

HOUSE BILL NO. 133

INTRODUCED BY N. MCCONNELL

BY REQUEST OF THE COMMISSION ON SENTENCING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SENTENCING;
6 REVISING CERTAIN DEFINITIONS; REVISING CRIMINAL HISTORY RECORD INFORMATION LAWS;
7 EXPANDING THE TYPES OF OFFENSES FOR WHICH FINGERPRINTS MUST BE SENT TO THE STATE
8 REPOSITORY; REVISING WHEN CERTAIN IDENTIFICATION INFORMATION MUST BE RETURNED TO AN
9 INDIVIDUAL; CLARIFYING THE ELEMENTS NECESSARY TO SUPPORT A CRIMINAL ENDANGERMENT
10 CHARGE; CLARIFYING THAT THE YOUTH COURT HAS JURISDICTION OF CHARGES OF ASSAULT WITH
11 A BODILY FLUID WHEN COMMITTED BY A MINOR; ~~LIMITING EXCEPTIONS TO MANDATORY MINIMUMS~~
12 ~~FOR CERTAIN SEXUAL OFFENSES WHEN VICTIM IS 12 YEARS OF AGE OR YOUNGER;~~ REVISING THE
13 MANDATORY MINIMUMS FOR CERTAIN SEXUAL OFFENSES WHEN VICTIM IS 12 YEARS OF AGE OR
14 YOUNGER; CREATING A TIERED SENTENCING STRUCTURE FOR THEFT-BASED CRIMES; REDUCING
15 PENALTIES FOR CERTAIN MISDEMEANORS; REDUCING PENALTIES FOR MOST DRUG OFFENSES;
16 ~~ABOLISHING~~ REVISING THE PERSISTENT FELONY OFFENDER DESIGNATION; ~~ABOLISHING~~ REVISING
17 THE REQUIREMENT FOR A CHEMICAL DEPENDENCY EDUCATION COURSE; REVISING CERTAIN
18 DRIVING OFFENSES; REVISING DUI PENALTIES; AMENDING SECTIONS 41-5-206, 44-5-202, 45-2-101,
19 45-5-207, 45-5-214, 45-5-503, 45-5-507, 45-5-625, 45-6-301, 45-6-309, 45-6-316, 45-6-317, 45-6-325, 45-6-332,
20 45-8-101, 45-8-102, 45-8-111, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 46-1-202, ~~46-13-110;~~ 46-18-201,
21 46-18-204, 46-18-205, ~~46-18-222;~~ 46-18-231, 46-18-502, 53-1-203, ~~53-30-403;~~ 61-5-102, 61-5-208, 61-5-212,
22 61-6-302, 61-6-304, 61-8-407, ~~61-8-410;~~ 61-8-422, ~~61-8-465, 61-8-714, 61-8-722;~~ 61-8-731, AND 61-8-732, ~~AND~~
23 ~~61-11-101;~~ MCA; REPEALING SECTIONS 45-9-208, 45-10-108, ~~46-13-108;~~ AND 46-18-501, ~~AND 46-18-502;~~
24 MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

25

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

27

28 **Section 1.** Section 41-5-206, MCA, is amended to read:

29 **"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney
30 may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the

1 district court a motion for leave to file an information in the district court if:

2 (a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and
3 the unlawful act would if it had been committed by an adult constitute:

4 (i) sexual intercourse without consent as defined in 45-5-503;

5 (ii) deliberate homicide as defined in 45-5-102;

6 (iii) mitigated deliberate homicide as defined in 45-5-103;

7 (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

8 (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate
9 or mitigated deliberate homicide; or

10 (b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and
11 the unlawful act is one or more of the following:

12 (i) negligent homicide as defined in 45-5-104;

13 (ii) arson as defined in 45-6-103;

14 (iii) aggravated assault as defined in 45-5-202;

15 (iv) sexual assault as provided in 45-5-502(3);

16 (v) assault with a weapon as defined in 45-5-213;

17 (vi) robbery as defined in 45-5-401;

18 (vii) burglary or aggravated burglary as defined in 45-6-204;

19 (viii) aggravated kidnapping as defined in 45-5-303;

20 (ix) possession of explosives as defined in 45-8-335;

21 (x) criminal distribution of dangerous drugs as defined in 45-9-101;

22 (xi) criminal possession of dangerous drugs as defined in ~~45-9-102(4)~~ through (6) 45-9-102(3);

23 (xii) criminal possession with intent to distribute as defined in 45-9-103(1);

24 (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

25 (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street
26 gang membership as defined in 45-8-403;

27 (xv) escape as defined in 45-7-306;

28 (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts
29 enumerated in subsections (1)(b)(i) through (1)(b)(xv).

30 (2) The county attorney shall file with the district court a petition for leave to file an information in district

1 court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

2 (3) The district court shall grant leave to file the information if it appears from the affidavit or other
3 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed
4 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct
5 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is
6 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on
7 request of either party for good cause. The district court may not transfer the case back to the youth court unless
8 the district court finds, by a preponderance of the evidence, that:

9 (a) a youth court proceeding and disposition will serve the interests of community protection;

10 (b) the nature of the offense does not warrant prosecution in district court; and

11 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

12 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth
13 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a
14 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district
15 court as provided in this section. A case may be transferred to district court after prosecution as provided in
16 41-5-208 or 41-5-1605.

17 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime
18 enumerated in subsection (1) may be:

19 (a) tried in youth court;

20 (b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county
21 attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

22 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense
23 that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth
24 pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in
25 subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which
26 the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and
27 placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine
28 the youth in an institution that it considers proper, including a state youth correctional facility under the procedures
29 of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the
30 period of confinement, school-aged youth with disabilities must be provided an education consistent with the

1 requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

2 (7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing,
3 the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's
4 case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal
5 offenses."

6

7 **SECTION 2. SECTION 44-5-202, MCA, IS AMENDED TO READ:**

8 **"44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections
9 (2) through (5), collect, process, and preserve photographs and fingerprints:

10 (a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's
11 office, or both;

12 (b) the department of corrections; and

13 (c) the department of justice.

14 (2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the
15 division of corrections or its successor.

16 (3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person
17 who has been arrested or noticed or summoned to appear to answer an information or indictment if:

18 (a) the charge is the commission of a felony or a misdemeanor except as provided in subsection (5);

19 (b) the identification of an accused is in issue; or

20 (c) it is required to do so by court order.

21 (4) Whenever a person charged with the commission of a felony or a misdemeanor is not arrested, the
22 person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting
23 at the time of initial appearance in court to answer the information or indictment against the person. The individual
24 being fingerprinted shall present the charging document, information, or citation at the time of fingerprinting, and
25 the charging document, information, or citation must be returned to the individual after the fingerprints are taken.

26 (5) ~~A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused~~
27 ~~if the accused has been arrested for the commission of a misdemeanor, except that an An individual arrested for~~
28 ~~a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is~~
29 ~~incarcerated.~~

30 (6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken

1 on a completed form provided by the state repository.

2 (7) The state repository shall compare the fingerprints received with those already on file in the state
3 repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall
4 at once inform the originating agency. If it is determined that the individual has a criminal record, the state
5 repository shall send the originating agency a copy of the individual's complete criminal history record.

6 (8) If an individual is released without the filing of charges, if the charges did not result in a conviction,
7 or if a conviction is later invalidated, the court having jurisdiction in the criminal action shall report the disposition
8 to the state repository as required in 44-5-213(2) within 14 business days. photographs Photographs and
9 fingerprints taken of the individual must be returned by the state repository to the originating agency, which shall
10 return all copies to the individual from whom they were taken; ~~in the following circumstances:~~

11 ~~—— (a) upon order of the court that had jurisdiction; or~~

12 ~~—— (b) upon the request of the individual. A criminal justice agency may not maintain any copies of the~~
13 ~~individual's fingerprints or photographs related to that charge or invalidated conviction."~~

14

15 **Section 3.** Section 45-2-101, MCA, is amended to read:

16 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in
17 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the
18 following definitions apply in this title:

19 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
20 communication, and when relevant, a failure or omission to take action.

21 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on
22 a record or documentation prescribed by law or in which a law or a regulation is particularized in its application
23 to an individual.

24 (3) "Another" means a person or persons other than the offender.

25 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage,
26 including benefit to another person or entity in whose welfare the beneficiary is interested.

27 (b) Benefit does not include an advantage promised generally to a group or class of voters as a
28 consequence of public measures that a candidate engages to support or oppose.

29 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes
30 mental illness or impairment.

1 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age
2 is specified.

3 (7) "Cohabit" means to live together under the representation of being married.

4 (8) "Common scheme" means a series of acts or omissions resulting in a pecuniary loss to the victim
5 of at least \$1,500, or \$1,500 in value, motivated by a purpose to accomplish a single criminal objective or by a
6 common purpose or plan that results in the repeated commission of the same offense or that affects the same
7 person or the same persons or the property of the same person or persons.

8 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by
9 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,
10 or communication facilities that are connected or related to that device in a system or network.

11 (10) "Computer network" means the interconnection of communication systems between computers or
12 computers and remote terminals.

13 (11) "Computer program" means an instruction or statement or a series of instructions or statements, in
14 a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer
15 system and causes it to perform specified functions.

16 (12) "Computer services" include but are not limited to computer time, data processing, and storage
17 functions.

18 (13) "Computer software" means a set of computer programs, procedures, and associated documentation
19 concerned with the operation of a computer system.

20 (14) "Computer system" means a set of related, connected, or unconnected devices, computer software,
21 or other related computer equipment.

22 (15) "Conduct" means an act or series of acts and the accompanying mental state.

23 (16) "Conviction" means a judgment of conviction ~~or~~ AND sentence entered upon a plea of guilty or nolo
24 contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court
25 of competent jurisdiction authorized to try the case without a jury.

26 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,
27 private detention center, regional correctional facility, private correctional facility, or other institution for the
28 incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for
29 offenses.

30 (18) "Deception" means knowingly to:

1 (a) create or confirm in another an impression that is false and that the offender does not believe to be
2 true;

3 (b) fail to correct a false impression that the offender previously has created or confirmed;

4 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

5 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal
6 impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter
7 of official record; or

8 (e) promise performance that the offender does not intend to perform or knows will not be performed.
9 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

10 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to
11 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or
12 occupation.

13 (20) "Deprive" means:

14 (a) to withhold property of another:

15 (i) permanently;

16 (ii) for such a period as to appropriate a portion of its value; or

17 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

18 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that
19 the owner will recover it.

20 (21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

21 (22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,
22 form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

23 (23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment
24 in a state prison for a term exceeding 1 year.

25 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against
26 any individual.

27 (25) A "frisk" is a search by an external patting of a person's clothing.

28 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality
29 within it.

30 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including

1 loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

2 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly
3 carried on by one or more persons under the control, management, or supervision of another.

4 (29) "Human being" means a person who has been born and is alive.

5 (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the
6 possession of a person subject to official detention.

7 (31) "Inmate" means a person who is confined in a correctional institution.

8 (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and
9 an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

10 (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the
11 process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

12 (33) An "involuntary act" means an act that is:

13 (a) a reflex or convulsion;

14 (b) a bodily movement during unconsciousness or sleep;

15 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

16 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either
17 conscious or habitual.

18 (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in
19 this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or
20 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective
21 juror.

22 (35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a
23 statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists.
24 A person acts knowingly with respect to the result of conduct described by a statute defining an offense when
25 the person is aware that it is highly probable that the result will be caused by the person's conduct. When
26 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person
27 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the
28 same meaning.

29 (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

30 (37) "Medicaid agency" has the meaning in 53-6-155.

1 (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient
2 under the medicaid program.

3 (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other
4 form:

5 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
6 program; or

7 (ii) that states income, expense, or other information that is or may be used to determine entitlement to
8 or the rate of payment under the medicaid program.

9 (b) The term includes related documents submitted as a part of or in support of the claim.

10 (40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders
11 the person incapable of appreciating the nature of the person's own conduct.

12 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or
13 controlling the person's own conduct as a result of the influence of an intoxicating substance.

14 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment
15 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison
16 for a term of 1 year or less.

17 (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by
18 a statute defining an offense when the person consciously disregards a risk that the result will occur or that the
19 circumstance exists or when the person disregards a risk of which the person should be aware that the result will
20 occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross
21 deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross
22 deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as
23 "negligent" and "with negligence", have the same meaning.

24 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges
25 against the defendant and neither admits nor denies the charge or charges.

26 (45) "Obtain" means:

27 (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or
28 to another; and

29 (b) in relation to labor or services, to secure the performance of the labor or service.

30 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,

1 conveyance, or transfer of title to, interest in, or possession of property.

2 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or
3 night lodging of persons or for carrying on business, whether or not a person is actually present, including any
4 outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually
5 used for personal use or employment. Each unit of a building consisting of two or more units separately secured
6 or occupied is a separate occupied structure.

7 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished
8 for a public offense.

9 (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.
10 Offenses are classified as felonies or misdemeanors.

11 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement
12 for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,
13 detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the
14 person detained or for the protection of society.

15 (b) Official detention does not include supervision of probation or parole, constraint incidental to release
16 on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or
17 a weapon to escape.

18 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,
19 an administrative, or another governmental agency or official authorized to take evidence under oath, including
20 any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in
21 connection with the proceeding.

22 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the
23 Commonwealth of Puerto Rico.

24 (53) "Owner" means a person other than the offender who has possession of or other interest in the
25 property involved, even though the interest or possession is unlawful, and without whose consent the offender
26 has no authority to exert control over the property.

27 (54) "Party official" means a person who holds an elective or appointive post in a political party in the
28 United States by virtue of which the person directs or conducts or participates in directing or conducting party
29 affairs at any level of responsibility.

30 (55) "Peace officer" means a person who by virtue of the person's office or public employment is vested

1 by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the
2 person's authority.

3 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else
4 the primary significance of which is economic gain.

5 (57) "Person" includes an individual, business association, partnership, corporation, government, or other
6 legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of
7 government.

8 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to
9 communicate unwillingness to act.

10 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

11 (60) "Premises" includes any type of structure or building and real property.

12 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

13 (a) real estate;

14 (b) money;

15 (c) commercial instruments;

16 (d) admission or transportation tickets;

17 (e) written instruments that represent or embody rights concerning anything of value, including labor or
18 services, or that are otherwise of value to the owner;

19 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

20 (g) electricity, gas, and water;

21 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

22 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
23 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

24 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,
25 prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,
26 merchandising, production, or management information or a secret designed process, procedure, formula,
27 invention, or improvement; and

28 (k) electronic impulses, electronically processed or produced data or information, commercial
29 instruments, computer software or computer programs, in either machine- or human-readable form, computer
30 services, any other tangible or intangible item of value relating to a computer, computer system, or computer

1 network, and copies thereof.

2 (62) "Property of another" means real or personal property in which a person other than the offender has
3 an interest that the offender has no authority to defeat or impair, even though the offender may have an interest
4 in the property.

5 (63) "Public place" means a place to which the public or a substantial group has access.

6 (64) (a) "Public servant" means an officer or employee of government, including but not limited to
7 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,
8 executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected
9 or designated to become a public servant.

10 (b) The term does not include witnesses.

11 (65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute
12 defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When
13 a particular purpose is an element of an offense, the element is established although the purpose is conditional,
14 unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent
15 terms, such as "purpose" and "with the purpose", have the same meaning.

16 (66) (a) "Serious bodily injury" means bodily injury that:

17 (i) creates a substantial risk of death;

18 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process
19 of a bodily member or organ; or

20 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or
21 protracted loss or impairment of the function or process of a bodily member or organ.

22 (b) The term includes serious mental illness or impairment.

23 (67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,
24 directly or through clothing, in order to knowingly or purposely:

25 (a) cause bodily injury to or humiliate, harass, or degrade another; or

26 (b) arouse or gratify the sexual response or desire of either party.

27 (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis
28 of another person, penetration of the vulva or anus of one person by a body member of another person, or
29 penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person
30 to knowingly or purposely:

- 1 (i) cause bodily injury or humiliate, harass, or degrade; or
2 (ii) arouse or gratify the sexual response or desire of either party.
- 3 (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.
- 4 (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to
5 commit an offense.
- 6 (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state
7 of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.
- 8 (71) "Statute" means an act of the legislature of this state.
- 9 (72) "Stolen property" means property over which control has been obtained by theft.
- 10 (73) A "stop" is the temporary detention of a person that results when a peace officer orders the person
11 to remain in the peace officer's presence.
- 12 (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted
13 alterations in its existing condition, or deposit refuse upon it.
- 14 (75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded, cellular,
15 or satellite telephone.
- 16 (76) "Threat" means a menace, however communicated, to:
- 17 (a) inflict physical harm on the person threatened or any other person or on property;
18 (b) subject any person to physical confinement or restraint;
19 (c) commit a criminal offense;
20 (d) accuse a person of a criminal offense;
21 (e) expose a person to hatred, contempt, or ridicule;
22 (f) harm the credit or business repute of a person;
23 (g) reveal information sought to be concealed by the person threatened;
24 (h) take action as an official against anyone or anything, withhold official action, or cause the action or
25 withholding;
- 26 (i) bring about or continue a strike, boycott, or other similar collective action if the person making the
27 threat demands or receives property that is not for the benefit of groups that the person purports to represent;
28 or
- 29 (j) testify or provide information or withhold testimony or information with respect to another's legal claim
30 or defense.

1 (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market
2 value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time
3 after the crime. If the offender appropriates a portion of the value of the property, the value must be determined
4 as follows:

5 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory
6 note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness
7 less any portion of the indebtedness that has been satisfied.

8 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable
9 legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument
10 might reasonably suffer by virtue of the loss of the instrument.

11 (iii) The value of electronic impulses, electronically produced data or information, computer software or
12 programs, or any other tangible or intangible item relating to a computer, computer system, or computer network
13 is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of
14 the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration
15 of the value of the owner's right to exclusive use or disposition of the item.

16 (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the
17 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

18 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
19 whether from the same person or several persons, may be aggregated in determining the value of the property.

20 (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with
21 provision for transport of an operator.

22 (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is
23 readily capable of being used to produce death or serious bodily injury.

24 (80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation
25 by a grand jury, or in a criminal action, prosecution, or proceeding."

26

27 **Section 4.** Section 45-5-207, MCA, is amended to read:

28 **"45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that
29 creates a substantial risk of death or serious bodily injury to another commits the offense of criminal
30 endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any

1 steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing,
2 or manufacturing equipment.

3 (2) A high blood alcohol concentration, as provided in 61-8-407, alone is not sufficient to support a
4 criminal endangerment charge.

5 ~~(2)~~(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to
6 exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

7

8 **Section 5.** Section 45-5-214, MCA, is amended to read:

9 **"45-5-214. Assault with bodily fluid.** (1) A person commits the offense of assault with a bodily fluid if
10 the person purposely causes one of the person's bodily fluids to make physical contact with:

11 (a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care
12 provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health
13 care provider is acting in the course and scope of the health care provider's profession and occupation:

14 (i) during or after an arrest for a criminal offense;

15 (ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or
16 regional jail or detention facility, or a health care facility; or

17 (iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city,
18 or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility,
19 short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

20 (b) an emergency responder.

21 (2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed
22 \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

23 (3) The youth court has jurisdiction of any violation of this section by a minor, ~~unless the charge is filed~~
24 ~~in district court, in which case the district court has jurisdiction.~~

25 (4) As used in this section, the following definitions apply:

26 (a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

27 (b) "Emergency responder" means a licensed medical services provider, law enforcement officer,
28 firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician,
29 emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith
30 renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

1

2 **Section 6.** Section 45-5-503, MCA, is amended to read:

3 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
4 without consent with another person commits the offense of sexual intercourse without consent. A person may
5 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

6 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or
7 by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined
8 not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

9 (3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or
10 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,
11 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less
12 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219
13 and 46-18-222.

14 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in
15 an incident in which each offender was present at the location where another offender's offense occurred during
16 a time period in which each offender could have reasonably known of the other's offense, each offender shall be
17 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more
18 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

19 (c) If the offender was previously convicted of an offense under this section or of an offense under the
20 laws of another state or of the United States that if committed in this state would be an offense under this section
21 and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the
22 offender shall be:

23 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18
24 years of age at the time of the commission of the offense; or

25 (ii) punished as provided in 46-18-219.

26 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
27 time of the offense, the offender:

28 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
29 suspend execution or defer imposition of the first ~~25~~ 10 years of a sentence of imprisonment imposed under this
30 subsection (4)(a)(i) except as provided in ~~46-18-222 46-18-222(1) through (5)~~ 46-18-222, and during the first ~~25~~

1 10 years of imprisonment, the offender is not eligible for parole. ~~The exception provided in 46-18-222(6) does not~~
 2 apply.

3 (ii) may be fined an amount not to exceed \$50,000; and

4 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
 5 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

6 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
 7 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
 8 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

9 (5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 10 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
 11 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
 12 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

13 (6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without
 14 consent" includes an attempt to commit the offense or flight after the attempt or commission.

15 (7) If as a result of sexual intercourse without consent a child is born, the offender who has been
 16 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual
 17 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have
 18 been followed."

19

20 **Section 7.** Section 45-5-507, MCA, is amended to read:

21 **"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries, cohabits
 22 with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant,
 23 a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this
 24 subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption,
 25 and relationships involving a stepson or stepdaughter.

26 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent
 27 is ineffective if the victim is less than 18 years old.

28 (3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life
 29 imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount
 30 not to exceed \$50,000.

1 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if
 2 the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished
 3 by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100
 4 years and may be fined not more than \$50,000.

5 (5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
 6 time of the offense, the offender:

7 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
 8 suspend execution or defer imposition of the first ~~25~~ 10 years of a sentence of imprisonment imposed under this
 9 subsection (5)(a)(i) except as provided in ~~46-18-222~~ ~~46-18-222(1) through (5)~~ 46-18-222, and during the first 25
 10 10 years of imprisonment, the offender is not eligible for parole. ~~The exception provided in 46-18-222(6) does not~~
 11 ~~apply.~~

12 (ii) may be fined an amount not to exceed \$50,000; and

13 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
 14 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

15 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
 16 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
 17 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

18 (6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial
 19 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
 20 offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount,
 21 method, and time of payment must be determined in the same manner as provided for in 46-18-244."

22

23 **Section 8.** Section 45-5-625, MCA, is amended to read:

24 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if
 25 the person:

26 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
 27 conduct, actual or simulated;

28 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or
 29 videotapes, or records a child engaging in sexual conduct, actual or simulated;

30 (c) knowingly, by any means of communication, including electronic communication, persuades, entices,

1 counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years
2 of age to engage in sexual conduct, actual or simulated;

3 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises
4 any visual or print medium, including a medium by use of electronic communication in which a child is engaged
5 in sexual conduct, actual or simulated;

6 (e) knowingly possesses any visual or print medium, including a medium by use of electronic
7 communication in which a child is engaged in sexual conduct, actual or simulated;

8 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that
9 the activity is of the nature described in those subsections;

10 (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic
11 communication in which a child is engaged in sexual conduct, actual or simulated;

12 (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of
13 age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct,
14 actual or simulated; or

15 (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or
16 a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the
17 intention of engaging in sexual conduct, actual or simulated.

18 (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual
19 abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to
20 exceed 100 years and may be fined not more than \$10,000.

21 (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the
22 offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison
23 for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

24 (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for
25 the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be
26 imprisoned in the state prison for a term not to exceed 10 years, or both.

27 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is
28 processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to
29 sell, or if the activity is financed, as part of a sexual offender information or treatment course or program
30 conducted or approved by the department of corrections.

1 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the
2 time of the offense, the offender:

3 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
4 suspend execution or defer imposition of the first 25 10 years of a sentence of imprisonment imposed under this
5 subsection (4)(a)(i) except as provided in ~~46-18-222 46-18-222(1) through (5) 46-18-222~~, and during the first 25
6 10 years of imprisonment, the offender is not eligible for parole. ~~The exception provided in 46-18-222(6) does not~~
7 ~~apply.~~

8 (ii) may be fined an amount not to exceed \$50,000; and

9 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
10 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

11 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
12 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
13 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

14 (5) As used in this section, the following definitions apply:

15 (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any
16 nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or
17 photo-optical system.

18 (b) "Sexual conduct" means:

19 (i) actual or simulated:

20 (A) sexual intercourse, whether between persons of the same or opposite sex;

21 (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical
22 procedure;

23 (C) bestiality;

24 (D) masturbation;

25 (E) sadomasochistic abuse;

26 (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

27 or

28 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

29 (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate,
30 harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual

1 response or desire of any person.

2 (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of
3 sexual conduct or incipient sexual conduct.

4 (d) "Visual medium" means:

5 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or
6 incorporates in any manner any film, photograph, videotape, negative, or slide; or

7 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other
8 video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite
9 transmission, or other method."

10

11 **Section 9.** Section 45-6-301, MCA, is amended to read:

12 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly
13 obtains or exerts unauthorized control over property of the owner and:

14 (a) has the purpose of depriving the owner of the property;

15 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
16 owner of the property; or

17 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
18 probably will deprive the owner of the property.

19 (2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or
20 deception control over property of the owner and:

21 (a) has the purpose of depriving the owner of the property;

22 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
23 owner of the property; or

24 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
25 probably will deprive the owner of the property.

26 (3) A person commits the offense of theft when the person purposely or knowingly obtains control over
27 stolen property knowing the property to have been stolen by another and:

28 (a) has the purpose of depriving the owner of the property;

29 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
30 owner of the property; or

1 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
2 probably will deprive the owner of the property.

3 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
4 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
5 agency, regardless of the original source of assistance, by means of:

6 (a) a knowingly false statement, representation, or impersonation; or

7 (b) a fraudulent scheme or device.

8 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
9 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
10 71, by means of:

11 (a) a knowingly false statement, representation, or impersonation; or

12 (b) deception or other fraudulent action.

13 (6) ~~(a)~~ A person commits the offense of theft when the person:

14 (a) purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;

15 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;

16 or

17 (c) purposely or knowingly receives small business health insurance premium incentive payments or
18 premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not
19 entitled.

20 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive
21 the owner of the property, the person:

22 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer
23 or over property entrusted to the person; or

24 (b) purposely or knowingly obtains by deception control over property of the person's employer or over
25 property entrusted to the person.

26 (8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not
27 exceeding \$1,500 in value shall be fined an amount not to exceed ~~\$1,500~~ \$500 or be imprisoned in the county
28 ~~jail for a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined ~~\$1,500~~ an
29 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A
30 person convicted of a third or subsequent offense shall be fined ~~\$1,500~~ an amount not to exceed \$500 and be

1 imprisoned in the county jail for a term of not less than ~~30~~ 5 days or more than ~~6 months~~ 1 year.

2 (b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property
3 ~~exceeding that exceeds \$1,500 in value and is less than~~ DOES NOT EXCEED \$5,000 in value shall be fined an
4 amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A
5 person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state
6 prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be
7 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an
8 amount not to exceed \$5,000.

9 (ii) A person convicted of the theft of property exceeding \$5,000 in value or as part of a common scheme,
10 or the theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs, shall be
11 fined an amount not to exceed \$50,000 \$10,000 or be imprisoned in a state prison for a term not to exceed 10
12 years, or both.

13 (iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an
14 amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed
15 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of
16 community service during a 1-year period, in the offender's county of residence. In addition to the fine and
17 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

18 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement
19 shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined
20 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the
21 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison
22 term may be ordered.

23 (9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
24 whether from the same person or several persons, may be aggregated in determining the value of the property.

25 (10) A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to
26 qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or
27 felony offense in the past 5 years."

28

29 **Section 10.** Section 45-6-309, MCA, is amended to read:

30 **"45-6-309. Failure to return rented or leased personal property.** (1) A person commits the offense

1 of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person
 2 purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental
 3 agreement, provided that clear written notice, in bold print, of the date and time when return of the property is
 4 required and of the penalty prescribed in this section is stated in the rental or lease agreement.

5 (2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a
 6 rental or lease agreement constitutes prima facie evidence of commission of the offense.

7 (3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return
 8 rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the
 9 renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie
 10 evidence of commission of the offense.

11 (4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$1,500
 12 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed
 13 6 months, or both.

14 (b) A person convicted of failure to return rented or leased personal property ~~exceeding that exceeds~~
 15 \$1,500 in value ~~shall be imprisoned in the state prison for a term not to exceed 10 years and is less than~~ DOES
 16 NOT EXCEED \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison
 17 for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not
 18 to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person
 19 convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2
 20 years or more than 5 years and may be fined an amount not to exceed \$5,000.

21 (c) A person convicted of failure to return rental or leased personal property exceeding \$5,000 in value
 22 or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison
 23 for a term not to exceed 10 years, or both."

24

25 **Section 11.** Section 45-6-316, MCA, is amended to read:

26 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the
 27 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money
 28 knowing that it will not be paid by the depository.

29 (2) If the offender has an account with the depository, failure to make good the check or other order
 30 within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the

1 offender knew that it would not be paid by the depository.

2 (3) (a) A person convicted of issuing a bad check not exceeding \$1,500 \$500 in value shall be fined an
 3 amount not to exceed \$1,500 \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or
 4 both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any
 5 property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not
 6 to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both. A person
 7 convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail
 8 for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be
 9 imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount
 10 not to exceed \$500.

11 (b) A person convicted of issuing a bad check that exceeds \$1,500 \$500 in value and is less than DOES
 12 NOT EXCEED \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison
 13 for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not
 14 to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person
 15 convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2
 16 years or more than 5 years and may be fined an amount not to exceed \$5,000.

17 (c) A person convicted of issuing a bad check exceeding \$5,000 in value or as part of a common scheme
 18 shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10
 19 years."

20

21 **Section 12.** Section 45-6-317, MCA, is amended to read:

22 **"45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when the
 23 person purposely or knowingly:

24 (a) causes another, by deception or threat, to execute a document disposing of property or a document
 25 by which a pecuniary obligation is incurred;

26 (b) makes or directs another to make a false or deceptive statement addressed to the public or any
 27 person for the purpose of promoting or procuring the sale of property or services;

28 (c) makes or directs another to make a false or deceptive statement to any person respecting the
 29 financial condition of the person making or directing another to make the statement for the purpose of procuring
 30 a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan

1 or credit regarding that person's financial condition; or

2 (d) obtains or attempts to obtain property, labor, or services by any of the following means:

3 (i) using a credit card that was issued to another without the other's consent;

4 (ii) using a credit card that has been revoked or canceled;

5 (iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

6 (iv) using the pretended number or description of a fictitious credit card; or

7 (v) using a credit card that has expired when the credit card clearly indicates the expiration date.

8 (2) (a) A person convicted of the offense of deceptive practices if the value of any property, labor, or
 9 services obtained or attempted to be obtained does not exceed \$1,500 in value shall be fined an amount not to
 10 exceed \$1,500 \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive
 11 practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to
 12 be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state
 13 prison for a term not to exceed 10 years, or both. A person convicted of a second offense shall be fined an
 14 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A
 15 person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than
 16 5 days or more than 1 year and may be fined an amount not to exceed \$500.

17 (b) A person convicted of the offense of deceptive practices if the value of any property, labor, or services
 18 obtained or attempted to be obtained exceeds \$1,500 in value and is less than DOES NOT EXCEED \$5,000 in value
 19 shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3
 20 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be
 21 imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or
 22 subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5
 23 years and may be fined an amount not to exceed \$5,000.

24 (c) A person convicted of the offense of deceptive practices if the value of any property, labor, or services
 25 obtained or attempted to be obtained exceeds \$5,000 in value or as part of a common scheme shall be fined an
 26 amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

27

28 **Section 13.** Section 45-6-325, MCA, is amended to read:

29 **"45-6-325. Forgery.** (1) A person commits the offense of forgery when with purpose to defraud the
 30 person knowingly:

1 (a) without authority makes or alters a document or other object apparently capable of being used to
2 defraud another in a manner that it purports to have been made by another or at another time or with different
3 provisions or of different composition;

4 (b) issues or delivers the document or other object knowing it to have been thus made or altered;

5 (c) possesses with the purpose of issuing or delivering any such document or other object knowing it
6 to have been thus made or altered; or

7 (d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or
8 article specifically designed for use in counterfeiting or otherwise forging written instruments.

9 (2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or
10 terminate any right, obligation, or power with reference to any person or property.

11 (3) A document or other object capable of being used to defraud another includes but is not limited to
12 one by which any right, obligation, or power with reference to any person or property may be created, transferred,
13 altered, or terminated.

14 (4) (a) A person convicted of the offense of forgery if the value of the property, labor, or services obtained
15 or attempted to be obtained exceeds DOES NOT EXCEED \$1,500 shall be fined an amount not to exceed \$1,500
16 \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a
17 common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds
18 \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not
19 to exceed 20 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500
20 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or
21 subsequent offense shall be fined an amount not to exceed \$500 and be imprisoned in the county jail for a term
22 of not less than 5 days or more than 1 year.

23 (b) A person convicted of the offense of forgery for which the value of the property, labor, or services
24 obtained or attempted to be obtained exceeds \$1,500 and is less than DOES NOT EXCEED \$5,000 in value shall
25 be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years,
26 or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned
27 in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense
28 shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined
29 an amount not to exceed \$5,000.

30 (c) A person convicted of the offense of forgery for which the value of the property, labor, or services

1 obtained or attempted to be obtained exceeds \$5,000 in value or is part of a common scheme shall be fined an
 2 amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

3

4 **Section 14.** Section 45-6-332, MCA, is amended to read:

5 **"45-6-332. Theft of identity.** (1) A person commits the offense of theft of identity if the person purposely
 6 or knowingly obtains personal identifying information of another person and uses that information for any unlawful
 7 purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical
 8 information in the name of the other person without the consent of the other person.

9 (2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was
 10 attempted to be gained or if an economic benefit of less than \$1,500 was gained or was attempted to be gained
 11 shall be fined an amount not to exceed ~~\$1,500, \$500~~ imprisoned in the county jail for a term not to exceed 6
 12 months, or both. If the victim is a minor, the offender shall be fined an amount not to exceed \$3,000; or be
 13 imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of a second offense shall
 14 be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or
 15 both. A person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 and be
 16 imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

17 (b) A person convicted of the offense of theft of identity if an economic benefit ~~of that exceeds~~ \$1,500
 18 ~~or more and is less than~~ DOES NOT EXCEED \$5,000 was gained or was attempted to be gained shall be fined an
 19 amount not to exceed ~~\$10,000, \$5,000~~ or be imprisoned in a the state prison for a term not to exceed 10 years,
 20 or both. If the victim is a minor, the offender shall be fined an amount not to exceed \$20,000; or be imprisoned
 21 in a the state prison for a term not to exceed 20 years, or both. A person convicted of a second offense shall be
 22 fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or
 23 both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not
 24 less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

25 (c) A person convicted of theft of identity if an economic benefit exceeding \$5,000 in value was gained
 26 or attempted to be gained shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison
 27 for a term not to exceed 10 years, or both.

28 (3) As used in this section, "personal identifying information" includes but is not limited to the name, date
 29 of birth, address, telephone number, driver's license number, social security number or other federal government
 30 identification number, tribal identification card number, place of employment, employee identification number,

1 mother's maiden name, financial institution account number, credit card number, or similar identifying information
2 relating to a person.

3 (4) If restitution is ordered, the court may include, as part of its determination of an amount owed,
4 payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit
5 history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt,
6 lien, or other obligation of the victim arising as a result of the actions of the defendant."
7

8 **NEW SECTION. SECTION 15. DETERMINATION OF NUMBER OF CONVICTIONS. FOR THE PURPOSE OF**
9 **DETERMINING THE NUMBER OF CONVICTIONS UNDER 45-6-301, 45-6-309, 45-6-316, 45-6-317, 45-6-325, OR 45-6-332,**
10 **A CONVICTION MEANS:**

11 **(1) A CONVICTION, AS DEFINED IN 45-2-101, UNDER THE SAME STATUTE;**

12 **(2) A CONVICTION FOR A VIOLATION OF A SIMILAR STATUTE IN ANOTHER STATE; OR**

13 **(3) A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE IN COURT**

14 **IN THIS STATE OR ANOTHER STATE FOR A VIOLATION OF A SIMILAR STATUTE, WHICH FORFEITURE HAS NOT BEEN VACATED.**
15

16 **Section 16.** Section 45-8-101, MCA, is amended to read:

17 **"45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person
18 knowingly disturbs the peace by:

19 (a) quarreling, challenging to fight, or fighting;

20 (b) making loud or unusual noises;

21 (c) using threatening, profane, or abusive language;

22 (d) rendering vehicular or pedestrian traffic impassable;

23 (e) rendering the free ingress or egress to public or private places impassable;

24 (f) disturbing or disrupting any lawful assembly or public meeting;

25 (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence
26 would endanger human life;

27 (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;

28 or

29 (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would
30 endanger human life.

1 (2) ~~(A)~~ Except as provided in ~~subsection~~ SUBSECTIONS (2)(B) AND (3), a person convicted of the offense
 2 of disorderly conduct shall be fined an amount not to exceed \$100 ~~or be imprisoned in the county jail for a term~~
 3 ~~not to exceed 10 days, or both.~~

4 (B) A PERSON CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF SUBSECTIONS (1)(A) THROUGH (1)(F)
 5 WITHIN 1 YEAR SHALL BE FINED AN AMOUNT NOT TO EXCEED \$100 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM
 6 NOT TO EXCEED 10 DAYS.

7 (3) A person convicted of a violation of ~~subsection (1)(i)~~ subsections (1)(g) through (i) (1)(l) shall be fined
 8 an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

9

10 **Section 17.** Section 45-8-102, MCA, is amended to read:

11 **"45-8-102. Failure of disorderly persons to disperse.** (1) Where ~~two~~ one or more persons are
 12 engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person
 13 who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

14 (2) A person convicted of the offense of failure to disperse shall be fined an amount not to exceed \$100
 15 or be imprisoned in the county jail for a term not to exceed ~~10 days~~ 1 day, or both."

16

17 **Section 18.** Section 45-8-111, MCA, is amended to read:

18 **"45-8-111. Public nuisance.** (1) "Public nuisance" means:

19 (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of
 20 property so as to interfere with the comfortable enjoyment of life or property by an entire community or
 21 neighborhood or by any considerable number of persons;

22 (b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

23 (c) a condition that renders dangerous for passage any public highway or right-of-way or waters used
 24 by the public.

25 (2) A person commits the offense of maintaining a public nuisance if the person knowingly creates,
 26 conducts, or maintains a public nuisance.

27 (3) Any act that affects an entire community or neighborhood or any considerable number of persons,
 28 as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted
 29 upon individuals is unequal.

30 (4) An agricultural or farming operation, a place, an establishment, or a facility or any of its

1 appurtenances or the operation of those things is not or does not become a public nuisance because of its normal
 2 operation as a result of changed residential or commercial conditions in or around its locality if the agricultural
 3 or farming operation, place, establishment, or facility has been in operation longer than the complaining resident
 4 has been in possession or the commercial establishment has been in operation.

5 (5) Noises resulting from the shooting activities at a shooting range during established hours of operation
 6 are not considered a public nuisance.

7 (6) A person convicted of maintaining a public nuisance shall be fined an amount not to exceed \$500
 8 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ Each day of the conduct constitutes
 9 a separate offense."

10

11 **Section 19.** Section 45-9-101, MCA, is amended to read:

12 **"45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in Title 50, chapter 46,
 13 a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges,
 14 gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

15 (2) A person convicted of criminal distribution of marijuana or its derivatives in an amount the aggregate
 16 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish shall be imprisoned in the state
 17 prison for a term not to exceed 5 years and may be fined not more than \$5,000.

18 ~~(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(19)(d), or an~~
 19 ~~opiate, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 2 years or more~~
 20 ~~than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

21 ~~————(3) (a) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule~~
 22 ~~II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for~~
 23 ~~criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or~~
 24 ~~more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

25 ~~————(b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be~~
 26 ~~imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more~~
 27 ~~than \$50,000, except as provided in 46-18-222.~~

28 ~~————(c) The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic~~
 29 ~~cannabinoids listed as dangerous drugs in 50-32-222.~~

30 (3) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any

1 dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

2 (4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in
3 ~~subsection (2), (3), or (5)~~ subsection (1), (2), (3), or (5) shall be imprisoned in the state prison for a term of ~~not~~
4 ~~less than 1 year or more than life~~ not to exceed 25 years or be fined an amount of not more than \$50,000, or both.

5 (5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of
6 dangerous drugs to a minor shall be sentenced as follows:

7 (a) ~~If convicted pursuant to subsection (2),~~ For a first offense, the person shall be imprisoned in the state
8 prison for ~~not less than 4 years or more than life~~ a term not to exceed 40 years and may be fined not more than
9 \$50,000, ~~except as provided in 46-18-222.~~

10 (b) ~~If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to~~
11 ~~50-32-222 or 50-32-224 and if previously convicted of such a distribution,~~ For a second or subsequent offense,
12 the person shall be imprisoned in the state prison for ~~not less than 20 years or more than~~ a term not to exceed
13 ~~life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

14 (c) ~~If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to~~
15 ~~50-32-222 or 50-32-224 and if previously convicted of two or more such distributions,~~ the person shall be
16 imprisoned in the state prison for ~~not less than 40 years or more than life and may be fined not more than~~
17 ~~\$50,000, except as provided in 46-18-222.~~

18 ~~———(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less~~
19 ~~than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

20 (6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
21 professional practice are exempt from this section."

22

23 **Section 20.** Section 45-9-102, MCA, is amended to read:

24 **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in Title 50, chapter 46,
25 a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous
26 drug, as defined in 50-32-101.

27 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate
28 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a
29 misdemeanor and shall be punished by a fine of ~~not less than \$100 or more than~~ not to exceed \$500 and by
30 imprisonment in the county jail for not more than 6 months. ~~The minimum fine must be imposed as a condition~~

1 ~~of a suspended or deferred sentence.~~

2 ~~(a) A person convicted of a second or subsequent offense under this subsection (2) is punishable by a~~
 3 ~~fine shall be fined an amount not to exceed \$1,000 \$500 or by imprisonment be imprisoned in the county jail for~~
 4 ~~a term not to exceed 1-year 6 months, or in the state prison for a term not to exceed 3 years or by both or both.~~

5 ~~(b) A person convicted of a third or subsequent offense under this subsection (2) shall be fined an~~
 6 ~~amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.~~

7 ~~(c) This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs~~
 8 ~~in 50-32-222.~~

9 ~~(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first~~
 10 ~~offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by~~
 11 ~~imprisonment in the county jail for not more than 6 months, or both.~~

12 ~~————(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned~~
 13 ~~in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than~~
 14 ~~\$50,000, except as provided in 46-18-222.~~

15 ~~(5) —(a) A person convicted of a second or subsequent offense of criminal possession of~~
 16 ~~methamphetamine shall be punished by:~~

17 ~~————(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or~~

18 ~~————(ii) commitment to the department of corrections for placement in an appropriate correctional facility or~~
 19 ~~program for a term of not less than 3 years or more than 5 years. If the person successfully completes a~~
 20 ~~residential methamphetamine treatment program operated or approved by the department of corrections during~~
 21 ~~the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not~~
 22 ~~to exceed \$50,000.~~

23 ~~————(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place~~
 24 ~~the person in a residential methamphetamine treatment program operated or approved by the department of~~
 25 ~~corrections or in a correctional facility or program. The residential methamphetamine treatment program must~~
 26 ~~consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based~~
 27 ~~prerelease center.~~

28 ~~————(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:~~

29 ~~————(i) the person to abide by the standard conditions of probation established by the department of~~
 30 ~~corrections;~~

- 1 ~~—— (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person~~
 2 ~~if the person is financially able to pay those costs;~~
 3 ~~—— (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption~~
 4 ~~on the premises or where gambling takes place;~~
 5 ~~—— (iv) that the person may not consume alcoholic beverages;~~
 6 ~~—— (v) the person to enter and remain in an aftercare program as directed by the person's probation officer;~~
 7 ~~and~~
 8 ~~—— (vi) the person to submit to random or routine drug and alcohol testing.~~

9 ~~(6)(3)~~ A person convicted of criminal possession of dangerous drugs not otherwise provided for in
 10 ~~subsections (2) through (5)~~ subsection (1) or (2) shall be imprisoned in the state prison for a term not to exceed
 11 5 years or be fined an amount not to exceed ~~\$50,000~~ \$5,000, or both.

12 ~~(7)(4)~~ A person convicted of a first violation under this section is presumed to be entitled to a deferred
 13 imposition of sentence of imprisonment.

14 ~~(8)(5)~~ Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision
 15 acting in the course of a professional practice are exempt from this section."
 16

17 **Section 21.** Section 45-9-103, MCA, is amended to read:

18 **"45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in Title 50, chapter
 19 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with
 20 intent to distribute any dangerous drug as defined in 50-32-101.

21 ~~(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101, with intent to~~
 22 ~~distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and~~
 23 ~~may be fined not more than \$50,000, except as provided in 46-18-222. A person convicted of criminal possession~~
 24 of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of
 25 marijuana or 1 gram of hashish shall be imprisoned in the state prison for a term of not more than 5 years or be
 26 fined an amount not to exceed \$5,000, or both.

27 (3) A person convicted of criminal possession with intent to distribute not otherwise provided for in
 28 subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount
 29 not to exceed \$50,000, or both.

30 (4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a

1 professional practice are exempt from this section."

2

3 **Section 22.** Section 45-9-110, MCA, is amended to read:

4 **"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) Except as provided in Title
5 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the
6 person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a
7 dangerous drug, as defined in 50-32-101.

8 (2) A person convicted of criminal production or manufacture of ~~a narcotic drug, as defined in~~
9 ~~50-32-101(19)(d), or an opiate, as defined in 50-32-101,~~ dangerous drugs, as defined in 50-32-101, shall be
10 imprisoned in the state prison for a term of not less than 5 years or more than life more than 25 years and may
11 be fined ~~not more than an amount not to exceed \$50,000, except as provided in 46-18-222.~~

12 (3) ~~A person convicted of criminal production or manufacture of a dangerous drug included in Schedule~~
13 ~~I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction~~
14 ~~that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be~~
15 ~~imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more~~
16 ~~than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for~~
17 ~~criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the~~
18 ~~state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except~~
19 ~~as provided in 46-18-222. The penalties provided for in this subsection also apply to the criminal production or~~
20 ~~manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.~~

21 (4)~~(3)~~ A person convicted of criminal production or manufacture of marijuana; or tetrahydrocannabinol;
22 ~~or a dangerous drug not referred to in subsections (2) and (3)~~ shall be imprisoned in the state prison for a term
23 ~~of not to exceed 10~~ more than 5 years and may be fined ~~not more than \$50,000~~ an amount not to exceed \$5,000,
24 ~~except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants~~
25 ~~is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life a~~
26 ~~term of not more than 25 years~~ and may be fined ~~not more than an amount not to exceed \$50,000.~~ "Weight"
27 means the weight of the dry plant and includes the leaves and stem structure but does not include the root
28 structure. ~~A person convicted under this subsection who has a prior conviction that has become final for criminal~~
29 ~~production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not~~
30 ~~to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.~~

1 ~~(5)~~(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of
2 a professional practice are exempt from this section."

3

4 **Section 23.** Section 46-1-202, MCA, is amended to read:

5 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following
6 definitions apply:

7 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice
8 registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

9 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering
10 a charge.

11 (3) "Arrest" means taking a person into custody in the manner authorized by law.

12 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other
13 person specifically named commanding that officer or person to arrest another. The term includes the original
14 warrant of arrest and a copy certified by the issuing court.

15 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant
16 in a pending criminal proceeding.

17 (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is
18 presented to a court, and that is contained in a complaint, information, or indictment.

19 (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon
20 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized
21 to try the case without a jury.

22 (8) "Court" means a place where justice is judicially administered and includes the judge of the court.

23 (9) "Included offense" means an offense that:

24 (a) is established by proof of the same or less than all the facts required to establish the commission of
25 the offense charged;

26 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in
27 the offense charged; or

28 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same
29 person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

30 (10) "Judge" means a person who is vested by law with the power to perform judicial functions.

1 (11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the
2 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

3 (12) "Make available for examination and reproduction" means to make material and information that is
4 subject to disclosure available upon request at a designated place during specified reasonable times and to
5 provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party
6 is required to make copies at its expense, to deliver the materials or information to the other party, or to supply
7 the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make
8 other or additional arrangements.

9 (13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict
10 or finding has been rendered.

11 (14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a
12 person to appear before a court at a stated time and place to answer a charge for the alleged commission of an
13 offense.

14 (15) "Offense" means a violation of any penal statute of this state or any ordinance of its political
15 subdivisions.

16 (16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and
17 parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and
18 parole and the supervision of the department of corrections.

19 (17) "Peace officer" means any person who by virtue of the person's office or public employment is vested
20 by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the
21 person's authority.

22 ~~(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and~~
23 ~~who is presently being sentenced for a second felony committed on a different occasion than the first. An offender~~
24 ~~is considered to have been previously convicted of a felony if:~~

25 ~~—— (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for~~
26 ~~which a sentence of imprisonment in excess of 1 year could have been imposed;~~

27 ~~—— (b) less than 5 years have elapsed between the commission of the present offense and either:~~

28 ~~—— (i) the previous felony conviction; or~~

29 ~~—— (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result~~
30 ~~of a previous felony conviction; and~~

1 ~~(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set~~
 2 ~~aside at the postconviction hearing.~~

3 (18) "PERSISTENT FELONY OFFENDER" MEANS AN OFFENDER WHO HAS PREVIOUSLY BEEN CONVICTED OF THREE
 4 TWO SEPARATE FELONIES THAT ARE SEXUAL OFFENSES OR VIOLENT OFFENSES AS THOSE TERMS ARE DEFINED IN
 5 46-23-502 AND WHO IS PRESENTLY BEING SENTENCED FOR A FOURTH THIRD SEXUAL OFFENSE OR VIOLENT OFFENSE THAT
 6 IS A FELONY COMMITTED ON A DIFFERENT OCCASION THAN ANY EITHER OF THE FIRST THREE TWO FELONIES. AT LEAST ONE
 7 OF THE THREE FELONIES MUST BE A SEXUAL OFFENSE OR A VIOLENT OFFENSE AS THOSE TERMS ARE DEFINED IN
 8 46-23-502. AN OFFENDER IS CONSIDERED TO HAVE PREVIOUSLY BEEN CONVICTED OF THREE TWO SEPARATE FELONIES
 9 IF:

10 (A) THE THREE TWO PREVIOUS FELONIES WERE FOR OFFENSES SEXUAL OFFENSES OR VIOLENT OFFENSES, AS
 11 THOSE TERMS ARE DEFINED IN 46-23-502; OFFENSES THAT WERE COMMITTED IN THIS STATE OR ANY OTHER JURISDICTION
 12 FOR WHICH A SENTENCE OF IMPRISONMENT IN EXCESS OF 1 YEAR COULD HAVE BEEN IMPOSED;

13 (B) LESS THAN 5 YEARS HAVE ELAPSED BETWEEN THE COMMISSION OF THE PRESENT OFFENSE AND EITHER:

14 (I) THE MOST RECENT OF THE THREE TWO FELONY CONVICTIONS; OR

15 (II) THE OFFENDER'S RELEASE ON PAROLE OR OTHERWISE FROM PRISON OR OTHER COMMITMENT IMPOSED AS
 16 A RESULT OF A PREVIOUS FELONY CONVICTION; AND

17 (C) THE OFFENDER HAS NOT BEEN PARDONED ON THE GROUND OF INNOCENCE AND THE CONVICTION HAS NOT
 18 BEEN SET ASIDE AT A POSTCONVICTION HEARING.

19 ~~(19)(18)(19)~~ "Place of trial" means the geographical location and political subdivision in which the court
 20 that will hear the cause is situated.

21 ~~(20)(19)(20)~~ "Preliminary examination" means a hearing before a judge for the purpose of determining
 22 if there is probable cause to believe a felony has been committed by the defendant.

23 ~~(24)(20)(21)~~ "Probation" means release by the court without imprisonment of a defendant found guilty
 24 of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

25 ~~(22)(21)(22)~~ "Prosecutor" means an elected or appointed attorney who is vested by law with the power
 26 to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

27 ~~(23)(22)(23)~~ "Same transaction" means conduct consisting of a series of acts or omissions that are
 28 motivated by:

29 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the
 30 accomplishment of that objective; or

1 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon
2 the same person or the property of the same person.

3 ~~(24)(23)(24)~~ "Search warrant" means an order that is:

4 (a) in writing;

5 (b) in the name of the state;

6 (c) signed by a judge;

7 (d) a particular description of the place, object, or person to be searched and the evidence, contraband,
8 or person to be seized; and

9 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or
10 persons.

11 ~~(25)(24)(25)~~ "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or
12 nolo contendere or upon a verdict or finding of guilty.

13 ~~(26)(25)(26)~~ "Statement" means:

14 (a) a writing signed or otherwise adopted or approved by a person;

15 (b) a video or audio recording of a person's communications or a transcript of the communications; and

16 (c) a writing containing a summary of a person's oral communications or admissions.

17 ~~(27)(26)(27)~~ "Summons" means a written order issued by the court that commands a person to appear
18 before a court at a stated time and place to answer a charge for the offense set forth in the order.

19 ~~(28)(27)(28)~~ "Superseded notes" means handwritten notes, including field notes, that have been
20 substantially incorporated into a statement. The notes may not be considered a statement and are not subject
21 to disclosure except as provided in 46-15-324.

22 ~~(29)(28)(29)~~ "Temporary road block" means any structure, device, or means used by a peace officer for
23 the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

24 ~~(30)(29)(30)~~ "Witness" means a person whose testimony is desired in a proceeding or investigation by
25 a grand jury or in a criminal action, prosecution, or proceeding.

26 ~~(31)(30)(31)~~ "Work product" means legal research, records, correspondence, reports, and memoranda,
27 both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor,
28 defense counsel, or their staff or investigators."

29

30 ~~Section 22. Section 46-13-110, MCA, is amended to read:~~

1 ~~—————"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but~~
2 ~~not less than 30 days before trial, the court shall hold an omnibus hearing.~~
3 ~~————(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.~~
4 ~~————(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the~~
5 ~~defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to~~
6 ~~the case, including but not limited to:~~
7 ~~————(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;~~
8 ~~————(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;~~
9 ~~————(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;~~
10 ~~————(d) notification of the existence of a plea agreement, 46-12-211;~~
11 ~~————(e) disclosure and discovery motions, Title 46, chapter 15, part 3;~~
12 ~~————(f) notice of reliance on certain defenses, 46-15-323;~~
13 ~~————(g) notice of seeking persistent felony offender status, 46-13-108;~~
14 ~~————(h)(g) motion to suppress, 46-13-301 and 46-13-302;~~
15 ~~————(i)(h) motion to dismiss, 46-13-401 and 46-13-402;~~
16 ~~————(j)(i) motion for change of place of trial, 46-13-203 through 46-13-205;~~
17 ~~————(k)(j) reasonableness of bail, Title 46, chapter 9; and~~
18 ~~————(l)(k) stipulations.~~
19 ~~————(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be~~
20 ~~signed by the court and counsel and filed with the court.~~
21 ~~————(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time~~
22 ~~of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers~~
23 ~~necessary."~~

24
25 **Section 24.** Section 46-18-201, MCA, is amended to read:
26 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
27 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
28 of sentence, except as otherwise specifically provided by statute, for a period:
29 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
30 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a

1 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
2 of whether any other conditions are imposed.

3 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the
4 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was
5 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

6 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or
7 nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically
8 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is
9 greater, for each particular offense.

10 (3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty
11 or nolo contendere, a sentencing judge may impose a sentence that may include:

12 (i) a fine as provided by law for the offense;

13 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
14 46-8-113;

15 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a
16 state prison to be designated by the department of corrections;

17 (iv) commitment of:

18 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections; with a
19 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
20 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),
21 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

22 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense
23 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in
24 an appropriate correctional facility or program;

25 ~~(v) with the approval of the facility or program, placement of the offender in a community corrections
26 facility or program as provided in 53-30-321;~~

27 ~~———(vi) with the approval of the prerelease center or prerelease program and confirmation by the department
28 of corrections that space is available, placement of the offender in a prerelease center or prerelease program for
29 a period not to exceed 1 year;~~

30 ~~(vii)~~(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by

1 and for a period of time determined by the department of corrections, but not exceeding the period of state
2 supervision of the person; or

3 (vi) commitment of an offender to the department of corrections with the requirement that immediately
4 subsequent to sentencing or disposition the offender is released to community supervision and that any
5 subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

6 ~~(viii)~~(vii) any combination of subsections (2) and (3)(a)(i) through ~~(3)(a)(viii)~~ (3)(a)(vii).

7 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

8 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
9 sentencing judge may impose ~~upon~~ on the offender any reasonable restrictions or conditions during the period
10 of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
11 subsection (1)(a) or (2) may include but are not limited to:

12 (a) limited release during employment hours as provided in 46-18-701;

13 (b) incarceration in a detention center not exceeding 180 days;

14 (c) conditions for probation;

15 (d) payment of the costs of confinement;

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

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

18 (g) payment of costs of assigned counsel as provided in 46-8-113;

19 ~~(h) with the approval of the facility or program, an order that the offender be placed in a community~~
20 ~~corrections facility or program as provided in 53-30-321;~~

21 (H) WITH THE APPROVAL OF THE FACILITY OR PROGRAM, AN ORDER THAT THE OFFENDER BE PLACED IN A
22 COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS PROVIDED IN 53-30-321;

23 ~~(i)(h)(l) with the approval of the prerelease center or prerelease program and~~ THE APPROVAL OF THE
24 PRERELEASE CENTER OR PRERELEASE PROGRAM AND confirmation by the department of corrections that space is
25 available and that the offender is a suitable candidate, an order that the offender be placed in a ~~prerelease center~~
26 ~~or prerelease chemical dependency treatment~~ PROGRAM, PRERELEASE CENTER, OR PRERELEASE program for a
27 period not to exceed 1 year;

28 ~~(j)(i)(J)~~ community service;

29 ~~(k)(i)(K)~~ home arrest as provided in Title 46, chapter 18, part 10;

30 ~~(l)(k)(L)~~ payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

1 ~~(m)(H)(M)~~ with the approval of the department of corrections and with a signed statement from an offender
 2 that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
 3 complete the boot camp incarceration program established pursuant to 53-30-403;

4 ~~(n)(m)(N)~~ participation in a day reporting program provided for in 53-1-203;

5 ~~(o)(n)(O)~~ participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter
 6 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or
 7 a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
 8 of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any
 9 statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs
 10 was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for
 11 a first, second, or subsequent violation of the statute;

12 ~~(p)(o)(P)~~ participation in a restorative justice program approved by court order and payment of a
 13 participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

14 ~~(q)(p)(Q)~~ any other reasonable restrictions or conditions considered necessary for rehabilitation or for
 15 the protection of the victim or society; or

16 ~~(r)(q)(R)~~ any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(q)~~ ~~(4)(p)~~
 17 (4)(Q).

18 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
 19 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
 20 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
 21 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
 22 sentence is deferred or suspended.

23 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
 24 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to
 25 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
 26 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

27 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
 28 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
 29 5.

30 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender

1 unless the court specifies otherwise.

2 (9) When imposing a sentence under this section that includes incarceration in a detention facility or the
 3 state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or
 4 sentencing.

5 ~~(9)~~(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
 6

7 **Section 25.** Section 46-18-204, MCA, is amended to read:

8 **"46-18-204. Dismissal after deferred imposition.** (1) Whenever the court has deferred the imposition
 9 of sentence and after termination of the time period during which imposition of sentence has been deferred or
 10 upon termination of the time remaining on a deferred sentence under 46-18-208:

11 (a) for a felony conviction, the court shall strike the plea of guilty or nolo contendere or the verdict of
 12 guilty from the record and order that the charge or charges against the defendant be dismissed provided that a
 13 petition for revocation under 46-18-203 has not been filed; or

14 (b) for a misdemeanor conviction, upon motion of the court, the defendant, or the defendant's attorney,
 15 the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty
 16 from the record and order that the charge or charges against the defendant be dismissed.

17 (2) A copy of the order of dismissal must be sent to the prosecutor and the department of justice,
 18 accompanied by a form prepared by the department of justice and containing identifying information about the
 19 defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal
 20 justice information, as defined in 44-5-103, and public access to the information may be obtained only by district
 21 court order upon good cause shown."
 22

23 **Section 26.** Section 46-18-205, MCA, is amended to read:

24 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
 25 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of
 26 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of
 27 46-18-222 do not apply to the first 30 days of the imprisonment:

28 (a) 45-5-503, sexual intercourse without consent;

29 (b) 45-5-504, indecent exposure;

30 (c) 45-5-507, incest; or

1 (d) 45-8-218, deviate sexual conduct.

2 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a
3 sentence of imprisonment imposed under the following sections may not be deferred or suspended:

4 (a) 45-5-103(4), mitigated deliberate homicide;

5 (b) 45-5-202, aggravated assault;

6 (c) 45-5-302(2), kidnapping;

7 (d) 45-5-303(2), aggravated kidnapping;

8 (e) 45-5-401(2), robbery;

9 (f) 45-5-502(3), sexual assault;

10 (g) 45-5-503(2) and (3), sexual intercourse without consent; and

11 (h) 45-5-603, aggravated promotion of prostitution; and

12 (i) ~~45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;~~

13 (j) ~~45-9-102(4), criminal possession of dangerous drugs; and~~

14 (k) ~~45-9-103(2), criminal possession with intent to distribute dangerous drugs.~~

15 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of
16 imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

17 (4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4),
18 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)."

19

20 ~~Section 27. Section 46-18-222, MCA, is amended to read:~~

21 ~~"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition
22 and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences~~

23 ~~prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
24 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,~~

25 ~~46-18-221(3), and 46-18-224, and 46-18-502(3), AND 46-18-502(3), and restrictions on parole eligibility prescribed
26 by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:~~

27 ~~(1) the offender was less than 18 years of age at the time of the commission of the offense for which the
28 offender is to be sentenced;~~

29 ~~(2) the offender's mental capacity, at the time of the commission of the offense for which the offender
30 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the~~

1 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
 2 impairment for the purposes of this subsection:

3 ~~———(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
 4 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the
 5 prosecution;~~

6 ~~———(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of
 7 another, and the offender's participation was relatively minor;~~

8 ~~———(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element
 9 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of
 10 the offense; or~~

11 ~~———(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
 12 or 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings contained in a psychosexual
 13 evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that
 14 treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community
 15 affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and
 16 society, in which case the judge shall include in its judgment a statement of the reasons for its determination."~~

17

18 **Section 27.** Section 46-18-231, MCA, is amended to read:

19 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),
 20 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an
 21 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in
 22 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

23 (b) For those crimes for which penalties are provided in the following sections, a fine may be imposed
 24 in accordance with subsection (3) in addition to a sentence of imprisonment:

25 (i) 45-5-103(4), mitigated deliberate homicide;

26 (ii) 45-5-202, aggravated assault;

27 (iii) 45-5-213, assault with a weapon;

28 (iv) 45-5-302(2), kidnapping;

29 (v) 45-5-303(2), aggravated kidnapping;

30 (vi) 45-5-401(2), robbery;

1 (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more
 2 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
 3 (viii) 45-5-503(2) through (4), sexual intercourse without consent;
 4 (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age
 5 or older at the time of the offense;
 6 (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated
 7 promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was
 8 18 years of age or older at the time of the offense;
 9 (xi) 45-5-625(4), sexual abuse of children;
 10 (xii) ~~45-9-101(2), (3), and (5)(d)~~ 45-9-101(4), criminal possession with intent to distribute a narcotic drug,
 11 ~~criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other~~
 12 criminal possession with intent to distribute a dangerous drug;
 13 ~~(xiii) 45-9-102(4), criminal possession of an opiate;~~
 14 ~~(xiv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and~~
 15 ~~(xv)~~(xiii) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school
 16 property.

17 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found
 18 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may
 19 impose a fine only in accordance with subsection (3).

20 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able
 21 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account
 22 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that
 23 payment of the fine will impose.

24 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge
 25 not to exceed \$50,000."
 26

27 **SECTION 28. SECTION 46-18-502, MCA, IS AMENDED TO READ:**

28 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and
 29 subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not
 30 less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if the

1 offender was 21 years of age or older at the time of the commission of the present offense.

2 (2) Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not
3 less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if:

4 (a) the offender was a persistent felony offender, as defined in ~~46-18-504~~ 46-1-202, at the time of the
5 offender's previous felony conviction;

6 (b) less than 5 years have elapsed between the commission of the present offense and:

7 (i) the previous felony conviction; or

8 (ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the
9 previous felony conviction; and

10 (c) the offender was 21 years of age or older at the time of the commission of the present offense.

11 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence
12 imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of
13 this section may not be deferred or suspended.

14 (4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."
15

16 **Section 29.** Section 53-1-203, MCA, is amended to read:

17 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

18 (a) subject to subsection (6), adopt rules necessary:

19 (i) to carry out the purposes of 41-5-125;

20 (ii) for the siting, establishment, and expansion of prerelease centers;

21 (iii) for the expansion of treatment facilities or programs previously established by contract through a
22 competitive procurement process;

23 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

24 (v) for the admission, custody, transfer, and release of persons in department programs except as
25 otherwise provided by law;

26 (b) subject to the functions of the department of administration, lease or purchase lands for use by
27 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
28 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
29 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
30 persons confined in correctional facilities;

1 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
2 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
3 maintain:

4 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
5 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
6 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
7 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
8 centers must be operated in coordination with other department correctional programs. This subsection does not
9 affect the department's authority to operate and maintain prerelease centers.

10 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
11 provided for in ~~45-9-102~~, 46-18-201, or 46-18-202, and any other sections relating to alternative sentences for
12 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
13 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

14 (d) use the staff and services of other state agencies and units of the Montana university system, within
15 their respective statutory functions, to carry out its functions under this title;

16 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
17 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
18 in correctional facilities or programs;

19 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
20 education of felony offenders;

21 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
22 in 41-5-103;

23 (h) collect and disseminate information relating to youth who are committed to the department for
24 placement in a state youth correctional facility;

25 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
26 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

27 (j) provide funding for youth who are committed to the department for placement in a state youth
28 correctional facility;

29 (k) administer youth correctional facilities;

30 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

- 1 (m) use to maximum efficiency the resources of state government in a coordinated effort to:
2 (i) provide for delinquent youth committed to the department; and
3 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
4 administered by the department.
- 5 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
6 and maintain a residential sexual offender treatment program. If the department intends to contract for that
7 purpose, the department shall adopt rules for the establishment and maintenance of that program.
- 8 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
9 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
10 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
11 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
12 committee. The legislative audit division shall review the contract and make recommendations or comments to
13 the legislative audit committee. The committee may make recommendations or comments to the department. The
14 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
15 prior to entering into the contract.
- 16 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
17 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
18 juvenile parole supervision.
- 19 (5) The department may contract with Montana corporations to operate a day reporting program as an
20 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
21 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
22 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
23 with any conditions of probation, such as drug testing.
- 24 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
25 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
26 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
27 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
28 at any location without community support. The prerelease siting, establishment, and expansion must be subject
29 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
30 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,

1 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3."

2

3 ~~Section 31. Section 53-30-403, MCA, is amended to read:~~

4 ~~"53-30-403. Boot camp incarceration program -- eligibility -- rulemaking. (1) The department shall~~
5 ~~establish a boot camp incarceration program for offenders incarcerated in a correctional institution:~~

6 ~~(2) In order to be eligible for participation in the boot camp incarceration program, an inmate:~~

7 ~~(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense~~
8 ~~other than a felony punishable by death, except as provided in 46-18-201(4)(m) 46-18-201(4)(l);~~

9 ~~(b) shall obtain the concurrence of the sentencing court; and~~

10 ~~(c) shall pass a physical examination to ensure sufficient health for participation.~~

11 ~~(3) The boot camp incarceration program must include:~~

12 ~~(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good~~
13 ~~health practices;~~

14 ~~(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal~~
15 ~~and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;~~

16 ~~(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be~~
17 ~~provided to, read by, and signed by all prospective enrollees; and~~

18 ~~(d) a maximum enrollment period of 120 days.~~

19 ~~(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission~~
20 ~~of an inmate to the program is discretionary with the department, which shall request and consider the written~~
21 ~~recommendation of the prosecuting attorney's office. Enrollment may be revoked only:~~

22 ~~(i) at the participant's request; or~~

23 ~~(ii) upon written departmental documentation of a participant's failure or refusal to comply with program~~
24 ~~requirements.~~

25 ~~(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the~~
26 ~~boot camp incarceration program more than twice.~~

27 ~~(5) The department may adopt rules for the establishment and administration of the boot camp~~
28 ~~incarceration program."~~

29

30 **Section 30.** Section 61-5-102, MCA, is amended to read:

1 **"61-5-102. Drivers to be licensed -- ~~penalties~~ penalty.** (1) (a) Except as provided in 61-5-104, a
2 person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's
3 license. A person may not receive a Montana driver's license until the person surrenders to the department all
4 valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under
5 the person's control more than one valid Montana driver's license at any time.

6 (b) Except as provided in subsection (1)(c), the penalty for a ~~first~~ violation of this section is a fine of not
7 more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for~~
8 ~~second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less~~
9 ~~than 2 days or more than 6 months.~~

10 (c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has
11 not renewed the license as provided in 61-5-111(3)(c) is not subject to the ~~penalties~~ penalty in subsection (1)(b).

12 (2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a
13 motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been
14 clearly marked with the words "motorcycle endorsement".

15 (ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a
16 motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the
17 motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is
18 equipped with a seat and seatbelts.

19 (b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license
20 has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial
21 driver's license", and the license bears the proper endorsement for:

22 (i) the specific vehicle type or types being operated; or

23 (ii) the passengers or type or types of cargo being transported.

24 (3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a
25 low-speed electric vehicle or a golf cart.

26 (4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or
27 permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this
28 chapter."

29

30 **Section 31.** Section 61-5-208, MCA, is amended to read:

1 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**
 2 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to
 3 drive a motor vehicle on the public highways, except as permitted by law.

4 (2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section,
 5 a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or
 6 revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or
 7 suspension period has been completed.

8 (b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

9 (i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first
 10 offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall suspend the driver's license
 11 or driving privilege of the person for a period of 6 months;

12 (ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a
 13 second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in
 14 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year
 15 and may not issue a probationary license during the period of suspension unless the person completes at least
 16 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a
 17 probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period
 18 passes and the person has not completed ~~a chemical dependency education course, treatment, or both,~~ as
 19 required under 61-8-732, the license suspension remains in effect until ~~the course or treatment, or both, are~~ is
 20 completed.

21 (iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third
 22 or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in
 23 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year
 24 and may not issue a probationary license during the period of suspension unless the person completes at least
 25 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a
 26 probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period
 27 passes and the person has not completed ~~a chemical dependency education course or treatment, or both,~~ as
 28 required under 61-8-732, the license suspension remains in effect until ~~the course or treatment, or both, are~~ is
 29 completed.

30 (3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person

1 convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license
2 commences from the date of conviction or forfeiture of bail.

3 (b) A suspension commences from the last day of the prior suspension or revocation period if the
4 suspension is for a conviction of driving with a suspended or revoked license.

5 (4) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 while operating
6 a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

7 (5) (a) A driver's license that is issued after a license revocation to a person described in subsection
8 (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

9 (b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has
10 reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the
11 person may not operate a motor vehicle unless:

12 (i) operation is authorized by the person's probation officer; or

13 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."
14

15 **Section 32.** Section 61-5-212, MCA, is amended to read:

16 **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**
17 **without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable.** (1) (a)

18 A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or
19 during a suspension or revocation period if the person drives:

20 (i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or
21 apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the
22 person has obtained a restricted-use driving permit under 61-5-232;

23 (ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended,
24 or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle
25 or from obtaining a commercial driver's license; or

26 (iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as
27 provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

28 (b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the A FIRST OR SECOND offense
29 of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second
30 time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2

1 ~~days or more than 6 months and may be fined not more than \$500. A person convicted of a third or subsequent~~
 2 ~~offense shall be imprisoned in the county jail for not more than 10 days or be fined an amount not to exceed \$500,~~
 3 ~~or both.~~

4 (B) (I) A PERSON CONVICTED OF THE OFFENSE OF DRIVING A MOTOR VEHICLE WITHOUT PROOF OF A STATUTORY
 5 EXEMPTION FOR THE SECOND TIME SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN 2 DAYS OR MORE THAN
 6 6 MONTHS AND MAY BE FINED NOT MORE THAN \$500.

7 (II) EXCEPT AS PROVIDED IN SUBSECTION (1)(B)(III), A PERSON CONVICTED OF THE OFFENSE OF DRIVING DURING
 8 A SUSPENSION OR REVOCATION PERIOD SHALL BE FINED AN AMOUNT NOT TO EXCEED \$500 OR BE IMPRISONED FOR A TERM
 9 OF NOT MORE THAN 6 MONTHS, OR BOTH.

10 ~~(ii)(iii)~~ (iii) If the reason for the suspension or revocation was that the person was convicted of a violation of
 11 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was
 12 under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs
 13 requested by a peace officer who believed that the person might be driving under the influence, the person shall
 14 ~~be punished by imprisonment~~ be imprisoned ~~for a term of not less than 2 days or~~ A TERM OF NOT LESS THAN 2 DAYS
 15 OR ~~more than 6 months or a fine~~ be fined an amount not to exceed \$2,000, or both, and in addition, the court may
 16 order the person to perform up to 40 hours of community service.

17 (2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of
 18 driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and
 19 be issued a driver's license was suspended or revoked, the department shall extend the period of suspension
 20 or revocation for an additional 1-year period.

21 (b) Upon receiving a record of the conviction of any person under this section upon a charge of driving
 22 a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled
 23 or the person was disqualified from operating a commercial motor vehicle under federal regulations, the
 24 department shall suspend the person's commercial driver's license in accordance with 61-8-802.

25 ~~(3) The vehicle owned and operated at the time of an offense under this section by a person whose~~
 26 ~~driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410,~~
 27 ~~or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the~~
 28 ~~convicted person's county of residence for a period of 30 days.~~

29 ~~—————(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the~~
 30 ~~date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered~~

1 ~~inoperable by the sheriff within 10 days after the conviction.~~

2 ~~———(5) A convicted person is responsible for all costs associated with actions taken under subsection (3).~~
3 ~~Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless~~
4 ~~the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who~~
5 ~~is determined to be without fault.~~

6 ~~———(6) A court may not suspend or defer imposition of penalties provided by this section."~~

7

8 **Section 33.** Section 61-6-302, MCA, is amended to read:

9 **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a
10 statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle
11 without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond,
12 as required by 61-6-301.

13 (2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle as proof of compliance
14 with 61-6-301 either:

15 (i) an insurance card approved by the department but issued by the insurance carrier to the motor vehicle
16 owner; or

17 (ii) an electronic device on which an electronic document issued by the insurance carrier showing proof
18 of compliance with 61-6-301 may be displayed.

19 (b) If the insurance card or electronic document is issued under a commercial automobile insurance
20 policy or a self-insured fleet, the insurance card or electronic document must indicate the status as "commercially
21 insured" or "fleet".

22 (c) A motor vehicle owner or operator shall exhibit the insurance card or display the electronic document
23 on demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field
24 deputy or inspector of the department.

25 (d) A person commits an offense under this subsection if the person fails to carry in the motor vehicle
26 the insurance card or an electronic device on which the electronic document may be displayed or fails to exhibit
27 the insurance card or display the electronic document on demand of a person specified in subsection (2)(c).

28 (e) For the purposes of this subsection (2), "insurance card" includes an electronic representation or
29 equivalent of a documentary insurance card that the insurer delivers by electronic means, as defined in
30 33-15-601, to satisfy the requirements of this subsection (2).

1 (3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the
 2 officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the
 3 complaint and notice to appear on the owner of the vehicle:

4 (a) personally; or

5 (b) by certified mail, return receipt requested, at the address for the owner listed on the registration
 6 receipt for the vehicle or, following query through available law enforcement systems, at the address maintained
 7 for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

8 (4) An owner or operator charged with violating subsection (2) may not be convicted if:

9 (a) the arresting or issuing officer or another person authorized to access information from the online
 10 motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented,
 11 a request that provides proof of insurance valid at the time of ~~arrest~~ the alleged violation took place; or

12 (b) when the system under 61-6-157 is not available, the person produces in court or the office of the
 13 arresting or issuing officer proof of insurance valid at the time of ~~arrest~~ the alleged violation took place."

14

15 **Section 34.** Section 61-6-304, MCA, is amended to read:

16 **"61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a
 17 fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or~~
 18 ~~both.~~ A second conviction is punishable by a fine of \$350 ~~or by imprisonment in the county jail for not more than~~
 19 ~~10 days, or both.~~ A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the
 20 county jail for not more than ~~6 months~~ 10 days, or both.

21 (2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall
 22 order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of
 23 the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate
 24 family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall
 25 report the surrender of the registration receipt and license plates to the department, which shall immediately
 26 suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance
 27 with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is
 28 entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless
 29 the court decides to retain the license plates for the owner until the registration suspension has been completed
 30 or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301

1 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under
 2 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction
 3 or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration
 4 receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of
 5 the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

6 (3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the
 7 surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered
 8 to the offender or a member of the offender's immediate family. The court shall send the driver's license, along
 9 with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the
 10 driver's license. The department may not reinstate a driver's license suspended under this subsection until the
 11 registered owner provides the department proof of compliance with 61-6-301 and the department determines that
 12 the registered owner is otherwise eligible for licensure.

13 ~~(4) The court may suspend a required fine only upon a determination that the offender is or will be unable~~
 14 ~~to pay the fine.~~

15 ~~— (5) A court may not defer imposition of penalties provided by this section.~~

16 ~~(6)~~(4) An offender is considered to have been previously convicted for the purposes of sentencing if less
 17 than 5 years have elapsed between the commission of the present offense and a previous conviction."
 18

19 **Section 35.** Section 61-8-407, MCA, is amended to read:

20 **"61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, 23-2-535, 45-5-207,
 21 67-1-211, and this title, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams
 22 of alcohol per 210 liters of breath."
 23

24 ~~— **Section 38.** Section 61-8-410, MCA, is amended to read:~~

25 ~~— **"61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of**~~
 26 ~~**0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more~~
 27 ~~to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability,~~
 28 ~~as provided for in 45-2-104, is imposed for a violation of this section.~~

29 ~~— (2) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100~~
 30 ~~or more than \$500.~~

1 ~~———(3) Upon a second conviction under this section, a person shall be punished by a fine of not less than~~
 2 ~~\$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.~~

3 ~~———(4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not~~
 4 ~~less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than~~
 5 ~~24 consecutive hours or more than 60 days.~~

6 ~~———(5) In addition to the punishment provided in this section, regardless of disposition:~~

7 ~~———(a) the person shall comply with the chemical dependency education course and chemical dependency~~
 8 ~~treatment provisions in 61-8-732 as ordered by the court; and~~

9 ~~———(b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6~~
 10 ~~months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or~~
 11 ~~probationary driver's license may not be issued during the suspension period until the person has paid a license~~
 12 ~~reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the~~
 13 ~~offense, has completed at least 30 days of the suspension period.~~

14 ~~———(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."~~

15

16 **Section 36.** Section 61-8-422, MCA, is amended to read:

17 **"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or**
 18 **forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~seizure under 61-5-212 or seizure and~~
 19 ~~forfeiture under 61-8-733~~ to transfer, sell, or encumber the owner's interest in that vehicle from the time of the
 20 owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the
 21 owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court,
 22 or the underlying charge is otherwise terminated.

23 (2) The prohibition against transfer of title may not be stayed pending the determination of an appeal
 24 from the conviction on the underlying charge.

25 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the
 26 county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

27

28 ~~———**SECTION 39. SECTION 61-8-465, MCA, IS AMENDED TO READ:**~~

29 ~~———**"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence~~
 30 ~~if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and:~~

- 1 ~~——— (a) the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.16 or~~
2 ~~more;~~
- 3 ~~——— (b) the person is under the order of a court or the department to equip any motor vehicle the person~~
4 ~~operates with an approved ignition interlock device;~~
- 5 ~~——— (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of~~
6 ~~a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;~~
- 7 ~~——— (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's~~
8 ~~driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the~~
9 ~~commission of the present offense; or~~
- 10 ~~——— (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401,~~
11 ~~61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or more~~
12 ~~prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401,~~
13 ~~61-8-406, or 61-8-411.~~
- 14 ~~——— (2) Except as provided in subsection (6), a person convicted of a first violation of the offense of~~
15 ~~aggravated driving under the influence shall be punished by:~~
- 16 ~~——— (a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at~~
17 ~~the time of the offense, a fine of \$2,000; and~~
- 18 ~~——— (b) a term of imprisonment for not less than 48 hours or more than 1 year, except that if one or more~~
19 ~~passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not~~
20 ~~less than 72 consecutive hours.~~
- 21 ~~——— (3) (a) Except as provided in subsection (6), a person convicted of a second violation of the offense of~~
22 ~~aggravated driving under the influence shall be punished by:~~
- 23 ~~——— (i) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at~~
24 ~~the time of the offense, a fine of \$5,000; and~~
- 25 ~~——— (ii) a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more~~
26 ~~passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not~~
27 ~~less than 45 days.~~
- 28 ~~——— (b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory~~
29 ~~minimum imprisonment term may be suspended pending successful completion of court-ordered chemical~~
30 ~~dependency assessment, education, or treatment by the person.~~

1 ~~———— (c) The mandatory minimum imprisonment term may not be served under home arrest and may not be~~
2 ~~suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's~~
3 ~~physical or mental well-being.~~

4 ~~———— (4) (a) Except as provided in subsection (6), a person convicted of a third violation of the offense of~~
5 ~~aggravated driving under the influence shall be punished by:~~

6 ~~———— (i) a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at~~
7 ~~the time of the offense, a fine of \$10,000; and~~

8 ~~———— (ii) a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if one~~
9 ~~or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment~~
10 ~~for not less than 90 consecutive days.~~

11 ~~———— (b) Except for the minimum term of imprisonment provided in subsection (4)(a)(ii), the mandatory~~
12 ~~minimum imprisonment term may be suspended pending successful completion of court-ordered chemical~~
13 ~~dependency assessment, education, or treatment by the person.~~

14 ~~———— (c) The mandatory minimum imprisonment term may not be served under home arrest and may not be~~
15 ~~suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's~~
16 ~~physical or mental well-being.~~

17 ~~———— (5) During the suspended sentence imposed by the court under subsection (3)(b) or (4)(b):~~

18 ~~———— (a) the person is subject to all conditions of the suspended sentence imposed by the court, including~~
19 ~~mandatory participation in drug or DUI courts if available;~~

20 ~~———— (b) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program if available~~
21 ~~and if imposed by the court; and~~

22 ~~———— (c) if the person violates any condition of the suspended sentence or any treatment requirement, the~~
23 ~~court may impose the remainder of any imprisonment term that was imposed and suspended.~~

24 ~~———— (6) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in~~
25 ~~61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive~~
26 ~~alcohol concentration, or under the influence of delta-9-tetrahydrocannabinol or aggravated driving under the~~
27 ~~influence.~~

28 ~~———— (7) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."~~

29

30 ~~———— **SECTION 40. SECTION 61-8-714, MCA, IS AMENDED TO READ:**~~

1 ~~—————"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.~~

2 ~~(1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be~~
3 ~~punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less~~
4 ~~than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle~~
5 ~~at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours~~
6 ~~or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.~~

7 ~~————(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be~~
8 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's~~
9 ~~physical or mental well-being.~~

10 ~~————(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending~~
11 ~~successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.~~

12 ~~————(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401~~
13 ~~shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than~~
14 ~~7 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at~~
15 ~~the time of the offense, the person shall be punished by a fine of not less than \$2,400 or more than \$4,000 and~~
16 ~~by imprisonment for not less than 14 days or more than 1 year.~~

17 ~~————(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be~~
18 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's~~
19 ~~physical or mental well-being.~~

20 ~~————(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending~~
21 ~~the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.~~

22 ~~————(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401~~
23 ~~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~~
24 ~~less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the~~
25 ~~vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60~~
26 ~~days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.~~

27 ~~————(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be~~
28 ~~suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's~~
29 ~~physical or mental well-being.~~

30 ~~————(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending~~

1 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

2 ~~———— (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in~~
 3 ~~61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive~~
 4 ~~alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under~~
 5 ~~the influence.~~

6 ~~———— (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall~~
 7 ~~be punished as provided in 61-8-465."~~

8

9 ~~———— **SECTION 41. SECTION 61-8-722, MCA, IS AMENDED TO READ:**~~

10 ~~———— **"61-8-722. Penalty for driving with excessive alcohol concentration or**~~
 11 ~~**delta-9-tetrahydrocannabinol level -- first through third offense.** (1) Except as provided in subsection (4) or~~
 12 ~~(5), a person convicted of a first violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not more~~
 13 ~~than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers~~
 14 ~~under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by~~
 15 ~~imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000.~~

16 ~~———— (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406~~
 17 ~~or 61-8-411 shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not~~
 18 ~~less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the~~
 19 ~~vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more~~
 20 ~~than 1 year and by a fine of not less than \$2,400 or more than \$4,000.~~

21 ~~———— (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not~~
 22 ~~be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's~~
 23 ~~physical or mental well-being.~~

24 ~~———— (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending~~
 25 ~~the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.~~

26 ~~———— (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or~~
 27 ~~61-8-411 shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not~~
 28 ~~less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the~~
 29 ~~vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more~~
 30 ~~than 1 year and by a fine of not less than \$5,000 or more than \$10,000.~~

1 ~~_____ (b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not~~
 2 ~~be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's~~
 3 ~~physical or mental well-being.~~

4 ~~_____ (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending~~
 5 ~~the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.~~

6 ~~_____ (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in~~
 7 ~~61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive~~
 8 ~~alcohol concentration.~~

9 ~~_____ (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall~~
 10 ~~be punished as provided in 61-8-465."~~

11

12 **Section 37.** Section 61-8-731, MCA, is amended to read:

13 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
 14 **concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence**
 15 **-- penalty for fourth ~~or OFFENSE -- PENALTY FOR FIFTH OR~~ subsequent offense.** (1) Except as provided in
 16 subsection (3), if a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person
 17 has either a single conviction under 45-5-106 or any combination of three ~~or more~~ OR MORE prior convictions
 18 under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104
 19 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any
 20 other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall
 21 be punished by:

22 (a) ~~(i) sentencing the person being sentenced~~ to the department of corrections for placement in an
 23 appropriate correctional facility or program for a term of not less than 13 months or more than 2 years. The court
 24 shall order that if the person successfully completes a residential alcohol treatment program approved by the
 25 department of corrections, the remainder of the sentence must be served on probation. The imposition or
 26 execution of the sentence may not be deferred or suspended, and the person is not eligible for parole.

27 ~~(b)(ii) sentencing the person being sentenced~~ to either the department of corrections or the Montana
 28 state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to
 29 run consecutively to the term imposed under subsection (1)(a); and

30 ~~(c)(iii) a fine in an amount of not less than \$5,000 or more than \$10,000; or~~

1 (b) (i) being sentenced to an appropriate treatment court program for a term of not more than 5 years,
 2 with required completion; and

3 (ii) a fine in an amount of not less than \$5,000 or more than \$10,000.

4 (c) If sentenced under subsection (1)(b), the person may be entitled to a suspended sentence and is not
 5 eligible for a deferred imposition of sentence.

6 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a
 7 residential alcohol treatment program approved by the department of corrections.

8 (3) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has
 9 either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104,
 10 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, ~~and the offense under 45-5-104 occurred while the~~
 11 ~~person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any~~
 12 ~~combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a~~
 13 ~~residential alcohol treatment program under subsection (2), whether or not the person successfully completed~~
 14 ~~the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months~~
 15 ~~or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both. THE PERSON~~
 16 ~~SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT LESS THAN 5 YEARS OR MORE THAN 100 YEARS OR BE~~
 17 ~~FINED AN AMOUNT NOT TO EXCEED \$50,000, OR BOTH. THE IMPOSITION OF THE FIRST 5 YEARS OF THE SENTENCE~~
 18 ~~IMPOSED MAY NOT BE DEFERRED OR SUSPENDED. AND THE PERSON WAS, UPON A PRIOR CONVICTION, PLACED IN A~~
 19 ~~RESIDENTIAL ALCOHOL TREATMENT PROGRAM UNDER SUBSECTION (2), WHETHER OR NOT THE PERSON SUCCESSFULLY~~
 20 ~~COMPLETED THE PROGRAM, THE PERSON SHALL BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF~~
 21 ~~NOT LESS THAN 13 MONTHS OR MORE THAN 5 YEARS OR BE FINED AN AMOUNT OF NOT LESS THAN \$5,000 OR MORE THAN~~
 22 ~~\$10,000, OR BOTH.~~

23 (4) The court shall, as a condition of probation, order:

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

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

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

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

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

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

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

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

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

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

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

10 (c) payment of costs of assigned counsel as provided in 46-8-113;

11 (d) community service;

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

14 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

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

17 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
18 46-23-1031 apply to persons sentenced under this section."

19

20 **Section 38.** Section 61-8-732, MCA, is amended to read:

21 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
22 **concentration -- assessment, ~~education,~~ EDUCATION, and treatment required.** (1) In addition to the
23 punishments provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant
24 convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

25 (a) a chemical dependency assessment; ~~and~~

26 (B) FOR A FIRST CONVICTION, EXCEPT AS PROVIDED IN SUBSECTION (8)(B), A CHEMICAL DEPENDENCY EDUCATION
27 COURSE; AND

28 ~~(b) a chemical dependency education course; and~~

29 ~~(c)(b)(C)~~ on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except
30 a fourth ~~or subsequent~~ OR SUBSEQUENT conviction for which the defendant completes a residential alcohol

1 treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency
2 treatment.

3 (2) The sentencing judge ~~may, in the judge's discretion, shall~~ MAY, IN THE JUDGE'S DISCRETION, require
4 the defendant to complete the chemical dependency assessment prior to sentencing the defendant. ~~If the~~
5 ~~assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency~~
6 ~~assessment as part of the sentence.~~ IF THE ASSESSMENT IS NOT ORDERED OR COMPLETED BEFORE SENTENCING, THE
7 JUDGE SHALL ORDER THE CHEMICAL DEPENDENCY ASSESSMENT AS PART OF THE SENTENCE.

8 (3) The chemical dependency assessment ~~and the chemical dependency education course~~ AND THE
9 CHEMICAL DEPENDENCY EDUCATION COURSE must be completed at a treatment program approved by the
10 department of public health and human services and must be conducted by a licensed addiction counselor.
11 Approved programs must be evidence-based programs. The defendant may attend a treatment program of the
12 defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The
13 defendant shall pay the cost of the assessment, ~~the education course,~~ THE EDUCATION COURSE, and chemical
14 dependency treatment and may use health insurance to cover the costs when possible.

15 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
16 recommendation as to ~~education,~~ EDUCATION, ~~treatment, or both,~~ OR BOTH. The assessment must conform to
17 quality standards required by the department of public health and human services. A defendant who disagrees
18 with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed
19 addiction counselor or a program approved by the department of public health and human services.

20 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the
21 defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to
22 diagnosis and patient placement rules adopted by the department of public health and human services. The rules
23 must include evidence-based treatment programs or courses approved by the department that are likely to reduce
24 recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than
25 one counselor makes a determination as provided in this subsection, the court shall order an appropriate level
26 of treatment based upon the determination of one of the counselors.

27 (6) Each counselor providing ~~education or~~ EDUCATION OR treatment shall, at the commencement of ~~the~~
28 ~~education or~~ THE EDUCATION OR treatment, notify the court that the defendant has been enrolled in a chemical
29 dependency ~~education course or~~ EDUCATION COURSE OR treatment program. If the defendant fails to attend the
30 ~~education course or~~ COURSE OR treatment program, the counselor shall notify the court of the failure.

1 (7) A court or counselor may not require attendance at a self-help program other than at an "open
2 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help
3 programs.

4 (8) (A) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation
5 of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of chemical dependency moderate or severe alcohol
6 or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules
7 adopted by the department of public health and human services.

8 (B) IF TREATMENT IS ORDERED UNDER SUBSECTION (8)(A) FOR A FIRST-TIME OFFENDER, THE OFFENDER MAY
9 NOT ALSO BE REQUIRED TO ATTEND A CHEMICAL DEPENDENCY EDUCATION COURSE.

10 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must
11 be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

12 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court
13 shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may
14 include additional monthly monitoring for up to an additional 1 year.

15 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and
16 orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction
17 to impose any suspended sentence for up to 1 year."

18

19 ~~Section 42. Section 61-11-101, MCA, is amended to read:~~

20 ~~"61-11-101. (Temporary) Report of convictions and suspension or revocation of driver's licenses~~
21 ~~--surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes~~
22 ~~mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by~~
23 ~~the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses~~
24 ~~then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a~~
25 ~~record of the conviction to the department. If the person does not possess a driver's license, the court shall~~
26 ~~indicate that fact in its report to the department.~~

27 ~~(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal~~
28 ~~ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or~~
29 ~~ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after~~
30 ~~the conviction. The court may recommend that the department issue a restricted probationary license on the~~

1 condition that the individual comply with the requirement that the person attend and complete a chemical
 2 dependency education course, treatment, or both, as ordered by the court under 61-8-732:

3 ~~———(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any
 4 action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication
 5 upon which it is based to the department within 5 days on forms furnished by the department.~~

6 ~~———(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license
 7 or who is required to hold a commercial driver's license, a court may not take any action, including deferring
 8 imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or
 9 ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving
 10 record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial
 11 driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a
 12 person who holds any other type of driver's license:~~

13 ~~———(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to
 14 a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at
 15 the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in
 16 subsection (1):~~

17 ~~———(5) (a) If a person who holds a valid registry identification card issued pursuant to 50-46-307 or
 18 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs
 19 when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or
 20 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry identification
 21 card:~~

22 ~~———(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy
 23 of the conviction to the department of public health and human services.~~

24 ~~———**61-11-101. (Effective June 30, 2017) Report of convictions and suspension or revocation of
 25 driver's licenses -- surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or
 26 chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's
 27 license of the person by the department, the court in which the conviction occurs shall require the surrender to
 28 it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction,
 29 forward the license and a record of the conviction to the department. If the person does not possess a driver's
 30 license, the court shall indicate that fact in its report to the department.~~

1 ~~———(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal~~
 2 ~~ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or~~
 3 ~~ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after~~
 4 ~~the conviction. The court may recommend that the department issue a restricted probationary license on the~~
 5 ~~condition that the individual comply with the requirement that the person attend and complete a chemical~~
 6 ~~dependency education course, treatment, or both, as ordered by the court under 61-8-732.~~

7 ~~———(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any~~
 8 ~~action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication~~
 9 ~~upon which it is based to the department within 5 days on forms furnished by the department.~~

10 ~~———(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license~~
 11 ~~or who is required to hold a commercial driver's license, a court may not take any action, including deferring~~
 12 ~~imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or~~
 13 ~~ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving~~
 14 ~~record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial~~
 15 ~~driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a~~
 16 ~~person who holds any other type of driver's license:~~

17 ~~———(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to~~
 18 ~~a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at~~
 19 ~~the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in~~
 20 ~~subsection (1).~~

21 ~~———(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307~~
 22 ~~or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or~~
 23 ~~drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406,~~
 24 ~~61-8-410, or 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry~~
 25 ~~identification card or license.~~

26 ~~———(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy~~
 27 ~~of the conviction to the department of public health and human services."~~

28
 29 **NEW SECTION. Section 39. Repealer.** The following sections of the Montana Code Annotated are
 30 repealed:

- 1 45-9-208. Mandatory dangerous drug information course.
2 45-10-108. Mandatory dangerous drug information course.
3 ~~46-13-108. Notice by prosecutor seeking persistent felony offender status.~~
4 46-18-501. Definition of persistent felony offender.
5 ~~46-18-502. Sentencing of persistent felony offender.~~

6
7 NEW SECTION. SECTION 40. CODIFICATION INSTRUCTION. [SECTION 14 15] IS INTENDED TO BE CODIFIED AS
8 AN INTEGRAL PART OF TITLE 45, CHAPTER 6, PART 3, AND THE PROVISIONS OF TITLE 45, CHAPTER 6, PART 3, APPLY TO
9 [SECTION 14 15].

10
11 COORDINATION SECTION. SECTION 41. COORDINATION INSTRUCTION. IF SENATE BILL NO. 280 AND [THIS
12 ACT] ARE BOTH PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 61-5-212, THEN THE SECTION
13 IN SENATE BILL NO. 280 THAT AMENDS 61-5-212 IS VOID.

14
15 NEW SECTION. Section 42. Effective date. [This act] is effective July 1, 2017.

16
17 NEW SECTION. Section 43. Applicability. [This act] applies to offenses committed after June 30,
18 2017.

19 - END -