

SENATE BILL NO. 37
INTRODUCED BY 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 INCREASING LICENSE REINSTATEMENT FEES; EXTENDING DRIVER'S LICENSE SUSPENSION AND REVOCATION PERIODS; REQUIRING IGNITION INTERLOCK DEVICES IN CERTAIN CASES; ALLOWING REMOVAL OF A CONVICTION FROM A DRIVING RECORD IF AN ARRESTED PERSON AGREED TO AN ALCOHOL TEST AND HAS NO OTHER CONVICTION WITHIN 5 YEARS; PROVIDING THAT A PERSON HAS THE RIGHT TO WAIT 15 MINUTES AFTER THE PERSON IS STOPPED BEFORE TAKING AN ALCOHOL CONCENTRATION TEST; REQUIRING THE COURT TO TAKE POSSESSION OF A PERSON'S DRIVER'S LICENSE AND ISSUE A PROBATIONARY LICENSE UNDER CERTAIN CIRCUMSTANCES AND FOR CERTAIN PURPOSES UPON A FIRST CONVICTION; CHANGING FROM THE FOURTH OFFENSE TO THE THIRD OFFENSE THE POINT AT WHICH ALL PREVIOUS CONVICTIONS ARE USED TO DETERMINE THE NUMBER OF PRIOR OFFENSES; INCREASING PENALTIES FOR REFUSAL TO TAKE ALCOHOL CONCENTRATION TESTS; INCREASING FINES AND JAIL TIMES; ALLOWING A COURT TO IMPOSE COMMUNITY SERVICE AS PART OF A DRIVER'S LICENSE SUSPENSION PENALTY; REVISING LAWS ALLOWING USE OF HOME ARREST AND ELECTRONIC MONITORING ON FIRST THROUGH THIRD OFFENSES IN LIEU OF JAIL TIME; REQUIRING THE DEPARTMENT OF REVENUE TO KEEP A LIST OF PERSONS CONVICTED OF FELONY DUI OR PER SE OFFENSES AND AUTHORIZING SELLERS OF ALCOHOL TO REFUSE TO SELL ALCOHOL TO PERSONS ON THE LIST; AMENDING SECTIONS 61-1-103, 61-2-107, 61-2-302, 61-5-208, 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-440, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, AND 61-11-105, MCA; REPEALING SECTION 61-8-442, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."~~

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. (1) Except as provided in subsection (2), "vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(2) (a) In chapters 3 and 4, vehicle means "motor vehicle" as defined in this part.

(b) (i) In chapter 8, part 4, vehicle does not include a bicycle as defined in 61-1-123.

(ii) In chapter 8, part 4, except 61-8-440 through ~~61-8-442~~ and 61-8-441, vehicle includes a snowmobile."

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

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

(1) ~~(a) Notwithstanding the provisions of any other law of the state, a~~ A driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100, except as provided in subsection (1)(b), in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(b) If a person's driver's license was suspended under 61-5-208(3) for a conviction for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operating a motor vehicle with an alcohol concentration of 0.10 or more, the following reinstatement fees must be paid:

(i) \$300 upon a second conviction;

(ii) \$500 upon a third or subsequent conviction or a felony conviction.

(2) The department shall deposit ONE-HALF OF the fees collected under subsection (1) in the general fund: ~~One-half~~ AND THE OTHER HALF of the fees ~~must be appropriated and~~ IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 3. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- department to contract with private entities -- participation by offending drivers. (1) (a) The department shall establish by

administrative rules a driver rehabilitation and improvement program or programs that 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.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana. Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department may participate in any driver rehabilitation and improvement program established under this section if the person's license is:~~

(a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this state; or;

~~(ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or~~

(b) ~~revoked and they have~~ the person has:

(i) ~~completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or~~

(ii) ~~completed 1 year of a 3-year revocation; and~~

(iii) ~~met the requirements for reobtaining a Montana driver's license; or~~

(c) ~~subject to suspension as provided in 61-11-204(3).~~

(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) In the event that 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 order must be terminated and the order of suspension or revocation enforced 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 and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) 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.

(10) (a) Except as provided in (10)(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.

(11) 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 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, 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)(3) When If the department receives a report from a court or another licensing jurisdiction that a person is has been convicted or ~~forfeits~~ has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, ~~upon receiving a report of conviction or forfeiture of bail or collateral not vacated,~~~~

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon,~~ EXCEPT THAT IF THE COURT REPORT STATES THAT THE COURT FOUND THAT THE PERSON WAS NOT THE CAUSE OF AN ACCIDENT THAT OCCURRED AT THE TIME OF THE OFFENSE, THAT THE PERSON DID NOT REFUSE A REQUESTED TEST FOR ALCOHOL CONCENTRATION, AND THAT NO TEST TAKEN BY THE PERSON RESULTED IN AN ALCOHOL CONCENTRATION ABOVE 0.12, THE DEPARTMENT MAY NOT SUSPEND THE LICENSE. THE DEPARTMENT MAY NOT DISSEMINATE INFORMATION OR RECORDS OF THE CONVICTION TO ANY PERSON OR ENTITY FOR ANY PURPOSE, EXCEPT THAT THE INFORMATION AND RECORDS MAY BE DISSEMINATED TO LAW ENFORCEMENT, PROSECUTORS, AND COURTS, WHICH MAY USE THE INFORMATION AND RECORDS FOR THE SOLE PURPOSE OF DETERMINING WHETHER A PERSON HAS A PRIOR CONVICTION UNDER 61-8-401 OR 61-8-406 AND MAY NOT FURTHER DISSEMINATE THE INFORMATION OR RECORDS. ~~Upon~~ issuance of any restricted probationary license during the period of ~~revocation~~ suspension, the department shall restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater;

or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, revoke the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license revocation. A restricted probationary license may not be issued during the 1-year period of revocation.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the ~~4-year~~ period of revocation under subsection (3)(b) or (3)(c) passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

~~(c)(5)~~ For the purposes of subsection ~~(2)(b)~~ (3), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

~~(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.~~

~~(b)(6)~~ If When an ignition interlock restriction is imposed under subsection (3) and the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the ~~court-imposed~~ ignition interlock restriction by, ~~including but not limited to~~ such acts as operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall ~~lift the stay and reinstate the license suspension~~ suspend the person's license or driving privilege for the remainder of the ~~time~~ restriction period. The department may not issue a restricted probationary driver's license to a person whose license ~~suspension~~ has been ~~reinstated~~ suspended because of violation of an ignition interlock restriction.

~~(4)(7)~~ The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection ~~(2)~~ (3).

~~(5)(8)~~ The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

~~(6)(9)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 5. Section 61-8-401, MCA, is amended to read:

"61-8-401. Driving under influence of alcohol or drugs. (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) "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.

(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 0.10, 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 0.10 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, 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 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 imposed for a violation of this section."

Section 6. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (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;

(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 in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

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

~~(3) If an arrested person agrees to submit to one or more tests requested and designated by the peace officer and is subsequently convicted of a violation of 61-8-401 or 61-8-406 arising out of the same incident, the conviction under 61-8-401 or 61-8-406 must be removed from the person's driving record after 5 years from the date of conviction or forfeiture of bail if the person has not been convicted of any other violation of 61-8-401 or 61-8-406, either within 5 years prior to the incident or 5 years subsequent to the incident.~~

~~(3)(4)(3)~~ (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)(5)(4)~~ (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, 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 ~~(6)(7)(6)~~.

~~(5)(6)(5)~~ 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 or revocation and the right to a hearing provided in 61-8-403.

~~(6)(7)(6)~~ The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of ~~6 months~~ 1 year with no provision for a restricted probationary license ~~and, upon reinstatement of a license or driving privilege, restriction of the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license revocation;~~

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of ~~1 year~~ 2 years with no provision for a restricted probationary license ~~and, upon reinstatement of a license or driving privilege, restriction of the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license revocation.~~

~~(7)(8)(7)~~ 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.

~~(8)(9)(8)~~ 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.

~~(9)(10)(9)~~ A suspension under this section is subject to review as provided in this part.

~~(10)(11)(10)~~ This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 7. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.10 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more. (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 alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

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

Section 8. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (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 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) (A) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

(B) THE TEST MAY NOT BE GIVEN UNTIL AT LEAST 15 MINUTES AFTER THE PEACE OFFICER STOPPED THE PERSON.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of ~~61-8-402(3) through (8)~~ 61-8-402(4) through (9)(3) THROUGH (8) that do not conflict

with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 9. Section 61-8-440, MCA, is amended to read:

"61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty. (1) It is unlawful for a person who is subject to a restriction under ~~61-8-442~~ 61-8-714 or 61-8-722 to operate a motor vehicle not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle."

Section 10. 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 person convicted of a violation of 61-8-401 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~~ \$300 or more than ~~\$500~~ \$1,000. 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. IF THE COURT FINDS

THAT THE PERSON WAS NOT THE CAUSE OF AN ACCIDENT THAT OCCURRED AT THE TIME OF THE OFFENSE, THAT THE PERSON DID NOT REFUSE A REQUESTED TEST FOR ALCOHOL CONCENTRATION, AND THAT NO TEST TAKEN BY THE PERSON RESULTED IN AN ALCOHOL CONCENTRATION ABOVE 0.12, THE COURT SHALL TAKE POSSESSION OF THE PERSON'S DRIVER'S LICENSE FOR A PERIOD OF 6 MONTHS AND IMMEDIATELY ISSUE THE PERSON A PROBATIONARY LICENSE ALLOWING THE PERSON TO DRIVE FOR OCCUPATIONAL AND EMERGENCY PURPOSES AND ANY OTHER PURPOSES FOUND APPROPRIATE BY THE COURT. THE COURT SHALL INCLUDE THE FINDING IN ITS REPORT OF THE CONVICTION TO THE DEPARTMENT OF JUSTICE.

(2) On a second conviction, the person shall be punished by a fine of not less than ~~\$300~~ \$600 or more than ~~\$500~~ \$2,500 and by imprisonment for not less than 7 days or more than ~~6~~ 9 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~~ Seven 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~~ 7 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.

(3) On the 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~~ \$1,000 or more than ~~\$1,000~~ \$5,000. 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.

(4) In addition to the penalties provided in subsections (1) through (3), the court:

(a) may, upon a first conviction if the person's alcohol concentration at the time of the arrest was less than 0.16, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device on each vehicle owned or operated by the person. A restriction imposed under this subsection (4)(a) must run concurrent to the period of THE TAKING OF THE DRIVER'S LICENSE UNDER SUBSECTION (1) OR OF suspension of the driver's license under 61-5-208(3)(a) and must be included in a report of the conviction made by the court to the department in accordance with 61-11-102.

(b) shall, upon a first conviction if the person's alcohol concentration at the time of the arrest was 0.16 or greater or upon a second or third conviction regardless of the person's alcohol concentration at the time of the

arrest, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device on each vehicle owned or operated by the person. A restriction imposed under this subsection (4)(b) must be included in a report of the conviction made by the court to the department in accordance with 61-11-102 and:

(i) upon a first conviction, run concurrent to the period of suspension of the person's driver's license under 61-5-208(3)(a); or

(ii) upon a second or third conviction, apply to the 12-month period beginning with the end of the period of revocation of the person's driver's license under 61-5-208(3)(b).

(5) The court may make the performance of community service of the type and in the number of hours or days determined by the court a condition of any sentence suspension under this section."

Section 11. 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 person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than ~~\$100~~ \$300 or more than ~~\$500~~ \$1,000. IF THE COURT FINDS THAT THE PERSON WAS NOT THE CAUSE OF AN ACCIDENT THAT OCCURRED AT THE TIME OF THE OFFENSE, THAT THE PERSON DID NOT REFUSE A REQUESTED TEST FOR ALCOHOL CONCENTRATION, AND THAT NO TEST TAKEN BY THE PERSON RESULTED IN AN ALCOHOL CONCENTRATION ABOVE 0.12, THE COURT SHALL TAKE POSSESSION OF THE PERSON'S DRIVER'S LICENSE FOR A PERIOD OF 6 MONTHS AND IMMEDIATELY ISSUE THE PERSON A PROBATIONARY LICENSE ALLOWING THE PERSON TO DRIVE FOR OCCUPATIONAL AND EMERGENCY PURPOSES AND ANY OTHER PURPOSES FOUND APPROPRIATE BY THE COURT. THE COURT SHALL INCLUDE THE FINDING IN ITS REPORT OF THE CONVICTION TO THE DEPARTMENT OF JUSTICE.

(2) 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~~ 5 days, 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~~ \$600 or more than ~~\$500~~ \$2,500. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(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~~ 10 days, 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~~ \$1,000 or more than ~~\$1,000~~ \$5,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) In addition to the penalties provided in subsections (1) through (3), the court:

(a) may, upon a first conviction if the person's alcohol concentration at the time of the arrest was less than 0.16, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device on each vehicle owned or operated by the person. A restriction imposed under this subsection (4)(a) must run concurrent to the period of THE TAKING OF THE DRIVER'S LICENSE UNDER SUBSECTION (1) OR OF suspension of the driver's license under 61-5-208(3)(a) and must be included in a report of the conviction made by the court to the department in accordance with 61-11-102.

(b) shall, upon a first conviction if the person's alcohol concentration at the time of the arrest was 0.16 or greater or upon a second or third conviction regardless of the person's alcohol concentration at the time of the arrest, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device on each vehicle owned or operated by the person. A restriction imposed under this subsection (4)(b) must be included in a report of the conviction made by the court to the department in accordance with 61-11-102 and:

(i) upon a first conviction, run concurrent to the period of suspension of the person's driver's license under 61-5-208(3)(a); or

(ii) upon a second or third conviction, apply to the 12-month period beginning with the end of the period of revocation of the person's driver's license under 61-5-208(3)(b).

(5) The court may make the performance of community service of the type and in the number of hours or days determined by the court a condition of any sentence suspension under this section."

~~Section 12. 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) 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.~~

~~(7) The department of corrections shall report to the department of revenue, on a monthly basis, the name of any person sentenced under this section for purposes of maintaining the list required under [section 13]."~~

~~NEW SECTION. Section 13. Refusal to sell to person with felony DUI. (1) The department shall, as provided in 61-8-731(7), maintain a list, in electronic form, of persons who have received felony convictions of driving under influence of alcohol or drugs or driving with excessive alcohol concentration:~~

~~(2) A store manager, retail licensee, or any employee of a store manager or retail licensee may refuse to sell any alcoholic beverage to a person whose name appears on a monthly advisory list available from the department of revenue. No liability arises for failure to check or use the list.~~

Section 12. 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 under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "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 a federally recognized Indian reservation; or 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.

(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~~ THIRD 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 or under contract with the county or other unit of local government 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, if an electronic monitoring device is used.

(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."

NEW SECTION. **Section 13. Repealer.** Section 61-8-442, MCA, is repealed.

~~NEW SECTION. **Section 16. Codification instruction.** [Section 13] is intended to be codified as an integral part of Title 16, chapter 6, part 3, and the provisions of Title 16, chapter 6, part 3, apply to [section 13].~~

NEW SECTION. **Section 14. Coordination instruction.** If Senate Bill No. 13 is passed and approved, then 61-2-107(1)(b) in [this act] must read as follows:

"(b) If a person's driver's license was suspended under 61-5-208(3) for a conviction for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operating a motor vehicle with an alcohol concentration of 0.08 or more, the following reinstatement fees must be paid:

- (i) \$300 upon a second conviction;
- (ii) \$500 upon a third or subsequent conviction or a felony conviction.

NEW SECTION. **Section 15. Effective date.** [This act] is effective June 30, 2003.

NEW SECTION. **Section 16. Applicability.** [This act] applies to persons sentenced for offenses committed on or after [the effective date of this act].

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