARTMENT OF JUSTICE TO INDICATE ON AN OFFENDER'S~~
10 ~~DRIVER'S LICENSE RECORD THAT THE PERSON MAY DRIVE ONLY A VEHICLE WITH AN IGNITION~~
11 ~~INTERLOCK DEVICE;~~ PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT
12 THE DEVICE; ~~DIRECTING THE SENTENCING COURT TO REQUIRE INSTALLATION OF AN IGNITION~~
13 ~~INTERLOCK DEVICE INSTEAD OF REVOKING OR SUSPENDING A PERSON'S LICENSE;~~ ALLOWING THE
14 DEPARTMENT OF JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK
15 RESTRICTED OFFENDER UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION
16 INTERLOCK RESTRICTIONS TO RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE
17 SUSPENSION OR REVOCATION FOR DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF
18 JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING
19 SECTIONS 61-2-302, ~~61-5-205~~, ~~61-8-714~~ 61-5-208, 61-8-401, AND ~~61-8-722~~ 61-8-406, MCA; AND
20 PROVIDING EFFECTIVE DATES."

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

1 SENATE BILL NO. 303

2 INTRODUCED BY WILSON, RYAN, CHRISTIAENS, SWYSGOOD, VAN VALKENBURG, KEATING,
3 COCCHIARELLA

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING~~ ALLOWING A JUDGE TO REQUIRE A PERSON TO
6 HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE
7 TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST
8 TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18
9 PERCENT OR MORE; ~~REQUIRING THE DEPARTMENT OF JUSTICE TO INDICATE ON AN OFFENDER'S~~
10 ~~DRIVER'S LICENSE RECORD THAT THE PERSON MAY DRIVE ONLY A VEHICLE WITH AN IGNITION~~
11 ~~INTERLOCK DEVICE;~~ PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT
12 THE DEVICE; ~~DIRECTING THE SENTENCING COURT TO REQUIRE INSTALLATION OF AN IGNITION~~
13 ~~INTERLOCK DEVICE INSTEAD OF REVOKING OR SUSPENDING A PERSON'S LICENSE;~~ ALLOWING THE
14 DEPARTMENT OF JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK
15 RESTRICTED OFFENDER UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION
16 INTERLOCK RESTRICTIONS TO RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE
17 SUSPENSION OR REVOCATION FOR DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF
18 JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING
19 SECTIONS 61-2-302, ~~61-5-205, 61-8-714~~ 61-5-208, 61-8-401, AND 61-8-722 61-8-406, MCA; AND
20 PROVIDING EFFECTIVE DATES."

21
22 WHEREAS, since the early 1980s, strict laws and extensive public awareness campaigns have
23 helped reduce the traffic death toll attributed to drunken driving; and

24 WHEREAS, despite the progress that has been made in the battle against drunken driving, there
25 remain on Montana's roads and highways a small group of hard-core drinkers who regularly drink to high
26 levels of intoxication (over 0.15%) and still drive; and

27 WHEREAS, on a weekend night, these hard-core drunk drivers make up only 1% of all drivers, yet
28 account for almost half of the driving fatalities; and

29 WHEREAS, approximately 80% of all drunk drivers killed on the nation's highways in 1995 had a
30 blood alcohol concentration of 0.15% or higher, and to get to that level, a 160-pound man would have

1 to consume more than six drinks in 1 hour; and

2 WHEREAS, approximately 50% of all fatally injured drunk drivers in 1995 had a blood alcohol
3 concentration of 0.20% or higher, more than twice the legal limit in Montana; and

4 WHEREAS, these hard-core drinkers continue to drive even after steps have been taken, including
5 license suspensions, fines, and incarceration, to remove them from the road; and

6 WHEREAS, proven technological approaches, such as court-ordered ignition interlocks, exist for
7 limiting the opportunity of hard-core drinkers to drink and drive; and

8 WHEREAS, ignition interlock devices prevent a car from starting if the driver fails a car-mounted
9 Breathalyzer test, and ignition interlock devices are a reliable, fair, and effective means of reducing repeat
10 driving under the influence (DUI) offenses; and

11 WHEREAS, reduction of repeat DUI offenses will, over time, reduce one of the growing pressures
12 for increased incarceration expenses impacting our local and state corrections systems; and

13 WHEREAS, ignition interlock devices can be an effective complement to treatment of
14 alcohol-dependent persons and their families who also drive on the roads and highways of this state; and

15 WHEREAS, the incidence of recidivism is lower among offenders with ignition interlock devices in
16 their vehicles; and

17 WHEREAS, the device serves as a constant reminder to a driver of the driver's drinking problem and
18 the difficulties that have arisen from it; and

19 WHEREAS, having an ignition interlock device installed forces a driver to develop and practice
20 strategies to avoid drinking and driving; and

21 WHEREAS, the device allows an offender to re-enter the driver licensing system legally, sober, and
22 with insurance; and

23 WHEREAS, ignition interlock devices allow more offenders the opportunity to maintain employment;
24 and

25 WHEREAS, regular maintenance of the ignition interlock device facilitates the monitoring of
26 offenders and allows for periodic checks on attempts to circumvent the device; and

27 WHEREAS, the use of ignition interlock devices is legal in Montana, but the devices are not
28 currently available throughout the state nor will they be consistently used in the state until installation of
29 these devices is required by Montana courts responsible for sentencing DUI offenders.

30

1 STATEMENT OF INTENT

2 A statement of intent is required for this bill because [section 4] delegates authority to the
 3 department of justice to adopt rules regarding ignition interlock devices. The legislature intends that the
 4 department model rules after rules that have implemented similar statutes adopted in Washington, Idaho,
 5 Oregon, North Dakota, and 31 other states. The legislature further intends that the rules adopted governing
 6 approval of the ignition interlock devices be based on federal standards issued by the national highway
 7 traffic safety administration on "model specifications for breath alcohol ignition interlock devices", published
 8 in the Federal Register on April 7, 1992. Any changes in the federal standards regarding standards for
 9 alcohol ignition interlock devices must be reflected in the department's rules.

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
 13 NEW SECTION. Section 1. Ignition interlock device -- definition. "Ignition interlock device" means
 14 ignition equipment that:

- 15 (1) analyzes the breath to determine blood alcohol concentration;
 16 (2) is approved by the department pursuant to [section 4]; and
 17 (3) is designed to prevent a motor vehicle from being operated by a person who has consumed a
 18 specific amount of an alcoholic beverage.

19
 20 ~~NEW SECTION. Section 2. Ignition interlock device -- notation on driver's license record.~~ When
 21 ~~a court orders a person to have an ignition interlock device installed under 61-8-714(6) or 61-8-722(7), the~~
 22 ~~court shall notify the department of its order. The department shall note on the person's driver's license~~
 23 ~~record that the person may operate only a motor vehicle equipped with an ignition interlock device.~~

24
 25 NEW SECTION. Section 2. Ignition interlock device -- assisting in starting and operating --
 26 circumventing -- penalty. (1) IT IS UNLAWFUL FOR A PERSON WHO IS SUBJECT TO A RESTRICTION
 27 UNDER [SECTION 8] TO OPERATE A MOTOR VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK
 28 DEVICE.

29 ~~(1)(2)~~ A person may not knowingly assist a person who is restricted to the use of an ignition
 30 interlock device to start and operate the restricted person's vehicle.

1 ~~(2)~~(3) A person may not knowingly circumvent the operation of an ignition interlock device.

2 ~~(3)~~(4) A person convicted of a violation of this section shall be punished by a fine of not more than
3 \$500 or by imprisonment for not more than 6 months or both.

4 ~~(4)~~(5) This section does not apply if:

5 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition
6 interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

7 (b) the person subject to the restriction does not operate the vehicle.

8

9 **NEW SECTION.** **Section 3. Department rules regarding ignition interlock devices.** (1) The
10 department shall adopt rules providing for the approval of ignition interlock devices and the installation,
11 **CALIBRATION**, repair, and removal of approved devices.

12 (2) The department's rules must be based upon federal standards issued for similar devices.

13 (3) An ignition interlock device that is approved by the department must also:

14 (a) be designed so it does not impede safe operation of the vehicle;

15 (b) correlate well with the level established for alcohol impairment;

16 (c) work accurately and reliably in an unsupervised environment and under extreme weather
17 conditions;

18 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol
19 concentration equivalence;

20 (e) resist tampering and show evidence of tampering if it is attempted;

21 (f) be difficult to circumvent;

22 (g) minimize inconvenience of a sober user;

23 (h) operate reliably over the range of automobile environments and in connection with various
24 manufacturing standards;

25 (i) be manufactured by a person who is adequately insured for product liability; and

26 (j) have a label affixed in a prominent location warning that a person who knowingly tampers with,
27 circumvents, or otherwise misuses the device is subject to criminal prosecution.

28

29 **Section 4.** Section 61-2-302, MCA, is amended to read:

30 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers.** (1)

1 The department may establish by administrative rules a driver rehabilitation and improvement program or
2 programs that may consist of classroom instruction in rules of the road, driving techniques, defensive
3 driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed
4 to contribute to proper driving attitudes, habits, and techniques.

5 (2) Official participation in the driver rehabilitation and improvement program is limited to those
6 persons WHO ARE NOT SUBJECT TO AN IGNITION INTERLOCK RESTRICTION IMPOSED UNDER SECTION
7 8] AND whose license to operate a motor vehicle in the state of Montana is:

8 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
9 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

10 (b) revoked and they have:

11 (i) completed at least 3 months of a 1-year revocation; or

12 (ii) completed 1 year of a 3-year revocation; and

13 (iii) met the requirements for reobtaining a Montana driver's license.

14 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
15 Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's
16 participation in the driver rehabilitation and improvement program provided for in this section may be stayed
17 if that person complies with the requirements established for the driver improvement program and meets
18 the eligibility requirements of subsection (2).

19 (4) In the event that a person's driver's license has been surrendered ~~prior to~~ before the person's
20 selection for participation in the driver rehabilitation and improvement program, the license may be returned
21 upon receipt of the person's agreement to participate in the program.

22 (5) The stay of enforcement of any suspension or revocation order must be terminated and the
23 order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and
24 improvement program or fails to meet the attendance or other requirements established for participation
25 in the program.

26 (6) ~~Nothing in this~~ This part does not creates create a right to be included in any program
27 established under this part.

28 (7) The department may establish a schedule of fees that may be charged those persons
29 participating in the driver improvement and rehabilitation program. The fees must be used to help defray
30 costs of maintaining the program.

1 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice
2 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
3 department.

4 (9) ~~(a)~~ The department may issue a restricted probationary license to any person who enrolls and
5 participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license
6 under this section, the licensee is subject to the restrictions set forth on the license.

7 ~~(b) When a sentencing court orders a person to have an ignition interlock device installed pursuant~~
8 ~~to 61-8-714(6) or 61-8-722(7), the department shall issue that person a probationary license.~~

9 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
10 restrictions imposed on a restricted license issued to the person under this section."

11
12 ~~Section 6. Section 61-5-205, MCA, is amended to read:~~

13 ~~"61-5-205. Mandatory revocation of license upon proper authority. The Except as provided in~~
14 ~~61-8-714(6) and 61-8-722(7), the department upon proper authority shall revoke the driver's license or the~~
15 ~~operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not~~
16 ~~vacated of any of the following offenses, when the conviction or forfeiture has become final:~~

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

18 ~~(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of~~
19 ~~alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood~~
20 ~~alcohol concentration of 0.10 or more;~~

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

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

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

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

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

29
30 ~~Section 7. Section 61-8-714, MCA, is amended to read:~~

1 ~~"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in~~
2 ~~subsections (8) (9) and (9) (10), a person convicted of a violation of 61-8-401 shall be punished by~~
3 ~~imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be~~
4 ~~punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be~~
5 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the~~
6 ~~defendant's physical or mental well being.~~

7 ~~(2) Except as provided in subsection (8) (9), on a second conviction, the person shall be punished~~
8 ~~by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least~~
9 ~~48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection~~
10 ~~(8) (9), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the~~
11 ~~imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well being.~~

12 ~~(3) (a) Except as provided in subsection (8) (9), on the third conviction, the person shall be~~
13 ~~punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served~~
14 ~~consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as~~
15 ~~provided in subsection (8) (9), notwithstanding any provision to the contrary providing for suspension of~~
16 ~~execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of~~
17 ~~the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may~~
18 ~~not 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 or more than \$10,000. Except as provided in subsection (8) (9), notwithstanding any provision~~
4 ~~to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~
5 ~~imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or~~
6 ~~subsequent offense may not be suspended.~~

7 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
8 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
9 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
10 ~~treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made~~
11 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
12 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
13 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
14 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
15 ~~department of public health and human services, which that must include alcohol or drug treatment, or~~
16 ~~both. As long as the alcohol information course is approved as provided in this subsection and the~~
17 ~~treatment is provided by a certified chemical dependency counselor, the defendant may attend the~~
18 ~~information course and treatment program of the defendant's choice. The treatment provided to the~~
19 ~~defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,~~
20 ~~or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient~~
21 ~~placement rules adopted by the department of corrections. Upon determination, the court shall order the~~
22 ~~defendant's appropriate level of treatment. If more than one counselor makes a determination as provided~~
23 ~~in this subsection, the court shall order an appropriate level of treatment based upon the determination of~~
24 ~~one of the counselors. On a second or subsequent conviction, the treatment program must be followed by~~
25 ~~monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or~~
26 ~~counselor may not require attendance at a self help program other than at an "open meeting" as that term~~
27 ~~is defined by the self help program. A defendant may voluntarily participate in self help programs. Each~~
28 ~~counselor providing education or treatment shall, at the commencement of the education or treatment,~~
29 ~~notify the court that the defendant has been enrolled in an alcohol information course or treatment program.~~
30 ~~If the defendant fails to attend the information course or treatment program, the counselor shall notify the~~

1 court of the failure.

2 ~~(6) In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
3 ~~an offender is convicted of the second or subsequent offense or the offender's blood alcohol concentration~~
4 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
5 ~~devices are reasonably available, the court shall:~~

6 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
7 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-206;~~

8 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
9 ~~motor vehicle from starting;~~

10 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
11 ~~motor vehicle;~~

12 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
13 ~~restriction;~~

14 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.~~

15 ~~(6)(7) For the purpose of determining the number of convictions under this section, "conviction"~~
16 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
17 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
18 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
19 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
20 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
21 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
22 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
23 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
24 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
25 ~~only be obtained by district court order upon good cause shown.~~

26 ~~(7)(8) For the purpose of calculating subsequent convictions under this section, a conviction for~~
27 ~~a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

28 ~~(8)(9) The court may order that a term of imprisonment imposed under this section be served in~~
29 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
30 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~

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

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

8 ~~(10)(11) A court may not defer imposition of sentence under this section."~~

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

11 ~~"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in~~
 12 ~~subsection (9) (10), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for~~
 13 ~~not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.~~

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

17 ~~(3) (a) Except as provided in subsection (9) (10), on a third conviction of a violation of 61-8-406,~~
 18 ~~the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6~~
 19 ~~months and by a fine of not less than \$500 or more than \$1,000.~~

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 that is owned and operated by the person at the time of the offense~~
 22 ~~to be 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 or more than \$10,000. Except as provided in subsection (9) (10), notwithstanding any other~~
5 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the imposition~~
6 ~~or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense~~
7 ~~may not be suspended.~~

8 ~~(5) The Except as provided in subsection (7), the provisions of 61-5-205(2), 61-5-208(2), and~~
9 ~~61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under~~
10 ~~61-8-406.~~

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

18 ~~(7) In addition to the other punishment provided in this section for a violation of 61-8-401, when~~
19 ~~an offender is convicted of the second or subsequent offense, or the offender's blood alcohol concentration~~
20 ~~at the time of the arrest was 0.18% or greater, and if the court determines that approved ignition interlock~~
21 ~~devices are reasonably available, the court shall:~~

22 ~~(a) order the offender to drive only a motor vehicle equipped with a functioning ignition interlock~~
23 ~~device instead of a revocation or suspension of that person's license imposed pursuant to 61-5-205;~~

24 ~~(b) establish a specific calibration setting at which the ignition interlock device will prevent the~~
25 ~~motor vehicle from starting;~~

26 ~~(c) determine the period of time that the offender must have the ignition interlock device in the~~
27 ~~motor vehicle;~~

28 ~~(d) retain jurisdiction over the offender convicted of the violation until the end of the period of the~~
29 ~~restriction;~~

30 ~~(e) require the offender to pay the reasonable cost of leasing, installing, and maintaining the device.~~

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

~~(8)(9) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

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

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

~~(11)(12) A court may not defer imposition of sentence under this section."~~

SECTION 5. 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

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

17 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department
18 proof of compliance with any ignition interlock restriction imposed under [section 8], the department shall
19 stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401
20 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of
21 suspension or revocation has expired and any required alcohol information course, treatment, or both, have
22 been completed.

23 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that
24 the person has violated the ignition interlock restriction by, including but not limited to, operating a motor
25 vehicle not equipped with the device, tampering with the device, or removing the device before the period
26 of restriction has expired, the department shall lift the stay and reinstate the license suspension or
27 revocation for the remainder of the time period. The department may not issue a probationary driver's
28 license to a person whose license suspension or revocation has been reinstated due to violation of an
29 ignition interlock restriction.

30 ~~(3)~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in

1 subsection (2).

2 ~~(4)~~(5) The period of revocation for any person convicted of any offense which makes mandatory
3 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

4 ~~(5)~~(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
5 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and
6 subsection (2) of this section."
7

8 **SECTION 6. SECTION 61-8-401, MCA, IS AMENDED TO READ:**

9 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
10 provided in 61-8-714, ~~and~~ 61-8-723, and [section 8] for any person who is under the influence of:

11 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
12 to the public;

13 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

14 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

15 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
16 within this state.

17 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
18 use alcohol or such a drug under the laws of this state does not constitute a defense against any charge
19 of violating subsection (1).

20 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
21 combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

22 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
23 been committed by any person driving or in actual physical control of a vehicle while under the influence
24 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
25 person's blood, urine, or breath, shall give rise to the following inferences:

26 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
27 person was not under the influence of alcohol.

28 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
29 fact shall not give rise to any inference that the person was or was not under the influence of alcohol but
30 such fact may be considered with other competent evidence in determining the guilt or innocence of the

1 person.

2 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
 3 person was under the influence of alcohol. The inference is rebuttable.

4 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
 5 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
 6 of the two.

7 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
 8 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and
 9 subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of
 10 the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

11 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
 12

13 **SECTION 7. SECTION 61-8-406, MCA, IS AMENDED TO READ:**

14 "61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is
 15 unlawful and punishable as provided in 61-8-722, ~~and 61-8-723,~~ and [section 8], for any person to drive
 16 or be in actual physical control of a vehicle upon the ways of this state open to the public while the
 17 person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or
 18 more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
 19

20 **NEW SECTION. SECTION 8. DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS --**
 21 **DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION -- IGNITION INTERLOCK DEVICE REQUIRED. (1)**
 22 **IN ADDITION TO THE PUNISHMENTS PROVIDED IN 61-8-714 AND 61-8-722, REGARDLESS OF**
 23 **DISPOSITION, THE COURT ~~SHALL~~ MAY RESTRICT A DEFENDANT TO ONLY DRIVING A MOTOR VEHICLE**
 24 **EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AND REQUIRE THE DEFENDANT TO PAY**
 25 **THE REASONABLE COST OF LEASING, INSTALLING, AND MAINTAINING THE DEVICE IF:**

26 **(A) THE COURT DETERMINES THAT APPROVED IGNITION INTERLOCK DEVICES ARE**
 27 **REASONABLY AVAILABLE; AND**

28 **(B) (I) THE DEFENDANT'S BLOOD ALCOHOL CONCENTRATION AT THE TIME OF THE ARREST**
 29 **WAS 0.18% OR GREATER; OR**

30 **(II) THE DEFENDANT PREVIOUSLY HAS BEEN CONVICTED OF A VIOLATION OF 61-8-401 OR**

1 61-8-406.

2 (2) ANY RESTRICTION IMPOSED UNDER THIS SECTION MUST BE INCLUDED IN A REPORT OF
3 THE CONVICTION MADE BY THE COURT TO THE DEPARTMENT IN ACCORDANCE WITH 61-11-101 AND
4 PLACED UPON THE PERSON'S DRIVING RECORD MAINTAINED BY THE DEPARTMENT IN ACCORDANCE
5 WITH 61-11-102.

6 (3) THE DURATION OF A RESTRICTION IMPOSED UNDER THIS SECTION MUST RUN PARALLEL
7 TO THE TIME PERIOD FOR SUSPENSION OR REVOCATION OF THE DRIVER'S LICENSE OF THE
8 DEFENDANT IN ACCORDANCE WITH 61-2-107, 61-5-205, AND 61-5-208 AND MUST BE MONITORED
9 BY THE DEPARTMENT.

10

11 NEW SECTION. Section 9. Codification instruction. (1) [Section 1] is intended to be codified as
12 an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to
13 [section 1].

14 (2) [Sections 2, 3, and 4 <aa>g] are intended to be codified as an integral part of Title 61,
15 chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 2, 3, and 4 g].

16

17 NEW SECTION. Section 10. Effective date DATES. (1) Except as provided in subsection (2), [this
18 act] is effective July 1, 1997.

19 (2) [Section 4 3 and this section] are effective on passage and approval.

20

-END-