

HOUSE BILL NO. 141
INTRODUCED BY LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE CRIMINAL CONDUCT OF AND INCREASING THE PENALTIES FOR FLEEING FROM OR ELUDING A PEACE OFFICER; AND AMENDING SECTIONS 61-5-205, 61-8-301, 61-8-715, 61-9-402, AND 61-9-431, MCA."

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

NEW SECTION. **Section 1. Fleeing from or eluding peace officer.** (1) A person operating a motor vehicle commits the offense of fleeing from or eluding a peace officer if a uniformed peace officer operating a police vehicle in the lawful performance of the peace officer's duty gives the person a visual or audible signal by hand, voice, emergency light, or siren directing the person to stop the motor vehicle and the person knowingly fails to obey the signal by increasing the speed of the motor vehicle, continuing at a speed that is 10 or more miles an hour above the applicable speed limit, extinguishing the motor vehicle's lights, or otherwise fleeing from, eluding, or attempting to flee from or elude the peace officer.

(2) ~~Except as provided in subsection (3), a~~ A person convicted of or pleading guilty or nolo contendere to an offense under subsection (1) shall be imprisoned for a term not to exceed ~~2 years~~ 1 YEAR or fined an amount not to exceed \$2,000, or both.

~~(3) A person convicted of or pleading guilty or nolo contendere to an offense under subsection (1) shall be:~~

~~_____ (a) imprisoned for a term not to exceed 5 years or fined an amount not to exceed \$5,000, or both, if at any time that the person was in violation of subsection (1):~~

~~_____ (i) an accident occurred resulting in bodily injury to another person;~~

~~_____ (ii) there was damage to the offender's motor vehicle or any other motor vehicle or property; or~~

~~_____ (iii) the offender was in an area with a speed limit of 35 miles an hour or less;~~

~~_____ (b) imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$10,000, or both, if at any time that the person was in violation of subsection (1), an accident occurred resulting in serious bodily injury to another person; or~~

~~_____ (c) imprisoned for a term not to exceed 20 years or fined an amount not to exceed \$50,000, or both, if at any time that the person was in violation of subsection (1), an accident occurred resulting in the death of~~

another person:

Section 2. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon proper authority. (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;
- (c) any felony in the commission of which a motor vehicle is used;
- (d) 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;
- (e) 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;
- (f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; ~~or~~
- ~~(g) fleeing from or eluding a peace officer; or~~
- ~~(g)(h)~~ negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

Section 3. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if the person:

- (a) operates a vehicle in willful or wanton disregard for the safety of persons or property; or
- ~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in~~

compliance with the requirements of 61-9-402; or

—(e)(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(e) (1)(b) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715."

Section 4. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving -- reckless endangerment of highway workers -- penalty. (1) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

~~(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than \$300 or more than \$500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than \$500 or more than \$1,000.~~

~~(3)(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection."~~

Section 5. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles -- immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. The use of

signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(a) The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(b) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (4)(a).

(5) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as

provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

(6) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(8) A violation of 61-9-402(4)(a) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~(1)."

Section 6. Section 61-9-431, MCA, is amended to read:

"61-9-431. Use of warning signs, flares, reflectors, lanterns, flag persons. (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck

from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~(1)."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61 apply to [section 1].

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