

## 1 HOUSE BILL NO. 434

2 INTRODUCED BY T. WOODS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE  
5 OF ALCOHOL OR DRUGS; REQUIRING A REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON  
6 THE EFFECTIVENESS OF COUNTY DRINKING AND DRIVING PREVENTION PROGRAMS; REQUIRING  
7 PAYMENT OF A MINIMUM FINE OF \$5,000 FOR ANY OFFENSE RELATED TO DRIVING UNDER THE  
8 INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THAT ONE-HALF OF THE FINES COLLECTED BE  
9 USED TO FUND COUNTY DRINKING AND DRIVING PROGRAMS; AMENDING SECTIONS 3-10-601,  
10 45-5-106, 46-17-303, 46-17-402, 46-18-235, 61-2-107, 61-8-465, 61-8-714, 61-8-722, AND 61-8-731, MCA; AND  
11 PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

12

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

14

15 **NEW SECTION. Section 1. Report to law and justice interim committee.** (1) The department of  
16 justice shall submit a report to the law and justice interim committee by July 1, 2019, regarding the effectiveness  
17 of the county drinking and driving prevention programs provided in 61-2-106. The report must include:

18 (a) a list of the counties that have established drinking and driving prevention programs and a discussion  
19 of the components of the programs for each county;

20 (b) statistics on a yearly basis regarding the incidence of all offenses related to driving while under the  
21 influence of alcohol or drugs; and

22 (c) a discussion of the effectiveness of the drinking and driving prevention programs for each county that  
23 has established a program.

24 (2) (a) The law and justice interim committee shall review the report and determine whether the county  
25 drinking and driving prevention program is effective and should be continued.

26 (b) If the law and justice interim committee determines that the county drinking and driving prevention  
27 program is not effective, the committee may request legislation discontinuing the program.

28

29 **NEW SECTION. Section 2. Allocation of fines collected for driving under the influence of alcohol**  
30 **or drugs.** Fines collected under 45-5-106, 61-8-465, 61-8-714, 61-8-722, or 61-8-731 must be allocated as

1 follows:

2 (1) 50% of the fine collected must be distributed as provided in 3-10-601, 46-17-303, 46-17-402, or  
3 46-18-235; and

4 (2) 50% must be forwarded to the county drinking and driving prevention program as provided in  
5 61-2-108 and [section 3].

6  
7 **NEW SECTION. Section 3. County drinking and driving prevention program account.** (1) There  
8 is an account in the state special revenue fund for county drinking and driving prevention programs as provided  
9 in 61-2-106.

10 (2) One-half of the fines collected under 45-5-106, 61-8-465, 61-8-714, 61-8-722, or 61-8-731 must be  
11 deposited in this account.

12 (3) The counties participating in the county drinking and driving program provided in 61-2-106 shall use  
13 the money in the account to fund the county drinking and driving prevention program.

14  
15 **Section 4.** Section 3-10-601, MCA, is amended to read:

16 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Except as  
17 provided in [section 2(2)], 61-8-726, and 75-7-123, a justice's court shall collect the fees prescribed by law for  
18 justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds  
19 office, on or before the 10th day of each month, to be credited to the general fund of the county.

20 (2) Except as provided in [section 2(2)], 61-8-726, 75-7-123, and subsection (4) of this section, all fines,  
21 penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each  
22 calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of  
23 the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206  
24 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

25 (3) Except as provided in 46-18-236(7), [section 2(2)], 61-8-726, and 75-7-123, the county treasurer  
26 shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

27 (a) 50% to the department of revenue for deposit in the state general fund; and

28 (b) 50% to the county general fund.

29 (4) (a) The justice's court may contract with a private person or entity for the collection of any final  
30 judgment that requires a payment to the justice's court.

1 (b) In the event that a private person or entity is retained to collect a judgment, the justice's court may  
2 assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute  
3 a suit or other lawful collection procedure and other postjudgment remedies in its own name.

4 (c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment.  
5 The fee incurred by the justice's court must be added to the judgment amount."  
6

7 **Section 5.** Section 45-5-106, MCA, is amended to read:

8 **"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular  
9 homicide while under the influence if the person negligently causes the death of another human being while the  
10 person is operating a vehicle in violation of 61-8-401 or 61-8-406.

11 (2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as  
12 described in 45-5-102(1)(b).

13 (3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state  
14 prison for a term not to exceed 30 years or be fined an amount ~~not to exceed~~ not less than \$5,000 or more than  
15 \$50,000, or both. Imposition of a sentence may not be deferred."  
16

17 **Section 6.** Section 46-17-303, MCA, is amended to read:

18 **"46-17-303. Deposit of fines -- collection.** (1) Except as provided in [section 2] and subsection (2) of  
19 this section, all fines imposed and collected by the court must be paid to the appropriate treasurer of the county,  
20 city, or town within 30 days of receipt. The judge shall file a copy of any receipt given for a collected fine with the  
21 appropriate county, city, or town clerk.

22 (2) (a) The court may contract with a private person or entity for the collection of any final judgment that  
23 requires a payment to the court.

24 (b) In the event that a private person or entity is retained to collect a judgment, the court may assign the  
25 judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other  
26 lawful collection procedure and other postjudgment remedies in its own name.

27 (c) The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity  
28 a reasonable fee for collecting the judgment. The fee incurred by the court must be added to the judgment  
29 amount.

30 (3) If the judgment is for a fine alone, execution may issue on the judgment for any unpaid interest

1 accrued on the judgment, costs, and fees in collecting the fine as on a judgment in a civil case."

2

3 **Section 7.** Section 46-17-402, MCA, is amended to read:

4 **"46-17-402. Fees and fines -- collection.** (1) The fees and fines in municipal court must be the same  
5 as the fees and fines provided by law or ordinance, and except as provided in [section 2(2)], 61-8-726, and  
6 subsection (2) of this section, all fees and fines collected by the court must be paid into the city treasury.

7 (2) (a) The municipal court may contract with a private person or entity for the collection of any final  
8 judgment that requires a payment to the municipal court.

9 (b) In the event that a private person or entity is retained to collect a judgment, the municipal court may  
10 assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute  
11 suit or other lawful collection procedure and other postjudgment remedies in its own name.

12 (c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private  
13 person or entity a reasonable fee for collecting the judgment."

14

15 **Section 8.** Section 46-18-235, MCA, is amended to read:

16 **"46-18-235. Disposition of money collected as fines and costs.** Except as provided in [section 2(2)]  
17 and 61-8-726, the money collected by a court as a result of the imposition of fines or assessment of costs under  
18 the provisions of 46-18-231 and 46-18-232 must be paid:

19 (1) by the clerk of district court to:

20 (a) the department of revenue for deposit into the state general fund; or

21 (b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, and at the court's discretion, the  
22 drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from  
23 which the conviction and fine arose; and

24 (2) by a justice's court pursuant to 3-10-601."

25

26 **Section 9.** Section 61-2-107, MCA, is amended to read:

27 **"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.**

28 (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or  
29 revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the  
30 department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of

1 conviction for a violation of the traffic laws of the state.

2 (2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund  
3 and the other half in an account in the state special revenue fund provided for in [section 3] to be used for funding  
4 county drinking and driving prevention programs ~~as provided in 61-2-108.~~"

5

6 **Section 10.** Section 61-8-465, MCA, is amended to read:

7 **"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence  
8 if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

9 (a) the person's blood alcohol concentration is 0.16 or more;

10 (b) the person is under the order of a court or the department to equip any motor vehicle the person  
11 operates with an approved ignition interlock device;

12 (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of  
13 a prior violation of 61-8-401, 61-8-402, or 61-8-406;

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

17 (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401,  
18 61-8-406, or this section within 3 years of the commission of the present offense, or two or more prior convictions  
19 or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this  
20 section within 7 years of the commission of the present offense.

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

22 (a) a fine of ~~\$1,000~~ \$5,000; and

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

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

26 (a) the person is subject to all conditions of the suspended sentence imposed by the court, including  
27 mandatory participation in drug or DUI courts if available;

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

30 (c) if the person violates any condition of the suspended sentence or any treatment requirement, the

1 court may impose the remainder of any imprisonment term that was imposed and suspended.

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

3

4 **Section 11.** Section 61-8-714, MCA, is amended to read:

5 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

6 (1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be  
7 punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less  
8 than ~~\$300~~ \$5,000 or more than ~~\$1,000~~ \$10,000, except that if one or more passengers under 16 years of age  
9 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48  
10 consecutive hours or more than 1 year and by a fine of not less than ~~\$600~~ \$5,000 or more than ~~\$2,000~~ \$12,500.

11 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not be  
12 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
13 physical or mental well-being.

14 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
15 successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

16 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401  
17 shall be punished by a fine of not less than ~~\$600~~ \$5,000 or more than ~~\$1,000~~ \$15,000 and by imprisonment for  
18 not less than 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in  
19 the vehicle at the time of the offense, the person shall be punished by a fine of not less than ~~\$1,200~~ \$5,000 or  
20 more than ~~\$2,000~~ \$17,500 and by imprisonment for not less than 14 days or more than 1 year.

21 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not be  
22 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
23 physical or mental well-being.

24 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
25 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

26 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401  
27 shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not  
28 less than ~~\$1,000~~ \$5,000 or more than ~~\$5,000~~ \$20,000, except that if one or more passengers under 16 years of  
29 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not  
30 less than 60 days or more than 1 year and by a fine of not less than ~~\$2,000~~ \$5,000 or more than ~~\$10,000~~

1 \$22,500.

2 (b) The mandatory minimum imprisonment term may not be served under home arrest and may not be  
3 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's  
4 physical or mental well-being.

5 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
6 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

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

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

12

13 **Section 12.** Section 61-8-722, MCA, is amended to read:

14 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

15 (1) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-406 shall be  
16 punished by imprisonment for not more than 6 months and by a fine of not less than ~~\$300~~ \$5,000 or more than  
17 ~~\$1,000~~ \$10,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of  
18 the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less  
19 than ~~\$600~~ \$5,000 or more than ~~\$2,000~~ \$12,500.

20 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406  
21 shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than  
22 ~~\$600~~ \$5,000 or more than ~~\$1,000~~ \$15,000, except that if one or more passengers under 16 years of age were  
23 in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days  
24 or more than 1 year and by a fine of not less than ~~\$1,200~~ \$5,000 or more than ~~\$2,000~~ \$17,500.

25 (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not  
26 be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's  
27 physical or mental well-being.

28 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
29 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

30 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406

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  
2 ~~\$1,000~~ \$5,000 or more than ~~\$5,000~~ \$20,000, except that if one or more passengers under 16 years of age were  
3 in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days  
4 or more than 1 year and by a fine of not less than ~~\$2,000~~ \$5,000 or more than ~~\$10,000~~ \$22,500.

5 (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not  
6 be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's  
7 physical or mental well-being.

8 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
9 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

10 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
11 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
12 alcohol concentration.

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

15

16 **Section 13.** Section 61-8-731, MCA, is amended to read:

17 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
18 **concentration -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a  
19 person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under  
20 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,  
21 or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the  
22 influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in  
23 61-8-401(1), the person is guilty of a felony and shall be punished by:

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

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

1 term imposed under subsection (1)(a); and

2 (c) a fine in an amount of not less than ~~\$1,000~~ \$5,000 or more than ~~\$10,000~~ \$25,000.

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

5 (3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single  
6 conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,  
7 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a  
8 vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,  
9 as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment  
10 program under subsection (2), whether or not the person successfully completed the program, the person shall  
11 be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years ~~or~~ and  
12 be fined an amount of not less than ~~\$1,000~~ \$5,000 or more than ~~\$10,000~~ \$30,000, ~~or both~~.

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

14 (a) that the person abide by the standard conditions of probation promulgated by the department of  
15 corrections;

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

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

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

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

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

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

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

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

28 (a) payment of a fine as provided in 46-18-231;

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

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

- 1 (d) community service;
- 2 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 3 protection of society; or
- 4 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).
- 5 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department
- 6 of corrections may, at its discretion, place the offender in another facility or program.
- 7 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
- 8 46-23-1031 apply to persons sentenced under this section."

9

10 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 3] are intended to be

11 codified as an integral part of Title 61, chapter 2, part 1, and the provisions of Title 61, chapter 2, part 1, apply

12 to [sections 1 through 3].

13

14 **NEW SECTION. Section 15. Effective date.** [This act] is effective July 1, 2013.

15

16 **NEW SECTION. Section 16. Applicability.** [This act] applies to proceedings begun on or after [the

17 effective date of this act].

18

19 **NEW SECTION. Section 17. Termination.** [Section 1] terminates September 30, 2019.

20 - END -