



AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 17], 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 [section 2(1)(a), (1)(b), (1)(c), or (1)(d)] 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, canceled, or revoked as a result of a prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], 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 [section 8] and the person's driver's license or privilege to drive was suspended, canceled, 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 [section 3 or 4] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [section 5] 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 2. 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 delta-9-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.

(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.

Section 3. Penalty for driving under influence -- first through third offenses. (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 consecutive hours or 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 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;

(ii) for a second violation, by imprisonment for not less than 7 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 14 days or more than 1 year and 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 [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(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 [section 1], 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 [section 5]. 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 [section 2(1)(b), (1)(c), or (1)(d)] 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 [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(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 [section 1], 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 [section 5]. 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 [section 2(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 [section 5] 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 [sections 3, 4, and 7].

(4) (a) A person convicted of a violation under [section 2] charged as aggravated driving under the influence, as defined in [section 1], 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 [section 5]. 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 [section 4].

(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 [section 5] 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 4. Penalty for driving under influence -- fourth and subsequent offenses. (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], 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 [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], 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 [section 2(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.

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

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

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

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

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

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

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

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

- (D) the person may not consume alcoholic beverages;
- (E) the person may not operate a motor vehicle unless authorized by the person's probation officer;
- (F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;
- (G) the person submit to random or routine drug and alcohol testing; and
- (H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and
- (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 [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, 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 [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], 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 [section 2(1)(a)], shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more

than 5 years or being fined an amount of not less than \$5,000 or more than \$10,000, or both.

(3) 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.

(4) 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. Driving under influence -- assessment, education, and treatment required. (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

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

(b) for a second or subsequent conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [section 4(1)(a)(i)], 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.

(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. Approved programs must be evidence-based programs. 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 and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. The assessment must conform to quality standards 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 [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], 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 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 [section 3] 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 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program. (1) For a person convicted of a first offense of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, in addition to the punishments listed in [section 3], the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or the suspension was under [section 8] or a similar law of another 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, in addition to the punishments listed in [section 2] and [section 3], the court shall require the person:

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

(b) 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; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [section 17].

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

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

Section 7. Driving under influence -- 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 referred to in [sections 1 through 4], "conviction" means:

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

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

(iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

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

for sentencing purposes.

(c) A previous conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a 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 [section 2].

(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 [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], 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 [section 2].

(2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under [section 3 or 4] 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 [section 3] concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under [section 3] 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 [section 3 or 4].

(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 [section 3] for a violation of [section 2].

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

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

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of [section 11(5)].

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

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

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in [section 2] or an offense that meets the definition of aggravated driving under the influence in [section 1];

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(e)]; or

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

(A) in violation of driving under the influence, as provided in [section 2], and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in [section 2], and the person has been involved in a motor vehicle crash or collision resulting in property damage;

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

(D) in violation of driving under the influence as provided in [section 2] and meets the definition of aggravated driving under the influence in [section 1].

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

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

(d) A hearing as provided for in [section 9] must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of [section 2] or an offense meeting the definition of aggravated driving under the influence in [section 1], and whether the person refused to submit to the test.

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

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

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

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

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in [section 16].

(ii) 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 as provided in [section 9].

(iii) 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.

(5) 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.

(6) 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 [section 11(6)].

Section 9. Right of appeal to court. (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based

on no other issues than:

- (a) whether a peace officer had a basis for requesting a test or tests as set forth in [section 8], and
- (b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

Section 10. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of [section 2(1)(a)] based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under [section 11(1)]; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has

received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

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

Section 11. Administration of tests. (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper

administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the definition of aggravated driving under the influence as defined in [section 1], or has violated 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.

Section 12. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty. (1) It is unlawful for a person who is subject to a restriction under [section 6] to operate a vehicle that is not equipped with an ignition interlock device.

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

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

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

(5) This section does not apply if:

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

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

Section 13. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements. (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

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

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

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

- (b) correlate well with the level established for alcohol impairment;
 - (c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;
 - (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;
 - (e) resist tampering and show evidence of tampering if it is attempted;
 - (f) be difficult to circumvent;
 - (g) minimize inconvenience of a sober user;
 - (h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and
 - (i) be manufactured by a person who is adequately insured for product liability.
- (4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

Section 14. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

- (2) This section does not apply to an open alcoholic beverage container:
- (a) in a locked glove compartment or storage compartment;
 - (b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;
 - (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;
 - (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or
 - (e) in the immediate possession of a passenger:
 - (i) of a bus, taxi, or limousine that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Section 15. Suspension of imprisonment sentence for DUI court participation. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [section 3], except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

Section 16. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(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 1 year; 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.

(5) 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.

(6) 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 [section 9].

Section 17. Forfeiture procedure. (1) A motor vehicle forfeited under [section 6] must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

Section 18. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in ~~61-8-401(4)~~ [section 2] 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 in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, 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, 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 ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] 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 ~~61-8-401(3)~~ [section 1]."

Section 19. Section 44-4-1205, MCA, is amended to read:

"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions. (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of 61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program, the court may, upon the individual's obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a

certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], 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;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], 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;

(c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], 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

(d) the department of corrections may establish conditions for conditional release for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], 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.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of 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.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with ~~violating 61-8-465~~ aggravated driving under the influence as defined in [section 1]; or

(b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406, 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

Section 20. Section 45-5-106, MCA, is amended to read:

"45-5-106. Vehicular homicide while under influence. (1) A person commits the offense of 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 ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2].

(2) 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 vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a sentence may not be deferred."

Section 21. Section 45-5-205, MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1) A person who negligently operates a vehicle, other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 22. Section 45-5-207, MCA, is amended to read:

"45-5-207. Criminal endangerment -- penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, ~~as provided in 61-8-407~~, alone is not sufficient to support a criminal endangerment charge.

(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) As used in this section, "alcohol concentration" has the meaning provided in [section 1]."

Section 23. Section 45-5-628, MCA, is amended to read:

"45-5-628. Criminal child endangerment. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in [section 1] with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

Section 24. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

- (i) that the defendant may not commit any offense;
- (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
- (iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
- (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or
- (v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of prosecution may be entered into only after the prosecutor provides notice to the court.

(4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ [section 2] or aggravated driving under the influence as defined in [section 1] may not be deferred."

Section 25. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (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 defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

- (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
- (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

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

(2) 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 suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(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), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); 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 immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

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

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

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

- (a) limited release during employment hours as provided in 46-18-701;
- (b) incarceration in a detention center not exceeding 180 days;
- (c) conditions for probation;
- (d) payment of the costs of confinement;
- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of assigned counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

- (j) community service;
 - (k) home arrest as provided in Title 46, chapter 18, part 10;
 - (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
 - (m) participation in a day reporting program provided for in 53-1-203;
 - (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], 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 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 offender unless the court specifies otherwise.

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

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

Section 26. Section 46-18-236, MCA, is amended to read:

"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.

(1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$15 for each misdemeanor charge;
- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
- (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges

imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a

victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$15 for each misdemeanor charge;
- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
- (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or 61-8-411~~ or section 2.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections

(1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Section 27. Section 50-46-320, MCA, is amended to read:

"50-46-320. Limitations of act. (1) This part does not permit:

- (a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or
- (b) except as provided in subsection (3), the use of marijuana by a registered cardholder:
 - (i) in a health care facility as defined in 50-5-101;
 - (ii) in a school or a postsecondary school as defined in 20-5-402;

- (iii) on or in any property owned by a school district or a postsecondary school;
- (iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;
- (v) in a school bus or other form of public transportation;
- (vi) when ordered by any court of competent jurisdiction into a correctional facility or program;
- (vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;
- (viii) at a public park, public beach, public recreation center, or youth center;
- (ix) in or on the property of any church, synagogue, or other place of worship;
- (x) in plain view of or in a place open to the general public; or
- (xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a property owner to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for

a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~ [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of ~~61-8-401 or 61-8-411~~ [section 2(1)(a) or (1)(e)].

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2]. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), or (1)(d)]; or

(ii) in ~~61-8-410~~ [section 3(3)] for a violation of ~~61-8-410~~ [section 2(1)(e)].

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

Section 28. Section 53-9-103, MCA, is amended to read:

"53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

- (a) the offender;
- (b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;
- (c) social security, medicare, and medicaid;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;
- (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;
- (g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.
- (h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or
- (i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

- (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;
- (b) results in bodily injury or death or involves domestic violence in a home where minor children were present; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in ~~61-8-401~~ section 1; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means:

(a) a person who suffers bodily injury or death as a result of:

(i) criminally injurious conduct;

(ii) the person's good faith effort to prevent criminally injurious conduct; or

(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred."

Section 29. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for

specific functions or purposes on behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Autocycle" means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(6) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(7) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

(8) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(9) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United

States coast guard personnel.

(c) For purposes of this subsection (10):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(11) "Commission" means the state transportation commission.

(12) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design; or

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(13) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(14) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do

business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (15)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(16) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(19) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that

person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or learner license;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(23) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(24) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for

purposes of vehicular travel.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(31) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle;
or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(32) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

- (a) has four wheels;
- (b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;
- (c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;
- (d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;
- (e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;
- (f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and
- (g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

- (a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(37) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(38) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

(39) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(40) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(42) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(43) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an auticycle.

(e) The term does not include a tractor, a bicycle or a moped as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(44) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSI/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(48) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(49) "Nonresident" means a person who is not a Montana resident.

(50) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(51) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

- (i) vehicles designed primarily for travel on, over, or in the water;
- (ii) snowmobiles; or
- (iii) motor vehicles designed to transport persons or property on the highways unless the vehicle is used for off-road recreation on public lands.

(52) "Operator" means a person who is in actual physical control of a motor vehicle.

(53) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,

for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(54) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(55) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(56) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(57) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(63) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the

registration period indicated on the sticker as recorded by the department under 61-3-101.

(64) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(65) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(66) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted on by the department after the expiration of the period of the revocation.

(67) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(68) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(69) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

(70) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(71) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests on or is carried by another vehicle.

(72) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(73) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(74) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(75) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(76) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the

directions of a police officer, highway patrol officer, or traffic control sign or signal.

(77) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(78) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(79) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(80) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(81) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(85) "Travel trailer" means a vehicle:

- (a) that is 40 feet or less in length;
- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
- (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(88) "Under the influence" has the meaning provided in ~~61-8-401~~ [section 1].

(89) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or given away or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(90) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(91) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on stationary rails or

tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(92) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(93) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(94) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 30. Section 61-2-107, MCA, is amended to read:

"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.

(1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 31. 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 ~~61-8-401, 61-8-406, or 61-8-411~~ section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e), 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 canceled.

(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 32. 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~~ [section 2];
- (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 (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) 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 33. 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~~ [section 2], the department shall suspend the driver's license or driving privilege of the person 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~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], 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 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], 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 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

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

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

(4) If a person is convicted of a violation of ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

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

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under ~~61-8-731~~ [section 4], the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

- (i) operation is authorized by the person's probation officer; or
- (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 34. 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 canceled 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 ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or a similar offense under the

laws of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ [section 8] 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 canceled 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 35. Section 61-5-218, MCA, is amended to read:

"61-5-218. License reinstatement fee following license suspension or revocation. (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 36. Section 61-5-231, MCA, is amended to read:

"61-5-231. Authorization of probationary license by DUI court --definition. (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration under ~~61-8-406~~ [section 2], or aggravated driving under the influence under ~~61-8-465~~ as defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] 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.

~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration."~~

Section 37. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, ~~61-8-401~~ [section 2], the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 38. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and ~~61-8-401(1)(b), (1)(c), and (2)~~ [section 2(1) and (2)], with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and ~~61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465~~ [section 2], except under the influence of a dangerous drug and [section 2(2)], with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 39. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation -- definitions. (1) Interpretation of this chapter in this state

must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.

(c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.

(d) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(f) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

(h) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic on a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular

traffic hazard, must be equipped as required by the rules of the department of transportation.

(i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(j) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to ~~61-8-441~~ section 13; and

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

(k) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling on different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(l) "Laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic.

(m) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(10)(b).

(p) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(q) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(r) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(s) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(t) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(u) "Right-of-way" means the privilege of the immediate use of the roadway.

(v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(w) "School bus" has the meaning provided in 20-10-101.

(x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(z) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 40. 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 purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] 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 41. Section 61-8-807, MCA, is amended to read:

"61-8-807. Administration of tests. Tests required under this part must be administered as provided in ~~61-8-405~~ [section 11]."

Section 42. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses --

surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under ~~61-8-732~~ [section 5].

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2], the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

Section 43. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in [section 1] of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) 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 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a

condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 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 in the person's body, a test will not 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 67-1-204.

(6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 44. Repealer. The following sections of the Montana Code Annotated are repealed:

- 61-8-401. Driving under influence of alcohol or drugs -- definitions.
- 61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.
- 61-8-403. Right of appeal to court.
- 61-8-404. Evidence admissible -- conditions of admissibility.
- 61-8-405. Administration of tests.
- 61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.
- 61-8-407. Definition of alcohol concentration.
- 61-8-408. Multiple convictions prohibited.
- 61-8-409. Preliminary alcohol screening test.
- 61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.
- 61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.
- 61-8-421. Forfeiture procedure.

- 61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.
- 61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.
- 61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.
- 61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.
- 61-8-461. Definitions.
- 61-8-465. Aggravated DUI.
- 61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.
- 61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.
- 61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.
- 61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.
- 61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 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.
- 61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

Section 44.. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 17].

Section 46. Saving clause. [This act] does not affect rights and duties that matured, penalties that

were incurred, or proceedings that were begun before [the effective date of this act].

Section 45. Effective date. [This act] is effective January 1, 2022.

Section 46. Applicability. [This act] applies to DUI incidents taking place on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 365, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 365

INTRODUCED BY K. REGIER

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.