



AN ACT REVISING LAWS RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO PROVIDE A LEGAL LIMIT FOR THE AMOUNT OF DELTA-9-TETRAHYDROCANNABINOL ALLOWED BE PRESENT IN A PERSON'S BLOOD WHILE OPERATING A MOTOR VEHICLE; AND AMENDING SECTIONS 45-5-106, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-231, 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-408, 61-8-421, 61-8-442, 61-8-465, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, 61-8-741, AND 61-11-101, MCA.

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

Section 1. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol. (1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more.

(2) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

Section 2. 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, ~~or 61-8-406,~~ or [section 1].

(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 3. 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) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

(4) A prosecution for a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-410, or [section 1] may not be deferred."

Section 4. 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)(c), 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) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) 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; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(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 upon 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, an order that the offender be placed in a 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) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
 - (n) participation in a day reporting program provided for in 53-1-203;
 - (o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or subsequent violation of 61-8-401, ~~or 61-8-406,~~ or [section 1];
 - (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
 - (q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- (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) 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.
- (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."

Section 5. 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, ~~or~~ 61-8-406,

or [section 1].

(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, 2015--sec. 14, Ch. 374, L. 2009.)

46-18-236. (Effective July 1, 2015) 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, ~~or 61-8-406~~, or [section 1].

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

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

- (a) any person, 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 or manufacture marijuana 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 a person 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 landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana 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 or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

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

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card 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, ~~or 61-8-410~~, or [section 1]. 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, ~~or 61-8-406~~, or [section 1]; or

(ii) in 61-8-410 for a violation of 61-8-410.

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

Section 7. 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 rules a driver rehabilitation and improvement program or programs. The programs may consist of 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, ~~or~~ 61-8-406, or [section 1], 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, judge of a district court of the state, or hearing examiner of the department.

(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 8. 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, ~~or 61-8-406~~, or [section 1];
- (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 9. 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, ~~or 61-8-406~~, or [section 1], 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, ~~or 61-8-406~~, or [section 1] within the time period specified in 61-8-734, 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. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are 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, ~~or 61-8-406~~, or [section 1] within the time period specified in 61-8-734, 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. If the 1-year suspension period passes and the person has not completed a chemical dependency education course or treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are 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, ~~or 61-8-406~~, or [section 1] 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, 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 10. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable. (1) (a)

A person commits the offense of driving a motor vehicle without a valid license or 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;
- (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 possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period 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) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, ~~or 61-8-406, or [section 1]~~ or a similar offense under 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 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 punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine 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.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, ~~or~~ 61-8-410, or [section 1] must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 11. 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 [section 1] or driving with excessive alcohol concentration under 61-8-406 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 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, ~~or~~ 61-8-406, or [section 1] 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 12. Section 61-8-401, MCA, is amended to read:

"61-8-401. Driving under influence of alcohol or drugs -- definitions. (1) It is unlawful and 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 influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

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

(3) (a) "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.

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

(4) 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 or breath 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.

(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.

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

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

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

Section 13. Section 61-8-402, MCA, is amended to read:

"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon 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.

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

(i) the officer has reasonable grounds 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 placed under arrest for a violation of 61-8-401 or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

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

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in

45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(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 provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the 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 subsection (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section 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, 61-8-401, ~~or 61-8-406~~, or [section 1] or a similar statute in another jurisdiction, the officer 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.

(6) 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 provided in 61-8-403.

(7) (a) Except as provided in subsection (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 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 a 1-year period; 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 for purposes of this subsection (7)(b).

(8) 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.

(9) 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 61-8-403.

(10) A suspension under this section is subject to review as provided in this part.

(11) 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.

(12) 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 61-8-405(6)."

Section 14. Section 61-8-404, MCA, is amended to read:

"61-8-404. 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 61-8-401, 61-8-406, 61-8-410, section 1, 61-8-465, 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 motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon 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;

(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 61-8-405(1);

(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 61-8-402, 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 15. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a 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 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 61-8-401, 61-8-406, 61-8-410, [section 1], or 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 16. Section 61-8-408, MCA, is amended to read:

"61-8-408. Multiple convictions prohibited. When the same acts may establish the commission of an offense under ~~both~~ 61-8-401 and 61-8-406 ~~or~~ 61-8-401 and [section 1], a person charged with the conduct may be prosecuted for a violation of ~~both~~ 61-8-401 and 61-8-406 ~~or~~ 61-8-401 and [section 1]. However, the person may ~~only~~ be convicted of ~~an~~ only one offense under ~~either~~ 61-8-401, ~~or~~ 61-8-406, ~~or~~ [section 1]."

Section 17. Section 61-8-421, MCA, is amended to read:

"61-8-421. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-733 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 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a second or subsequent offense under 61-8-401, ~~or 61-8-406,~~ or section 1. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, 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.

(5) Actions the court may take under 44-12-205(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 61-8-442, MCA, is amended to read:

"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401, ~~or 61-8-406,~~ or section 1, 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.

(2) If a person is convicted of a second or subsequent violation of 61-8-401, ~~or 61-8-406,~~ or section 1, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall:

(a) 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

(b) 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 61-8-421.

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

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

Section 19. Section 61-8-465, MCA, is amended to read:

"61-8-465. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401, ~~or~~ 61-8-406, or [section 1] and at the time of the offense:

(a) the person's blood alcohol concentration 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 61-8-401, 61-8-402, ~~or~~ 61-8-406, or [section 1];

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, [section 1], or this section within 3 years of the commission of the present offense; or has two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, [section 1], or this section within 7 years of the commission of the present offense.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of \$1,000; and

(b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714.

(3) During the suspended sentence imposed by the court under subsection (2)(b):

(a) 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;

(b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the court; and

(c) 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.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."

Section 20. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense. (1) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-406 or [section 1] shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$300 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 \$600 or more than \$2,000.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406 or [section 1] shall be punished by imprisonment for not less than 5 days or more than 1 year 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 10 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that 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 61-8-732.

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or [section 1] shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$1,000 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 \$2,000 or more than \$10,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that 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 61-8-732.

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

(5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall be punished as provided in 61-8-465."

Section 21. 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) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401, ~~or 61-8-406, or [section 1]~~, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, 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~~, or [section 1], the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, 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.

(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.

(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 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 (5)(a) through (5)(e).

(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.

(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."

Section 22. 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,~~ or [section 1] 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,~~ or [section 1], 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 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 education 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) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, ~~or 61-8-406,~~ or [section 1] upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(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 61-8-714 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 23. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol

concentration -- forfeiture of vehicle. (1) On the second or subsequent conviction of a violation of 61-8-401, ~~or 61-8-406, or [section 1]~~ 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 61-8-401, ~~or 61-8-406, or [section 1]~~ or a similar offense under 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 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 court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

(a) 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

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

(2) 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.

(3) 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 24. Section 61-8-734, MCA, is amended to read:

"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. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture 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, which forfeiture has not been vacated.

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

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401, ~~or 61-8-406,~~ or [section 1] may be counted for purposes of determining the number of a subsequent conviction for violation of ~~either 61-8-401, or 61-8-406,~~ [section 1].

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 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 require that the defendant follow the rules of that 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 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section 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 61-8-714, 61-8-722, or 61-8-731.

(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 61-8-714 or 61-8-722 for a violation of 61-8-401, ~~or 61-8-406,~~ or [section 1]."

Section 25. Section 61-8-741, MCA, is amended to read:

"61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

(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 61-8-714 or 61-8-722, 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.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401, ~~or 61-8-406,~~ or [section 1] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration."

Section 26. 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 becomes final, 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 becomes final. 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.

(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 conviction becomes final for the purposes of this part upon the later of:

- (a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;
- (b) forfeiture of bail that is not vacated; or
- (c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended

execution of a sentence.

(5) (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 (5)(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 (5), "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).

(6) (a) If a person who holds a valid registry identification card 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, ~~or~~ 61-8-410, or [section 1], the court in which the conviction occurs shall require the person to surrender the registry identification card.

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

Section 27. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

- END -

I hereby certify that the within bill,
HB 0168, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 168

INTRODUCED BY D. MOORE, HANSEN, C. SMITH

AN ACT REVISING LAWS RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO PROVIDE A LEGAL LIMIT FOR THE AMOUNT OF DELTA-9-TETRAHYDROCANNABINOL ALLOWED BE PRESENT IN A PERSON'S BLOOD WHILE OPERATING A MOTOR VEHICLE; AND AMENDING SECTIONS 45-5-106, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-231, 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-408, 61-8-421, 61-8-442, 61-8-465, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, 61-8-741, AND 61-11-101, MCA.