

Amendments to House Bill No. 46
Reference Copy

For the House Conference Committee

Prepared by Valencia Lane
April 15, 2005 (10:49am)

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 either a single conviction under [section 1 of House Bill No. 46] or any combination of three or more prior convictions under 45-5-104, 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 either a single conviction under [section 1 of House Bill No. 46] or any combination of four or more prior convictions under 45-5-104, 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."