

SENATE BILL NO. 37
INTRODUCED BY D. MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; PROVIDING THAT A FIRST OFFENSE, NOT INVOLVING A TRAFFIC ACCIDENT, SHALL BE PENALIZED BY A FINE AND MAY NOT BE RECORDED OR CHARGED AGAINST A DRIVER'S LICENSE RECORD UNLESS THERE IS A SUBSEQUENT OFFENSE; PROHIBITING AN INSURANCE COMPANY FROM INCREASING PREMIUMS BECAUSE OF A FIRST OFFENSE THAT IS NOT RECORDED; ALLOWING A SENTENCING JUDGE TO SUSPEND A SENTENCE OF IMPRISONMENT ON A FOURTH OR SUBSEQUENT OFFENSE IF AN OFFENDER AGREES TO PARTICIPATE IN A PROGRAM OF PHARMACOLOGIC THERAPY FOR ALCOHOLISM AFTER A 30-DAY JAIL TERM; AND AMENDING SECTIONS 61-8-714, 61-8-722, 61-8-731, 61-8-734, AND 61-11-105, MCA."

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

Section 1. Section 61-8-714, MCA, is amended to read:

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

(1) (a) A person convicted of a violation of 61-8-401 involving a traffic accident shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the defendant.

(b) A person convicted of a violation of 61-8-401 not involving a traffic accident shall be punished by a fine of not less than \$750 or more than \$1,000. Except as provided in subsection (2)(b), a conviction penalized under this subsection (1)(b) may not be recorded or charged against a driver's record and an insurance company may not hold a conviction against the insured or increase premiums because of a conviction.

(2) (a) On a second conviction of a violation of 61-8-401, the person shall be punished by a fine of not

less than \$300 or more than \$500 and by imprisonment for a term of not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 3 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant.

(b) On a second conviction of a violation of 61-8-401, if a prior conviction was not recorded or charged against a licensee's record pursuant to subsection (1)(b), the prior unrecorded conviction must be recorded and charged against the licensee's record along with any subsequent conviction penalized under 61-8-731 or this section.

(3) On ~~the~~ a third conviction, the person 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 less than \$500 or more than \$1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant."

Section 2. Section 61-8-722, MCA, is amended to read:

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

(1) (a) A person convicted of a violation of 61-8-406 involving a traffic accident shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(b) A person convicted of a violation of 61-8-406 not involving a traffic accident shall be punished by a fine of not less than \$750 or more than \$1,000. Except as provided in subsection (2)(b), a conviction penalized under this subsection (1)(b) may not be recorded or charged against a driver's record and an insurance company may not hold a conviction against the insured or increase premiums because of a conviction.

(2) (a) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than \$500.

(b) On a second conviction of a violation of 61-8-406, if a prior conviction was not recorded or charged against a licensee's record pursuant to subsection (1)(b), the prior unrecorded conviction must be recorded and

charged against the licensee's record along with any subsequent conviction penalized under 61-8-731 or this section.

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than \$1,000."

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. (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, the person is guilty of a felony and shall be punished by:

(a) (i) 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 Except as provided in subsection (1)(b), the imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b)(ii) 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)~~ (1)(a)(i); and

(c)(iii) a fine in an amount of not less than \$1,000 or more than \$10,000; or

(b) sentencing the person, as provided in subsection (1)(a), with the sentence suspended while the person participates in a program of pharmacologic therapy for alcoholism after serving 30 days in the county jail, if the judge orders the 30-day jail term. A sentence under this subsection (1)(b) may not be ordered unless the person is willing to accept pharmacologic therapy for alcoholism, is willing to seek abstinence, and has no psychological or medical contraindications for pharmacologic therapy. Pharmacologic therapy under this subsection (1)(b) for alcoholism must include the use of alcohol sensitizing agents, such as disulfiram or calcium carbimide. The person may present the court with a program of pharmacologic therapy for alcoholism prepared by a physician. The therapy must be administered by a law enforcement officer or personnel of a hospital or physician's office on a daily basis as provided in the court-ordered program. If the person fails to continue with the therapy, the court shall revoke the suspended sentence and order the sentence provided under subsection

(1)(a) to be imposed. The person shall pay for the cost of the therapy, including the cost of administration of the therapy.

(2) The department of corrections may place an offender sentenced under subsection ~~(1)(a)~~ (1)(a)(i) 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 61-8-734, 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)(1)~~ (a) (i) ~~For~~ Except as provided in subsection (1)(a)(ii), for the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means:

(A) a final conviction, as defined in 45-2-101, in this state;

(B) conviction for a violation of a similar statute or regulation in another state; or a federally recognized Indian reservation; or

(C) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(ii) A conviction penalized under 61-8-714(1)(b) or 61-8-722(1)(b) may not be counted for the purpose of determining the number of convictions unless there is a subsequent conviction penalized under 61-8-714(2)(b) or 61-8-722(2)(b).

(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 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 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, 61-2-302, 61-5-205(1)(b), and 61-5-208(2), relating to suspension and revocation 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."

Section 5. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information -- fees. (1) Subject to the provisions of ~~subsection (2)~~ subsections (2) and (3), the department shall, upon request, furnish a person the individual Montana driving record of a licensee, showing the following:

- (a) driver's license status and expiration date;
- (b) convictions of the licensee; and
- (c) traffic accidents in which the licensee was involved.

(2) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(3) The department may not release to an insurance company information relating to a penalty imposed under 61-8-714(1)(b) or 61-8-722(1)(b) or relating to a first-time conviction under 61-8-401 or 61-8-406 not involving a traffic accident until there is a subsequent violation of 61-8-401 or 61-8-406.

~~(3)(4)~~ Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

~~(4)(5)~~ A fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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