

HOUSE BILL NO. 295
INTRODUCED BY JENT, PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ESTABLISHING PENALTIES FOR THE OFFENSE; INCREASING THE PENALTY FOR A PERSON DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH AN ILLEGAL AMOUNT OF ALCOHOL OR DRUGS IN THE PERSON'S BODY IF THE PERSON HAS A PRIOR CONVICTION OF AGGRAVATED DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 46-18-1001, 61-5-205, 61-8-731, 61-8-732, AND 61-11-203, MCA; AND REPEALING SECTION 45-5-205, MCA."

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

NEW SECTION. **Section 1. Aggravated driving under influence of alcohol or drugs.** (1) A person commits the offense of aggravated driving under the influence of alcohol or drugs if the person operates or is in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs and:

- ~~(a) the person causes serious bodily injury to another;~~
- ~~—— (b) the person causes property damage in excess of \$10,000;~~
- ~~—— (c) the person was previously arrested for a violation of 61-8-401 or 61-8-406 and refused to take a blood or breath test under 61-8-402; or~~
- ~~—— (d) the person's privilege to operate a motor vehicle is under suspension or revocation by this state for a violation of 61-8-401 or 61-8-406 or by any other.~~

(A) HAS AN ALCOHOL CONCENTRATION OF 0.30 OR HIGHER; OR

(B) WAS CONVICTED WITHIN THE LAST 10 YEARS OF BOTH OF THE FOLLOWING OFFENSES ARISING OUT OF THE SAME TRANSACTION:

(I) DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A COMBINATION OF ALCOHOL AND DRUGS; AND

(II) EITHER NEGLIGENT HOMICIDE OR CRIMINAL ENDANGERMENT AND GIVEN A SENTENCE MAKING THE OFFENSE A FELONY.

(2) A person convicted of the offense of aggravated driving under the influence of alcohol or drugs shall be imprisoned for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both, except that

if the offense included serious bodily injury to another person, the convicted person shall be imprisoned for a term not to exceed 20 years or fined an amount not to exceed \$50,000, or both.

(3) Absolute liability, as referred to in 45-2-104, is imposed for the conduct described in this section.

~~Section 2. Section 46-18-1001, MCA, is amended to read:~~

~~"46-18-1001. Definitions. As used in this part, the following definitions apply:~~

~~(1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority:~~

~~(b) When more than one residence or family are is located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family:~~

~~(2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest procedures and conditions imposed under this part. It does not include intensive supervision by the department of corrections:~~

~~(3) "Monitoring device" means an electronic device or apparatus capable of recording or transmitting information concerning the offender's presence in or absence from the home. The device may include an apparatus for testing the offender's breath for the presence of alcohol. A telephone alone is not a monitoring device:~~

~~(4) "Supervising authority" means:~~

~~(a) in the case of an adult felon, the department of corrections;~~

~~(b) in the case of an adult misdemeanor, a court-approved entity other than the department of corrections; or~~

~~(c) in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.~~

~~(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction."~~

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) ~~negligent vehicular assault~~ aggravated driving under the influence of alcohol or drugs as defined in ~~45-5-205 involving a motor vehicle~~ [section 1] OR NEGLIGENT VEHICULAR ASSAULT.

(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 61-8-731, 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 or for person with prior conviction of aggravated driving under influence of alcohol or drugs. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406 or on a conviction under 61-8-401 or 61-8-406 of a person who has a prior conviction under [section 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) The court shall, as a condition of probation, order:

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

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

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

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

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

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

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

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

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

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

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

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

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

(f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).

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

(6) 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 4. 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 section 1, 61-8-401, or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of section 1, 61-8-401, or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

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

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

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

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

makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or 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 [section 1], 61-8-401, or 61-8-406 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 5. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).

(3) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more

conviction points according to the schedule specified in this subsection:

- (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
 - (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, NEGLIGENT VEHICULAR ASSAULT, or ~~negligent vehicular assault~~ aggravated driving under the influence of alcohol or drugs, 12 points;
 - (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;
 - (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;
 - (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;
 - (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;
 - (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;
 - (h) reckless driving, 5 points;
 - (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
 - (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;
 - (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);
 - (l) speeding, except as provided in 61-8-725(2), 3 points;
 - (m) all other moving violations, 2 points.
- (4) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.
- (5) "License" means any type of license or permit to operate a motor vehicle.
- (6) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.
- (7) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size,

weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

~~NEW SECTION. **Section 7. Repealer.** Section 45-5-205, MCA, is repealed.~~

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45 apply to [section 1].

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