

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

EXHIBIT 1  
DATE 4-18-05  
HB 46 Conf. Committee

BRIAN SCHWEITZER  
GOVERNOR



JOHN BOHLINGER  
LT. GOVERNOR

30 March 2005

The Honorable Gary Matthews  
Speaker of the House  
State Capitol  
Helena, MT 59620

The Honorable Jon Tester  
President of the Senate  
State Capitol  
Helena, MT 59620

Dear Speaker Matthews and President Tester:

In accordance with the powers vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 46, "AN ACT CREATING THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

House Bill No. 97, which was recently signed into law, needs to be coordinated with House Bill 46 transmitted for my signature so that vehicular homicide is one of the offenses that count toward a felony DUI. The proposed amendment to coordinate House Bills 97 and 46 are attached to this letter. A Department of Justice staff member has discussed my proposed amendments with the sponsor of the bill, Representative Parker, and he approves of the amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Schweitzer".

BRIAN SCHWEITZER  
Governor

c Legislative Services Division  
Department of Justice

HB46



Amendments to House Bill No. 46  
Reference Copy

For the Governor

Prepared by Valencia Lane, Legislative counsel

1. Page 3, line 11.

Following: line 10

Insert: **"COORDINATION SECTION.** Section 5. Coordination instruction. If both House Bill No. 97 and [this act] are passed and approved, then 61-8-731 must be amended as follows:

**"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~~ Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has any combination of three or more prior convictions under 45-5-104, [section 1 of House Bill No. 46], 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or

61-8-406, the person has any combination of four or more prior convictions under 45-5-104, [section 1 of House Bill No. 46], 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that 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;

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

(d) that the person may not consume alcoholic beverages;

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

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(4)~~(5) The sentencing judge may impose upon 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 court-appointed 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 ~~(4)~~(a) (5)(a) through ~~(4)~~(e) (5)(e).

~~(5)~~(6) Following initial placement of a defendant in a

61-8-406, the person has any combination of four or more prior convictions under 45-5-104, [section 1 of House Bill No. 46], 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that 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;

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

(d) that the person may not consume alcoholic beverages;

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

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(4)~~(5) The sentencing judge may impose upon 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 court-appointed 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 ~~(4)(a)~~ (5)(a) through ~~(4)(e)~~ (5)(e).

~~(5)~~(6) Following initial placement of a defendant in a

treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

~~(6)~~(7) 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 persons sentenced under this section."

**Renumber:** subsequent section

- END -

## HOUSE BILL NO. 46

INTRODUCED BY PARKER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

1  
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4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF VEHICULAR HOMICIDE; WHILE  
6 UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING  
7 UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS  
8 A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL  
9 BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING  
10 UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS  
11 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14

15 NEW SECTION. Section 1. Vehicular homicide WHILE UNDER INFLUENCE. (1) A person commits the  
16 offense of vehicular homicide WHILE UNDER THE INFLUENCE if the person negligently causes the death of another  
17 human being while the person is operating a vehicle in violation of a state law or local ordinance relating to the  
18 operation of a vehicle and the violation is the proximate cause of the death 61-8-401 OR 61-8-406.

19 (2) Vehicular homicide WHILE UNDER THE INFLUENCE is not an included offense of deliberate homicide  
20 as described in 45-5-102(1)(b).

21 (3) A person convicted of vehicular homicide WHILE UNDER THE INFLUENCE shall be imprisoned in a state  
22 prison for a term not to exceed ~~20~~ 30 years or be fined an amount not to exceed \$50,000, or both. IMPOSITION  
23 OF A SENTENCE MAY NOT BE DEFERRED.  
24

25 SECTION 2. 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) Except as provided in subsection (4), a person convicted of a violation of 61-8-401 shall be punished by  
28 imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of  
29 not less than \$300 or more than \$1,000. The initial 24 hours of the imprisonment term must be served in the  
30 county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be

1 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the  
2 person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding  
3 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful  
4 completion of court-ordered chemical dependency assessment, education, or treatment by the person.

5 (2) On Except as provided in subsection (4), on a second conviction, the person shall be punished by  
6 a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6  
7 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not  
8 be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may  
9 not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the  
10 imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a  
11 chemical dependency treatment program by the person.

12 (3) On Except as provided in subsection (4), on the third conviction, the person shall be punished by  
13 imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or  
14 more than \$5,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail  
15 and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment  
16 sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period  
17 of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

18 (4) If the person has a prior conviction under [section 11, the person shall be punished as provided in  
19 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an  
20 excessive alcohol concentration."

21

22 **SECTION 3. SECTION 61-8-722, MCA, IS AMENDED TO READ:**

23 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

24 (1) A Except as provided in subsection (4), a person convicted of a violation of 61-8-406 shall be punished by  
25 imprisonment for not more than 10 days and shall be punished by a fine of not less than \$300 or more than  
26 \$1,000.

27 (2) On Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the  
28 person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on  
29 home arrest, or more than 30 days and by a fine of not less than \$600 or more than \$1,000. The imposition or  
30 execution of the first 5 days of the imprisonment sentence may not be suspended.



