

HOUSE BILL NO. 344

INTRODUCED BY B. MITCHELL, S. KLAKKEN, C. SCHOMER, A. REGIER, G. LAMMERS, S. FITZPATRICK,

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ADDITIONAL TYPE OF DRIVING UNDER THE INFLUENCE OFFENSE REGARDING NONCOMMERCIAL OR COMMERCIAL DRIVERS WHO HAVE A CERTAIN AMOUNT OF PROHIBITED SUBSTANCES OTHER THAN ALCOHOL OR MARIJUANA IN THEIR BLOOD ~~OR OTHER BODILY SUBSTANCE~~; AND AMENDING SECTIONS 23-2-535, 61-2-302, 61-5-212, 61-5-231, 61-8-805, 61-8-1001, 61-8-1002, 61-8-1007, 61-8-1008, 61-8-1009, AND 61-8-1011, MCA."

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

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol and drug concentration standards -- evidence admissible -- administration of tests. (1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, or drugs, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-1001."

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

"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by offending drivers. (1) The department may establish by administrative rule a driver rehabilitation and improvement program or programs. The programs may consist of electronic or classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under 61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), ~~or (1)(e), or (1)(f)~~, may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

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

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

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

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

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

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

(6) This part does not create a right to be included in any program established under this part.

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

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

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

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or cancelled.

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

Section 3. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without licensing exemption. (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless

the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or cancelled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed \$500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), ~~or (1)(e), or (1)(f)~~ or a similar offense under the laws of any other state or the suspension was under 61-8-1016 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or cancelled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802."

Section 4. Section 61-5-231, MCA, is amended to read:

"61-5-231. Authorization of probationary license by DUI court. (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), ~~or (1)(e)~~, or (1)(f), driving with excessive alcohol concentration under 61-8-1002, or aggravated driving under the influence as defined in 61-8-1001 is participating in a DUI court as defined in 61-8-1001, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-1010 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license."

Section 5. Section 61-8-805, MCA, is amended to read:

"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more -- hearing. (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For the purposes of this section, a conviction for violation of 61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), ~~or (1)(e)~~, or (1)(f) while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 6. Section 61-8-1001, MCA, is amended to read:

"61-8-1001. Definitions. As used in this part, unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f) and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, cancelled, or revoked as a result of a prior violation of driving under the influence, including a violation of 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f), an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in 61-8-1016 and the person's driver's license or privilege to drive was suspended, cancelled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that

contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in 61-1-101.

(6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-1007 or 61-8-1008 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-1009 and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in 61-1-101.

(11) "Motor vehicle" has the meaning provided in 61-1-101.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

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

(15) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle."

Section 7. Section 61-8-1002, MCA, is amended to read:

"61-8-1002. Driving under influence. (1) A person commits the offense of driving under the influence

if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more; or

(f) a noncommercial vehicle or commercial motor vehicle on the ways of this state open to the public while, ~~without a valid prescription~~, the person has an amount of any of the following prohibited substances in their body, as shown by analysis of the person's blood ~~or other bodily substance~~, that is equal to or greater than:

	Urine	Blood
	Nanograms	Nanograms
Prohibited substance	per milliliter	per milliliter
(i) Amphetamine	500	100 10
(ii) Cocaine	50	50 10
(iii) Cocaine metabolite	150	50 10
(iv) Heroin	2,000	50 1
(v) Heroin metabolite:		
(A) Morphine	2,000	50 10

1	(B) 6-monoacetyl morphine	10	10 1
2	(vi) Lysergic acid diethylamide	25	10 0.1
3	(vii) Methamphetamine	500	100 10
4	(viii) Phencyclidine	25	10 5
5	(ix) Fentanyl		1

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol;

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person; and

(c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state."

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2 **Section 8.** Section 61-8-1007, MCA, is amended to read:

3 **"61-8-1007. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as
4 provided in subsection (1)(b) or (1)(c), a person convicted of a violation of 61-8-1002(1)(a) shall be punished as
5 follows:

6 (i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6
7 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under
8 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for
9 not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than
10 \$2,000;

11 (ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a
12 fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age
13 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14
14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

15 (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a
16 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age
17 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60
18 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

19 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided
20 in 61-8-1008.

21 (c) If the person has a prior conviction or pending charge for a violation of driving under the
22 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this
23 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-
24 1001, the person shall be punished as provided in subsection (4).

25 (d) The mandatory minimum imprisonment term may not be served under home arrest and may
26 not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
27 person's physical or mental well-being.

28 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year

pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-1009. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-1002(1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f) shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000;

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-1008.

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-1001, the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-1009. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(3) (a) A person convicted of a violation of 61-8-1002(1)(e) shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100 or more than \$500.

(ii) Upon a second conviction under this section, a person shall be punished by a fine of not less than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(iv) In addition to the punishment provided in this section, regardless of disposition:

(A) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-1009 as ordered by the court; and

(B) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the

offense, has completed at least 30 days of the suspension period.

(b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-1007, 61-8-1008, and 61-8-1011.

(4) (a) A person convicted of a violation under 61-8-1002 charged as aggravated driving under the influence, as defined in 61-8-1001, shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of \$2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of \$5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of \$10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-1009. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement,

the court may impose the remainder of any imprisonment term that was imposed and suspended.

(d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-1008.

(5) In addition to the punishment provided in this section, regardless of disposition, the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-1009 as ordered by the court.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5."

Section 9. Section 61-8-1008, MCA, is amended to read:

"61-8-1008. Penalty for driving under influence -- fourth and subsequent offenses. (1) (a) A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d),~~ or (1)(f), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d),~~ or (1)(f), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in 61-8-1002(1)(a), is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than \$5,000 or more than \$10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than \$5,000 or more than \$10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

- 1 (b) Regarding the sentence provided for in subsection (1)(a)(i):
- 2 (i) the imposition or execution of the sentence may not be deferred or suspended, and the person
- 3 is not eligible for parole;
- 4 (ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by
- 5 the department of corrections;
- 6 (iii) following initial placement of a defendant in a residential alcohol treatment program facility, the
- 7 department of corrections may, at its discretion, place the offender in another facility or program;
- 8 (iv) the court shall order that if the person successfully completes a residential alcohol treatment
- 9 program approved by the department of corrections, the remainder of the 13-month to 2-year term must be
- 10 served on probation with the conditions that:
- 11 (A) the person abide by the standard conditions of probation promulgated by the department of
- 12 corrections;
- 13 (B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol
- 14 treatment under this section does so;
- 15 (C) the person may not frequent an establishment where alcoholic beverages are served;
- 16 (D) the person may not consume alcoholic beverages;
- 17 (E) the person may not operate a motor vehicle unless authorized by the person's probation officer;
- 18 (F) the person enter in and remain in an aftercare treatment program for the entirety of the
- 19 probationary period;
- 20 (G) the person submit to random or routine drug and alcohol testing; and
- 21 (H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
- 22 interlock system; and
- 23 (v) the sentencing judge may impose on the defendant any other reasonable restrictions or
- 24 conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited
- 25 to:
- 26 (A) payment of a fine as provided in 46-18-231;
- 27 (B) payment of costs as provided in 46-18-232 and 46-18-233;
- 28 (C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-1002(1)(a), and the person was previously sentenced under subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000, and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.

(3) If a person has previously been convicted and sentenced under subsection (2), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.

(4) If a person who is presently being sentenced has previously been convicted and sentenced under subsection (3) on one or more occasions, the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or more than 25 years. The first 5 years of the sentence may not be suspended.

(5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5."

1

2 **Section 10.** Section 61-8-1009, MCA, is amended to read:

3 **"61-8-1009. Driving under influence -- assessment, education, and treatment required.** (1) In
4 addition to the punishments provided in 61-8-1007 and 61-8-1008, regardless of disposition, a defendant
5 convicted of a violation of driving under the influence, including 61-8-1002, an offense that meets the definition
6 of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or
7 the laws of another state shall complete a chemical dependency assessment and:

8 (a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education
9 course; and

10 (b) for a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f), an offense that meets the definition of aggravated driving
12 under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another
13 state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol
14 treatment program under 61-8-1008(1)(a)(i), or as required by subsection (8) of this section, chemical
15 dependency treatment.

16 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the
17 chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or
18 completed before sentencing, the judge shall order the chemical dependency assessment as part of the
19 sentence.

20 (3) The chemical dependency assessment and the chemical dependency education course must
21 be completed at a treatment program approved by the department of public health and human services and
22 must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs.
23 The defendant may attend a treatment program of the defendant's choice as long as the treatment services are
24 provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education
25 course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

26 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
27 recommendation as to education, treatment, or both. The assessment must conform to quality standards
28 required by the department of public health and human services. A defendant who disagrees with the initial

assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the court of the failure.

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

(8) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

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

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the

1 court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence,
2 and may include additional monthly monitoring for up to an additional 1 year.

3 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-
4 1007 and orders the person to complete chemical dependency treatment under this section, the judge retains
5 jurisdiction to impose any suspended sentence for up to 1 year."

6
7 **Section 11.** Section 61-8-1011, MCA, is amended to read:

8 **"61-8-1011. Driving under influence -- conviction defined -- place of imprisonment -- home**
9 **arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the number
10 of convictions for prior offenses referred to in 61-8-1001, 61-8-1002, 61-8-1007, and 61-8-1008, "conviction"
11 means:

12 (i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally
13 recognized Indian reservation;

14 (ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the
15 defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation;
16 or

17 (iii) a conviction for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b),
18 (1)(c), ~~or (1)(d), or (1)(f)~~, an offense that meets the definition of aggravated driving under the influence in 61-8-
19 1001, or a similar offense under previous laws of this state or the laws of another state, or a violation of a
20 similar statute or regulation in another state or on a federally recognized Indian reservation.

21 (b) An offender is considered to have been previously convicted for the purposes of sentencing if
22 less than 10 years have elapsed between the commission of the present offense and a previous conviction
23 unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be
24 used for sentencing purposes.

25 (c) A previous conviction for a violation of driving under the influence, including 61-8-1002(1)(a),
26 (1)(b), (1)(c), ~~or (1)(d), or (1)(f)~~, an offense that meets the definition of aggravated driving under the influence in
27 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or a violation of a
28 similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise

defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under 61-8-1002.

(d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while the person was operating a vehicle in violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), ~~or (1)(d)~~, or (1)(f), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and a previous conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under 61-8-1002.

(2) Except as provided in 61-8-1008, the court may order that a term of imprisonment imposed under 61-8-1007 or 61-8-1008 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 may require that the defendant follow the rules of the 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.

(3) Subject to the limitations set forth in 61-8-1007 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under 61-8-1007 be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-1007 or 61-8-1008.

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-1007 for a violation of 61-8-1002."

- END -