

## 1 HOUSE BILL NO. 146

2 INTRODUCED BY K. PETERSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PENALTIES FOR VIOLATIONS OF ALCOHOL-RELATED  
5 OR DRUG-RELATED DRIVING OFFENSES; AMENDING SECTIONS 46-1-202, 46-18-501, 46-18-502,  
6 46-23-201, 61-8-401, 61-8-406, 61-8-442, 61-8-714, 61-8-731, 61-8-732, 61-8-733, AND 61-8-734, MCA;  
7 REPEALING SECTION 61-8-722, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY  
8 DATE."

9

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

11

12 **Section 1.** Section 46-1-202, MCA, is amended to read:

13 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following  
14 definitions apply:

15 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice  
16 registered nurse, provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

17 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering  
18 a charge.

19 (3) "Arrest" means taking a person into custody in the manner authorized by law.

20 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other  
21 person specifically named commanding that officer or person to arrest another. The term includes the original  
22 warrant of arrest and a copy certified by the issuing court.

23 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant  
24 in a pending criminal proceeding.

25 (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is  
26 presented to a court, and that is contained in a complaint, information, or indictment.

27 (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon  
28 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized  
29 to try the case without a jury.

30 (8) "Court" means a place where justice is judicially administered and includes the judge of the court.

1 (9) "Included offense" means an offense that:

2 (a) is established by proof of the same or less than all the facts required to establish the commission of  
3 the offense charged;

4 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in  
5 the offense charged; or

6 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same  
7 person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

8 (10) "Judge" means a person who is vested by law with the power to perform judicial functions.

9 (11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the  
10 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

11 (12) "Make available for examination and reproduction" means to make material and information that is  
12 subject to disclosure available upon request at a designated place during specified reasonable times and to  
13 provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party  
14 is required to make copies at its expense, to deliver the materials or information to the other party, or to supply  
15 the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make  
16 other or additional arrangements.

17 (13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict  
18 or finding has been rendered.

19 (14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a  
20 person to appear before a court at a stated time and place to answer a charge for the alleged commission of an  
21 offense.

22 (15) "Offense" means a violation of any penal statute of this state or any ordinance of its political  
23 subdivisions.

24 (16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and  
25 parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and  
26 parole and the supervision of the department of corrections.

27 (17) "Peace officer" means any person who by virtue of the person's office or public employment is vested  
28 by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the  
29 person's authority.

30 (18) "Persistent felony offender" ~~means an offender who has previously been convicted of a felony and~~

1 who is presently being sentenced for a second felony committed on a different occasion than the first. An offender  
 2 is considered to have been previously convicted of a felony if:

3 ~~—— (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for  
 4 which a sentence of imprisonment in excess of 1 year could have been imposed;~~

5 ~~—— (b) less than 5 years have elapsed between the commission of the present offense and either:~~

6 ~~—— (i) the previous felony conviction; or~~

7 ~~—— (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result  
 8 of a previous felony conviction; and~~

9 ~~—— (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set  
 10 aside at the postconviction hearing has the meaning provided in 46-18-501.~~

11 (19) "Place of trial" means the geographical location and political subdivision in which the court that will  
 12 hear the cause is situated.

13 (20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there  
 14 is probable cause to believe a felony has been committed by the defendant.

15 (21) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime.  
 16 The release is subject to the supervision of the department of corrections upon direction of the court.

17 (22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate  
 18 and carry out criminal proceedings on behalf of the state or a political subdivision.

19 (23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

20 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the  
 21 accomplishment of that objective; or

22 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon  
 23 the same person or the property of the same person.

24 (24) "Search warrant" means an order that is:

25 (a) in writing;

26 (b) in the name of the state;

27 (c) signed by a judge;

28 (d) a particular description of the place, object, or person to be searched and the evidence, contraband,  
 29 or person to be seized; and

30 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or

1 persons.

2 (25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo  
3 contendere or upon a verdict or finding of guilty.

4 (26) "Statement" means:

5 (a) a writing signed or otherwise adopted or approved by a person;

6 (b) a video or audio recording of a person's communications or a transcript of the communications; and

7 (c) a writing containing a summary of a person's oral communications or admissions.

8 (27) "Summons" means a written order issued by the court that commands a person to appear before  
9 a court at a stated time and place to answer a charge for the offense set forth in the order.

10 (28) "Superseded notes" means handwritten notes, including field notes, that have been substantially  
11 incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure  
12 except as provided in 46-15-324.

13 (29) "Temporary road block" means any structure, device, or means used by a peace officer for the  
14 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

15 (30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand  
16 jury or in a criminal action, prosecution, or proceeding.

17 (31) "Work product" means legal research, records, correspondence, reports, and memoranda, both  
18 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense  
19 counsel, or their staff or investigators."

20

21 **Section 2.** Section 46-18-501, MCA, is amended to read:

22 **"46-18-501. Definition of persistent felony offender.** A "persistent felony offender" is an offender who:

23 (1) has previously been convicted of a felony and who is presently being sentenced for a second felony  
24 committed on a different occasion than the first. An offender is considered to have been previously convicted of  
25 a felony if:

26 ~~(1)~~(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction  
27 for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

28 ~~(2)~~(b) less than 5 years have elapsed between the commission of the present offense and either:

29 ~~(a)~~(i) the previous felony conviction; or

30 ~~(b)~~(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result

1 of the previous felony conviction; and  
 2 ~~(3)(c)~~ the offender has not been pardoned on the ground of innocence and the conviction has not been  
 3 set aside in a postconviction hearing; or  
 4 (2) has been convicted of a fifth or subsequent alcohol-related or drug-related driving offense, as  
 5 provided in 61-8-731."  
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7 **Section 3.** Section 46-18-502, MCA, is amended to read:

8 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and  
 9 subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not  
 10 less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if the  
 11 offender was 21 years of age or older at the time of the commission of the present offense.

12 (2) Except as provided in 46-18-219 and subsection (5) of this section, an offender shall be imprisoned  
 13 in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to  
 14 exceed \$50,000, or both, if:

15 (a) the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's  
 16 previous felony conviction;

17 (b) less than 5 years have elapsed between the commission of the present offense and:

18 (i) the previous felony conviction; or

19 (ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the  
 20 previous felony conviction; and

21 (c) the offender was 21 years of age or older at the time of the commission of the present offense.

22 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence  
 23 imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of  
 24 this section may not be deferred or suspended.

25 (4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed.

26 (5) The 5-year limitation provision of subsection (2)(b) does not apply to a person sentenced under  
 27 61-8-731(5)."  
 28

29 **Section 4.** Section 46-23-201, MCA, is amended to read:

30 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in

1 subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person who  
2 is confined in a state prison or the state hospital or any person who is sentenced to the state prison and confined  
3 in a prerelease center when in its opinion there is reasonable probability that the prisoner can be released without  
4 detriment to the prisoner or to the community.

5 (2) Persons under sentence of death, persons sentenced to the department who have been placed by  
6 the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences  
7 imposed under 46-18-202(2) or 46-18-219 may not be paroled.

8 (3) ~~A~~ Except as provided in 61-8-731, a prisoner serving a time sentence may not be paroled under this  
9 section until the prisoner has served at least one-fourth of the prisoner's full term.

10 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served  
11 30 years.

12 (5) A parole may be ordered under this section only for the best interests of society and not as an award  
13 of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board  
14 believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."  
15

16 **Section 5.** Section 61-8-401, MCA, is amended to read:

17 **"61-8-401. Driving under influence of alcohol or drugs -- definitions.** (1) It is unlawful and  
18 punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the  
19 influence of:

20 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the  
21 public;

22 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

23 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

24 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within  
25 this state.

26 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use  
27 alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating  
28 subsection (1).

29 (3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any  
30 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

1 (b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that  
2 the term does not include a bicycle.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been  
4 committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol,  
5 the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's  
6 blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following  
7 inferences:

8 (a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person  
9 was not under the influence of alcohol.

10 (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may  
11 not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be  
12 considered with other competent evidence in determining the guilt or innocence of the person.

13 (c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person  
14 was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing  
16 upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and  
17 drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714,  
19 ~~61-8-722~~, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in  
20 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given  
21 jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the  
22 ordinance.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."  
24

25 **Section 6.** Section 61-8-406, MCA, is amended to read:

26 **"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or**  
27 **more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.** (1) It is  
28 unlawful and punishable as provided in 61-8-442, ~~61-8-722~~, 61-8-714, 61-8-723, and 61-8-731 through 61-8-734  
29 for any person to drive or be in actual physical control of:

30 (a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol

1 concentration, as shown by analysis of the person's blood, breath, or urine, is 0.08 or more; or  
 2 (b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol  
 3 concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

4 (2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."  
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6 **Section 7.** Section 61-8-442, MCA, is amended to read:

7 **"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 8 **concentration -- ignition interlock device.** (1) In addition to the punishments provided in 61-8-714 ~~and~~  
 9 ~~61-8-722~~, regardless of disposition and if a probationary license is recommended by the court, the court may, for  
 10 a person convicted of a first offense under 61-8-401 or 61-8-406, restrict the person to driving only a motor  
 11 vehicle equipped with a functioning ignition interlock device during the probationary period and require the person  
 12 to pay the reasonable cost of leasing, installing, and maintaining the device.

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

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

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

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

23 (4) The duration of a restriction imposed under this section must be monitored by the department."  
 24

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

26 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 27 **concentration -- first through third offense.** (1) Except as provided in subsection (4), a person convicted of  
 28 a violation of 61-8-401 or 61-8-406 shall be punished by imprisonment for not less than ~~24~~ 3 consecutive ~~hours~~  
 29 days or more than 6 ~~12~~ months and by a fine of not less than ~~\$300~~ \$750 or more than ~~\$1,000~~ \$1,500, except that  
 30 if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall



1 be punished by imprisonment for not less than ~~48~~ 5 consecutive ~~hours~~ days or more than 12 months and by a  
2 fine of not less than ~~\$600~~ \$1,000 or more than \$2,000. The initial ~~24 hours~~ 3 days of the imprisonment term must  
3 be served and may not be served under home arrest. The mandatory imprisonment sentence may not be  
4 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
5 physical or mental well-being. Except for the initial ~~24 hours~~ 3 days of the imprisonment term, notwithstanding  
6 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful  
7 completion of court-ordered chemical dependency assessment, education, or treatment by the person.

8 (2) Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine  
9 of not less than ~~\$600~~ \$1,500 or more than ~~\$1,000~~ \$3,000 and by imprisonment for not less than ~~7~~ 30 days or  
10 more than ~~6~~ 12 months, except that if one or more passengers under 16 years of age were in the vehicle at the  
11 time of the offense, the person shall be punished by a fine of not less than ~~\$1,200~~ \$2,000 or more than ~~\$2,000~~  
12 \$3,500 and by imprisonment for not less than ~~14~~ 45 days or more than 12 months. At least ~~48 hours~~ 30 days of  
13 the imprisonment term must be served and served consecutively and may not be served under home arrest. The  
14 imposition or execution of the first ~~5~~ 30 days of the imprisonment sentence may not be suspended. Except for  
15 the initial ~~5~~ 30 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be  
16 suspended for a period of up to 1 year pending successful completion of a court-ordered chemical dependency  
17 treatment program by the person.

18 (3) Except as provided in subsection (4), on the third conviction, the person shall be punished by  
19 imprisonment for a term of not less than ~~30~~ 90 days or more than ~~1 year~~ 12 months and by a fine of not less than  
20 ~~\$1,000~~ \$3,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the  
21 vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than ~~60~~  
22 120 days or more than 12 months and by a fine of not less than ~~\$2,000~~ \$5,000 or more than \$10,000. At least  
23 ~~48 hours~~ 90 days of the imprisonment term must be served and served consecutively and may not be served  
24 under home arrest. The imposition or execution of the first ~~40~~ 90 days of the imprisonment sentence may not be  
25 suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
26 successful completion of a chemical dependency treatment program by the person.

27 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
28 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
29 alcohol concentration."  
30

1           **Section 9.** Section 61-8-731, MCA, is amended to read:

2           **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 3 **concentration -- penalty for fourth or subsequent offense -- persistent felony offender.** (1) Except as  
 4 provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has  
 5 either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104,  
 6 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a  
 7 vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,  
 8 as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

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

14           ~~\_\_\_\_\_ (b) sentencing the person to either the department of corrections or the Montana state prison or Montana~~  
 15 ~~women's prison for a term of not less than 3 years or more than 5 6 years, all of which must be suspended, to~~  
 16 ~~run consecutively to the term imposed under subsection (1)(a); and~~

17           ~~(e)(b)~~ a fine in an amount of not less than \$1,000 \$5,000 or more than \$10,000.

18           (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a  
 19 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.  
 20 If the person successfully completes the residential alcohol treatment program, the person may apply for parole  
 21 under 46-23-201.

22           ~~\_\_\_\_\_ (3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single~~  
 23 ~~conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,~~  
 24 ~~61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while~~  
 25 ~~under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided~~  
 26 ~~in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program~~  
 27 ~~under subsection (2), whether or not the person successfully completed the program, the person shall be~~  
 28 ~~sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined~~  
 29 ~~an amount of not less than \$1,000 or more than \$10,000, or both.~~

30           ~~\_\_\_\_\_ (4) The court shall, as a condition of probation, order:~~

1 ~~—— (a) that the person abide by the standard conditions of probation promulgated by the department of~~  
2 ~~corrections;~~

3 ~~—— (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment~~  
4 ~~under this section;~~

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

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

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

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

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

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

13 ~~—— (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions~~  
14 ~~during the period of probation. Reasonable restrictions or conditions may include but are not limited to:~~

15 ~~—— (a) payment of a fine as provided in 46-18-231;~~

16 ~~—— (b) payment of costs as provided in 46-18-232 and 46-18-233;~~

17 ~~—— (c) payment of costs of assigned counsel as provided in 46-8-113;~~

18 ~~—— (d) community service;~~

19 ~~—— (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
20 ~~protection of society; or~~

21 ~~—— (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).~~

22 ~~(6)(3) Following initial placement of a defendant in a treatment facility under subsection (2), the~~  
23 ~~department of corrections may, at its discretion, place the offender in another facility or program.~~

24 ~~(7)(4) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014,~~  
25 ~~and 46-23-1031 apply to persons sentenced under this section.~~

26 ~~(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single~~  
27 ~~conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,~~  
28 ~~61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while~~  
29 ~~under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided~~  
30 ~~in 61-8-401(1), the person shall be punished as a persistent felony offender as provided in 46-18-502."~~

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

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

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

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

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

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

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

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

(6) Each counselor providing education or treatment shall, at the commencement of the education or

1 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or  
2 treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall  
3 notify the court of the failure.

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

7 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of  
8 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a licensed addiction counselor pursuant  
9 to diagnosis and patient placement rules adopted by the department of public health and human services.

10 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must  
11 be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

12 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court  
13 shall revoke the suspended sentence, if any, shall impose any remaining portion of the suspended sentence, and  
14 may include additional monthly monitoring for up to an additional 1 year.

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

18

19 **Section 11.** Section 61-8-733, MCA, is amended to read:

20 **"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
21 **concentration -- forfeiture of vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401  
22 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or  
23 revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under  
24 the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state  
25 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be  
26 driving under the influence, the court, in addition to the punishments provided in 61-5-212; and 61-8-714; ~~and~~  
27 ~~61-8-722~~ and any other penalty imposed by law, shall:

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

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

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

9 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest  
10 if the person did not know and could not have reasonably known of the unlawful possession, use, or other act  
11 on which the forfeiture is sought."  
12

13 **Section 12.** Section 61-8-734, MCA, is amended to read:

14 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
15 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**  
16 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses  
17 referred to in 61-8-714, ~~61-8-722~~, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in  
18 this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized  
19 Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in  
20 this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

21 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less  
22 than 5 years have elapsed between the commission of the present offense and a previous conviction; unless the  
23 offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for  
24 sentencing purposes.

25 (c) A previous conviction under 61-8-714 ~~or 61-8-722~~ for a violation of 61-8-401 or 61-8-406 may be  
26 counted for purposes of determining the number of a subsequent conviction for a violation of either 61-8-401 or  
27 61-8-406.

28 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under  
29 61-8-714, ~~61-8-722~~, or 61-8-731 be served in another facility made available by the county and approved by the  
30 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The

1 court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
2 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
3 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred  
4 by the sentencing court.

5 (3) Subject to the limitations set forth in 61-8-714 ~~and 61-8-722~~ concerning minimum periods of  
6 imprisonment, the court may order that a term of imprisonment imposed under either section be served by  
7 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

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

9 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's  
10 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 ~~or 61-8-722~~ for a  
11 violation of 61-8-401 or 61-8-406."

12

13 NEW SECTION. **Section 13. Repealer.** The following section of the Montana Code Annotated is  
14 repealed:

15 61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.

16

17 NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 2011.

18

19 NEW SECTION. **Section 15. Applicability.** [This act] applies to offenses committed on or after [the  
20 effective date of this act].

21

- END -