

SENATE BILL NO. 280

INTRODUCED BY S. MALEK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DRIVING UNDER THE INFLUENCE; PROVIDING FOR AN INTERLOCK RESTRICTED LICENSE INSTEAD OF LICENSE SUSPENSION IN CERTAIN SITUATIONS FOLLOWING CONVICTION FOR DRIVING UNDER THE INFLUENCE OR VIOLATION OF THE IMPLIED CONSENT LAWS; AMENDING SECTIONS 61-5-205, 61-5-208, 61-5-212, 61-8-402, 61-8-410, 61-8-440, 61-8-442, 61-8-465, 61-8-714, 61-8-732, AND 61-8-734, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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

"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions. (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

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

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

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

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

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) ~~a driving offense under 61-8-401, 61-8-406, or 61-8-411~~ violation of 61-8-440;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in ~~subsections~~ subsection (4)(b) and ~~(4)(c)~~, a suspension under subsection (2) must be for a period of 1 year.

~~(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.~~

~~(c)~~ (b) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall ~~suspend the driver's license or driving privilege of the person~~ issue an interlock restricted license as provided in 61-8-442 for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall ~~suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least~~

1 ~~45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a~~
2 ~~probationary driver's license be issued subject to the requirements of 61-8-442~~ issue an interlock restricted
3 license as provided in 61-8-442 for a period of 1 year. If the 1-year ~~suspension~~ period passes and the person has
4 not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the
5 ~~license suspension~~ interlock restricted license remains in effect until the course or treatment, or both, are
6 completed.

7 (iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third
8 or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in
9 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year
10 and may not issue a probationary license during the period of suspension unless the person completes at least
11 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a
12 probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period
13 passes and the person has not completed a chemical dependency education course or treatment, or both, as
14 required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are
15 completed.

16 (3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person
17 convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license
18 commences from the date of conviction or forfeiture of bail.

19 (b) A suspension commences from the last day of the prior suspension or revocation period if the
20 suspension is for a conviction of driving with a suspended or revoked license.

21 (4) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 while operating
22 a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.
23 The person may be issued an interlock restricted license.

24 (5) (a) A driver's license that is issued after a license revocation to a person described in subsection
25 (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

26 (b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has
27 reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the
28 person may not operate a motor vehicle unless:

29 (i) operation is authorized by the person's probation officer; or

30 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

1

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

3 **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**
4 **without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable. (1) (a)**

5 A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or
6 during a suspension or revocation period if the person drives:

7 (i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or
8 apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the
9 person has obtained a restricted-use driving permit under 61-5-232;

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

13 (iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as
14 provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

15 (b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor
16 vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving
17 during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than
18 6 months and may be fined not more than \$500.

19 (ii) If the reason for the suspension or revocation was that the person was convicted of a violation of
20 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was
21 under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs
22 requested by a peace officer who believed that the person might be driving under the influence, the person shall
23 be punished by imprisonment for a term of not ~~less than 2 days or~~ more than 6 months or a fine not to exceed
24 \$2,000, or both, and in addition, must have an interlock restricted license for at least 1 year. ~~the~~ The court may
25 also order the person to perform up to 40 hours of community service.

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

30 (b) Upon receiving a record of the conviction of any person under this section upon a charge of driving

1 a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled
2 or the person was disqualified from operating a commercial motor vehicle under federal regulations, the
3 department shall suspend the person's commercial driver's license in accordance with 61-8-802.

4 (3) (a) The Except as provided in subsection (3)(b), the vehicle owned and operated at the time of an
5 offense under this section by a person whose driver's license is suspended for violating the provisions of
6 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized
7 or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

8 (b) The vehicle may be released if an interlock device is installed. The interlock device must remain on
9 the vehicle for a period of at least 1 year.

10 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the
11 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered
12 inoperable by the sheriff within 10 days after the conviction.

13 (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).
14 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless
15 the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who
16 is determined to be without fault.

17 (6) A court may not suspend or defer imposition of penalties provided by this section."
18

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

20 **"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit**
21 **to test -- administrative license suspension.** (1) A person who operates or is in actual physical control of a
22 vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the
23 person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol
24 or drugs in the person's body.

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

26 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
27 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
28 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

29 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

30 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of

1 a vehicle:

2 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
3 resulting in property damage;

4 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
5 45-2-101, or death; or

6 (C) in violation of 61-8-465.

7 (b) The arresting or investigating officer may designate which test or tests are administered.

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

10 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
11 as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5),
12 but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace
13 officer shall immediately forward the license to the department, along with a report certified under penalty of law
14 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and
15 confirming that the person refused to submit to one or more tests requested and designated by the peace officer.
16 Upon receipt of the report, the department shall suspend the license for the period provided in subsection (8).

17 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this
18 section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the
19 arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205,
20 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search
21 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

22 (6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall
23 pay the department an administrative fee of \$300, which must be deposited in the state special revenue account
24 established pursuant to subsection (6)(b).

25 (b) There is a blood-draw search warrant processing account in the state special revenue fund
26 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection
27 (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a
28 driver's blood to determine the presence of alcohol or drugs.

29 (c) The department shall adopt rules establishing procedures for the collection, distribution, and strict
30 accountability of any funds received pursuant to this section.

(7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license or issuance of an interlock restricted license for a period of 1 year;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license or issuance of an interlock restricted license for a period of 1 year.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (8)(b).

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

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

(11) A suspension under this section is subject to review as provided in this part.

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

(13) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 5. Section 61-8-410, MCA, is amended to read:

"61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

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

(3) 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.

(4) 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.

(5) 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 61-8-732 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~~ issue an interlock restricted license for 6 months upon the first conviction, 1 year upon the second conviction, and 2 years 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.~~

(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."

1 **Section 6.** Section 61-8-440, MCA, is amended to read:

2 **"61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing --**
3 **penalty.** (1) It is unlawful for a person who is subject to a restriction under 61-8-442 to operate a motor vehicle
4 not equipped with an ignition interlock device except:

5 (a) if the person is actively participating in a sobriety program provided for in 44-4-1203; or

6 (b) during work hours at the specific direction of the person's employer to carry out job-related functions
7 using a vehicle that belongs to the employer.

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

10 (3) A person may not knowingly circumvent the operation of an ignition interlock device and must perform
11 all required tests regarding the operation of the interlock device.

12 (4) (a) A person convicted of a violation of this section shall be punished by a fine of not more than \$500
13 less than \$300 or more than \$1,000 or by imprisonment for not more than 6 months or both.

14 (b) The court may order that the motor vehicle driven by the person at the time of the offense be seized
15 and subjected to the forfeiture procedure provided under 61-8-421. If the person has stolen the interlock
16 equipment or failed to pay costs for the interlock then forfeiture revenue may be used to reimburse the interlock
17 provider.

18 (5) This section does not apply if:

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

21 (b) the person subject to the restriction does not operate the vehicle."
22

23 **Section 7.** Section 61-8-442, MCA, is amended to read:

24 **"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
25 **concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**
26 **vehicle.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of
27 disposition and if a probationary license is recommended by the court, the court ~~may~~ must, for a person convicted
28 of a ~~first~~ an offense under 61-8-401, 61-8-406, 61-8-411, or 61-8-465:

29 (a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device
30 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and

maintaining the device; ~~or~~

~~_____ (b) require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program.~~

~~_____ (2) If a person is convicted of a second or subsequent violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, in addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of disposition, the court shall:~~

~~_____ (a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;~~

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that ~~each~~ the motor vehicle ~~owned~~ driven by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

~~(3)~~(2) Any restriction or requirement imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

~~(4)~~(3) The duration of a restriction imposed under this section must be monitored by the department.

(4) (a) The person may petition the court for assistance with payment of the reasonable cost of leasing, installing, and maintaining a device or participating in a program, or both.

(b) Each jurisdiction may create an indigent fund for assistance. Funds may be allocated from vehicle seizure revenue, an offender fine surcharge, or solicited from program providers, community donations, or other funding sources.

(c) The jurisdiction must establish procedures for the collection, distribution, and strict accountability of any funds received as provided in this section."

Section 8. Section 61-8-465, MCA, is amended to read:

"61-8-465. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and:

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

1 more;

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

4 (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of
5 a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;

6 (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's
7 driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the
8 commission of the present offense; or

9 (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401,
10 61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or more
11 prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401,
12 61-8-406, or 61-8-411.

13 (2) Except as provided in subsection (6), a person convicted of a first violation of the offense of
14 aggravated driving under the influence shall be punished by:

15 (a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at
16 the time of the offense, a fine of \$2,000; and

17 (b) a term of imprisonment for not less than 48 hours or more than 1 year, except that if one or more
18 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
19 less than 72 consecutive hours.

20 (3) (a) Except as provided in subsection (6), a person convicted of a second violation of the offense of
21 aggravated driving under the influence shall be punished by:

22 (i) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at
23 the time of the offense, a fine of \$5,000; and

24 (ii) a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more
25 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
26 less than 45 days.

27 (b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory
28 minimum imprisonment term may be suspended pending successful completion of court-ordered chemical
29 dependency assessment, education, or treatment by the person.

30 (c) The mandatory minimum imprisonment term may not be served under home arrest and may not be

1 suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's
2 physical or mental well-being.

3 (4) (a) Except as provided in subsection (6), a person convicted of a third violation of the offense of
4 aggravated driving under the influence shall be punished by:

5 (i) a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at
6 the time of the offense, a fine of \$10,000; and

7 (ii) a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if one
8 or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment
9 for not less than 90 consecutive days.

10 (b) Except for the minimum term of imprisonment provided in subsection (4)(a)(ii), the mandatory
11 minimum imprisonment term may be suspended pending successful completion of court-ordered chemical
12 dependency assessment, education, or treatment by the person.

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

16 (5) During the suspended sentence imposed by the court under subsection (3)(b) or (4)(b):

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

19 (b) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program if available
20 and if imposed by the court or an interlock restricted license, or both; and

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

23 (6) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
24 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive
25 alcohol concentration, or under the influence of delta-9-tetrahydrocannabinol or aggravated driving under the
26 influence.

27 (7) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."
28

29 **Section 9.** Section 61-8-714, MCA, is amended to read:

30 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

(1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be punished by imprisonment ~~for not less than 24 consecutive hours or of not~~ more than 6 months ~~and or~~ by a fine of not less than \$600 or more than \$1,000, or both, 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 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.

(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 successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401 shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 7 days or more than 1 year, 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 a fine of not less than \$2,400 or more than \$4,000 and by imprisonment for not less than 14 days or more than 1 year.

(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 61-8-732.

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401 shall be punished by imprisonment for a term of 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 a term of 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) 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 61-8-732.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under the influence.

(5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall be punished as provided in 61-8-465."

Section 10. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence. The court shall authorize release of relevant criminal records to the licensed addiction counselor.

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

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. 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. 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 upon 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 education 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) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

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

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

Section 11. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses

1 referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in
2 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally
3 recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance
4 in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not
5 been vacated.

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

10 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401, 61-8-406, 61-8-411, or
11 61-8-465 and a previous conviction for a violation of 45-5-104, 45-5-205, or 45-5-628(1)(e) when the offense
12 under 45-5-104 occurred while the person was operating a vehicle in violation of 61-8-401(1) may be counted
13 for purposes of determining the number of a subsequent conviction for violation of 61-8-401, 61-8-406, 61-8-411,
14 or 61-8-465.

15 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under
16 61-8-465, 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and
17 approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment
18 in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and
19 require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a
20 community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a
21 defendant referred by the sentencing court.

22 (3) Subject to the limitations set forth in 61-8-465, 61-8-714, and 61-8-722 concerning minimum periods
23 of imprisonment, the court may order that a term of imprisonment imposed under those sections be served by
24 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

25 (4) A court may not defer imposition of sentence under 61-8-465, 61-8-714, 61-8-722, or 61-8-731.

26 (5) The provisions of 61-2-107, ~~61-5-205(2)~~, and 61-5-208(2), relating to suspension of driver's licenses
27 and later reinstatement of driving privileges, apply to any conviction under 61-8-465, 61-8-714, or 61-8-722 for
28 a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465."

29
30 NEW SECTION. **Section 12. Applicability.** [This act] applies to convictions on or after [the effective

1 date of this act].

2

- END -