

HOUSE BILL NO. 267

INTRODUCED BY B. MITCHELL, D. FERN, L. SCHUBERT, M. NOLAND, S. KELLY, T. SHARP, E. BYRNE, T. MILLETT, M. REGIER, J. FULLER, A. REGIER, T. FALK, N. DURAM, C. GLIMM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DRIVING UNDER THE INFLUENCE; CREATING THE CRIME OF AGGRAVATED VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING PENALTIES; AND AMENDING SECTIONS 44-15-103, 46-18-201, 61-8-1007, 61-8-1008, AND 61-8-1016, MCA."

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

**NEW SECTION. Section 1. Aggravated vehicular homicide while under the influence.** (1) A person commits the offense of aggravated vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d) ~~AND IS CHARGED WITH IN VIOLATION OF~~ AGGRAVATED DRIVING UNDER THE INFLUENCE AS DEFINED IN 61-8-1001.

(2) Aggravated vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of aggravated vehicular homicide while under the influence shall be imprisoned in a state prison for a term of not less than 3 years or more than 30 years or be fined an amount of at least \$10,000 not to exceed \$50,000, or both. Imposition of a sentence may not be deferred. THE COURT MAY NOT SUSPEND EXECUTION OF THE FIRST 3 YEARS OF A SENTENCE OF IMPRISONMENT IMPOSED UNDER THIS SUBSECTION EXCEPT AS PROVIDED IN 46-18-222(1) THROUGH (5).

**Section 2.** Section 44-15-103, MCA, is amended to read:

**"44-15-103. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affirmative authorization" means an action that demonstrates the intentional decision by an

1 individual to opt into the retention of the individual's facial biometric data by a third-party vendor.

2 (2) "Another jurisdiction" means the federal government, the United States military, the District of  
3 Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United  
4 States Virgin Islands, Guam, American Samoa, a federally recognized Indian tribe, or a state other than  
5 Montana.

6 (3) "Continuous facial surveillance" means the monitoring of public places or third-party image sets  
7 using facial recognition technology for facial identification to match faces with a prepopulated list of face  
8 images. The term includes but is not limited to scanning stored video footage to identify faces in the stored  
9 data, real-time scanning of video surveillance to identify faces passing by the cameras, and passively  
10 monitoring video footage using facial recognition technology for general surveillance purposes without a  
11 particularized suspicion of a specific target.

12 (4) "Department" means the department of justice.

13 (5) "Digital driver's license" means a secure version of an individual's physical driver's license or  
14 identification card that is stored on the individual's mobile device.

15 (6) "Facial biometric data" means data derived from a measurement, pattern, contour, or other  
16 characteristic of an individual's face, either directly or from an image.

17 (7) (a) "Facial identification" means a computer system that, for the purpose of attempting to  
18 determine the identity of an unknown individual, uses an algorithm to compare the facial biometric data of an  
19 unknown individual derived from a photograph, video, or image to a database of photographs or images and  
20 associated facial biometric data in order to identify potential matches.

21 (b) The term does not include:

22 (i) a system used specifically to protect against unauthorized access to a particular location or an  
23 electronic device; or

24 (ii) a system a consumer uses for the consumer's private purposes.

25 (8) "Facial recognition service" or "facial recognition technology" means the use of facial  
26 identification or facial verification.

27 (9) "Facial verification" means the automated process of comparing an image or facial biometric  
28 data of a known individual to an image database, or to government documentation containing an image of the

1 known individual, to identify a potential match in pursuit of the individual's identity.

2 (10) "Law enforcement agency" means:

3 (a) an agency or officer of the state of Montana or of a political subdivision that is empowered by  
4 the laws of this state to conduct investigations or to make arrests; and

5 (b) an attorney, including the attorney general, who is authorized by the laws of this state to  
6 prosecute or to participate in the prosecution of a person who is arrested or who may be subject to a civil action  
7 related to or concerning an arrest.

8 (11) "Motor vehicle division" means the division within the department of justice authorized to issue  
9 driver's licenses.

10 (12) "Personal information" has the same meaning as in 30-14-1704.

11 (13) "Public building" means any building that the state or any political subdivision of the state  
12 maintains for the use of the public.

13 (14) "Public employee" means a person employed by a state or local government agency, including  
14 but not limited to a peace officer.

15 (15) "Public official" means a person elected or appointed to a public office that is part of a state or  
16 local government agency.

17 (16) "Public roads and highways of this state" has the same meaning as in 15-70-401.

18 (17) "Serious crime" means:

19 (a) a crime under the laws of this state that is a violation of 45-5-102, 45-5-103, 45-5-104, 45-5-  
20 106, section 1, 45-5-202, 45-5-207, 45-5-210, 45-5-212, 45-5-213, 45-5-220, 45-5-302, 45-5-303, 45-5-401,  
21 45-5-503, 45-5-504(3), 45-5-508, 45-5-602, 45-5-603, 45-5-622, 45-5-625, 45-5-627, 45-5-628, 45-5-702, 45-5-  
22 703, 45-5-704, or 45-5-705; or

23 (b) a crime under the laws of another jurisdiction that is substantially similar to a crime under  
24 subsection (17)(a).

25 (18) "State or local government agency" means a state, county, or municipal government, a  
26 department, agency, or subdivision of a state, county, or municipal government, or any other entity identified in  
27 law as a public instrumentality. The term does not include a school district or law enforcement agency.

28 (19) "Vendor" has the same meaning as in 18-4-123."

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2           **Section 3.** Section 46-18-201, MCA, is amended to read:

3           **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of  
4 an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer  
5 imposition of sentence, except as otherwise specifically provided by statute, for a period:

6           (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

7           (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
8 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
9 of whether any other conditions are imposed.

10           (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred  
11 in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence  
12 was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

13           (2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of  
14 guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in  
15 subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence  
16 allowed or for a period of 6 months, whichever is greater, for each particular offense.

17           (b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not  
18 suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner  
19 that would result in an offender being supervised in the community as a probationer by the department of  
20 corrections for a period of time longer than:

21           (A) 20 years for a sexual offender, as defined in 46-23-502;

22           (B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated  
23 homicide, as defined in 45-5-103;

24           (C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent  
25 homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106,  
26 aggravated vehicular homicide under the influence, as provided in [section 1], or criminal distribution of  
27 dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-  
28 101(5);

(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds \$50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), and 45-5-711; or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that

1 immediately subsequent to sentencing or disposition the offender is released to community supervision and that  
2 any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

3 (vii) any combination of subsection (2) and this subsection (3)(a).

4 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank  
5 program.

6 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence,  
7 the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of  
8 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under  
9 subsection (1)(a) or (2) may include but are not limited to:

10 (a) limited release during employment hours as provided in 46-18-701;

11 (b) incarceration in a detention center not exceeding 180 days;

12 (c) conditions for probation;

13 (d) payment of the costs of confinement;

14 (e) payment of a fine and accrued interest as provided in 46-18-231;

15 (f) payment of costs as provided in 46-18-232 and 46-18-233;

16 (g) payment of costs of assigned counsel as provided in 46-8-113;

17 (h) with the approval of the facility or program, an order that the offender be placed in a community  
18 corrections facility or program as provided in 53-30-321;

19 (i) with the approval of the prerelease center or prerelease program and confirmation by the  
20 department of corrections that space is available and that the offender is a suitable candidate, an order that the  
21 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for  
22 a period not to exceed 1 year;

23 (j) community service;

24 (k) home arrest as provided in Title 46, chapter 18, part 10;

25 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

26 (m) participation in a day reporting program provided for in 53-1-203;

27 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter  
28 4, part 12, for a violation of aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-

1002, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

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

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution and interest to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the

1 offender unless the court specifies otherwise.

2 (9) When imposing a sentence under this section that includes incarceration in a detention facility  
3 or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before  
4 trial or sentencing.

5 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."  
6

7 **Section 4.** Section 61-8-1007, MCA, is amended to read:

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

11 (i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6  
12 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under  
13 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for  
14 not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than  
15 \$2,000;

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

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

24 (b) If the person has a prior conviction under 45-5-106 or [section 1], the person shall be punished  
25 as provided in 61-8-1008.

26 (c) If the person has a prior conviction or pending charge for a violation of driving under the  
27 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
28 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-



1 1001, the person shall be punished as provided in subsection (4).

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

5 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
6 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
7 1009. During any suspended portion of sentence imposed by the court:

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

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

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

14 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-  
15 1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

16 (i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than  
17 \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at  
18 the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine  
19 of not less than \$1,200 or more than \$2,000;

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

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

28 (b) If the person has a prior conviction under 45-5-106 or [section 1], the person shall be punished

1 as provided in 61-8-1008.

2 (c) If the person has a prior conviction or pending charge for a violation of driving under the  
3 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
4 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-  
5 1001, the person shall be punished as provided in subsection (4).

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

9 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
10 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
11 1009. During any suspended portion of sentence imposed by the court:

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

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

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

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

19 (i) Upon a first conviction under this section, a person shall be punished by a fine of not less than  
20 \$100 or more than \$500.

21 (ii) Upon a second conviction under this section, a person shall be punished by a fine of not less  
22 than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than  
23 10 days.

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

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

28 (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 or [section 1], 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 5.** 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), 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 [section 1], 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), 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,

1 and a fine of not less than \$5,000 or more than \$10,000; or

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

6 (b) Regarding the sentence provided for in subsection (1)(a)(i):

7 (i) the imposition or execution of the sentence may not be deferred or suspended, and the person  
8 is not eligible for parole;

9 (ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by  
10 the department of corrections;

11 (iii) following initial placement of a defendant in a residential alcohol treatment program facility, the  
12 department of corrections may, at its discretion, place the offender in another facility or program;

13 (iv) the court shall order that if the person successfully completes a residential alcohol treatment  
14 program approved by the department of corrections, the remainder of the 13-month to 2-year term must be  
15 served on probation with the conditions that:

16 (A) the person abide by the standard conditions of probation promulgated by the department of  
17 corrections;

18 (B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol  
19 treatment under this section does so;

20 (C) the person may not frequent an establishment where alcoholic beverages are served;

21 (D) the person may not consume alcoholic beverages;

22 (E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

23 (F) the person enter in and remain in an aftercare treatment program for the entirety of the  
24 probationary period;

25 (G) the person submit to random or routine drug and alcohol testing; and

26 (H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition  
27 interlock system; and

28 (v) the sentencing judge may impose on the defendant any other reasonable restrictions or

conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(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), 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), 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

1 25 years. The first 5 years of the sentence may not be suspended.

2 (5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-  
3 1014, and 46-23-1031 apply to a person sentenced under this section.

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

6

7 **Section 6.** Section 61-8-1016, MCA, is amended to read:

8 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**  
9 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**

10 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle  
11 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent  
12 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or  
13 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or  
14 detected presence of drugs in the person's body.

15 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test  
16 of the person's breath for the purpose of estimating the person's alcohol concentration.

17 (c) A preliminary alcohol screening test may not be conducted or requested under this section  
18 unless both the peace officer and the instrument used to conduct the test have been certified by the department  
19 pursuant to rules adopted under the authority of 61-8-1019(5).

20 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person  
21 submitting to a preliminary alcohol screening test pursuant to this section.

22 (2) (a) The test or tests must be administered at the direction of a peace officer when:

23 (i) the peace officer has particularized suspicion to believe that the person has been driving or has  
24 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence  
25 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under  
26 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the  
27 influence in 61-8-1001;

28 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe

1 that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

2 (iii) the peace officer has probable cause to believe that the person was driving or in actual  
3 physical control of a vehicle or commercial motor vehicle:

4 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been  
5 placed under arrest;

6 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been  
7 involved in a motor vehicle crash or collision resulting in property damage;

8 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious  
9 bodily injury, as defined in 45-2-101, or death; or

10 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of  
11 aggravated driving under the influence in 61-8-1001.

12 (b) A peace officer may designate which test or tests are administered.

13 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to  
14 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

15 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be  
16 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of  
17 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and  
18 whether the person refused to submit to the test.

19 (e) If a person refuses a preliminary alcohol screening test and another test during the same  
20 incident, the department may not consider each a separate refusal for purposes of suspension of the person's  
21 driver's license.

22 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable  
23 of refusal is considered not to have withdrawn the consent requested in subsection (1).

24 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by  
25 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,  
26 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute  
27 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-  
28 104, 45-5-106, [section 1], 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets



1 the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of  
2 this state or a similar statute in another jurisdiction.

3 (b) On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily substance  
4 requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search  
5 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for testing.

6 (c) (i) On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily  
7 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.  
8 The peace officer shall immediately forward the license to the department, along with a report certified under  
9 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing  
10 request and confirming that the person refused to submit to one or more tests requested and designated by the  
11 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in  
12 61-8-1032.

13 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
14 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of  
15 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as  
16 provided in 61-8-1017.

17 (iii) A nonresident driver's license seized under this section must be sent by the department to the  
18 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or  
19 more tests.

20 (5) This section does not apply to tests, samples, and analyses of blood, breath, or urine used for  
21 purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected  
22 violation of an offense not in this part, or performed pursuant to a search warrant.

23 (6) This section does not prohibit the release of information obtained from tests, samples, and  
24 analyses of blood, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

25 - END -