

1 HOUSE BILL NO. 67

2 INTRODUCED BY M. MENAHAN

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO STRENGTHEN AND CLARIFY THE CHEMICAL DEPENDENCY
6 ASSESSMENT, EDUCATIONAL COURSE, AND TREATMENT REQUIREMENTS FOR OFFENDERS OF
7 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 61-8-732, MCA; AND
8 PROVIDING AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 61-8-732, MCA, is amended to read:

13 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
14 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments provided
15 in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401
16 or 61-8-406 shall complete:

17 (a) a chemical dependency assessment;

18 (b) a chemical dependency education course; and

19 (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or
20 subsequent conviction for which the defendant completes a residential alcohol treatment program under
21 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

22 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical
23 dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before
24 sentencing, the judge shall order the chemical dependency assessment as part of the sentence and shall order
25 that the assessment be completed within 20 days of the sentencing. The judge shall also order that the defendant
26 enroll in any required treatment within 20 days after the assessment or sentencing, whichever is later.

27 (3) The chemical dependency assessment and the chemical dependency education course must be
28 completed at a treatment program approved by the department of public health and human services and must
29 be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the
30 defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The

1 defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

2 (4) The chemical dependency assessment must consider the defendant's driving record and prior
3 offenses of driving under the influence of alcohol or drugs. The driving record must be sent to the licensed
4 addiction counselor by the law enforcement agency associated with the defendant's arrest. The counselor shall
5 take precautions to ensure that the driving record is kept confidential and is used only for the purposes of the
6 assessment. The assessment must describe the defendant's level of addiction, if any, and contain a
7 recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may,
8 at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program
9 approved by the department of public health and human services.

10 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the
11 defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to
12 diagnosis and patient placement rules adopted by the department of public health and human services. Upon
13 determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor
14 makes a determination as provided in this subsection, the court shall order an appropriate level of treatment
15 based upon the determination of one of the counselors.

16 (6) Each counselor providing education or treatment shall, at the commencement of the education or
17 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or
18 treatment program. If the defendant fails to attend the education course or to comply with the treatment program,
19 the counselor shall notify the court and the prosecuting attorney's office of the failure.

20 (7) A court or counselor may not require attendance at a self-help program other than at an "open
21 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help
22 programs.

23 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of
24 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a licensed addiction counselor pursuant
25 to diagnosis and patient placement rules adopted by the department of public health and human services.

26 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must
27 be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

28 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court
29 shall revoke the suspended sentence, if any, shall impose any remaining portion of the suspended sentence to
30 commence on the effective date of the revocation, and may include additional monthly monitoring for up to an

1 additional 1 year.

2 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 or
3 61-8-722 and orders the person to complete chemical dependency treatment under this section, the judge retains
4 jurisdiction for up to 1 year from the date of the sentencing to impose any suspended sentence ~~for up to 1 year.~~"

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6 **NEW SECTION. Section 2. Applicability.** [This act] applies to offenses committed on or after [the
7 effective date of this act].

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