

HOUSE BILL NO. 613

INTRODUCED BY S. LAVIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE 24/7 SOBRIETY AND DRUG
5 MONITORING PROGRAM; PROVIDING A PROCESS AND PENALTIES TO ADDRESS CERTAIN PRETRIAL
6 OR POSTCONVICTION NONCOMPLIANCE WITH THE PROGRAM; REVISING DEFINITIONS; REVISING
7 LAWS RELATED TO CORE COMPONENTS AND METHODOLOGIES; LIMITING USE OF HARDSHIP
8 TESTING METHODOLOGIES TO CERTAIN INDIVIDUALS; PROVIDING THAT THE STATE OWNS DATA
9 COLLECTED IN THE PROGRAM; REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES
10 RELATED TO SANCTIONING SCHEDULES AND USE OF PILOT PROJECTS; REVISING WHEN A
11 PROBATIONARY DRIVER'S LICENSE MUST BE WITHDRAWN; CLARIFYING THAT PARTICIPATION CAN
12 ONLY BE ORDERED IF THE PROGRAM IS AVAILABLE IN THE JURISDICTION; CLARIFYING THE USE OF
13 THE PROGRAM FOR CHARGES AND CONVICTIONS OF CERTAIN ALCOHOL- OR DRUG-RELATED
14 TRAFFIC CRIMES; AMENDING SECTIONS 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, 46-9-108, 46-9-505,
15 46-18-201, 61-5-208, 61-8-442, 61-8-465, 61-8-714, 61-8-722, 61-8-731, AND 61-8-733, MCA; AND PROVIDING
16 AN EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Postconviction 24/7 program noncompliance.** (1) At any time during the
21 participant's postconviction participation in a sobriety program, if the participant has committed a noncompliant
22 event:

23 (a) a court may issue a warrant for the arrest of the participant or a county attorney may issue a notice
24 to appear to answer to a charge of the sobriety program violation. The notice must be personally served upon
25 the participant. The warrant must authorize law enforcement officers to return the participant to any suitable
26 detention center or community corrections facility.

27 (b) a law enforcement officer may arrest the participant without a warrant and within 12 hours deliver to
28 the detention center or community corrections facility a written statement setting forth that the participant has, in
29 the judgment of the law enforcement officer, violated the conditions of the sobriety program. A written statement
30 or oral authorization delivered with the participant by the arresting officer to the official in charge of a detention

1 center or community corrections facility is sufficient warrant for the detention of the participant if the law
2 enforcement officer delivers the written statement within 12 hours of the participant's arrest. The law enforcement
3 officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances
4 of violation.

5 (2) (a) The detention center or community corrections facility shall arrange for the participant to appear
6 before the court without unnecessary delay. The court shall impose a \$25 fine and, except as provided in
7 subsection (2)(b), follow the model sanctioning schedule for noncompliant events contained in administrative rules
8 for the 24/7 sobriety program.

9 (b) If the judge determines that the appropriate sanctions provided by the model sanctioning schedule
10 for noncompliant events have been exhausted or that the participant will not be responsive to the model
11 sanctioning schedule, the judge may:

12 (i) continue the sentence without a change in conditions;

13 (ii) continue the sentence with modified or additional terms and conditions; or

14 (iii) set bail for the participant. In setting bail, the provisions of Title 46, chapter 9, regarding release on
15 bail of persons charged with a crime apply.

16 (3) If the participant is detained and bond is set, the law enforcement officer shall file a report of violation
17 of criminal contempt pursuant to 45-7-309.

18 (4) The fine provided for in subsection (2)(a) must be deposited into the local sobriety program account
19 established pursuant to department rules as provided in 44-4-1206.

20

21 **Section 2.** Section 44-4-1202, MCA, is amended to read:

22 **"44-4-1202. Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of
23 this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege
24 shall accept the corresponding responsibilities.

25 (2) The legislature further declares that the purpose of this part is:

26 (a) to protect the public health and welfare by reducing the number of people on Montana's highways
27 who drive under the influence of alcohol or dangerous drugs;

28 (b) to protect the public health and welfare by reducing the number of repeat offenders for crimes in
29 which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

30 (c) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to

1 repeat DUI offenders or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous
2 drugs was a contributing factor in the commission of the crime; and

3 (d) to ensure timely and sober participation in judicial proceedings.

4 (3) As used in this part, the following definitions apply:

5 (a) "Core components" means those elements of a sobriety program that analysis demonstrates are most
6 likely to account for positive program outcomes.

7 (b) "Dangerous drug" has the meaning provided in 50-32-101.

8 (c) "Department" means the department of justice provided for in 2-15-2001.

9 (d) "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.

10 (e) "Law enforcement agency" means the county sheriff's office or another law enforcement agency
11 designated by the county sheriff's office that is charged with enforcing the sobriety program.

12 (f) "Law enforcement officer" has the meaning of "peace officer" in 7-32-303.

13 (g) "Noncompliance" means when a participant has committed a noncompliant event and has not yet
14 met the requirements of the sanction.

15 (h) "Noncompliant event" means when a participant:

16 (i) refuses to enroll in the program;

17 (ii) fails to report to and provide a test sample at a central testing location during the periodic scheduled
18 or random scheduled testing times;

19 (iii) fails to provide a test sample remotely during the periodic scheduled or random scheduled testing
20 times;

21 (iv) admits use of alcohol or a dangerous drug;

22 (v) provides a confirmatory sample that tests positive for the presence of alcohol;

23 (vi) provides an initial breath sample that tests positive for the presence of alcohol and then refuses or
24 does not provide a confirmatory breath sample for analysis;

25 (vii) provides an initial sample that tests positive for dangerous drugs and a laboratory confirmation test
26 was not ordered because the participant admits drug use;

27 (viii) provides a sample that was sent to a laboratory for testing and was determined by the laboratory
28 as testing positive for a dangerous drug;

29 (ix) fails to provide a proper test sample;

30 (x) is confirmed to have tampered with the device or testing protocol;

1 (xi) fails to pay required program fees; or

2 (xii) is otherwise noncompliant through acts or omissions.

3 ~~(f)(i)~~ "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established
4 in 44-4-1203, which authorizes a court or an agency as defined in 2-15-102, as a condition of bond, sentence,
5 probation, parole, or work permit, to:

6 ~~——(f) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol
7 or dangerous drugs was a contributing factor in the commission of the crime, including but not limited to a second
8 or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or
9 dangerous drugs for a period of time; and~~

10 ~~——(ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous drugs:~~

11 ~~——(A) twice a day at a central location where immediate sanctions may be applied;~~

12 ~~——(B) when testing twice a day is impractical, by continuous, remote sensing, or transdermal alcohol
13 monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or~~

14 ~~——(C) with the concurrence of the department, by an alternate method that is consistent with 44-4-1203.~~

15 ~~(g)(i)~~ "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug
16 in an individual's breath or body fluid, including blood, urine, saliva, or perspiration, and includes any combination
17 of the use of breath testing, drug patch testing, urinalysis testing, saliva testing, or continuous remote sensing,
18 breath or transdermal alcohol monitoring. With the concurrence of the department and consistent with 44-4-1203,
19 alternate body fluids may be approved for testing.

20 ~~(h)(k)~~ "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant
21 ~~test event."~~

22

23 **Section 3.** Section 44-4-1203, MCA, is amended to read:

24 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety
25 and drug monitoring program within the department to be administered by the attorney general.

26 (2) (a) ~~The~~ As a core components of component, the sobriety program must ~~include~~ use of a primary
27 testing methodology for the presence of alcohol ~~or dangerous drugs~~ that:

28 (i) best facilitates the ability to apply immediate sanctions for noncompliance; ~~and~~

29 (ii) is available at an affordable cost; and

30 (iii) provides for positive behavioral reinforcement for program compliance.

1 (b) Primary testing methods include twice-a-day, in-person breath testing at a central location and other
2 methodologies approved by the department. Primary testing methodologies must utilize devices that are capable
3 of determining alcohol concentrations below an equivalent breath alcohol concentration of 0.010 grams per 210
4 liters of breath. If the primary testing methodology is a breath alcohol analysis, the device utilized must be listed
5 on the conforming products list for evidential breath alcohol measurement devices contained in 77 FR 35747 as
6 of [the effective date of this act].

7 ~~(b)(c)~~ In cases of hardship or when a sobriety program participant is subject to less stringent testing
8 requirements, testing methodologies with timely sanctions for noncompliance may be utilized. Hardship testing
9 methodologies include the use of transdermal alcohol monitoring devices, remote breath test devices, and other
10 methods approved by the department. A hardship testing methodology may be used if the following factors are
11 met:

12 (i) a device is available;

13 (ii) the participant is capable of paying the fees and costs associated with transdermal alcohol monitoring
14 or remote breath tests; and

15 (iii) the participant does not qualify for twice-daily breath testing because one or more of the following is
16 true:

17 (A) the participant lives more than 25 miles from a testing site, and submitting to twice-daily breath tests
18 would be unduly burdensome;

19 (B) the participant's employment requires job performance at a location that is more than 25 miles from
20 a testing site and submitting to twice-daily breath tests would be unduly burdensome;

21 (C) the participant's schooling is at a location that is more than 25 miles from a testing site and submitting
22 to twice-daily breath tests would be unduly burdensome;

23 (D) the participant lives in a county where twice-daily breath testing is not available; or

24 (E) the participant has a readily identifiable and physician-documented physical or mental impairment
25 that prevents the participant from submitting to twice-daily breath testing.

26 (3) As a core component, the sobriety program must use a testing methodology to test for the presence
27 of dangerous drugs that best facilitates the ability to apply timely, if not immediate, sanctions for noncompliance
28 and is available at an affordable cost.

29 ~~(3)~~(4) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of
30 the following categories:

- 1 (a) the program is included in the federal registry of evidence-based programs and practices;
- 2 (b) the program has been reported in a peer-reviewed journal as having positive effects on the primary
3 targeted outcome; or
- 4 (c) the program has been documented as effective by informed experts and other sources.
- 5 ~~(4)~~(5) If a law enforcement agency chooses to participate in the sobriety program, the department shall
6 assist in the creation and administration of the program in the manner provided in this part. The department shall
7 also assist entities participating in the program in determining alternatives to incarceration.
- 8 ~~(5)~~(6) (a) If a law enforcement agency participates in the program, the law enforcement agency may
9 designate an entity to provide the testing services or to take any other action required or authorized to be
10 provided by the law enforcement agency pursuant to this part, except that the law enforcement agency's designee
11 may not determine whether to participate in the sobriety program.
- 12 (b) The law enforcement agency shall establish the testing locations and times for the county but must
13 have at least one testing location and two daily testing times approximately 12 hours apart.
- 14 ~~(6)~~(7) Any efforts by the department to alter or modify the core components of the statewide sobriety
15 program must include a documented strategy for achieving and measuring the effectiveness of the proposed
16 modifications. Before core components may be modified, a pilot program with defined objectives and timelines
17 must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the
18 core components are monitored. The data collected from the pilot program must be assessed by the department,
19 and a determination must be made as to whether the stated goals were achieved and whether the modifications
20 should be formally implemented in the sobriety program.
- 21 (8) All required data related to participants in the sobriety program must be received into the data
22 management technology plan. The data is owned by the state and maintained by the department. Approved
23 testing methodologies must be capable of electronically transferring data directly into the data management
24 technology system through a department-approved interface.
- 25 ~~(7)~~(9) All alcohol or drug testing ordered by a court must utilize the data management technology plan
26 provided for in 44-4-1204(4), unless exempted by the department.
- 27 ~~(8)~~(10) Alcohol or drug testing required by the department of corrections pursuant to this part must utilize
28 the data management technology plan provided for in 44-4-1204(4)."
29

30 **Section 4.** Section 44-4-1204, MCA, is amended to read:

1 **"44-4-1204. Rulemaking -- testing fee.** The attorney general shall adopt rules to implement this part.

2 The rules must:

3 (1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

4 (2) establish reasonable participation and testing fees for the program, including the collection of fees
5 to pay the cost of installation, monitoring, and deactivation of any testing device and fees to law enforcement
6 agencies;

7 (3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to
8 these rules; ~~and~~

9 (4) require and provide for the approval of a sobriety program data management technology plan that
10 must be used by the department, ~~and participating law enforcement agencies, and any other participating entity~~
11 to manage testing, data ~~access~~, fees and fee payments, and any required reports;:

12 (5) establish a model sanctioning schedule for program noncompliance; and

13 (6) establish a process to create a pilot project to test alternative core components of the program."

14

15 **Section 5.** Section 44-4-1205, MCA, is amended to read:

16 **"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program --**
17 **probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program if
18 available in the jurisdiction may stay any sanctions that it imposed against an offender while the offender is in
19 compliance with the sobriety program.

20 (b) If an individual convicted of the offense of aggravated driving under the influence in violation of
21 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401, or a second or
22 subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required
23 to participate in the sobriety program, the court may, upon the individual's successful ~~completion of enrollment~~
24 into a court-approved chemical dependency treatment program and proof of insurance pursuant to 61-6-301,
25 notify the department that as a participant in the sobriety program, the individual is eligible for a restricted
26 probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an
27 individual is required to complete a certain portion of a suspension period before a probationary license may be
28 issued.

29 (c) If the individual fails twice to comply with the requirements of the sobriety program, the court ~~may~~
30 shall notify the department of the individual's noncompliance and direct the department to withdraw the

1 individual's probationary driver's license and reinstate the remainder of the suspension period provided in
2 61-5-208.

3 (2) Upon an offender's participation in the sobriety program if available in the jurisdiction and payment
4 of the fees required by 44-4-1204:

5 (a) the court ~~may~~ shall condition any bond or pretrial release for an individual charged with a violation
6 of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of
7 any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was
8 a contributing factor in the commission of the crime, unless the court conducts an individualized assessment and
9 determines:

10 (i) the offender's history and circumstances suggest the offender does not pose an increased risk to the
11 community; or

12 (ii) the offender is financially unable to pay the fees associated with testing;

13 (b) the court may condition the granting of a suspended execution of sentence or probation for an
14 individual convicted of a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a
15 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
16 of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

17 (c) the board of pardons and parole may condition parole for a violation of 61-8-465, a second or
18 subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that
19 imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor
20 in the commission of the crime; or

21 (d) the department of corrections may establish conditions for conditional release for a violation of
22 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any
23 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous
24 drugs was a contributing factor in the commission of the crime.

25 (3) If required to participate in a sobriety program pursuant to subsection (2)(a), the offender shall
26 participate in the sobriety program until the adjudication of the charge is complete.

27 ~~(3)~~(4) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release,
28 suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for
29 an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or
30 neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the

1 crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the
2 statute.

3 ~~(4)~~(5) A person is eligible to participate in and a court may compel a person to participate in a sobriety
4 program if the person:

5 (a) is charged with violating 61-8-465; or

6 (b) (i) is charged with or has been convicted of violating 61-8-401 or 61-8-406; and

7 (ii) at any time in the 10 years preceding the date of the current charge or conviction:

8 (A) has been convicted in this state of a violation of 61-8-401, 61-8-406, or 61-8-465;

9 (B) has been convicted of a violation of a statute or regulation in another state or on a federally
10 recognized Indian reservation that is similar to 61-8-401, 61-8-406, or 61-8-465; or

11 (C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state,
12 in another state, or on a federally recognized Indian reservation for a charge of violating 61-8-401, 61-8-406,
13 61-8-465, or a similar statute or regulation and the forfeiture has not been vacated.

14 ~~(5)~~(6) As used in this section, "conviction" has the meaning provided in 45-2-101."
15

16 **Section 6.** Section 46-9-108, MCA, is amended to read:

17 **"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The
18 court may impose any condition that will reasonably ensure the appearance of the defendant as required or that
19 will ensure the safety of any person or the community, including but not limited to the following conditions:

20 (a) the defendant may not commit an offense during the period of release;

21 (b) the defendant shall remain in the custody of a designated person who agrees to supervise the
22 defendant and report any violation of a release condition to the court, if the designated person is reasonably able
23 to assure the court that the defendant will appear as required and will not pose a danger to the safety of any
24 person or the community;

25 (c) the defendant shall maintain employment or, if unemployed, actively seek employment;

26 (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place
27 of abode, and travel;

28 (e) the defendant shall avoid all contact with:

29 (i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions
30 contained in a no contact order issued under 45-5-209; and

- 1 (ii) any potential witness who may testify concerning the offense;
- 2 (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services
- 3 agency, or other appropriate individual;
- 4 (g) the defendant shall comply with a specified curfew;
- 5 (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- 6 (i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other
- 7 controlled substance without a legal prescription;
- 8 (j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment
- 9 program, or both;
- 10 (k) the defendant shall furnish bail in accordance with 46-9-401; ~~or~~
- 11 (l) the defendant shall return to custody for specified hours following release from employment,
- 12 schooling, or other approved purposes; or
- 13 (m) the defendant, if charged with a violation of 61-8-465, a second or subsequent violation of 61-8-401
- 14 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or
- 15 more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime, shall
- 16 participate in the 24/7 sobriety and drug monitoring program provided in Title 44, chapter 4, part 12, if available
- 17 in the jurisdiction.
- 18 (2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant
- 19 and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the
- 20 defendant's appearance and provide for protection of any person or the community. At any time, the court may,
- 21 upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own
- 22 motion or upon the motion of either party.
- 23 (3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the
- 24 detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable
- 25 attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged
- 26 victim is a minor, the alleged victim's parent or guardian of the accused's release."
- 27

28 **Section 7.** Section 46-9-505, MCA, is amended to read:

29 **"46-9-505. Issuance of arrest warrant -- redetermining bail -- definition.** (1) Upon failure to comply

30 with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition

1 to any other action provided by law, issue a warrant for the arrest of the person.

2 (2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach
3 or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending
4 proceeding, the court may issue a warrant for the arrest of the defendant.

5 (3) If the defendant has been released under the supervision of a pretrial services agency, referred to
6 in 46-9-108(1)(f), an officer of that agency may arrest the defendant without a warrant or may deputize any other
7 officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12 hours
8 delivering to the place of detention a verified written statement setting forth that the defendant has, in the
9 judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with the
10 defendant by the arresting officer to the official in charge of a county detention center or other place of detention
11 is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written statement within
12 12 hours of the defendant's arrest.

13 (4) Upon the arrest, the defendant must be brought before the court without unnecessary delay and the
14 court shall conduct a hearing and determine bail in accordance with 46-9-311.

15 (5) If the defendant has been released under 46-9-108(1)(m) on the condition of participation in the 24/7
16 sobriety and drug monitoring program provided in Title 44, chapter 4, part 12, a law enforcement officer may:

17 (a) arrest the defendant without a warrant; or

18 (b) may deputize any other officer with power of arrest to arrest the defendant by giving the officer oral
19 authorization and within 12 hours delivering to the defendant's place of detention a verified written statement
20 setting forth that the defendant has, in the judgment of the officer, violated the conditions of the defendant's
21 release. An oral authorization delivered with the defendant by the arresting officer to the official in charge of a
22 county detention center or other place of detention is a sufficient warrant for detention of the defendant if the law
23 enforcement officer delivers a written statement within 12 hours of the defendant's arrest.

24 (6) (a) Upon arrest for a violation of the 24/7 sobriety and drug monitoring program as provided in this
25 section, the defendant must be brought before the court without unnecessary delay, and the court shall impose
26 a \$25 fine and, except as provided in subsection (6)(b), follow the model sanctioning schedule for noncompliant
27 events established in administrative rule as required in 44-4-1204.

28 (b) If the court determines that utilization of the model sanctioning schedule for noncompliant events has
29 been exhausted or that the defendant will not be responsive to the model sanctioning schedule, the judge may:

30 (i) continue with conditions of bail without a change in conditions;

- 1 (ii) continue with conditions of bail with modified or additional terms and conditions; or
 2 (iii) conduct a hearing and determine bail in accordance with 46-9-311.
 3 (7) The fine provided for in subsection (6)(a) must be deposited into the local sobriety program account
 4 established pursuant to 44-4-1206.

5 ~~(5)~~(8) As used in this section, "pretrial services agency" means a government agency or a private entity
 6 under contract with a local government whose employees have the minimum training required in 46-23-1003 and
 7 that is designated by a district court, justice's court, municipal court, or city court to provide services pending a
 8 trial."

9

10 **Section 8.** Section 46-18-201, MCA, is amended to read:

11 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
 12 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
 13 of sentence, except as otherwise specifically provided by statute, for a period:

- 14 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
 15 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
 16 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
 17 of whether any other conditions are imposed.

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

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

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

- 27 (i) a fine as provided by law for the offense;
 28 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
 29 46-8-113;
 30 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a

1 state prison to be designated by the department of corrections;

2 (iv) commitment of:

3 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a
4 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
5 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),
6 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

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

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

15 (vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and
16 for a period of time determined by the department of corrections, but not exceeding the period of state supervision
17 of the person; or

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

19 (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.

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

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

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

26 (c) conditions for probation;

27 (d) payment of the costs of confinement;

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

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

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

- 1 (h) with the approval of the facility or program, an order that the offender be placed in a community
2 corrections facility or program as provided in 53-30-321;
- 3 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
4 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
5 program for a period not to exceed 1 year;
- 6 (j) community service;
- 7 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 9 (m) with the approval of the department of corrections and with a signed statement from an offender that
10 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
11 complete the boot camp incarceration program established pursuant to 53-30-403;
- 12 (n) participation in a day reporting program provided for in 53-1-203;
- 13 (o) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part
14 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 a second
15 or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol
16 or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute
17 involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a
18 contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first,
19 second, or subsequent violation of the statute; The offender shall participate in the program for a minimum of
20 90 days after the offender's release from jail, the final 30 days of which the offender must be free of any
21 noncompliant events.
- 22 (p) participation in a restorative justice program approved by court order and payment of a participation
23 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 24 (q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
25 protection of the victim or society; or
- 26 (r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).
- 27 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
28 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
29 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
30 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the

1 sentence is deferred or suspended.

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

6 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
7 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
8 5.

9 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender
10 unless the court specifies otherwise.

11 (9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
12

13 **Section 9.** Section 61-5-208, MCA, is amended to read:

14 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**
15 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to
16 drive a motor vehicle on the public highways, except as permitted by law.

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

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

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

25 (ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a
26 second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in
27 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year
28 and may not issue a probationary license during the period of suspension unless the person completes at least
29 ~~45~~ 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that
30 a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period

1 passes and the person has not completed a chemical dependency education course, treatment, or both, as
 2 required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are
 3 completed.

4 (iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third
 5 or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in
 6 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year
 7 and may not issue a probationary license during the period of suspension unless the person completes at least
 8 ~~90~~ 180 days of the 1-year suspension and the report of conviction includes a recommendation from the court that
 9 a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period
 10 passes and the person has not completed a chemical dependency education course or treatment, or both, as
 11 required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are
 12 completed.

13 (3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person
 14 convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license
 15 commences from the date of conviction or forfeiture of bail.

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

18 (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
 19 a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

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

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

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

26 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device; or

27 (iii) the person is participating in a 24/7 sobriety and drug monitoring program provided for in Title 44,
 28 chapter 4, part 12."

29

30 **Section 10.** Section 61-8-442, MCA, is amended to read:

1 **"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
 2 **concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**
 3 **vehicle.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of
 4 disposition and if a probationary license is recommended by the court, the court may, for a person convicted of
 5 a first offense under 61-8-401, 61-8-406, 61-8-411, or 61-8-465:

6 (a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device
 7 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and
 8 maintaining the device; or

9 (b) require the person to participate in a court-approved alcohol or drug detection testing program and
 10 pay the fees associated with the testing program.

11 (2) If a person is convicted of a second or subsequent violation of 61-8-401, 61-8-406, 61-8-411, or
 12 61-8-465, in addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of disposition,
 13 the court shall:

14 (a) require the person to participate in the 24/7 sobriety and drug monitoring program if available,
 15 including a hardship assessment as provided for in 44-4-1203, and pay the fees associated with the program for
 16 a minimum of 90 days upon release from jail, the final 30 days of which the person must be free of any
 17 noncompliant events; or

18 (b) if recommending that a probationary license be issued to the person, for the entire probationary
 19 period:

20 ~~(a)(i) if recommending that a probationary license be issued to the person, restrict the person to driving~~
 21 ~~only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and~~
 22 ~~require the person to pay the reasonable cost of leasing, installing, and maintaining the device;~~

23 ~~(b)(ii) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in~~
 24 ~~44-4-1203 and pay the fees associated with the program; or require the person to participate in a court-approved~~
 25 ~~alcohol or drug detection testing program and pay the fees associated with the testing program; or~~

26 ~~(c)(iii) order that each motor vehicle owned by the person at the time of the offense be seized and~~
 27 ~~subjected to the forfeiture procedure provided under 61-8-421; or~~

28 (iv) any combination of subsections (2)(b)(i) and (2)(b)(ii).

29 (3) Any restriction or requirement imposed under this section must be included in a report of the
 30 conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's

1 driving record maintained by the department in accordance with 61-11-102.

2 (4) The duration of a restriction imposed under this section must be monitored by the department."
3

4 **Section 11.** Section 61-8-465, MCA, is amended to read:

5 **"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence
6 if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and:

7 (a) the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.16 or
8 more;

9 (b) the person is under the order of a court or the department to equip any motor vehicle the person
10 operates with an approved ignition interlock device;

11 (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of
12 a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;

13 (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's
14 driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the
15 commission of the present offense; or

16 (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401,
17 61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or more
18 prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401,
19 61-8-406, or 61-8-411.

20 (2) Except as provided in subsection (6), a person convicted of a first violation of the offense of
21 aggravated driving under the influence shall be punished by:

22 (a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at
23 the time of the offense, a fine of \$2,000; ~~and~~

24 (b) a term of imprisonment for not less than 48 hours or more than 1 year, except that if one or more
25 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
26 less than 72 consecutive hours; ~~and~~

27 (c) if available in the jurisdiction, mandatory participation in the 24/7 sobriety and drug monitoring
28 program, including a hardship assessment as provided for in 44-4-1203 and payment of fees associated with the
29 program. The person must participate in the program for a minimum of 90 days on release from jail, the final 30
30 days of which the person must be free of any noncompliant events.

1 (3) (a) Except as provided in subsection (6), a person convicted of a second violation of the offense of
2 aggravated driving under the influence shall be punished by:

3 (i) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at
4 the time of the offense, a fine of \$5,000; and

5 (ii) a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more
6 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not
7 less than 45 days.

8 (b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory
9 minimum imprisonment term may be suspended pending successful completion of court-ordered chemical
10 dependency assessment, education, or treatment by the person.

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

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

16 (i) a fine of \$5,000, 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 \$10,000; and

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

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

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

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

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

30 (b) the person ~~is subject to all conditions of~~ must participate in the 24/7 sobriety and drug monitoring

1 program if available and if imposed by the court, including a hardship assessment as provided for in 44-4-1203,
2 and pay the fees associated with the program for a minimum of 90 days on release from jail, the final 30 days of
3 which the person must be free of any noncompliant events; and

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

6 (6) 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, with an excessive
8 alcohol concentration, or under the influence of delta-9-tetrahydrocannabinol or aggravated driving under the
9 influence.

10 (7) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."
11

12 **Section 12.** Section 61-8-714, MCA, is amended to read:

13 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

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

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

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

24 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401
25 shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than
26 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at
27 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
28 by imprisonment for not less than 14 days or more than 1 year.

29 (b) In addition to the penalties provided in subsection (2)(a), the sentencing court shall require the person
30 to participate in the 24/7 sobriety and drug monitoring program if available, including a hardship assessment as

1 provided in for in 44-4-1203, and pay the fees associated with the program for a minimum of 90 days on release
 2 from jail, the final 30 days of which the person must be free of any noncompliant events.

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

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

8 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401
 9 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
 10 less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the
 11 vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60
 12 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

13 (b) In addition to the penalties provided in subsection (3)(a), the sentencing court shall require the person
 14 to participate in the 24/7 sobriety and drug monitoring program if available, including a hardship assessment as
 15 provided in for in 44-4-1203, and pay the fees associated with the program for a minimum of 90 days on release
 16 from jail, the final 30 days of which the person must be free of any noncompliant events.

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

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

22 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
 23 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
 24 alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under
 25 the influence.

26 (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall
 27 be punished as provided in 61-8-465."
 28

29 **Section 13.** Section 61-8-722, MCA, is amended to read:

30 **"61-8-722. Penalty for driving with excessive alcohol concentration or**

1 **delta-9-tetrahydrocannabinol level -- first through third offense.** (1) Except as provided in subsection (4) or
2 (5), a person convicted of a first violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not more
3 than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers
4 under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by
5 imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000.

6 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406
7 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
8 less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the
9 vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more
10 than 1 year and by a fine of not less than \$2,400 or more than \$4,000.

11 (b) In addition to the penalties provided in subsection (2)(a), the sentencing court shall require the person
12 to participate in the 24/7 sobriety and drug monitoring program if available, including a hardship assessment as
13 provided in for in 44-4-1203 and pay the fees associated with the program for a minimum of 90 days on release
14 from jail, the final 30 days of which the person must be free of any noncompliant events.

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

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

20 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or
21 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
22 less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the
23 vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more
24 than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

25 (b) In addition to the penalties provided in subsection (3)(a), the sentencing court shall require the person
26 to participate in the 24/7 sobriety and drug monitoring program if available, including a hardship assessment as
27 provided in for in 44-4-1203 and pay the fees associated with the program for a minimum of 90 days on release
28 from jail, the final 30 days of which the person must be free of any noncompliant events.

29 ~~(b)~~(c) The mandatory minimum imprisonment sentence may not be served under home arrest and may
30 not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the

1 person's physical or mental well-being.

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

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

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

9

10 **Section 14.** Section 61-8-731, MCA, is amended to read:

11 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
12 **concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence**
13 **-- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted
14 of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under
15 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e),
16 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a
17 vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,
18 as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

19 (a) sentencing the person to the department of corrections for placement in an appropriate correctional
20 facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the
21 person successfully completes a residential alcohol treatment program approved by the department of
22 corrections, the remainder of the sentence must be served on probation. The execution of the sentence may not
23 be suspended, and the imposition or execution of the sentence may not only be deferred or suspended, while
24 the person is waiting to be accepted into an appropriate correctional facility or residential alcohol treatment
25 program approved by the department of corrections. If the imposition of the sentence is deferred, during the time
26 the imposition of sentence is deferred the person shall participate in twice-daily breath testing at an in-person,
27 central testing location as part of the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 and
28 pay the fees associated with the sobriety program, wear a global positioning system monitoring device, and
29 comply with any other requirements the court considers sufficient to ensure compliance until the person can be
30 accepted into a residential alcohol treatment program approved by the department of corrections. and the The

1 person is not eligible for parole.

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

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

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.

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

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

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

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

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

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

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

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

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

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

- 1 (a) payment of a fine as provided in 46-18-231;
- 2 (b) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (c) payment of costs of assigned counsel as provided in 46-8-113;
- 4 (d) community service;
- 5 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 6 protection of society; or
- 7 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).
- 8 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department
- 9 of corrections may, at its discretion, place the offender in another facility or program.
- 10 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
- 11 46-23-1031 apply to persons sentenced under this section."
- 12

13 **Section 15.** Section 61-8-733, MCA, is amended to read:

14 **"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

15 **concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**

16 **vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465

17 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that

18 the person was convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 or a similar offense under

19 the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state

20 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be

21 driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-465, 61-8-714,

22 and 61-8-722 and any other penalty imposed by law, shall:

23 (a) require the person to participate in the 24/7 sobriety and drug monitoring program if available,

24 including a hardship assessment, as provided for in 44-4-1203, and pay the fees associated with the program

25 for a minimum of 90 days on release from jail, the final 30 days of which the person must be free of any

26 noncompliant events; or

27 (a)(b) if recommending that a probationary license be issued to the person, for the entire probationary

28 period:

29 (i) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device

30 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and

1 maintaining the device;

2 ~~(b)(ii)~~ require the person to participate in the 24/7 sobriety and drug monitoring program provided for in
3 44-4-1203 and pay the fees associated with the program ~~or require the person to participate in a court-approved~~
4 ~~alcohol or drug detection testing program and pay the fees associated with the testing program; or;~~

5 ~~(c)(iii)~~ order that each motor vehicle owned by the person at the time of the offense be seized and
6 subjected to the procedure provided under 61-8-421; or

7 (iv) some combination of subsections (1)(b)(i) and (1)(b)(ii).

8 (2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier
9 is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to
10 or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established
11 by the owner to have been committed or omitted by a person other than the owner while the vehicle was
12 unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the
13 United States.

14 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest
15 if the person did not know and could not have reasonably known of the unlawful possession, use, or other act
16 on which the forfeiture is sought."

17
18 NEW SECTION. Section 16. Codification instruction. [Section 1] is intended to be codified as an
19 integral part of Title 44, chapter 4, part 12, and the provisions of Title 44, chapter 4, part 12, apply to [section 1].

20

21 NEW SECTION. Section 17. Effective date. [This act] is effective July 1, 2017.

22

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