

SENATE BILL NO. 483

INTRODUCED BY C. CHRISTIAENS, BECK, HARRINGTON, ZOOK

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO A FOURTH  
TIME OR SUBSEQUENT THIRD OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
PROVIDING THAT ALL SENTENCES MUST BE ~~SUSPENDED~~ SENTENCES ON THE CONDITION OF  
RESIDENTIAL TREATMENT, PAYMENT OF COSTS OF TREATMENT, EMPLOYMENT ACTIVITIES,  
AFTERCARE, AND USE OF AN IGNITION INTERLOCK REQUIRE RESIDENTIAL CHEMICAL DEPENDENCY  
TREATMENT AT A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY OR IN A PROGRAM  
OPERATED BY THE DEPARTMENT OF CORRECTIONS; AND AMENDING SECTION SECTIONS 61-8-731  
61-8-714, 61-8-722, AND 61-8-732, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN  
APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

~~Section 1.~~ Section 61-8-731, MCA, is amended to read:

~~"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and, subject to the assessment required by 61-8-732, shall be punished by:~~

~~(a) imprisonment for a term of not less than 6 months or more than 13 months to be served as follows:~~

~~(i) a period of at least 45 days must be served in residential chemical dependency treatment at a state-approved public or private treatment facility, upon acceptance by the facility, or at a correctional facility or program administered by the department of corrections, for which the imposition or execution of the first 6 months period of treatment may not be suspended, and during which the person is not eligible for parole; and~~

~~(ii) the remainder of the term of imprisonment may, at the discretion of the court, be:~~



1 ~~—— (A) served in an appropriate correctional institution or program designated by the department of~~  
2 ~~corrections that must include an aftercare component;~~

3 ~~—— (B) suspended to probation with conditions that must include continued outpatient treatment or~~  
4 ~~aftercare, or both, and may include a condition of incarceration served in one of the following facilities:~~

5 ~~—— (i) a regional correctional facility;~~  
6 ~~—— (ii) a county detention center; or~~  
7 ~~—— (iii) a prerelease center;~~

8 ~~—— (b) probation for a term of not less than 1 year or more than 4 years to follow the sentence~~  
9 ~~imposed under subsection (1)(a); and~~

10 ~~—— (c) a fine of not less than \$1,000 or more than \$10,000.; and~~

11 ~~—— (2) The court shall, subject to sentencing restrictions:~~

12 ~~—— (a) specify one of the following facilities as the initial place in which the term of imprisonment~~  
13 ~~must be served:~~

14 ~~—— (i) a state prison;~~  
15 ~~—— (ii) a regional correctional facility;~~  
16 ~~—— (iii) a county jail;~~  
17 ~~—— (iv) a boot camp, provided the prior approval of the department of corrections has been obtained;~~  
18 ~~or~~

19 ~~—— (v) a prerelease center or, upon acceptance by the facility, a state-approved public or private~~  
20 ~~treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior~~  
21 ~~approval of the department of corrections has been obtained; or~~

22 ~~—— (b) sentence the person to the department of corrections for placement in an appropriate~~  
23 ~~correctional institution or program; and~~

24 ~~—— (c)(d) order for a person who is determined to be financially able, to pay payment of the costs of~~  
25 ~~imprisonment, if any, probation, and chemical dependency treatment under this section.~~

26 ~~—— (3)(2) The sentencing judge may impose upon the defendant any reasonable restrictions or~~  
27 ~~conditions during the any period of probation under subsection (1)(a)(ii) or (1)(b). Reasonable restrictions~~  
28 ~~or conditions may include:~~

29 ~~—— (a) payment of a fine as provided in 46-18-231;~~  
30 ~~—— (b)(a) payment of costs as provided in 46-18-232 and 46-18-233;~~

1 ~~—— (c)(b) payment of costs of court-appointed counsel as provided in 46-8-113;~~  
 2 ~~—— (d)(c) community service;~~  
 3 ~~—— (e)(d) any other reasonable restrictions or conditions considered necessary for rehabilitation or for~~  
 4 ~~the protection of society;~~  
 5 ~~—— (f) treatment in a state-approved public or private treatment facility; or~~  
 6 ~~—— (g)(e) any combination of the restrictions or conditions listed in subsections (3)(a) (2)(a) through~~  
 7 ~~(3)(f) (2)(d).~~  
 8 ~~—— (4) (a) Following initial placement of a defendant in a boot camp, prerelease center, or treatment~~  
 9 ~~facility under subsection (2)(a), the department of corrections may, at its discretion, place the offender~~  
 10 ~~in another facility or program.~~  
 11 ~~—— (b)(3) The department of corrections may order all or any portion of the term of probation to be~~  
 12 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation,~~  
 13 ~~apply to the probation.~~  
 14 ~~—— (5)(4) If a violation of the restrictions or conditions of the probation a suspended portion of the~~  
 15 ~~sentence is established, the court may continue the period of the suspended sentence under probation or~~  
 16 ~~may require the defendant to serve the remainder of the probation sentence as provided in 46-18-203 in~~  
 17 ~~one of the facilities set forth in subsection (2)(a) or (2)(b) (1)(a). The court may credit the remainder of the~~  
 18 ~~probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the~~  
 19 ~~time already served on probation. The provisions of 46-18-403 allowing credit for incarceration prior to~~  
 20 ~~conviction may not be applied to the period that the person is sentenced to serve in a residential treatment~~  
 21 ~~facility, but may be applied to the remainder of the initial sentence under subsection (1)(a). The provisions~~  
 22 ~~of 46-18-203, 46-18-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031~~  
 23 ~~apply to a person sentenced under this section."~~

24

25 **SECTION 1. SECTION 61-8-714, MCA, IS AMENDED TO READ:**

26 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

27 (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24  
 28 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$100 or more  
 29 than \$500. The initial 24 hours of the imprisonment term must be served in the county jail and may not  
 30 be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the

1 judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
 2 or mental well-being. Except for the initial 24 hours of the imprisonment term, the imprisonment sentence  
 3 may be suspended for a period of up to 6 months pending successful completion of court-ordered chemical  
 4 dependency assessment, education, or treatment by the defendant.

5 (2) On a second conviction, the person shall be punished by a fine of not less than \$300 or more  
 6 than \$500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the  
 7 imprisonment term must be served consecutively in the county jail and may not be served under home  
 8 arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the  
 9 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.  
 10 Except for the initial 3 days of the imprisonment term, the imprisonment sentence may be suspended for  
 11 a period of up to 6 months pending successful completion of a chemical dependency treatment program  
 12 by the defendant.

13 (3) On the third conviction, the person shall be punished by:

14 (a) imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less  
 15 than \$500 or more than \$1,000. At least 48 hours of the imprisonment term must be served consecutively  
 16 in the county jail and may not be served under home arrest. The imposition or execution of the first 10  
 17 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence  
 18 may be suspended for a period of up to 1 year pending successful completion of a the chemical  
 19 dependency treatment program by the defendant as required under subsection (3)(b). The total term of  
 20 imprisonment and treatment may not exceed 1 year.

21 (b) a requirement for chemical dependency treatment at a state-approved public or private  
 22 treatment facility designated by the court, upon acceptance by the facility. The imposition of treatment  
 23 may not be suspended.

24 (c) a fine of not less than \$500 or more than \$1,000."

25

26 **SECTION 2.** SECTION 61-8-722, MCA, IS AMENDED TO READ:

27 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

28 (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than  
 29 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

30 (2) On a second conviction of a violation of 61-8-406, the person shall be punished by

1 imprisonment for not less than 48 consecutive hours, to be served in the county jail and not on home  
2 arrest, or more than 30 days and by a fine of not less than \$300 or more than \$500.

3 (3) On a third conviction of a violation of 61-8-406, the person shall be punished by:

4 (a) imprisonment for not less than 48 consecutive hours, to be served in the county jail and not  
5 on home arrest, or more than 6 months and by a fine of not less than \$500 or more than \$1,000; and

6 (b) a requirement for chemical dependency treatment at a state-approved public or private  
7 treatment facility designated by the court, upon acceptance by the facility. The imposition of treatment  
8 may not be suspended. The total term of imprisonment and treatment may not exceed 6 months."

9

10 **Section 3.** Section 61-8-732, MCA, is amended to read:

11 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
12 **concentration -- assessment, education, and treatment required.** (1) ~~(a)~~ In addition to the punishments  
13 provided in 61-8-714, ~~and~~ 61-8-722, ~~and 61-8-731, AND 61-8-731,~~ regardless of disposition, a defendant  
14 convicted of a ~~first, second, or third~~ violation of 61-8-401 or 61-8-406 shall complete:

15 ~~(a)(i)(A)~~ a chemical dependency assessment;

16 ~~(b)(ii)(B)~~ a chemical dependency education course; and

17 ~~(c)(iii)(C)~~ CHEMICAL DEPENDENCY TREATMENT AS PROVIDED IN THIS SECTION on a second or ~~subsequent~~  
18 ~~third~~ SUBSEQUENT conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection ~~(8) (1)(h)~~  
19 ~~(8)~~ of this section, UNLESS chemical dependency treatment IS ORDERED UNDER 61-8-714, 61-8-722, OR  
20 61-8-731.

21 ~~(2)(b)~~ The (2) EXCEPT ON A THIRD CONVICTION, THE sentencing judge may, in the judge's discretion,  
22 require the defendant to complete the chemical dependency assessment prior to sentencing the defendant.  
23 If the assessment is not ordered or completed before sentencing, the judge shall order the chemical  
24 dependency assessment as part of the sentence. AN ASSESSMENT ON A THIRD CONVICTION FOR A VIOLATION  
25 UNDER 61-8-401 OR 61-8-406 MUST BE COMPLETED PRIOR TO SENTENCING.

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

1 course, and chemical dependency treatment.

2 ~~(4)(d)(4)~~ The assessment must describe the defendant's level of addiction, if any, and contain a  
3 recommendation as to education, treatment, or both. A defendant who disagrees with the initial  
4 assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical  
5 dependency counselor or a program approved by the department of public health and human services.

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

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

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

19 ~~(8)(h)(8)~~ Chemical dependency treatment must be ordered for a first-time offender convicted of  
20 a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical  
21 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of  
22 public health and human services.

23 ~~(9)(i)(9)~~ ~~(a)(i)(A)~~ On a second or ~~subsequent third~~ SUBSEQUENT conviction, the treatment program  
24 provided for in subsection ~~(5)(1)(e)(5)~~ must be followed by monthly monitoring for a period of at least  
25 1 year from the date of admission to the program.

26 ~~(b)(ii)(B)~~ If a defendant fails to comply with the monitoring program imposed under subsection  
27 ~~(9)(a)(1)(i)(i)(9)(A)~~, the court shall revoke the suspended sentence, if any, impose any remaining portion  
28 of the suspended sentence, and may include additional monthly monitoring for up to an additional 6  
29 months.

30 ~~(2)(a) A defendant convicted of a fourth or subsequent violation of 61-8-401 or 61-8-406 must~~

1 ~~be sentenced as provided in 61-8-731. Prior to sentencing a defendant, the judge shall require the~~  
2 ~~defendant to complete a chemical dependency assessment conducted by a certified chemical dependency~~  
3 ~~counselor as a part of a presentence investigation as provided in 46-18-111. The assessment must~~  
4 ~~describe the defendant's level of chemical dependency and contain a recommendation as to the type and~~  
5 ~~length of treatment and whether the treatment is appropriate in a state-approved public or private~~  
6 ~~residential treatment facility or at a correctional facility or program that has a residential chemical~~  
7 ~~dependency treatment program. If financially able, the defendant shall pay for the cost of the assessment.~~  
8 ~~A defendant may, at the defendant's expense, obtain a second assessment by a certified chemical~~  
9 ~~dependency counselor or a program approved by the department of public health and human services.~~  
10 ~~—— (b) The judge shall consider the assessment or assessments in the presentence investigation and~~  
11 ~~sentence the defendant as provided in 61-8-731. In determining a sentence, the judge may consider any~~  
12 ~~state or federal resources available to fund sentencing options."~~

13

14 NEW SECTION. SECTION 4. COORDINATION INSTRUCTION. IF SENATE BILL NO. 489 AND [THIS ACT] ARE  
15 BOTH PASSED AND APPROVED, THEN [SECTION 3] OF SENATE BILL NO. 489, AMENDING 61-8-732, IS VOID.

16

17 NEW SECTION. Section 5. Effective date -- applicability. [This act] is effective January 1, 2002,  
18 and applies to persons sentenced under 61-8-731 on or after January 1, 2002.

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- END -