

HOUSE BILL NO. 355

INTRODUCED BY C. CLARK

BY REQUEST OF THE ATTORNEY GENERAL

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; RAISING THE 5-YEAR LOOKBACK PROVISION FOR CERTAIN ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; PROVIDING THAT ALL PRIOR CONVICTIONS ARE COUNTED FOR DETERMINING THE NUMBER OF CONVICTIONS IN THE CASE OF A FOURTH OR SUBSEQUENT DUI; AMENDING SECTIONS 61-8-465 AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

**Section 1.** Section 61-8-465, MCA, is amended to read:

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

- (a) the person's blood alcohol concentration is 0.16 or more;
- (b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;
- (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, or 61-8-406;
- (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or
- (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 3 20 years of the commission of the present offense, or two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, ~~or this section within 7 years of the commission of the present offense.~~

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

- 1 (a) a fine of \$1,000; and
- 2 (b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the
- 3 mandatory minimum sentences set forth in 61-8-714.
- 4 (3) During the suspended sentence imposed by the court under subsection (2)(b):
- 5 (a) the person is subject to all conditions of the suspended sentence imposed by the court, including
- 6 mandatory participation in drug or DUI courts if available;
- 7 (b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the
- 8 court; and
- 9 (c) if the person violates any condition of the suspended sentence or any treatment requirement, the
- 10 court may impose the remainder of any imprisonment term that was imposed and suspended.
- 11 (4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."
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13 **Section 2.** Section 61-8-734, MCA, is amended to read:

14 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

15 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**

16 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses

17 referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in

18 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally

19 recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance

20 in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not

21 been vacated.

22 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less

23 than 5 20 years have elapsed between the commission of the present offense and a previous conviction, unless

24 the offense is the offender's ~~fourth~~ second or subsequent offense, in which case all previous convictions must

25 be used for sentencing purposes.

26 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be

27 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or

28 61-8-406.

29 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under

30 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the

1 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The  
2 court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
3 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
4 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred  
5 by the sentencing court.

6 (3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of  
7 imprisonment, the court may order that a term of imprisonment imposed under either section be served by  
8 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

9 (4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

10 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses  
11 and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation  
12 of 61-8-401 or 61-8-406."

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14 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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16 NEW SECTION. **Section 4. Applicability -- retroactive applicability.** (1) [This act] applies to offenses  
17 committed on or after [the effective date of this act].

18 (2) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465,  
19 61-8-714, 61-8-722, or 61-8-731, [this act] applies retroactively, within the meaning of 1-2-109, to convictions that  
20 occurred before [the effective date of this act].

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