

HOUSE BILL NO. 685

INTRODUCED BY M. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE PROVISIONS OF THE GENERAL  
5 APPROPRIATIONS ACT FOR SECTION D; GENERALLY REVISING LAWS REGARDING DRIVING UNDER  
6 THE INFLUENCE; PROVIDING DEFINITIONS, A DESCRIPTION OF DRIVING UNDER THE INFLUENCE  
7 CRIMES, TREATMENT REQUIREMENTS, SOBRIETY MONITORING PROGRAM, IMPLIED CONSENT AND  
8 ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, PROCESS  
9 FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE,  
10 OPEN CONTAINER VIOLATION, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES;  
11 PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; PROVIDING DEFINITIONS; AMENDING  
12 SECTIONS 23-2-535, 44-4-1202, 44-4-1203, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130,  
13 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-125, 61-5-205, 61-5-208,  
14 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211,  
15 MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408,  
16 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465,  
17 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; PROVIDING FUND  
18 TRANSFERS; AND PROVIDING AN A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21  
22 ~~NEW SECTION. Section 1. Fund transfer. By August 15, 2019, the state treasurer shall transfer \$100~~  
23 ~~from the general fund to the restorative justice fund established in 2-15-2014.~~

24  
25 NEW SECTION. SECTION 1. DEFINITIONS. AS USED IN [SECTIONS 1 THROUGH 17], UNLESS THE CONTEXT  
26 REQUIRES OTHERWISE AND UNLESS A DIFFERENT MEANING PLAINLY IS REQUIRED, THE FOLLOWING DEFINITIONS APPLY:

27 (1) "AGGRAVATED DRIVING UNDER THE INFLUENCE" MEANS A PERSON IS IN VIOLATION OF [SECTION 2(1)(A),  
28 (1)(B), (1)(C), (1)(D), OR (1)(E)] AND:

29 (A) THE PERSON'S ALCOHOL CONCENTRATION, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD, BREATH, OR  
30 OTHER BODILY SUBSTANCE, IS 0.16 OR MORE;



1 (B) THE PERSON IS UNDER THE ORDER OF A COURT OR THE DEPARTMENT TO EQUIP ANY MOTOR VEHICLE THE  
2 PERSON OPERATES WITH AN APPROVED IGNITION INTERLOCK DEVICE;

3 (C) THE PERSON'S DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IS SUSPENDED, CANCELED, OR REVOKED AS A  
4 RESULT OF A PRIOR VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING A VIOLATION OF [SECTION 2(1)(A), (1)(B),  
5 (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE, OR  
6 A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE; OR

7 (D) THE PERSON REFUSES TO GIVE A BREATH SAMPLE AS REQUIRED IN [SECTION 8] AND THE PERSON'S DRIVER'S  
8 LICENSE OR PRIVILEGE TO DRIVE WAS SUSPENDED, CANCELED, OR REVOKED UNDER THE PROVISIONS OF AN IMPLIED  
9 CONSENT STATUTE.

10 (2) "ALCOHOLIC BEVERAGE" MEANS A COMPOUND PRODUCED FOR HUMAN CONSUMPTION AS A DRINK THAT  
11 CONTAINS 0.5% OR MORE OF ALCOHOL BY VOLUME.

12 (3) "ALCOHOL CONCENTRATION" MEANS EITHER GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS  
13 OF ALCOHOL PER 210 LITERS OF BREATH, INCLUDING AS USED IN 16-6-305, 23-2-535, 45-5-207, 67-1-211, AND THIS  
14 TITLE.

15 (4) "BUS" MEANS A MOTOR VEHICLE WITH A MANUFACTURER'S RATED SEATING CAPACITY OF 11 OR MORE  
16 PASSENGERS, INCLUDING THE DRIVER.

17 (5) "CAMPER" HAS THE MEANING PROVIDED IN 61-1-101.

18 (6) "COMMERCIAL MOTOR VEHICLE" HAS THE MEANING PROVIDED IN 61-1-101.

19 (7) "DRUG" MEANS ANY SUBSTANCE, THAT WHEN TAKEN INTO THE HUMAN BODY CAN IMPAIR A PERSON'S ABILITY  
20 TO OPERATE A VEHICLE SAFELY. THE TERM INCLUDES THE MEANINGS PROVIDED IN 50-32-101(6), (7), AND (14).

21 (8) "DUI COURT" MEANS ANY COURT THAT HAS ESTABLISHED A SPECIAL DOCKET FOR HANDLING CASES INVOLVING  
22 PERSONS CONVICTED UNDER [SECTION 3 OR 4] AND THAT IMPLEMENTS A PROGRAM OF INCENTIVES AND SANCTIONS  
23 INTENDED TO ASSIST A PARTICIPANT TO COMPLETE TREATMENT ORDERED PURSUANT TO [SECTION 5] AND TO END THE  
24 PARTICIPANT'S CRIMINAL BEHAVIOR ASSOCIATED WITH THE USE OF ALCOHOL OR DRUGS.

25 (9) "HIGHWAY" HAS THE MEANING PROVIDED IN 61-1-101, INCLUDING THE SHOULDERS OF THE HIGHWAY.

26 (10) "MOTOR HOME" HAS THE MEANING PROVIDED IN 61-1-101.

27 (11) "MOTOR VEHICLE" HAS THE MEANING PROVIDED IN 61-1-101.

28 (12) "OPEN ALCOHOLIC BEVERAGE CONTAINER" MEANS A BOTTLE, CAN, JAR, OR OTHER RECEPTACLE THAT  
29 CONTAINS ANY AMOUNT OF AN ALCOHOLIC BEVERAGE AND THAT IS OPEN OR HAS A BROKEN SEAL OR THE CONTENTS OF  
30 WHICH ARE PARTIALLY REMOVED.

1 (13) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS WHILE A MOTOR  
2 VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE THE  
3 DRIVER OR A PASSENGER IS SEATED IN THE VEHICLE, INCLUDING AN UNLOCKED GLOVE COMPARTMENT.

4 (14) "PASSENGER FOR HIRE" MEANS A PASSENGER FOR WHOM CONSIDERATION IS CONTRIBUTED OR EXPECTED  
5 AS A CONDITION OF CARRIAGE IN THE VEHICLE, WHETHER DIRECTLY OR INDIRECTLY FLOWING TO THE OWNER, OPERATOR,  
6 AGENT, OR ANY OTHER PERSON HAVING AN INTEREST IN THE VEHICLE.

7 (15) "PREARRANGED RIDE" HAS THE MEANING PROVIDED IN 69-12-101.

8 (16) "UNDER THE INFLUENCE" MEANS THAT AS A RESULT OF TAKING INTO THE BODY ALCOHOL, DRUGS, OR ANY  
9 COMBINATION OF ALCOHOL AND DRUGS, A PERSON'S ABILITY TO SAFELY OPERATE A VEHICLE HAS BEEN DIMINISHED.

10 (17) "VEHICLE" HAS THE MEANING PROVIDED IN 61-1-101, EXCEPT THAT THE TERM DOES NOT INCLUDE A  
11 BICYCLE.

12  
13 **NEW SECTION. SECTION 2. DRIVING UNDER INFLUENCE. (1) A PERSON COMMITS THE OFFENSE OF DRIVING**  
14 **UNDER THE INFLUENCE IF THE PERSON DRIVES OR IS IN ACTUAL PHYSICAL CONTROL OF:**

15 **(A) A VEHICLE OR A COMMERCIAL MOTOR VEHICLE UPON THE WAYS OF THIS STATE OPEN TO THE PUBLIC WHILE**  
16 **UNDER THE INFLUENCE OF ALCOHOL, ANY DRUG, OR A COMBINATION OF ALCOHOL AND ANY DRUG;**

17 **(B) A NONCOMMERCIAL VEHICLE UPON THE WAYS OF THIS STATE OPEN TO THE PUBLIC WHILE THE PERSON'S**  
18 **ALCOHOL CONCENTRATION, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD, BREATH, OR OTHER BODILY SUBSTANCE,**  
19 **IS 0.08 OR MORE;**

20 **(C) A COMMERCIAL MOTOR VEHICLE WITHIN THIS STATE WHILE THE PERSON'S ALCOHOL CONCENTRATION, AS**  
21 **SHOWN BY ANALYSIS OF THE PERSON'S BLOOD, BREATH, OR OTHER BODILY SUBSTANCE, IS 0.04 OR MORE;**

22 **(D) A NONCOMMERCIAL VEHICLE WITHIN THIS STATE WHEN A PASSENGER FOR HIRE IS A PASSENGER IN THE**  
23 **VEHICLE AT THE TIME OF THE OFFENSE WHILE THE PERSON'S ALCOHOL CONCENTRATION, AS SHOWN BY ANALYSIS OF THE**  
24 **PERSON'S BLOOD, BREATH, OR OTHER BODILY SUBSTANCE, IS 0.04 OR MORE;**

25 **(E) A NONCOMMERCIAL VEHICLE OR COMMERCIAL MOTOR VEHICLE WITHIN THIS STATE WHILE THE PERSON'S**  
26 **DELTA-9-TETRAHYDROCANNABINOL LEVEL, EXCLUDING INACTIVE METABOLITES, AS SHOWN BY ANALYSIS OF THE PERSON'S**  
27 **BLOOD OR OTHER BODILY SUBSTANCE, IS 5 NG/ML OR MORE;**

28 **(F) A VEHICLE WITHIN THIS STATE WHEN THE PERSON IS UNDER 21 YEARS OF AGE AT THE TIME OF THE OFFENSE**  
29 **WHILE THE PERSON'S ALCOHOL CONCENTRATION, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD, BREATH, OR OTHER**  
30 **BODILY SUBSTANCE, IS 0.02 OR MORE BUT LESS THAN 0.08.**

1 (2) THE FACT THAT ANY PERSON CHARGED WITH A VIOLATION OF SUBSECTION (1) IS OR HAS BEEN ENTITLED TO  
 2 USE ALCOHOL OR A DRUG UNDER THE LAWS OF THIS STATE DOES NOT CONSTITUTE A DEFENSE AGAINST ANY CHARGE OF  
 3 VIOLATING SUBSECTION (1).

4 (3) UPON THE TRIAL OF ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING ARISING OUT OF ACTS ALLEGED TO HAVE  
 5 BEEN COMMITTED BY ANY PERSON DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE  
 6 OF ALCOHOL, THE CONCENTRATION OF ALCOHOL IN THE PERSON AT THE TIME OF A TEST, AS SHOWN BY ANALYSIS OF A  
 7 SAMPLE OF THE PERSON'S BLOOD, BREATH, OR OTHER BODILY SUBSTANCE DRAWN OR TAKEN WITHIN A REASONABLE TIME  
 8 AFTER THE ALLEGED ACT, GIVES RISE TO THE FOLLOWING INFERENCES:

9 (A) IF THERE WAS AT THAT TIME AN ALCOHOL CONCENTRATION OF 0.04 OR LESS, IT MAY BE INFERRED THAT THE  
 10 PERSON WAS NOT UNDER THE INFLUENCE OF ALCOHOL;

11 (B) IF THERE WAS AT THAT TIME AN ALCOHOL CONCENTRATION IN EXCESS OF 0.04 BUT LESS THAN 0.08, THAT  
 12 FACT MAY NOT GIVE RISE TO ANY INFERENCE THAT THE PERSON WAS OR WAS NOT UNDER THE INFLUENCE OF ALCOHOL,  
 13 BUT THE FACT MAY BE CONSIDERED WITH OTHER COMPETENT EVIDENCE IN DETERMINING THE GUILT OR INNOCENCE OF  
 14 THE PERSON; AND

15 (C) IF THERE WAS AT THAT TIME AN ALCOHOL CONCENTRATION OF 0.08 OR MORE, IT MAY BE INFERRED THAT THE  
 16 PERSON WAS UNDER THE INFLUENCE OF ALCOHOL. THE INFERENCE IS REBUTTABLE.

17 (4) THE PROVISIONS OF SUBSECTION (3) DO NOT LIMIT THE INTRODUCTION OF ANY OTHER COMPETENT EVIDENCE  
 18 BEARING ON THE ISSUE OF WHETHER THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A COMBINATION  
 19 OF ALCOHOL AND DRUGS.

20 (5) EACH MUNICIPALITY IN THIS STATE IS GIVEN AUTHORITY TO ENACT THIS SECTION, WITH THE WORD "STATE"  
 21 CHANGED TO READ "MUNICIPALITY", AS AN ORDINANCE AND IS GIVEN JURISDICTION OF THE ENFORCEMENT OF THE  
 22 ORDINANCE AND THE IMPOSITION OF THE FINES AND PENALTIES PROVIDED IN THE ORDINANCE.

23 (6) ABSOLUTE LIABILITY, AS PROVIDED IN 45-2-104, IS IMPOSED FOR A VIOLATION OF THIS SECTION.

24 (7) WHEN THE SAME ACTS MAY ESTABLISH THE COMMISSION OF AN OFFENSE UNDER SUBSECTION (1), A PERSON  
 25 CHARGED WITH THE CONDUCT MAY BE PROSECUTED FOR A VIOLATION OF ANOTHER RELEVANT SUBSECTION UNDER  
 26 SUBSECTION (1). HOWEVER, THE PERSON MAY BE CONVICTED OF ONLY ONE OFFENSE UNDER THIS SECTION OR OF A  
 27 SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE.

28  
 29 **NEW SECTION. SECTION 3. PENALTY FOR DRIVING UNDER INFLUENCE -- FIRST THROUGH THIRD OFFENSES.**

30 **(1)(A) EXCEPT AS PROVIDED IN SUBSECTION (1)(B) OR (1)(C), A PERSON CONVICTED OF A VIOLATION OF [SECTION 2(1)(A)]**

1 SHALL BE PUNISHED AS FOLLOWS:

2 (I) FOR A FIRST VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 24 CONSECUTIVE HOURS OR MORE THAN 6  
3 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 LESS THAN 48 CONSECUTIVE HOURS OR MORE THAN 1 YEAR AND BY A FINE OF NOT LESS THAN  
6 \$1,200 OR MORE THAN \$2,000;

7 (II) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 7 CONSECUTIVE DAYS OR MORE THAN 1  
8 YEAR AND BY A FINE OF NOT LESS THAN \$1,200 OR MORE THAN \$2,000, EXCEPT THAT IF ONE OR MORE PASSENGERS  
9 UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY  
10 IMPRISONMENT FOR NOT LESS THAN 14 DAYS OR MORE THAN 1 YEAR AND A FINE OF NOT LESS THAN \$2,400 OR MORE  
11 THAN \$4,000; OR

12 (III) FOR A THIRD VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 30 CONSECUTIVE DAYS OR MORE THAN 1  
13 YEAR AND BY A FINE OF NOT LESS THAN \$2,500 OR MORE THAN \$5,000, 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 LESS THAN 60 DAYS OR MORE THAN 1 YEAR AND BY A FINE OF NOT LESS THAN \$5,000 OR MORE  
16 THAN \$10,000.

17 (B) IF THE PERSON HAS A PRIOR CONVICTION UNDER 45-5-106, THE PERSON SHALL BE PUNISHED AS PROVIDED  
18 IN [SECTION 4] FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A),  
19 (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE  
20 INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER  
21 STATE.

22 (C) IF THE PERSON HAS A PRIOR CONVICTION OR PENDING CHARGE FOR A VIOLATION OF DRIVING UNDER THE  
23 INFLUENCE, INCLUDING [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF  
24 AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS  
25 STATE OR THE LAWS OF ANOTHER STATE, AND THE VIOLATION MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER  
26 THE INFLUENCE IN [SECTION 1], THE PERSON SHALL BE PUNISHED AS PROVIDED IN SUBSECTION (4) OF THIS SECTION.

27 (2)(A) EXCEPT AS PROVIDED IN SUBSECTION (2)(B) OR (2)(C), A PERSON CONVICTED OF A VIOLATION OF [SECTION  
28 2(1)(B), (1)(C), (1)(D), OR (1)(E)] SHALL BE PUNISHED AS FOLLOWS:

29 (I) FOR A FIRST VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN 6 MONTHS AND BY A FINE OF NOT LESS THAN  
30 \$600 OR MORE THAN \$1,000, EXCEPT THAT IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE

1 VEHICLE AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT MORE THAN 6  
2 MONTHS AND BY A FINE OF NOT LESS THAN \$1,200 OR MORE THAN \$2,000;

3 (II) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 5 CONSECUTIVE DAYS OR MORE THAN 1  
4 YEAR AND BY A FINE OF NOT LESS THAN \$1,200 OR MORE THAN \$2,000, EXCEPT THAT IF ONE OR MORE PASSENGERS  
5 UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY  
6 IMPRISONMENT FOR NOT LESS THAN 10 CONSECUTIVE DAYS OR MORE THAN 1 YEAR AND BY A FINE OF NOT LESS THAN  
7 \$2,400 OR MORE THAN \$4,000; OR

8 (III) FOR A THIRD VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 30 CONSECUTIVE DAYS OR MORE THAN 1  
9 YEAR AND BY A FINE OF NOT LESS THAN \$2,500 OR MORE THAN \$5,000, EXCEPT THAT IF ONE OR MORE PASSENGERS  
10 UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY  
11 IMPRISONMENT FOR NOT LESS THAN 60 CONSECUTIVE DAYS OR MORE THAN 1 YEAR AND BY A FINE OF NOT LESS THAN  
12 \$5,000 OR MORE THAN \$10,000.

13 (B) IF THE PERSON HAS A PRIOR CONVICTION UNDER 45-5-106, THE PERSON SHALL BE PUNISHED AS PROVIDED  
14 IN [SECTION 4] FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A),  
15 (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE  
16 INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER  
17 STATE.

18 (C) IF THE PERSON HAS A PRIOR CONVICTION OR PENDING CHARGE FOR A VIOLATION OF DRIVING UNDER THE  
19 INFLUENCE, INCLUDING [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF  
20 AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS  
21 STATE OR THE LAWS OF ANOTHER STATE, AND THE VIOLATION MEETS THE DEFINITION FOR AGGRAVATED DRIVING UNDER  
22 THE INFLUENCE IN [SECTION 1], THE PERSON SHALL BE PUNISHED AS PROVIDED IN SUBSECTION (4) OF THIS SECTION.

23 (3) (A) A PERSON CONVICTED OF A VIOLATION OF [SECTION 2(1)(F)] SHALL BE PUNISHED AS FOLLOWS:

24 (I) FOR A FIRST VIOLATION, THE PERSON MUST BE FINED NOT LESS THAN \$200 OR MORE THAN \$500, EXCEPT  
25 THAT IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE, THE  
26 PERSON SHALL BE FINED NOT LESS THAN \$400 OR MORE THAN \$1,000. A CONVICTION UNDER THIS SECTION MAY NOT  
27 BE COUNTED AS A PRIOR CONVICTION UNDER [SECTION 2], A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE,  
28 OR A SIMILAR OFFENSE UNDER THE LAWS OF ANOTHER STATE.

29 (II) EXCEPT AS PROVIDED IN 61-8-723, FOR A SECOND VIOLATION, THE PERSON SHALL BE SENTENCED IN  
30 ACCORDANCE WITH SUBSECTION (2)(A)(II). A CONVICTION UNDER THIS SECTION MAY NOT BE COUNTED AS A PRIOR

1 CONVICTION UNDER [SECTION 2], A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE, OR A SIMILAR OFFENSE  
2 UNDER THE LAWS OF ANOTHER STATE.

3 (III) EXCEPT AS PROVIDED IN SECTION 61-8-723, FOR A THIRD OR SUBSEQUENT VIOLATION, THE PERSON SHALL  
4 BE SENTENCED IN ACCORDANCE WITH SUBSECTION (2)(A)(III). A CONVICTION UNDER THIS SECTION MAY NOT BE COUNTED  
5 AS A PRIOR CONVICTION UNDER [SECTION 2], A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE, OR A SIMILAR  
6 OFFENSE UNDER THE LAWS OF ANOTHER STATE.

7 (4) (A) IF A VIOLATION OF [SECTION 2] MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE  
8 IN [SECTION 1], THE PERSON SHALL BE PUNISHED AS FOLLOWS:

9 (I) FOR A FIRST VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 2 CONSECUTIVE DAYS OR MORE THAN 1 YEAR  
10 AND BY A FINE OF \$1,000, EXCEPT THAT IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE  
11 AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN 4 CONSECUTIVE  
12 DAYS OR MORE THAN 1 YEAR AND BY A FINE OF \$2,000;

13 (II) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 15 CONSECUTIVE DAYS OR MORE THAN 1  
14 YEAR AND BY A FINE OF \$2,500, EXCEPT THAT IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE  
15 VEHICLE AT THE TIME OF THE OFFENSE, THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN 45  
16 CONSECUTIVE DAYS OR MORE THAN 1 YEAR AND BY A FINE OF \$5,000; OR

17 (III) FOR A THIRD VIOLATION, BY IMPRISONMENT FOR NOT LESS THAN 60 CONSECUTIVE DAYS OR MORE THAN 1  
18 YEAR AND BY A FINE OF \$5,000, 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 120  
20 DAYS OR MORE THAN 1 YEAR AND BY A FINE OF \$10,000.

21 (B) THE MANDATORY MINIMUM IMPRISONMENT TERM MAY NOT BE SERVED UNDER HOME ARREST AND MAY NOT  
22 BE SUSPENDED UNLESS THE JUDGE FINDS THAT THE IMPOSITION OF THE IMPRISONMENT SENTENCE WILL POSE A RISK TO  
23 THE PERSON'S PHYSICAL OR MENTAL WELL-BEING.

24 (C) THE REMAINDER OF THE IMPRISONMENT SENTENCE MAY BE SUSPENDED FOR A PERIOD OF UP TO 1 YEAR  
25 PENDING THE PERSON'S SUCCESSFUL COMPLETION OF A CHEMICAL DEPENDENCY TREATMENT PROGRAM PURSUANT TO  
26 [SECTION 5]. DURING ANY SUSPENDED PORTION OF SENTENCE IMPOSED BY THE COURT:

27 (I) THE PERSON IS SUBJECT TO ALL CONDITIONS OF THE SUSPENDED SENTENCE IMPOSED BY THE COURT,  
28 INCLUDING MANDATORY PARTICIPATION IN DRUG OR DUI COURTS, IF AVAILABLE;

29 (II) THE PERSON IS SUBJECT TO ALL CONDITIONS OF THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM, IF  
30 AVAILABLE AND IF IMPOSED BY THE COURT; AND

1 (III) IF THE PERSON VIOLATES ANY CONDITION OF THE SUSPENDED SENTENCE OR ANY TREATMENT REQUIREMENT,  
 2 THE COURT MAY IMPOSE THE REMAINDER OF ANY IMPRISONMENT TERM THAT WAS IMPOSED AND SUSPENDED.

3 (D) IF THE PERSON HAS A PRIOR CONVICTION OR PENDING CHARGE FOR A VIOLATION OF DRIVING UNDER THE  
 4 INFLUENCE, INCLUDING [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF  
 5 AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS  
 6 STATE OR THE LAWS OF ANOTHER STATE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN THIS SUBSECTION (4).

7 (E) IF THE PERSON HAS A PRIOR CONVICTION UNDER 45-5-106, THE PERSON SHALL BE PUNISHED AS PROVIDED  
 8 IN [SECTION 4] FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A),  
 9 (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE  
 10 INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER  
 11 STATE.

12 (5) IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS SECTION, REGARDLESS OF DISPOSITION, THE PERSON  
 13 SHALL COMPLY WITH THE CHEMICAL DEPENDENCY EDUCATION COURSE AND CHEMICAL DEPENDENCY TREATMENT  
 14 PROVISIONS IN [SECTION 5] AS ORDERED BY THE COURT.

15  
 16 **NEW SECTION. SECTION 4. PENALTY FOR DRIVING UNDER INFLUENCE -- FOURTH AND SUBSEQUENT**  
 17 **OFFENSES. (1) EXCEPT AS PROVIDED IN SUBSECTION (4), A PERSON IS GUILTY OF A FELONY IF:**

18 (A) THE PERSON IS CONVICTED OF A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A),  
 19 (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE  
 20 INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER  
 21 STATE;

22 (B) THE PERSON HAS EITHER A SINGLE CONVICTION UNDER 45-5-106 OR ANY COMBINATION OF THREE OR MORE  
 23 PRIOR CONVICTIONS UNDER 45-5-104, 45-5-205, 45-5-628(1)(E), OR DRIVING UNDER THE INFLUENCE, INCLUDING  
 24 [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING  
 25 UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF  
 26 ANOTHER STATE; AND

27 (C) THE OFFENSE UNDER 45-5-104, IF APPLICABLE, OCCURRED WHILE THE PERSON WAS OPERATING A VEHICLE  
 28 WHILE UNDER THE INFLUENCE OF ALCOHOL, A DANGEROUS DRUG, ANY OTHER DRUG, OR ANY COMBINATION OF THE THREE,  
 29 AS PROVIDED IN [SECTION 2(1)].

30 (2) A PERSON FOUND GUILTY OF A FELONY UNDER SUBSECTION (1) SHALL BE PUNISHED BY:

1 (A) (I) BEING SENTENCED TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE  
2 CORRECTIONAL FACILITY OR PROGRAM FOR A TERM OF NOT LESS THAN 13 MONTHS OR MORE THAN 2 YEARS. THE COURT  
3 SHALL ORDER THAT IF THE PERSON SUCCESSFULLY COMPLETES A RESIDENTIAL ALCOHOL TREATMENT PROGRAM  
4 APPROVED BY THE DEPARTMENT OF CORRECTIONS, THE REMAINDER OF THE SENTENCE MUST BE SERVED ON PROBATION.  
5 THE IMPOSITION OR EXECUTION OF THE SENTENCE MAY NOT BE DEFERRED OR SUSPENDED, AND THE PERSON IS NOT  
6 ELIGIBLE FOR PAROLE.

7 (II) BEING SENTENCED TO EITHER THE DEPARTMENT OF CORRECTIONS OR THE MONTANA STATE PRISON OR  
8 MONTANA WOMEN'S PRISON FOR A TERM OF NOT MORE THAN 5 YEARS, ALL OF WHICH MUST BE SUSPENDED, TO RUN  
9 CONSECUTIVELY TO THE TERM IMPOSED UNDER SUBSECTION (2)(A)(I); AND

10 (III) A FINE OF NOT LESS THAN \$5,000 OR MORE THAN \$10,000; OR

11 (B) BEING SENTENCED TO AN APPROPRIATE TREATMENT COURT PROGRAM FOR A TERM OF NOT MORE THAN 5  
12 YEARS, WITH REQUIRED COMPLETION, AND A FINE OF NOT LESS THAN \$5,000 OR MORE THAN \$10,000. IF SENTENCED  
13 UNDER THIS SUBSECTION (2)(B), THE PERSON MAY BE ENTITLED TO A SUSPENDED SENTENCE AND IS NOT ELIGIBLE FOR  
14 A DEFERRED IMPOSITION OF SENTENCE.

15 (3) THE DEPARTMENT OF CORRECTIONS MAY PLACE AN OFFENDER SENTENCED UNDER SUBSECTION (2)(A) IN A  
16 RESIDENTIAL ALCOHOL TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF CORRECTIONS.

17 (4) (A) A PERSON MEETING THE FOLLOWING CRITERIA SHALL BE PUNISHED BY IMPRISONMENT FOR NOT MORE  
18 THAN 10 YEARS AND BY A FINE OF NOT LESS THAN \$5,000 OR MORE THAN \$10,000:

19 (I) THE PERSON IS CONVICTED OF A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A),  
20 (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE  
21 INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER  
22 STATE;

23 (II) THE PERSON HAS EITHER A SINGLE CONVICTION UNDER 45-5-106 OR ANY COMBINATION OF FOUR OR MORE  
24 PRIOR CONVICTIONS UNDER 45-5-104, 45-5-205, 45-5-628(1)(E), OR DRIVING UNDER THE INFLUENCE, INCLUDING  
25 [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING  
26 UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF  
27 ANOTHER STATE; AND

28 (III) THE OFFENSE UNDER 45-5-104, IF APPLICABLE, OCCURRED WHILE THE PERSON WAS OPERATING A VEHICLE  
29 WHILE UNDER THE INFLUENCE AS PROVIDED IN [SECTION 1(1) AND SECTION 2] OR A SIMILAR OFFENSE UNDER PREVIOUS  
30 LAWS OF THIS STATE AND THE PERSON WAS PREVIOUSLY SENTENCED UNDER EITHER SUBSECTION (2)(A) OR (2)(B).

1 (B) IF SENTENCED UNDER THIS SUBSECTION (4), THE PERSON IS NOT ELIGIBLE FOR A DEFERRED SENTENCE. IF  
2 THE COURT DETERMINES, BASED ON THE FINDINGS CONTAINED IN A CHEMICAL DEPENDENCY ASSESSMENT PREPARED  
3 PURSUANT TO [SECTION 5], THAT A LONG-TERM RESIDENTIAL ALCOHOL TREATMENT PROGRAM AFFORDS A BETTER  
4 OPPORTUNITY FOR REHABILITATION OF THE OFFENDER AND FOR THE PROTECTION OF SOCIETY, THE OFFENDER'S TERM  
5 OF IMPRISONMENT MAY INCLUDE PLACEMENT IN A LONG-TERM RESIDENTIAL ALCOHOL TREATMENT PROGRAM APPROVED  
6 BY THE DEPARTMENT OF CORRECTIONS. THE COURT SHALL INCLUDE IN ITS JUDGMENT A STATEMENT OF THE REASONS  
7 FOR ITS DETERMINATION.

8 (5) IF A PERSON HAS PREVIOUSLY BEEN CONVICTED AND SENTENCED UNDER SUBSECTION (4) ON A DIFFERENT  
9 OCCASION OTHER THAN THE FIRST, THE PERSON SHALL BE FINED NOT LESS THAN \$5,000 OR MORE THAN \$10,000 AND  
10 BE SENTENCED TO IMPRISONMENT FOR NOT MORE THAN 25 YEARS. IF SENTENCED UNDER THIS SUBSECTION (5), THE  
11 PERSON IS NOT ELIGIBLE FOR A DEFERRED SENTENCE.

12 (6) THE COURT SHALL, AS A CONDITION OF PROBATION, ORDER THAT:

13 (A) THE PERSON ABIDE BY THE STANDARD CONDITIONS OF PROBATION PROMULGATED BY THE DEPARTMENT OF  
14 CORRECTIONS;

15 (B) A PERSON WHO IS FINANCIALLY ABLE PAY THE COSTS OF IMPRISONMENT, PROBATION, AND ALCOHOL  
16 TREATMENT UNDER THIS SECTION;

17 (C) THE PERSON MAY NOT FREQUENT AN ESTABLISHMENT WHERE ALCOHOLIC BEVERAGES ARE SERVED;

18 (D) THE PERSON MAY NOT CONSUME ALCOHOLIC BEVERAGES;

19 (E) THE PERSON MAY NOT OPERATE A MOTOR VEHICLE UNLESS AUTHORIZED BY THE PERSON'S PROBATION  
20 OFFICER;

21 (F) THE PERSON ENTER IN AND REMAIN IN AN AFTERCARE TREATMENT PROGRAM FOR THE ENTIRE PROBATIONARY  
22 PERIOD;

23 (G) THE PERSON SUBMIT TO RANDOM OR ROUTINE DRUG AND ALCOHOL TESTING; AND

24 (H) IF THE PERSON IS PERMITTED TO OPERATE A MOTOR VEHICLE, THE VEHICLE BE EQUIPPED WITH AN IGNITION  
25 INTERLOCK DEVICE.

26 (7) THE SENTENCING JUDGE MAY IMPOSE ON THE DEFENDANT ANY OTHER REASONABLE RESTRICTIONS OR  
27 CONDITIONS DURING THE PERIOD OF PROBATION. REASONABLE RESTRICTIONS OR CONDITIONS MAY INCLUDE BUT ARE NOT  
28 LIMITED TO:

29 (A) PAYMENT OF A FINE AS PROVIDED IN 46-18-231;

30 (B) PAYMENT OF COSTS AS PROVIDED IN 46-18-232 AND 46-18-233;

- 1           (C) PAYMENT OF COSTS OF ASSIGNED COUNSEL AS PROVIDED IN 46-8-113;  
 2           (D) COMMUNITY SERVICE;  
 3           (E) ANY OTHER REASONABLE RESTRICTIONS OR CONDITIONS CONSIDERED NECESSARY FOR REHABILITATION OR  
 4 FOR THE PROTECTION OF SOCIETY; OR  
 5           (F) ANY COMBINATION OF THE RESTRICTIONS OR CONDITIONS LISTED IN SUBSECTIONS (7)(A) THROUGH (7)(E).  
 6           (8) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A TREATMENT FACILITY UNDER SUBSECTION (3), THE  
 7 DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE OFFENDER IN ANOTHER FACILITY OR PROGRAM.  
 8           (9) THE PROVISIONS OF 46-18-203, 46-23-1001 THROUGH 46-23-1005, 46-23-1011 THROUGH 46-23-1014,  
 9 AND 46-23-1031 APPLY TO PERSONS SENTENCED UNDER THIS SECTION.

10  
 11           **NEW SECTION. SECTION 5. DRIVING UNDER INFLUENCE -- ASSESSMENT, EDUCATION, AND TREATMENT**  
 12 **REQUIRED.** (1) IN ADDITION TO THE PUNISHMENTS PROVIDED IN [SECTIONS 3 AND 4], REGARDLESS OF DISPOSITION, A  
 13 DEFENDANT CONVICTED OF A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2], AN OFFENSE THAT  
 14 MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], A SIMILAR OFFENSE UNDER  
 15 PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE SHALL COMPLETE A CHEMICAL DEPENDENCY  
 16 ASSESSMENT AND:

17           (A) FOR A FIRST CONVICTION, EXCEPT AS PROVIDED IN SUBSECTION (8)(B), A CHEMICAL DEPENDENCY EDUCATION  
 18 COURSE; OR

19           (B) FOR A SECOND OR SUBSEQUENT CONVICTION FOR A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING  
 20 [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING  
 21 UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF  
 22 ANOTHER STATE, EXCEPT A FOURTH OR SUBSEQUENT CONVICTION FOR WHICH THE DEFENDANT COMPLETES A  
 23 RESIDENTIAL ALCOHOL TREATMENT PROGRAM UNDER [SECTION 4(3)], OR AS REQUIRED BY SUBSECTION (8) OF THIS  
 24 SECTION, CHEMICAL DEPENDENCY TREATMENT.

25           (2) THE SENTENCING JUDGE MAY, IN THE JUDGE'S DISCRETION, REQUIRE THE DEFENDANT TO COMPLETE THE  
 26 CHEMICAL DEPENDENCY ASSESSMENT PRIOR TO SENTENCING THE DEFENDANT. IF THE ASSESSMENT IS NOT ORDERED OR  
 27 COMPLETED BEFORE SENTENCING, THE JUDGE SHALL ORDER THE CHEMICAL DEPENDENCY ASSESSMENT AS PART OF THE  
 28 SENTENCE.

29           (3)(A) THE CHEMICAL DEPENDENCY ASSESSMENT MUST BE CONDUCTED BY A LICENSED ADDICTION COUNSELOR.  
 30 THE CHEMICAL DEPENDENCY EDUCATION COURSE MUST BE CONDUCTED BY A CERTIFIED INSTRUCTOR AT A TREATMENT

1 PROGRAM APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. IN ADDITION TO THE PUNISHMENTS  
2 PROVIDED IN [SECTIONS 3 AND 4], REGARDLESS OF DISPOSITION, A DEFENDANT CONVICTED OF A VIOLATION OF DRIVING  
3 UNDER THE INFLUENCE FOR A FIRST OR SECOND TIME WHO DOES NOT MEET THE CLINICAL CRITERIA FOR MODERATE OR  
4 SEVERE CHEMICAL DEPENDENCY MUST COMPLETE AN EVIDENCE-BASED INTERVENTION THAT IS APPROPRIATE TO THE  
5 LEVEL OF OFFENSE AND IS APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. FOR A FIRST  
6 CONVICTION, THE EVIDENCE-BASED INTERVENTION MAY INCLUDE A CHEMICAL DEPENDENCY EDUCATION COURSE.

7 (B) THE DEFENDANT MAY ATTEND A TREATMENT PROGRAM OF THE DEFENDANT'S CHOICE AS LONG AS THE  
8 TREATMENT SERVICES ARE PROVIDED BY A LICENSED ADDICTION COUNSELOR. THE DEFENDANT SHALL PAY THE COST OF  
9 THE ASSESSMENT, THE EDUCATION COURSE, AND CHEMICAL DEPENDENCY TREATMENT AND MAY USE HEALTH INSURANCE  
10 TO COVER THE COSTS WHEN POSSIBLE.

11 (4) THE ASSESSMENT MUST BE CONDUCTED BY A LICENSED ADDICTION COUNSELOR USING NATIONAL STANDARD  
12 PRACTICE ASSESSMENT AND PLACEMENT CRITERIA THAT HAS BEEN APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH  
13 AND HUMAN SERVICES. IT MUST PRESCRIBE THE LEVEL OF CARE THAT IS CLINICALLY WARRANTED TO TREAT THE  
14 DEFENDANT'S DISORDER. A DEFENDANT WHO DISAGREES WITH THE INITIAL ASSESSMENT MAY, AT THE DEFENDANT'S COST,  
15 OBTAIN A SECOND ASSESSMENT PROVIDED BY A LICENSED ADDICTION COUNSELOR OR A PROGRAM APPROVED BY THE  
16 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.

17 (5) THE TREATMENT PROVIDED TO THE DEFENDANT AT A TREATMENT PROGRAM MUST BE AT A LEVEL OF CARE  
18 PRESCRIBED IN A DEFENDANT'S CLINICAL ASSESSMENT AS DESCRIBED IN SUBSECTION (4). THE RULES DEFINING LEVELS  
19 OF CARE AND TREATMENT MUST MANDATE EVIDENCE-BASED TREATMENT PROGRAMS OR COURSES APPROVED BY THE  
20 DEPARTMENT THAT ARE LIKELY TO REDUCE RECIDIVISM. UPON DETERMINATION, THE COURT SHALL ORDER THE  
21 DEFENDANT'S APPROPRIATE LEVEL OF TREATMENT. IF MORE THAN ONE COUNSELOR MAKES A DETERMINATION AS  
22 PROVIDED IN THIS SUBSECTION, THE COURT SHALL ORDER AN APPROPRIATE LEVEL OF TREATMENT BASED ON THE  
23 DETERMINATION OF ONE OF THE COUNSELORS.

24 (6) EACH COUNSELOR PROVIDING EDUCATION OR TREATMENT SHALL, AT THE COMMENCEMENT OF THE  
25 EDUCATION OR TREATMENT, NOTIFY THE COURT THAT THE DEFENDANT HAS BEEN ENROLLED IN A CHEMICAL DEPENDENCY  
26 EDUCATION COURSE OR TREATMENT PROGRAM. IF THE DEFENDANT FAILS TO ATTEND THE COURSE OR TREATMENT  
27 PROGRAM, THE COUNSELOR SHALL NOTIFY THE COURT OF THE FAILURE.

28 (7) A COURT OR COUNSELOR MAY NOT REQUIRE ATTENDANCE AT A SELF-HELP PROGRAM OTHER THAN AT AN  
29 OPEN MEETING, AS THAT TERM IS DEFINED BY THE SELF-HELP PROGRAM. A DEFENDANT MAY VOLUNTARILY PARTICIPATE  
30 IN SELF-HELP PROGRAMS.

1 (8) (A) CHEMICAL DEPENDENCY TREATMENT MUST BE ORDERED FOR A FIRST-TIME OR SECOND-TIME OFFENDER  
 2 CONVICTED OF A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2], AN OFFENSE THAT MEETS THE  
 3 DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS  
 4 LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE, UPON A FINDING OF MODERATE OR SEVERE ALCOHOL OR DRUG  
 5 USE DISORDER MADE BY A LICENSED ADDICTION COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT RULES  
 6 ADOPTED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.

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

9 (9) (A) ON A THIRD CONVICTION, THE TREATMENT PROGRAM PROVIDED FOR IN SUBSECTION (5) MUST BE ONE  
 10 OF THE FOLLOWING:

11 (I) DUI OR DRUG TREATMENT COURT;

12 (II) INPATIENT TREATMENT, IF THE ASSESSMENT COMPLETED SUPPORTS IT;

13 (III) A CHEMICAL DEPENDENCY TREATMENT PROGRAM OPERATED THROUGH THE DEPARTMENT OF CORRECTIONS;

14 OR

15 (IV) OUTPATIENT TREATMENT WITH APPROPRIATE CLINICAL MONITORING FOR A PERIOD SPECIFIED IN A  
 16 DEFENDANT'S INDIVIDUALIZED TREATMENT PLAN.

17 (B) IN THE EVENT THAT A DEFENDANT'S CHEMICAL DEPENDENCY ASSESSMENT DOES NOT SUPPORT ANY OF THE  
 18 ABOVE, A DEFENDANT MAY PETITION THE COURT FOR AN ALTERNATIVE SENTENCE.

19 (C) IF THE DEFENDANT IS SENTENCED TO A PROGRAM OPERATED THROUGH THE DEPARTMENT OF CORRECTIONS,  
 20 THE DEPARTMENT SHALL CONFIRM THAT SPACE IS AVAILABLE SO THAT THE COURT MAY ORDER THAT THE OFFENDER BE  
 21 PLACED INTO THE CHEMICAL DEPENDENCY TREATMENT PROGRAM.

22 (D) IF A DEFENDANT FAILS TO COMPLY WITH THE MONITORING PROGRAM IMPOSED UNDER SUBSECTION (9)(A)(IV),  
 23 THE COURT SHALL REVOKE THE SUSPENDED SENTENCE, IF ANY, SHALL IMPOSE ANY REMAINING PORTION OF THE  
 24 SUSPENDED SENTENCE, AND MAY INCLUDE ADDITIONAL MONTHLY MONITORING FOR UP TO AN ADDITIONAL 1 YEAR.

25 (10) NOTWITHSTANDING 46-18-201(2), WHENEVER A JUDGE SUSPENDS A SENTENCE IMPOSED UNDER [SECTION  
 26 3] AND ORDERS THE PERSON TO COMPLETE CHEMICAL DEPENDENCY TREATMENT UNDER THIS SECTION, THE JUDGE  
 27 RETAINS JURISDICTION TO IMPOSE ANY SUSPENDED SENTENCE FOR UP TO 1 YEAR.

28  
 29 **NEW SECTION. SECTION 6. DRIVING UNDER INFLUENCE -- IGNITION INTERLOCK DEVICE -- 24/7 SOBRIETY AND**  
 30 **DRUG MONITORING PROGRAM. (1) FOR A PERSON CONVICTED OF A FIRST OFFENSE OF DRIVING UNDER THE INFLUENCE,**

1 INCLUDING [SECTION 2] OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE,  
 2 THE COURT MAY REQUIRE THE PERSON TO PARTICIPATE IN A COURT-APPROVED ALCOHOL OR DRUG DETECTION TESTING  
 3 PROGRAM AND TO PAY THE FEES ASSOCIATED WITH THE TESTING PROGRAM.

4 (2) ON A SECOND OR SUBSEQUENT CONVICTION FOR A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING  
 5 [SECTION 2], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1],  
 6 OR A SIMILAR OFFENSE UNDER THE LAWS OF ANOTHER STATE, OR A SECOND OR SUBSEQUENT CONVICTION UNDER  
 7 61-5-212 WHEN THE REASON FOR THE SUSPENSION OR REVOCATION WAS THAT THE PERSON WAS CONVICTED OF A  
 8 VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2], AN OFFENSE THAT MEETS THE DEFINITION OF  
 9 AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS  
 10 STATE OR THE LAWS OF ANOTHER STATE, OR THE SUSPENSION WAS UNDER [SECTION 8] OR A SIMILAR LAW OF ANOTHER  
 11 STATE FOR REFUSAL TO TAKE A TEST FOR ALCOHOL OR DRUGS REQUESTED BY A PEACE OFFICER WHO BELIEVED THAT THE  
 12 PERSON MIGHT BE DRIVING UNDER THE INFLUENCE, THE COURT SHALL:

13 (A) REQUIRE THE PERSON TO PARTICIPATE IN THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM PROVIDED  
 14 FOR IN 44-4-1203 AND TO PAY THE FEES ASSOCIATED WITH THE PROGRAM;

15 (B) RESTRICT THE PERSON TO DRIVING ONLY A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION  
 16 INTERLOCK DEVICE DURING THE PROBATIONARY PERIOD AND REQUIRE THE PERSON TO PAY THE REASONABLE COST OF  
 17 LEASING, INSTALLING, AND MAINTAINING THE DEVICE; OR

18 (C) REQUIRE THE PERSON TO PARTICIPATE IN A COURT-APPROVED ALCOHOL OR DRUG DETECTION TESTING  
 19 PROGRAM AND TO PAY THE FEES ASSOCIATED WITH THE TESTING PROGRAM.

20  
 21 **NEW SECTION. SECTION 7. DRIVING UNDER INFLUENCE -- CONVICTION DEFINED -- PLACE OF IMPRISONMENT**  
 22 **-- HOME ARREST -- EXCEPTIONS -- DEFERRAL OF SENTENCE NOT ALLOWED. (1) (A) FOR THE PURPOSE OF DETERMINING**  
 23 **THE NUMBER OF CONVICTIONS FOR PRIOR OFFENSES REFERRED TO IN [SECTIONS 1 THROUGH 4], "CONVICTION", AS**  
 24 **DEFINED IN 45-2-101, MEANS:**

25 (I) A FINAL CONVICTION IN THIS STATE, OR ON A FEDERALLY RECOGNIZED INDIAN RESERVATION, WITHIN A  
 26 MUNICIPALITY FOR A MUNICIPAL ORDINANCE ENACTED UNDER THE AUTHORITY GRANTED IN [SECTION 2(5)];

27 (II) A FORFEITURE, WHICH HAS NOT BEEN VACATED, OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE  
 28 DEFENDANT'S APPEARANCE IN COURT IN THIS STATE, IN ANOTHER STATE, OR ON A FEDERALLY RECOGNIZED INDIAN  
 29 RESERVATION; OR

30 (III) A CONVICTION FOR A VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2(1)(A), (1)(B),

1 (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN  
2 [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE.

3 (B)(I) EXCEPT AS PROVIDED IN SUBSECTION (1)(B)(II), AN OFFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY  
4 CONVICTED FOR THE PURPOSES OF SENTENCING IF LESS THAN 10 YEARS HAVE ELAPSED BETWEEN THE COMMISSION OF  
5 THE PRESENT OFFENSE AND A PREVIOUS CONVICTION UNLESS THE OFFENSE IS THE OFFENDER'S THIRD OR SUBSEQUENT  
6 OFFENSE, IN WHICH CASE ALL PREVIOUS CONVICTIONS MUST BE USED FOR SENTENCING PURPOSES.

7 (II) SUBSECTION (1)(B)(I) DOES NOT APPLY TO AN OFFENDER FOR WHOM AN EXPUNGEMENT PURSUANT TO  
8 46-18-1101 HAS BEEN ORDERED.

9 (C) FOR THE PURPOSE OF DETERMINING THE NUMBER OF SUBSEQUENT CONVICTIONS FOR A VIOLATION OF  
10 DRIVING UNDER THE INFLUENCE, INCLUDING [SECTIONS 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS  
11 THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS  
12 LAWS OF THIS STATE OR THE LAWS OF ANOTHER STATE, THE FOLLOWING MUST BE COUNTED:

13 (I) A PREVIOUS CONVICTION UNDER [SECTION 3] FOR VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING  
14 [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING  
15 UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF  
16 ANOTHER STATE;

17 (II) A PREVIOUS CONVICTION FOR A VIOLATION OF 45-5-104 FOR WHICH THE OFFENSE UNDER 45-5-104  
18 OCCURRED WHILE THE PERSON WAS OPERATING A VEHICLE IN VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING  
19 [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], AN OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING  
20 UNDER THE INFLUENCE IN [SECTION 1], OR A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE OR THE LAWS OF  
21 ANOTHER STATE; AND

22 (III) A PREVIOUS CONVICTION FOR A VIOLATION OF 45-5-106, 45-5-205, OR 45-5-628(1)(E).

23 (2) EXCEPT AS PROVIDED IN [SECTION 4], THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED  
24 UNDER [SECTION 3 OR 4] BE SERVED IN ANOTHER FACILITY MADE AVAILABLE BY THE COUNTY AND APPROVED BY THE  
25 SENTENCING COURT. THE DEFENDANT, IF FINANCIALLY ABLE, SHALL BEAR THE EXPENSE OF THE IMPRISONMENT IN THE  
26 FACILITY. THE COURT MAY IMPOSE RESTRICTIONS ON THE DEFENDANT'S ABILITY TO LEAVE THE PREMISES OF THE FACILITY  
27 AND MAY REQUIRE THAT THE DEFENDANT FOLLOW THE RULES OF THE FACILITY. THE FACILITY MAY BE, BUT IS NOT  
28 REQUIRED TO BE, A COMMUNITY-BASED PRERELEASE CENTER AS PROVIDED FOR IN 53-1-203. THE PRERELEASE CENTER  
29 MAY ACCEPT OR REJECT A DEFENDANT REFERRED BY THE SENTENCING COURT.

30 (3) SUBJECT TO THE LIMITATIONS SET FORTH IN [SECTION 3] CONCERNING MINIMUM PERIODS OF IMPRISONMENT,

1 THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED UNDER [SECTION 3] BE SERVED BY IMPRISONMENT  
 2 UNDER HOME ARREST, AS PROVIDED IN TITLE 46, CHAPTER 18, PART 10.

3 (4) A COURT MAY NOT DEFER IMPOSITION OF SENTENCE UNDER [SECTION 3 OR 4].

4 (5) THE PROVISIONS OF 61-2-107, 61-5-205(2), AND 61-5-208(2), RELATING TO SUSPENSION OF DRIVER'S  
 5 LICENSES AND LATER REINSTATEMENT OF DRIVING PRIVILEGES, APPLY TO ANY CONVICTION UNDER [SECTION 3] FOR A  
 6 VIOLATION OF [SECTION 2].

7  
 8 **NEW SECTION. SECTION 8. IMPLIED CONSENT -- BLOOD OR BREATH TESTS FOR ALCOHOL, DRUGS, OR BOTH**  
 9 **-- REFUSAL TO SUBMIT TO TEST. (1) A PERSON WHO OPERATES OR IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE OR**  
 10 **COMMERCIAL MOTOR VEHICLE UPON THE WAYS OF THIS STATE OPEN TO THE PUBLIC IS CONSIDERED TO HAVE GIVEN**  
 11 **CONSENT TO A TEST OR TESTS OF THE PERSON'S BLOOD, BREATH, OR OTHER BODILY SUBSTANCE FOR THE PURPOSE OF**  
 12 **DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY.**

13 **(2) (A) THE TEST OR TESTS MUST BE ADMINISTERED AT THE DIRECTION OF A PEACE OFFICER WHEN:**

14 **(I) THE PEACE OFFICER HAS PARTICULARIZED SUSPICION TO BELIEVE THAT THE PERSON HAS BEEN DRIVING OR**  
 15 **HAS BEEN IN ACTUAL PHYSICAL CONTROL OF A VEHICLE OR COMMERCIAL MOTOR VEHICLE UPON THE WAYS OF THIS STATE**  
 16 **OPEN TO THE PUBLIC WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A COMBINATION OF THE TWO AND THE**  
 17 **PERSON HAS BEEN DETAINED FOR A VIOLATION OF DRIVING UNDER THE INFLUENCE AS PROVIDED IN [SECTION 2] OR AN**  
 18 **OFFENSE THAT MEETS THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1];**

19 **(II) THE PERSON IS UNDER THE AGE OF 21 AND THE PEACE OFFICER HAS PARTICULARIZED SUSPICION TO BELIEVE**  
 20 **THAT THE PERSON HAS BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE IN VIOLATION OF [SECTION 2(1)(F)];**  
 21 **OR**

22 **(III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL**  
 23 **CONTROL OF A VEHICLE OR COMMERCIAL MOTOR VEHICLE:**

24 **(A) IN VIOLATION OF DRIVING UNDER THE INFLUENCE AS PROVIDED IN [SECTION 2], AND THE PERSON HAS BEEN**  
 25 **PLACED UNDER ARREST;**

26 **(B) IN VIOLATION OF DRIVING UNDER THE INFLUENCE AS PROVIDED IN [SECTION 2], AND THE PERSON HAS BEEN**  
 27 **INVOLVED IN A MOTOR VEHICLE CRASH OR COLLISION RESULTING IN PROPERTY DAMAGE;**

28 **(C) AND THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE CRASH OR COLLISION RESULTING IN SERIOUS**  
 29 **BODILY INJURY, AS DEFINED IN 45-2-101, OR DEATH; OR**

30 **(D) IN VIOLATION OF DRIVING UNDER THE INFLUENCE AS PROVIDED IN [SECTION 2] AND MEETS THE DEFINITION**

1 OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1].

2 (B) A PEACE OFFICER MAY DESIGNATE WHICH TEST OR TESTS ARE ADMINISTERED.

3 (3) A PERSON WHO IS UNCONSCIOUS OR WHO IS OTHERWISE IN A CONDITION RENDERING THE PERSON INCAPABLE  
4 OF REFUSAL HAS NOT WITHDRAWN CONSENT.

5 (4) IF A PERSON REFUSES TO SUBMIT TO ONE OR MORE TESTS REQUESTED BY THE PEACE OFFICER:

6 (A) THE OFFICER MAY APPLY FOR A SEARCH WARRANT TO BE ISSUED PURSUANT TO 46-5-224 TO COLLECT A  
7 SAMPLE OF THE PERSON'S BLOOD FOR TESTING IF ANY OF THE FOLLOWING APPLY:

8 (I) THE PERSON IS UNDER THE ORDER OF A COURT OR THE DEPARTMENT TO EQUIP ANY MOTOR VEHICLE THE  
9 PERSON OPERATES WITH AN APPROVED INTERLOCK IGNITION DEVICE;

10 (II) THE PERSON HAS A PASSENGER UNDER THE AGE OF 16 IN THE VEHICLE;

11 (III) THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE CRASH OR COLLISION RESULTING IN PROPERTY  
12 DAMAGE, SERIOUS BODILY INJURY AS DEFINED IN 45-2-101, OR DEATH;

13 (IV) THE PERSON'S DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IS SUSPENDED, CANCELED, OR REVOKED UNDER  
14 THE PROVISIONS OF AN IMPLIED CONSENT STATUTE OR AS A RESULT OF A PRIOR VIOLATION OF DRIVING UNDER THE  
15 INFLUENCE, INCLUDING A VIOLATION OF [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D) OR (1)(E)], AN OFFENSE THAT MEETS THE  
16 DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE, OR A SIMILAR OFFENSE UNDER THE PREVIOUS LAWS OF THIS  
17 STATE OR THE LAWS OF ANOTHER STATE; OR

18 (V) THE PERSON HAS REFUSED TO PROVIDE A BREATH, BLOOD, OR OTHER BODILY SUBSTANCE UNDER THIS  
19 SECTION IN A PRIOR INVESTIGATION IN THIS STATE OR UNDER A SUBSTANTIALLY SIMILAR STATUTE IN ANOTHER  
20 JURISDICTION OR THE ARRESTED PERSON HAS A PRIOR CONVICTION OR PENDING OFFENSE FOR A VIOLATION OF 45-5-104,  
21 45-5-106, 45-5-205, [SECTION 2(1)(A), (1)(B), (1)(C), (1)(D), OR (1)(E)], OR A SIMILAR STATUTE IN ANOTHER  
22 JURISDICTION; AND

23 (B) THE OFFICER SHALL IMMEDIATELY SEIZE THE PERSON'S DRIVER LICENSE AND IMMEDIATELY FORWARD THE  
24 LICENSE TO THE DEPARTMENT, ALONG WITH A REPORT CERTIFIED UNDER PENALTY OF LAW STATING THE BASIS FOR THE  
25 TESTING REQUEST AND CONFIRMING THAT THE PERSON REFUSED TO SUBMIT TO ONE OR MORE TESTS REQUESTED BY THE  
26 PEACE OFFICER.

27 (5) UPON SEIZURE OF A DRIVER'S LICENSE, THE PEACE OFFICER SHALL ISSUE, ON BEHALF OF THE DEPARTMENT,  
28 A TEMPORARY DRIVING PERMIT, WHICH IS EFFECTIVE 24 HOURS AFTER ISSUANCE AND IS VALID FOR 5 DAYS FOLLOWING  
29 THE DATE OF ISSUANCE, AND SHALL PROVIDE THE DRIVER WITH WRITTEN NOTICE OF THE LICENSE SUSPENSION AND THE  
30 RIGHT TO A HEARING AS PROVIDED IN [SECTION 9].

1           (6) A NONRESIDENT DRIVER'S LICENSE SEIZED UNDER THIS SECTION MUST BE SENT BY THE DEPARTMENT TO THE  
2 LICENSING AUTHORITY OF THE NONRESIDENT'S HOME STATE WITH A REPORT OF THE NONRESIDENT'S REFUSAL TO SUBMIT  
3 TO ONE OR MORE TESTS REQUESTED BY THE PEACE OFFICER.

4           (7) THIS SECTION DOES NOT APPLY TO TESTS, SAMPLES, AND ANALYSES OF BLOOD, BREATH, OR OTHER BODILY  
5 SUBSTANCES USED FOR PURPOSES OF MEDICAL TREATMENT OR CARE OF AN INJURED MOTORIST, RELATED TO A LAWFUL  
6 SEIZURE FOR A SUSPECTED VIOLATION OF AN OFFENSE NOT IN THIS PART, OR PERFORMED PURSUANT TO A SEARCH  
7 WARRANT.

8           (8) THIS SECTION DOES NOT PROHIBIT THE RELEASE OF INFORMATION OBTAINED FROM TESTS, SAMPLES, AND  
9 ANALYSES OF BLOOD OR BREATH FOR LAW ENFORCEMENT PURPOSES AS PROVIDED IN 46-4-301 AND [SECTION 11(6)].

10  
11           NEW SECTION. SECTION 9. RIGHT OF APPEAL TO COURT. (1) WITHIN 30 DAYS AFTER NOTICE OF THE RIGHT  
12 TO A HEARING HAS BEEN GIVEN BY A PEACE OFFICER, A PERSON MAY FILE A PETITION TO CHALLENGE THE LICENSE  
13 SUSPENSION OR REVOCATION IN THE DISTRICT COURT IN THE COUNTY WHERE THE ARREST WAS MADE.

14           (2) THE COURT HAS JURISDICTION AND SHALL SET THE MATTER FOR HEARING. THE COURT SHALL GIVE AT LEAST  
15 10 DAYS' WRITTEN NOTICE OF THE HEARING TO THE COUNTY ATTORNEY OF THE COUNTY WHERE THE ARREST WAS MADE  
16 AND TO THE CITY ATTORNEY IF THE INCIDENT LEADING TO THE SUSPENSION OR REVOCATION RESULTED IN A CHARGE FILED  
17 IN A CITY OR MUNICIPAL COURT. THE COUNTY ATTORNEY OR CITY ATTORNEY MAY REPRESENT THE STATE. IF THE COUNTY  
18 ATTORNEY AND THE CITY ATTORNEY CANNOT AGREE ON WHO WILL REPRESENT THE STATE, THE COUNTY ATTORNEY SHALL  
19 REPRESENT THE STATE.

20           (3) UPON REQUEST OF THE PETITIONER, THE COURT MAY ORDER THE DEPARTMENT TO RETURN THE SEIZED  
21 LICENSE OR ISSUE A STAY OF THE SUSPENSION OR REVOCATION ACTION PENDING THE HEARING.

22           (4) THE COURT SHALL TAKE TESTIMONY AND EXAMINE THE FACTS OF THE CASE, EXCEPT THAT THE ISSUES ARE  
23 LIMITED TO WHETHER:

24           (A) A PEACE OFFICER HAD PARTICULARIZED SUSPICION TO BELIEVE THAT THE PERSON HAD BEEN DRIVING OR WAS  
25 IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR  
26 A COMBINATION OF THE TWO AND THE PERSON WAS DETAINED FOR A VIOLATION OF [SECTION 2] OR MET THE DEFINITION  
27 OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1];

28           (B) THE PERSON IS UNDER 21 YEARS OF AGE AND WAS PLACED UNDER ARREST FOR A VIOLATION OF [SECTION  
29 2(1)(F)];

30           (C) THE OFFICER HAD PROBABLE CAUSE TO BELIEVE THAT THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL

1 CONTROL OF A VEHICLE IN VIOLATION OF [SECTION 2] AND THE PERSON WAS INVOLVED IN A MOTOR VEHICLE ACCIDENT  
 2 OR COLLISION RESULTING IN PROPERTY DAMAGE, BODILY INJURY, OR DEATH; AND

3 (D) THE PERSON REFUSED TO SUBMIT TO ONE OR MORE TESTS DESIGNATED BY THE OFFICER.

4 (5) FOR A NONCOMMERCIAL DRIVER WHOSE REFUSAL TOOK PLACE IN A NONCOMMERCIAL VEHICLE, THE COURT  
 5 SHALL ORDER THE DEPARTMENT TO EITHER:

6 (A) REMOVE THE REFUSAL FROM THE DRIVING RECORD BECAUSE OF THE ISSUES IN SUBSECTION (4) AND NO  
 7 OTHER;

8 (B) KEEP THE REFUSAL ON THE DRIVING RECORD AND ORDER THE DEPARTMENT TO SUSPEND THE DRIVER'S  
 9 LICENSE OR PRIVILEGE TO DRIVE FOR THE DURATION OF THE SUSPENSION PERIOD UNDER [SECTION 8]; OR

10 (C) KEEP THE REFUSAL ON THE DRIVING RECORD AND ORDER THE DEPARTMENT TO TAKE NO FURTHER  
 11 SUSPENSION ACTION AGAINST THE DRIVER.

12 (6) (A) FOR A COMMERCIAL DRIVER OR FOR A DRIVER OPERATING A COMMERCIAL MOTOR VEHICLE, THE COURT  
 13 SHALL ORDER THE DEPARTMENT TO EITHER:

14 (I) REMOVE THE REFUSAL FROM THE DRIVING RECORD BECAUSE OF THE ISSUES IN SUBSECTION (4) AND NO  
 15 OTHER; OR

16 (II) KEEP THE REFUSAL ON THE DRIVING RECORD AND ORDER THE DEPARTMENT TO SUSPEND THE DRIVER'S  
 17 LICENSE OR PRIVILEGE TO DRIVE FOR THE DURATION OF THE ORIGINAL SUSPENSION UNDER [SECTION 8] OR 61-8-802.

18 (B) FOR A COMMERCIAL DRIVER OR A DRIVER WHO WAS OPERATING A COMMERCIAL VEHICLE, THE COURT MAY  
 19 NOT ORDER THE DEPARTMENT TO:

20 (I) LEAVE THE REFUSAL ON THE DRIVING RECORD AND NOT TAKE THE SUSPENSION UNDER [SECTION 8] OR  
 21 61-8-802; OR

22 (II) PERMANENTLY STAY THE SUSPENSION TAKEN UNDER [SECTION 8] OR 61-8-802.

23 (7) IF THE COURT DOES NOT ISSUE A RULING ON THE APPEAL WITHIN 1 YEAR OF FILING, THE DEPARTMENT SHALL  
 24 DEEM THE COURT TO HAVE DENIED THE PETITION AND SHALL SUSPEND THE DRIVER FOR THE DURATION OF THE ORIGINAL  
 25 SUSPENSION UNDER [SECTION 8] OR 61-8-802.

26 (8) THIS SECTION DOES NOT GRANT A RIGHT OF APPEAL TO A STATE COURT IF A DRIVER'S LICENSE IS INITIALLY  
 27 SEIZED, SUSPENDED, OR REVOKED PURSUANT TO A TRIBAL LAW OR REGULATION THAT REQUIRES ALCOHOL OR DRUG  
 28 TESTING OF MOTOR VEHICLE OPERATORS.

29  
 30 NEW SECTION. SECTION 10. EVIDENCE ADMISSIBLE -- CONDITIONS OF ADMISSIBILITY. (1) UPON THE TRIAL

1 OF A CRIMINAL ACTION OR OTHER PROCEEDING ARISING OUT OF ACTS ALLEGED TO HAVE BEEN COMMITTED BY A PERSON  
 2 IN VIOLATION OF DRIVING UNDER THE INFLUENCE, INCLUDING [SECTION 2], AN OFFENSE THAT MEETS THE DEFINITION OF  
 3 AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], A SIMILAR OFFENSE UNDER PREVIOUS LAWS OF THIS STATE  
 4 OR THE LAWS OF ANOTHER STATE, OR 61-8-805:

5 (A) EVIDENCE OF ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL, DRUGS, OR A COMBINATION  
 6 OF ALCOHOL AND DRUGS IN THE PERSON AT THE TIME OF A TEST, AS SHOWN BY AN ANALYSIS OF THE PERSON'S BLOOD,  
 7 BREATH, OR OTHER BODILY SUBSTANCE, IS ADMISSIBLE. A POSITIVE TEST RESULT DOES NOT, IN ITSELF, PROVE THAT THE  
 8 PERSON WAS UNDER THE INFLUENCE OF A DRUG OR DRUGS AT THE TIME THE PERSON WAS IN CONTROL OF A VEHICLE. A  
 9 PERSON MAY NOT BE CONVICTED OF A VIOLATION OF [SECTION 2] BASED ON THE PRESENCE OF A DRUG OR DRUGS IN THE  
 10 PERSON UNLESS SOME OTHER COMPETENT EVIDENCE EXISTS THAT TENDS TO ESTABLISH THAT THE PERSON WAS UNDER  
 11 THE INFLUENCE OF A DRUG OR DRUGS WHILE DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN THIS  
 12 STATE.

13 (B) A REPORT OF THE FACTS AND RESULTS OF ONE OR MORE TESTS OF A PERSON'S BLOOD, BREATH, OR OTHER  
 14 BODILY SUBSTANCE IS ADMISSIBLE IN EVIDENCE IF:

15 (I) A BREATH TEST OR PRELIMINARY ALCOHOL SCREENING TEST WAS PERFORMED BY A PERSON CERTIFIED BY THE  
 16 FORENSIC SCIENCES DIVISION OF THE DEPARTMENT TO ADMINISTER THE TEST; OR

17 (II) A BLOOD SAMPLE OR OTHER BODILY SUBSTANCE SAMPLE WAS ANALYZED IN A LABORATORY OPERATED OR  
 18 CERTIFIED BY THE DEPARTMENT OR IN A LABORATORY EXEMPT FROM CERTIFICATION UNDER THE RULES OF THE  
 19 DEPARTMENT AND, IF THE SAMPLE WAS BLOOD, THE BLOOD WAS WITHDRAWN FROM THE PERSON BY A PERSON  
 20 COMPETENT TO DO SO UNDER [SECTION 11(1)]:

21 (C) A REPORT OF THE FACTS AND RESULTS OF A PHYSICAL, PSYCHOMOTOR, OR PHYSIOLOGICAL ASSESSMENT OF  
 22 A PERSON IS ADMISSIBLE IN EVIDENCE IF IT WAS MADE BY A PERSON TRAINED BY THE DEPARTMENT OR BY A PERSON WHO  
 23 HAS RECEIVED TRAINING RECOGNIZED BY THE DEPARTMENT.

24 (2) IF THE PERSON UNDER ARREST REFUSED TO SUBMIT TO ONE OR MORE TESTS UNDER [SECTION 8], WHETHER  
 25 OR NOT A SAMPLE WAS SUBSEQUENTLY COLLECTED FOR ANY PURPOSE, PROOF OF REFUSAL IS ADMISSIBLE IN ANY  
 26 CRIMINAL ACTION OR PROCEEDING ARISING OUT OF ACTS ALLEGED TO HAVE BEEN COMMITTED WHILE THE PERSON WAS  
 27 DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE WAYS OF THIS STATE OPEN TO THE PUBLIC WHILE  
 28 UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A COMBINATION OF ALCOHOL AND DRUGS. THE TRIER OF FACT MAY INFER  
 29 FROM THE REFUSAL THAT THE PERSON WAS UNDER THE INFLUENCE. THE INFERENCE IS REBUTTABLE.

30 (3) THE PROVISIONS OF THIS PART DO NOT LIMIT THE INTRODUCTION OF ANY OTHER COMPETENT EVIDENCE

1 BEARING ON THE QUESTION OF WHETHER THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A  
2 COMBINATION OF ALCOHOL AND DRUGS.

3  
4 NEW SECTION. SECTION 11. ADMINISTRATION OF TESTS. (1) ONLY A LICENSED PHYSICIAN, A REGISTERED  
5 NURSE, A PHLEBOTOMIST TRAINED IN A LICENSED HOSPITAL OR EDUCATIONAL INSTITUTION, OTHER MEDICAL PERSONNEL  
6 TRAINED IN A LICENSED HOSPITAL OR EDUCATIONAL INSTITUTION TO WITHDRAW BLOOD, OR A LAW ENFORCEMENT  
7 PHLEBOTOMIST TRAINED IN A LICENSED HOSPITAL OR EDUCATIONAL INSTITUTION THAT FOLLOWS CLINICAL AND  
8 LABORATORY STANDARDS INSTITUTE PROTOCOL REGARDING VENIPUNCTURE STANDARDS MAY, AT THE ORDER OR  
9 REQUEST OF A PEACE OFFICER, WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR  
10 DETECTED PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF ALCOHOL AND DRUGS IN THE PERSON. THIS  
11 LIMITATION DOES NOT APPLY TO THE SAMPLING OF BREATH OR OTHER BODILY SUBSTANCES. BLOOD DRAWS BY A LAW  
12 ENFORCEMENT PHLEBOTOMIST MUST BE CONDUCTED IN AN ENVIRONMENT THAT MEETS CLINICAL AND LABORATORY  
13 STANDARDS INSTITUTE VENIPUNCTURE STANDARDS AND IS APPROVED BY THE DEPARTMENT. THE QUALIFICATIONS OF THE  
14 INDIVIDUAL WITHDRAWING THE BLOOD AND THE METHOD USED TO WITHDRAW THE BLOOD ARE NOT FOUNDATIONAL  
15 PREREQUISITES FOR THE ADMISSIBILITY OF A BLOOD ALCOHOL CONTENT OR TOXICOLOGICAL DETERMINATION MADE  
16 PURSUANT TO THIS SUBSECTION.

17 (2) IN ADDITION TO ANY TEST ADMINISTERED AT THE DIRECTION OF A PEACE OFFICER, A PERSON MAY REQUEST  
18 THAT AN INDEPENDENT BLOOD SAMPLE BE DRAWN BY A PHYSICIAN OR REGISTERED NURSE FOR THE PURPOSE OF  
19 DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF ALCOHOL  
20 AND DRUGS IN THE PERSON. THE PEACE OFFICER MAY NOT UNREASONABLY IMPEDE THE PERSON'S RIGHT TO OBTAIN AN  
21 INDEPENDENT BLOOD TEST. THE OFFICER MAY, BUT HAS NO DUTY TO, TRANSPORT THE PERSON TO A MEDICAL FACILITY  
22 OR OTHERWISE ASSIST THE PERSON IN OBTAINING THE TEST. THE COST OF AN INDEPENDENT BLOOD TEST IS THE SOLE  
23 RESPONSIBILITY OF THE PERSON REQUESTING THE TEST. THE FAILURE OR INABILITY TO OBTAIN AN INDEPENDENT TEST  
24 BY A PERSON DOES NOT PRECLUDE THE ADMISSIBILITY IN EVIDENCE OF ANY TEST GIVEN AT THE DIRECTION OF A PEACE  
25 OFFICER.

26 (3) UPON THE REQUEST OF THE PERSON TESTED, FULL INFORMATION CONCERNING ANY TEST GIVEN AT THE  
27 DIRECTION OF THE PEACE OFFICER MUST BE MADE AVAILABLE TO THE PERSON OR THE PERSON'S ATTORNEY.

28 (4) A LICENSED PHYSICIAN, REGISTERED NURSE, PHLEBOTOMIST TRAINED IN A LICENSED HOSPITAL OR  
29 EDUCATIONAL INSTITUTION, OR OTHER MEDICAL PERSONNEL TRAINED IN A LICENSED HOSPITAL OR EDUCATIONAL  
30 INSTITUTION DOES NOT INCUR ANY CIVIL OR CRIMINAL LIABILITY AS A RESULT OF THE PROPER ADMINISTERING OF A BLOOD

1 TEST WHEN REQUESTED IN WRITING BY A PEACE OFFICER TO ADMINISTER THE TEST.

2 (5) THE DEPARTMENT IN COOPERATION WITH ANY APPROPRIATE AGENCY SHALL ADOPT UNIFORM RULES FOR THE  
3 GIVING OF TESTS AND MAY REQUIRE CERTIFICATION OF TRAINING TO ADMINISTER THE TESTS AS CONSIDERED NECESSARY.

4 (6) IF A PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT A PERSON HAS VIOLATED [SECTION 2], MEETS  
5 THE DEFINITION OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN [SECTION 1], OR HAS VIOLATED 61-8-805 AND A  
6 SAMPLE OF BLOOD, BREATH, OR OTHER BODILY SUBSTANCE IS TAKEN FROM THAT PERSON FOR ANY REASON, A PORTION  
7 OF THAT SAMPLE SUFFICIENT FOR ANALYSIS MUST BE PROVIDED TO A PEACE OFFICER IF REQUESTED FOR LAW  
8 ENFORCEMENT PURPOSES AND UPON ISSUANCE OF A SUBPOENA AS PROVIDED IN 46-4-301.

9

10 **NEW SECTION. SECTION 12. IGNITION INTERLOCK DEVICE -- ASSISTING IN STARTING AND OPERATING --**  
11 **CIRCUMVENTING -- PENALTY. (1) IT IS UNLAWFUL FOR A PERSON WHO IS SUBJECT TO A RESTRICTION UNDER [SECTION 14]**  
12 **TO OPERATE A VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK DEVICE.**

13 (2) A PERSON MAY NOT KNOWINGLY ASSIST A PERSON WHO IS RESTRICTED TO THE USE OF AN IGNITION  
14 INTERLOCK DEVICE TO START AND OPERATE THE RESTRICTED PERSON'S VEHICLE.

15 (3) A PERSON MAY NOT KNOWINGLY CIRCUMVENT THE OPERATION OF AN IGNITION INTERLOCK DEVICE.

16 (4) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION SHALL BE PUNISHED BY A FINE OF NOT MORE THAN  
17 \$500 OR BY IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR BOTH.

18 (5) THIS SECTION DOES NOT APPLY IF:

19 (A) THE STARTING OF A MOTOR VEHICLE OR THE REQUEST TO START A MOTOR VEHICLE EQUIPPED WITH AN  
20 IGNITION INTERLOCK DEVICE IS DONE FOR THE PURPOSE OF SAFETY OR MECHANICAL REPAIR OF THE DEVICE OR THE  
21 VEHICLE; AND

22 (B) THE PERSON SUBJECT TO THE RESTRICTION DOES NOT OPERATE THE VEHICLE.

23

24 **NEW SECTION. SECTION 13. DEPARTMENT RULES REGARDING IGNITION INTERLOCK DEVICES -- IGNITION**  
25 **INTERLOCK DEVICE PROVIDER REQUIREMENTS. (1) THE DEPARTMENT SHALL ADOPT RULES PROVIDING FOR THE APPROVAL**  
26 **OF IGNITION INTERLOCK DEVICES AND THE INSTALLATION, CALIBRATION, REPAIR, AND REMOVAL OF APPROVED DEVICES.**

27 (2) THE DEPARTMENT'S RULES MUST BE BASED ON FEDERAL STANDARDS ISSUED FOR SIMILAR DEVICES.

28 (3) AN IGNITION INTERLOCK DEVICE THAT IS APPROVED BY THE DEPARTMENT MUST ALSO:

29 (A) BE DESIGNED SO IT DOES NOT IMPEDE SAFE OPERATION OF THE VEHICLE;

30 (B) CORRELATE WELL WITH THE LEVEL ESTABLISHED FOR ALCOHOL IMPAIRMENT;

1 (C) WORK ACCURATELY AND RELIABLY IN AN UNSUPERVISED ENVIRONMENT AND UNDER EXTREME WEATHER  
2 CONDITIONS;

3 (D) REQUIRE A DEEP LUNG BREATH SAMPLE OR USE AN EQUALLY ACCURATE MEASURE OF BLOOD ALCOHOL  
4 CONCENTRATION EQUIVALENCE;

5 (E) RESIST TAMPERING AND SHOW EVIDENCE OF TAMPERING IF IT IS ATTEMPTED;

6 (F) BE DIFFICULT TO CIRCUMVENT;

7 (G) MINIMIZE INCONVENIENCE OF A SOBER USER;

8 (H) OPERATE RELIABLY OVER THE RANGE OF AUTOMOBILE ENVIRONMENTS AND IN CONNECTION WITH VARIOUS  
9 MANUFACTURING STANDARDS; AND

10 (I) BE MANUFACTURED BY A PERSON WHO IS ADEQUATELY INSURED FOR PRODUCT LIABILITY.

11 (4) AN IGNITION INTERLOCK DEVICE PROVIDER SHALL INCLUDE IN ANY LEASE AGREEMENT FOR AN IGNITION  
12 INTERLOCK DEVICE A WARNING THAT A PERSON WHO KNOWINGLY TAMPERS WITH, CIRCUMVENTS, OR OTHERWISE MISUSES  
13 THE DEVICE IS SUBJECT TO CRIMINAL PROSECUTION.

14  
15 **NEW SECTION. SECTION 14. DRIVING UNDER INFLUENCE -- PROBATIONARY DRIVER'S LICENSE. (1) A**  
16 **PROBATIONARY NONCOMMERCIAL DRIVER'S LICENSE MAY BE ISSUED TO A PERSON CONVICTED OF A FIRST OFFENSE FOR**  
17 **MISDEMEANOR DRIVING UNDER THE INFLUENCE UNLESS THE REPORT OF CONVICTION INCLUDES A STATEMENT THAT THE**  
18 **COURT DOES NOT RECOMMEND A PROBATIONARY LICENSE.**

19 **(2) IF RECOMMENDING A PROBATIONARY LICENSE FOR A PERSON CONVICTED OF A SECOND OR SUBSEQUENT**  
20 **OFFENSE FOR MISDEMEANOR DRIVING UNDER THE INFLUENCE, THE COURT SHALL FOR THE DURATION OF THE SUSPENSION**  
21 **UNDER 61-5-208:**

22 **(A) REQUIRE THE PERSON TO PARTICIPATE IN THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM PROVIDED**  
23 **FOR IN 44-4-1203 AND TO PAY THE FEES ASSOCIATED WITH THE PROGRAM;**

24 **(B) RESTRICT THE PERSON TO DRIVING ONLY A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION**  
25 **INTERLOCK DEVICE DURING THE PROBATIONARY PERIOD AND REQUIRE THE PERSON TO PAY THE REASONABLE COST OF**  
26 **LEASING, INSTALLING, AND MAINTAINING THE DEVICE; OR**

27 **(C) REQUIRE THE PERSON TO PARTICIPATE IN A COURT-APPROVED ALCOHOL OR DRUG DETECTION TESTING**  
28 **PROGRAM AND TO PAY THE FEES ASSOCIATED WITH THE TESTING PROGRAM.**

29  
30 **NEW SECTION. SECTION 15. UNLAWFUL POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER IN MOTOR**

1 VEHICLE ON HIGHWAY. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A PERSON COMMITS THE OFFENSE OF UNLAWFUL  
 2 POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN OR ON A MOTOR VEHICLE IF THE PERSON KNOWINGLY  
 3 POSSESSES AN OPEN ALCOHOLIC BEVERAGE CONTAINER WITHIN THE PASSENGER AREA OF A MOTOR VEHICLE ON A  
 4 HIGHWAY.

5 (2) THIS SECTION DOES NOT APPLY TO AN OPEN ALCOHOLIC BEVERAGE CONTAINER:

6 (A) IN A LOCKED GLOVE COMPARTMENT OR STORAGE COMPARTMENT;

7 (B) IN A MOTOR VEHICLE TRUNK OR LUGGAGE COMPARTMENT OR RACK, OR IN A TRUCK BED OR CARGO  
 8 COMPARTMENT;

9 (C) BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK;

10 (D) IN A CLOSED CONTAINER IN THE AREA OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK AND THAT  
 11 IS NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER; OR

12 (E) IN THE IMMEDIATE POSSESSION OF A PASSENGER:

13 (I) OF A BUS, TAXI, LIMOUSINE, OR PREARRANGED RIDE THAT IS USED FOR THE TRANSPORTATION OF PERSONS  
 14 FOR COMPENSATION AND THAT INCLUDES THE PROVISION OF A HIRED DRIVER; OR

15 (II) IN THE LIVING QUARTERS OF A CAMPER, TRAVEL TRAILER, OR MOTOR HOME.

16 (3) SUBSECTIONS (2)(A), (2)(B), (2)(C), AND (2)(D) APPLY ONLY TO TRANSPORTATION OF OPEN ALCOHOLIC  
 17 BEVERAGE CONTAINERS AND DO NOT ALLOW FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES IN THESE AREAS IN OR  
 18 ON A VEHICLE.

19 (4) (A) A PERSON CONVICTED OF THE OFFENSE OF UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE  
 20 CONTAINER IN A MOTOR VEHICLE SHALL BE FINED AN AMOUNT NOT TO EXCEED \$100.

21 (B) A VIOLATION OF THIS SECTION IS NOT A CRIMINAL OFFENSE WITHIN THE MEANING OF 3-1-317, 3-1-318,  
 22 45-2-101, 46-18-236, 61-8-104, AND 61-8-711 AND MAY NOT BE RECORDED OR CHARGED AGAINST A DRIVER'S RECORD,  
 23 AND AN INSURANCE COMPANY MAY NOT HOLD A VIOLATION OF THIS SECTION AGAINST THE INSURED OR INCREASE  
 24 PREMIUMS BECAUSE OF THE VIOLATION. THE SURCHARGES PROVIDED FOR IN 3-1-317, 3-1-318, AND 46-18-236 MAY NOT  
 25 BE IMPOSED FOR A VIOLATION OF THIS SECTION.

26  
 27 **NEW SECTION. SECTION 16. SUSPENSION OF IMPRISONMENT SENTENCE FOR DUI COURT PARTICIPATION.**

28 (1) IF A PERSON PARTICIPATES IN A DUI COURT, THE COURT MAY, AT THE COURT'S DISCRETION, SUSPEND ALL OR A  
 29 PORTION OF AN IMPRISONMENT SENTENCE UNDER [SECTION 3], EXCEPT FOR THE MANDATORY MINIMUM IMPRISONMENT  
 30 TERM.

1 (2) IF A PERSON PARTICIPATING IN A DUI COURT FAILS TO COMPLY WITH THE CONDITIONS IMPOSED BY THE DUI  
2 COURT, THE COURT SHALL REVOKE THE SUSPENDED IMPRISONMENT SENTENCE AND ANY SENTENCE SUBSEQUENTLY  
3 IMPOSED MUST COMMENCE FROM THE EFFECTIVE DATE OF THE REVOCATION.

4  
5 **NEW SECTION. SECTION 17. MANDATORY SUSPENSION OF LICENSE FOLLOWING CERTAIN IMPLIED CONSENT**  
6 **ACTION. (1) THE DEPARTMENT SHALL SUSPEND AN INDIVIDUAL'S DRIVER LICENSE IF THE DEPARTMENT RECEIVES A REPORT**  
7 **FOR AN IMPLIED CONSENT VIOLATION FROM LAW ENFORCEMENT OR ANOTHER REPORTING JURISDICTION THAT, PURSUANT**  
8 **TO [SECTION 8], AN INDIVIDUAL HAS REFUSED A TEST OR TESTS OF THE PERSON'S BLOOD, BREATH, OR OTHER BODILY**  
9 **SUBSTANCE FOR DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE**  
10 **PERSON'S BODY.**

11 (2) (A) EXCEPT AS PERMITTED BY LAW, A PERSON WHOSE LICENSE OR PRIVILEGE TO DRIVE A MOTOR VEHICLE ON  
12 THE PUBLIC HIGHWAYS HAS BEEN SUSPENDED MAY NOT HAVE THE LICENSE OR PRIVILEGE RENEWED OR RESTORED UNTIL  
13 THE REVOCATION OR SUSPENSION DURATION HAS BEEN COMPLETED.

14 (B) THE DEPARTMENT SHALL APPLY THE APPROPRIATE SANCTION TO THE DRIVER BASED ON THE REPORTED  
15 CONVICTION AND PRIOR OFFENSES.

16 (C) THE DRIVER SHALL PAY ALL REINSTATEMENT AND ADMINISTRATIVE FEES OWED TO THE DEPARTMENT BEFORE  
17 A DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IS RESTORED.

18 (D) THE DURATION OF THE SUSPENSION COMMENCES FROM THE DATE OF VIOLATION.

19 (E) IF A PERSON REFUSES TESTS FOR THE SAME INCIDENT, THE DEPARTMENT MAY NOT CONSIDER EACH A  
20 SEPARATE REFUSAL FOR PURPOSES OF SUSPENSION.

21 (F) THE DEPARTMENT MAY NOT ISSUE A PROBATIONARY LICENSE DURING THE SUSPENSION ISSUED UNDER THIS  
22 PART.

23 (3) (A) A PERSON WHO HAS AN IMPLIED CONSENT VIOLATION SHALL PAY THE DEPARTMENT AN ADMINISTRATIVE  
24 FEE OF \$300, WHICH MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT ESTABLISHED PURSUANT TO  
25 SUBSECTION (3)(B).

26 (B) THERE IS A BLOOD-DRAW SEARCH WARRANT PROCESSING ACCOUNT IN THE STATE SPECIAL REVENUE FUND  
27 ESTABLISHED PURSUANT TO 17-2-102(1)(B). MONEY PROVIDED TO THE DEPARTMENT OF JUSTICE PURSUANT TO THIS  
28 SUBSECTION (3) MUST BE DEPOSITED IN THE ACCOUNT AND MAY BE USED ONLY FOR PROVIDING FORENSIC ANALYSIS OF  
29 A DRIVER'S BLOOD TO DETERMINE THE PRESENCE OF ALCOHOL OR DRUGS.

30 (4) (A) UPON RECEIVING A REPORT OF AN IMPLIED CONSENT VIOLATION, THE DEPARTMENT SHALL:

- 1           (I) FOR A FIRST VIOLATION, SUSPEND THE DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR 6 MONTHS; OR  
 2           (II) FOR A SECOND VIOLATION, SUSPEND THE DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR 1 YEAR.  
 3           (B) IF A PERSON WHO REFUSES TO SUBMIT TO ONE OR MORE TESTS UNDER THIS SECTION IS THE HOLDER OF A  
 4 COMMERCIAL DRIVER'S LICENSE OR WAS DRIVING A COMMERCIAL VEHICLE AT THE TIME OF THE REFUSAL, IN ADDITION TO  
 5 ANY ACTION TAKEN AGAINST THE DRIVER'S NONCOMMERCIAL DRIVING PRIVILEGES, THE DEPARTMENT SHALL APPLY A  
 6 MAJOR OFFENSE TO THE DRIVING RECORD AND TAKE THE APPROPRIATE SUSPENSION AS PROVIDED IN 61-8-802.  
 7           (5) A NONRESIDENT DRIVER'S LICENSE SEIZED UNDER THIS SECTION MUST BE SENT BY THE DEPARTMENT TO THE  
 8 LICENSING AUTHORITY OF THE NONRESIDENT'S HOME STATE WITH A REPORT OF THE NONRESIDENT'S REFUSAL TO SUBMIT  
 9 TO ONE OR MORE TESTS.  
 10           (6) THE DEPARTMENT MAY RECOGNIZE THE SEIZURE OF A LICENSE OF A TRIBAL MEMBER BY A PEACE OFFICER  
 11 ACTING UNDER THE AUTHORITY OF A TRIBAL GOVERNMENT OR AN ORDER ISSUED BY A TRIBAL COURT SUSPENDING,  
 12 REVOKING, OR REINSTATING A LICENSE OR ADJUDICATING A LICENSE SEIZURE IF THE ACTIONS ARE CONDUCTED PURSUANT  
 13 TO TRIBAL LAW OR REGULATION REQUIRING ALCOHOL OR DRUG TESTING OF MOTOR VEHICLE OPERATORS AND THE  
 14 CONDUCT GIVING RISE TO THE ACTIONS OCCURRED WITHIN THE EXTERIOR BOUNDARIES OF A FEDERALLY RECOGNIZED  
 15 INDIAN RESERVATION IN THIS STATE. ACTION BY THE DEPARTMENT UNDER THIS SUBSECTION IS NOT REVIEWABLE UNDER  
 16 [SECTION 9].

17  
 18           **SECTION 18. SECTION 23-2-535, MCA, IS AMENDED TO READ:**

19           **"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests. (1)**

20           The inferences contained in ~~61-8-401(4)~~ [section 2(3)] apply to any criminal action or proceeding arising out of  
 21 acts alleged to have been committed in violation of 23-2-523(2).

22           (2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act  
 23 alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing  
 24 on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at  
 25 the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have  
 26 been committed in violation of 23-2-523(2).

27           (3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood,  
 28 breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will  
 29 be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have  
 30 been committed in violation of 23-2-523(2).

1 (4) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition  
 2 of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to a person charged with  
 3 violation of 23-2-523(2).

4 (5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in ~~61-8-401(3)~~  
 5 [section 1]."

6

7 **SECTION 19.** SECTION 44-4-1202, MCA, IS AMENDED TO READ:

8 **"44-4-1202. Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of  
 9 this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege  
 10 shall accept the corresponding responsibilities.

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

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

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

16 (c) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to  
 17 repeat DUI offenders or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous  
 18 drugs was a contributing factor in the commission of the crime; and

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

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

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

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

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

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

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

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

1 (i) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol  
 2 or dangerous drugs was a contributing factor in the commission of the crime, including but not limited to a second  
 3 or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or  
 4 dangerous drugs for a period of time; and

5 (ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous  
 6 drugs:

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

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

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

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

16 (h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant test  
 17 event."

18

19 **SECTION 20. SECTION 44-4-1203, MCA, IS AMENDED TO READ:**

20 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety  
 21 and drug monitoring program within the department to be administered by the attorney general.

22 (2) (a) The core components of the sobriety program must include use of a primary testing methodology  
 23 for the presence of alcohol or dangerous drugs that:

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

25 (ii) is available at an affordable cost.

26 (b) Primary testing methods for alcohol include twice-a-day, in-person breath testing at a central location  
 27 and other methodologies approved by the department. Primary testing methodologies must utilize devices that  
 28 are capable of determining alcohol concentrations below an equivalent breath alcohol concentration of 0.010  
 29 grams per 210 liters of breath. If the primary testing methodology is a breath alcohol analysis, the device utilized  
 30 must be listed on the most recent conforming products list for evidential breath alcohol measurement devices as

1 published by the national highway traffic safety administration.

2 (b)(c) In cases of hardship or when a sobriety program participant is subject to less-stringent testing  
3 requirements, testing methodologies with timely sanctions for noncompliance may be utilized. Hardship testing  
4 methodologies include the use of transdermal alcohol monitoring devices, remote breath test devices, and other  
5 methods approved by the department. A hardship testing methodology may be used if the court or agency  
6 determines that hardship factors, including but not limited to distance from or lack of access to a primary testing  
7 method site, prevent the reasonable use of a primary testing method.

8 (3) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of the  
9 following categories:

10 (a) the program is included in the federal registry of evidence-based programs and practices;

11 (b) the program has been reported in a peer-reviewed journal as having positive effects on the primary  
12 targeted outcome; or

13 (c) the program has been documented as effective by informed experts and other sources.

14 (4) If a law enforcement agency chooses to participate in the sobriety program, the department shall  
15 assist in the creation and administration of the program in the manner provided in this part. The department shall  
16 also assist entities participating in the program in determining alternatives to incarceration.

17 (5) (a) If a law enforcement agency participates in the program, the law enforcement agency may  
18 designate an entity to provide the testing services or to take any other action required or authorized to be  
19 provided by the law enforcement agency pursuant to this part, except that the law enforcement agency's designee  
20 may not determine whether to participate in the sobriety program.

21 (b) The law enforcement agency shall establish the testing locations and times for the county but must  
22 have at least one testing location and two daily testing times approximately 12 hours apart.

23 ~~(6) Any efforts by the department to alter or modify the core components of the statewide sobriety~~  
24 ~~program must include a documented strategy for achieving and measuring the effectiveness of the proposed~~  
25 ~~modifications. Before core components may be modified, a pilot program with defined objectives and timelines~~  
26 ~~must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the~~  
27 ~~core components are monitored. The data collected from the pilot program must be assessed by the department,~~  
28 ~~and a determination must be made as to whether the stated goals were achieved and whether the modifications~~  
29 ~~should be formally implemented in the sobriety program.~~

30 (7)(6) All alcohol or drug testing ordered by a court must utilize the data management technology plan

1 provided for in 44-4-1204(4). All alcohol or drug testing ordered by a court must utilize the data management  
 2 technology system in accordance with the data management technology plan provided for in 44-4-1204(4). The  
 3 data is owned by the state and maintained by the department. Approved testing methodologies, whether  
 4 designated as primary or hardship, must be capable of electronically transferring data directly into the data  
 5 management technology system through a department-approved interface.

6 ~~(6)(7) Alcohol~~ In order to provide a more complete record of drug and alcohol testing results, any alcohol  
 7 or drug testing required by the department of corrections pursuant to this part other state or local agencies must  
 8 may utilize the data management technology plan provided for in 44-4-1204(4) system."

9

10 **SECTION 21. SECTION 44-4-1205, MCA, IS AMENDED TO READ:**

11 **"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program --**  
 12 **probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may  
 13 stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety  
 14 program.

15 (b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of~~  
 16 ~~61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of  
 17 ~~61-8-404~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in  
 18 violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program,  
 19 the court may, upon the individual's ~~successful completion of a court-approved chemical dependency treatment~~  
 20 ~~program and obtaining~~ proof of insurance pursuant to 61-6-301, notify the department that as a participant in the  
 21 sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302,  
 22 notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a  
 23 suspension period before a probationary license may be issued.

24 (c) If the individual fails to comply with the requirements of the sobriety program, the court may notify  
 25 the department of the individual's noncompliance and direct the department to withdraw the individual's  
 26 probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

27 (2) Upon an offender's participation in the sobriety program and payment of the fees required by  
 28 44-4-1204:

29 (a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of~~  
 30 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of

1 ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence  
2 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of  
3 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the  
4 crime;

5 (b) the court may condition the granting of a suspended execution of sentence or probation for an  
6 individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1],  
7 a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or  
8 aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other  
9 statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a  
10 contributing factor in the commission of the crime;

11 (c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving  
12 under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section  
13 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a  
14 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse  
15 of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

16 (d) the department of corrections may establish conditions for conditional release for ~~a violation of~~  
17 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of  
18 ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence  
19 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of  
20 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the  
21 crime.

22 (3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release,  
23 suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for  
24 an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or  
25 neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the  
26 crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the  
27 statute.

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

30 (a) is charged with ~~violating 61-8-465~~ aggravated driving under the influence as defined in [section 1];

1 or

2 (b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b),  
 3 (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; and

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

5 (A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a),  
 6 (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

7 (B) has been convicted of a violation of a statute or regulation in another state or on a federally  
 8 recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c),  
 9 (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

10 (C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state,  
 11 in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406,~~  
 12 ~~61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in  
 13 [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

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

15

16 **SECTION 22. SECTION 45-5-106, MCA, IS AMENDED TO READ:**

17 **"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular  
 18 homicide while under the influence if the person negligently causes the death of another human being while the  
 19 person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)].

20 (2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as  
 21 described in 45-5-102(1)(b).

22 (3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state  
 23 prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a  
 24 sentence may not be deferred."

25

26 **SECTION 23. SECTION 45-5-205, MCA, IS AMENDED TO READ:**

27 **"45-5-205. Negligent vehicular assault -- penalty.** (1) A person who negligently operates a vehicle,  
 28 other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other  
 29 drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury  
 30 to another commits the offense of negligent vehicular assault.

1 (2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be  
2 fined an amount not to exceed \$1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and  
3 shall be ordered to pay restitution as provided in 46-18-241.

4 (3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to  
5 another shall be fined an amount not to exceed \$10,000 or incarcerated for a term not to exceed 10 years, or  
6 both, and shall be ordered to pay restitution as provided in 46-18-241.

7 (4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of  
8 incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the  
9 fine or restitution, the term of incarceration may be imposed."

10

11 **SECTION 24. SECTION 45-5-207, MCA, IS AMENDED TO READ:**

12 **"45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that  
13 creates a substantial risk of death or serious bodily injury to another commits the offense of criminal  
14 endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any  
15 steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing,  
16 or manufacturing equipment.

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

19 (3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed  
20 \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

21 (4) As used in this section, "alcohol concentration" has the meaning provided in [section 1]."

22

23 **SECTION 25. SECTION 45-5-628, MCA, IS AMENDED TO READ:**

24 **"45-5-628. Criminal child endangerment.** (1) A person commits the offense of criminal child  
25 endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily  
26 injury to a child under 14 years of age by:

27 (a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening  
28 condition;

29 (b) placing a child in the physical custody of another who the person knows has previously purposely  
30 or knowingly caused bodily injury to a child;

1 (c) placing a child in the physical custody of another who the person knows has previously committed  
2 an offense against the child under 45-5-502 or 45-5-503;

3 (d) manufacturing or distributing dangerous drugs in a place where a child is present;

4 (e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401,~~  
5 ~~61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in  
6 [section 1] with a child in the vehicle; or

7 (f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic  
8 failure to thrive.

9 (2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the  
10 other person's custody pursuant to a court order.

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

13 (4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that  
14 is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."  
15

16 **SECTION 26. SECTION 46-16-130, MCA, IS AMENDED TO READ:**

17 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who  
18 has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified  
19 period of time based on one or more of the following conditions:

20 (i) that the defendant may not commit any offense;

21 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a  
22 relationship to the conduct upon which the charge against the defendant is based;

23 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include  
24 treatment, counseling, training, or education;

25 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;

26 or

27 (v) any other reasonable conditions.

28 (b) The agreement must be in writing, must be signed by the parties, and must state that the defendant  
29 waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the  
30 admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and

1 there is a trial on the charge.

2 (c) The prosecution must be deferred for the period specified in the agreement unless there has been  
3 a violation of its terms.

4 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon  
5 expiration and compliance with the terms of the agreement.

6 (2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine  
7 the appropriateness of proceedings pursuant to Title 53, chapter 21.

8 (3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of  
9 prosecution may be entered into only after the prosecutor provides notice to the court.

10 (4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ section 2 or  
11 aggravated driving under the influence as defined in [section 1] may not be deferred."

12

13 **SECTION 27. SECTION 46-18-201, MCA, IS AMENDED TO READ:**

14 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an  
15 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition  
16 of sentence, except as otherwise specifically provided by statute, for a period:

17 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

18 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
19 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
20 of whether any other conditions are imposed.

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

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

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

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

- 1 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in  
2 46-8-113;
- 3 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a  
4 state prison to be designated by the department of corrections;
- 5 (iv) commitment of:
- 6 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a  
7 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years  
8 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),  
9 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or
- 10 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense  
11 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in  
12 an appropriate correctional facility or program;
- 13 (v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and  
14 for a period of time determined by the department of corrections, but not exceeding the period of state supervision  
15 of the person;
- 16 (vi) commitment of an offender to the department of corrections with the requirement that immediately  
17 subsequent to sentencing or disposition the offender is released to community supervision and that any  
18 subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or
- 19 (vii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).
- 20 (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.
- 21 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the  
22 sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the  
23 deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection  
24 (1)(a) or (2) may include but are not limited to:
- 25 (a) limited release during employment hours as provided in 46-18-701;
- 26 (b) incarceration in a detention center not exceeding 180 days;
- 27 (c) conditions for probation;
- 28 (d) payment of the costs of confinement;
- 29 (e) payment of a fine as provided in 46-18-231;
- 30 (f) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 2 (h) with the approval of the facility or program, an order that the offender be placed in a community  
3 corrections facility or program as provided in 53-30-321;
- 4 (i) with the approval of the prerelease center or prerelease program and confirmation by the department  
5 of corrections that space is available and that the offender is a suitable candidate, an order that the offender be  
6 placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not  
7 to exceed 1 year;
- 8 (j) community service;
- 9 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 10 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 (m) participation in a day reporting program provided for in 53-1-203;
- 12 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part  
13 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or~~  
14 ~~subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any  
15 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a  
16 contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the  
17 abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the  
18 commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent  
19 violation of the statute;
- 20 (o) participation in a restorative justice program approved by court order and payment of a participation  
21 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 22 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
23 protection of the victim or society;
- 24 (q) with approval of the program and confirmation by the department of corrections that space is  
25 available, an order that the offender be placed in a residential treatment program; or
- 26 (r) any combination of the restrictions or conditions listed in this subsection (4).
- 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) When imposing a sentence under this section that includes incarceration in a detention facility or the  
12 state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or  
13 sentencing.

14 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."  
15

16 **SECTION 28. SECTION 46-18-236, MCA, IS AMENDED TO READ:**

17 **"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration. (1)**  
18 Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon  
19 conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in  
20 addition to other taxable court costs, fees, or fines, as follows:

21 (a) \$15 for each misdemeanor charge;

22 (b) the greater of \$20 or 10% of the fine levied for each felony charge; and

23 (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~  
24 ~~61-8-411~~ or [section 2].

25 (2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay  
26 the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of  
27 the charge imposed by this section.

28 (3) The charges imposed by this section are not fines and must be imposed in addition to any fine and  
29 may not be used in determining the jurisdiction of any court.

30 (4) When the payment of a fine is to be made in installments over a period of time, the charges imposed

1 by this section must be collected from the first payment made and each subsequent payment as necessary if the  
2 first payment is not sufficient to cover the charges.

3 (5) The charges collected under subsection (1), except those collected under subsections (1)(a) and  
4 (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer.  
5 If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under  
6 subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's  
7 court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the  
8 county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county  
9 government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be  
10 deposited with the finance officer or treasurer of the consolidated government.

11 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections  
12 (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of  
13 salaries of the city or town attorney and deputies.

14 (b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a)  
15 and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The  
16 county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys  
17 and for the payment of other salaries in the office of the county attorney, and any funds not needed for those  
18 salaries may be used for the payment of any other county salaries.

19 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may  
20 retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate  
21 program, including a program operated by a private, nonprofit organization, that provides the services specified  
22 in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

23 (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge  
24 collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by  
25 the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to  
26 allocation under 46-18-251.

27 (c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim  
28 and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims  
29 compensation and assistance program in the department of justice for deposit in the account provided for in  
30 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

1           **46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture --**

2 **administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original  
3 jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond  
4 or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

5           (a) \$15 for each misdemeanor charge;

6           (b) the greater of \$20 or 10% of the fine levied for each felony charge; and

7           (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~  
8 ~~61-8-411~~ or [section 2].

9           (2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay  
10 the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of  
11 the charge imposed by this section.

12           (3) The charges imposed by this section are not fines and must be imposed in addition to any fine and  
13 may not be used in determining the jurisdiction of any court.

14           (4) When the payment of a fine is to be made in installments over a period of time, the charges imposed  
15 by this section must be collected from the first payment made and each subsequent payment as necessary if the  
16 first payment is not sufficient to cover the charges.

17           (5) The charges collected under subsection (1), except those collected under subsections (1)(a) and  
18 (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer.  
19 If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under  
20 subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's  
21 court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the  
22 county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county  
23 government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be  
24 deposited with the finance officer or treasurer of the consolidated government.

25           (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections  
26 (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of  
27 salaries of the city or town attorney and deputies.

28           (b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a)  
29 and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The  
30 county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys

1 and for the payment of other salaries in the office of the county attorney, and any funds not needed for those  
2 salaries may be used for the payment of any other county salaries.

3 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may  
4 retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate  
5 program, including a program operated by a private, nonprofit organization, that provides the services specified  
6 in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

7 (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge  
8 collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by  
9 the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to  
10 allocation under 46-18-251.

11 (c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim  
12 and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims  
13 compensation and assistance program in the department of justice for deposit in the state general fund to be used  
14 to provide services to crime victims as provided in Title 53, chapter 9, part 1."

15

16 **SECTION 29. SECTION 50-46-320, MCA, IS AMENDED TO READ:**

17 **"50-46-320. Limitations of act.** (1) This part does not permit:

18 (a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control  
19 of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

20 (b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

21 (i) in a health care facility as defined in 50-5-101;

22 (ii) in a school or a postsecondary school as defined in 20-5-402;

23 (iii) on or in any property owned by a school district or a postsecondary school;

24 (iv) on or in any property leased by a school district or a postsecondary school when the property is being  
25 used for school-related purposes;

26 (v) in a school bus or other form of public transportation;

27 (vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

28 (vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

29 (viii) at a public park, public beach, public recreation center, or youth center;

30 (ix) in or on the property of any church, synagogue, or other place of worship;

1 (x) in plain view of or in a place open to the general public; or  
2 (xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare  
3 of children.

4 (2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana  
5 or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a  
6 manner that is visible from the street or other public area.

7 (3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows  
8 use of marijuana by a registered cardholder.

9 (4) Nothing in this part may be construed to require:

10 (a) a government medical assistance program, a group benefit plan that is covered by the provisions of  
11 Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to  
12 reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

13 (b) an employer to accommodate the use of marijuana by a registered cardholder;

14 (c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular  
15 activities; or

16 (d) a landlord to allow a tenant who is a registered cardholder, provider, marijuana-infused products  
17 provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana  
18 concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

19 (5) Nothing in this part may be construed to:

20 (a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for  
21 a debilitating medical condition; or

22 (b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or  
23 discrimination pursuant to 49-1-102.

24 (6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or  
25 employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused  
26 products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

27 (7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid  
28 registry identification card is driving under the influence of marijuana may apply for a search warrant to require  
29 the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~  
30 [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml or more may be charged with a

1 violation of ~~61-8-401 or 61-8-411~~ section 2(1)(a) or (1)(e).

2 (b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection  
3 (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted  
4 of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense  
5 with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ section 2.

6 A revocation under this section must be for the period of suspension or revocation set forth:

7 (i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ section 2(1)(a), (1)(b), (1)(c), (1)(d),  
8 or (1)(e); or

9 (ii) in ~~61-8-410~~ section 3(3) for a violation of ~~61-8-410~~ section 2(1)(f).

10 (c) If an individual's registry identification card or license is subject to renewal during the revocation  
11 period, the individual may not renew the card until the full revocation period has elapsed. The card or license may  
12 be renewed only if the individual submits all materials required for renewal.

13 (8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject  
14 to revocation of the person's license from the date of the violation until a period of up to 1 year after the  
15 department of revenue certifies compliance with 15-64-103 or 15-64-104."

16

17 **SECTION 30. SECTION 53-9-103, MCA, IS AMENDED TO READ:**

18 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

19 (1) "Claimant" means any of the following claiming compensation under this part:

20 (a) a victim;

21 (b) a dependent of a deceased victim; or

22 (c) an authorized person acting on behalf of any of them.

23 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for  
24 economic loss otherwise compensable under this part that the claimant has received or that is readily available  
25 to the claimant from:

26 (a) the offender;

27 (b) the government of the United States or any agency thereof, a state or any of its political subdivisions,  
28 or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them  
29 excess or secondary to benefits under this part;

30 (c) social security, medicare, and medicaid;

- 1 (d) workers' compensation;
- 2 (e) wage continuation programs of any employer;
- 3 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of  
4 the criminally injurious conduct;
- 5 (g) a contract, including an insurance contract, providing hospital and other health care services or  
6 benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for  
7 benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are  
8 a primary source.
- 9 (h) a crime victims compensation program operated by the state in which the victim was injured or killed  
10 that compensates residents of this state injured or killed in that state; or
- 11 (i) any other third party.
- 12 (3) "Criminally injurious conduct" means conduct that:
- 13 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331,  
14 committed outside of the United States against a resident of this state;
- 15 (b) results in bodily injury or death or involves domestic violence in a home where minor children were  
16 present; and
- 17 (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person  
18 engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally  
19 injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle  
20 unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires  
21 the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a  
22 motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor  
23 vehicle while under the influence, as that term is defined in ~~61-8-401~~ section 1; or
- 24 (d) is committed in a state without a crime victims compensation program that covers a resident of this  
25 state if the conduct meets the requirements in subsections (3)(b) and (3)(c).
- 26 (4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or  
27 partially dependent upon the victim for care or support and includes a child of the victim conceived before the  
28 victim's death but born after the victim's death, including a child that is conceived as a result of the criminally  
29 injurious conduct.
- 30 (5) "Office" means the office of victims services established in 2-15-2016.

- 1 (6) "Victim" means:
- 2 (a) a person who suffers bodily injury or death as a result of:
- 3 (i) criminally injurious conduct;
- 4 (ii) the person's good faith effort to prevent criminally injurious conduct; or
- 5 (iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally
- 6 injurious conduct; or
- 7 (b) a minor child present in a home where domestic violence occurred."
- 8

9 **SECTION 31. SECTION 61-1-101, MCA, IS AMENDED TO READ:**

10 **"61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following

11 definitions apply:

12 (1) (a) "Authorized agent" means a person who has executed a written agreement with the department

13 and is specifically authorized by the department to electronically access and update the department's motor

14 vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or

15 purposes on behalf of a third party.

16 (b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited

17 partnership, limited liability company, association, joint venture, state agency, local government unit, another state

18 government, the United States, a political subdivision of this or another state, or any other legal or commercial

19 entity.

20 (2) "Authorized agent agreement" means the written agreement executed between an authorized agent

21 and the department that sets the technical and operational program standards, compliance criteria, payment

22 options, and service expectations by which the authorized agent is required to operate in performing specific

23 motor vehicle or driver-related record functions.

24 (3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the

25 transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the

26 transportation of persons for compensation.

27 (4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited

28 liability company, or other legal entity recognized under state law.

29 (b) The term does not include an individual.

30 (5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to

1 an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a  
2 cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

3 (b) The term does not include a truck canopy cover or topper.

4 (6) "CDLIS driver record" means the electronic record of a person's commercial driver's license status  
5 and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

6 (7) "Certificate of title" means the paper record issued by the department or by the appropriate agency  
7 of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons  
8 and the motor vehicle specifically described in the record and that provides notice of a perfected security interest  
9 in the motor vehicle.

10 (8) "Commercial driver's license" means:

11 (a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate  
12 a class of commercial motor vehicle; or

13 (b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid  
14 commercial driver's license.

15 (9) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in  
16 commerce to transport passengers or property if the vehicle:

17 (i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more,  
18 whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

19 (ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is  
20 greater;

21 (iii) is designed to transport at least 16 passengers, including the driver;

22 (iv) is a school bus; or

23 (v) is of any size and is used in the transportation of hazardous materials.

24 (b) The following vehicles are not commercial motor vehicles:

25 (i) an authorized emergency vehicle:

26 (A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

27 (B) operated when responding to or returning from an emergency call or operated in another official  
28 capacity;

29 (ii) a vehicle:

30 (A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

1 (B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana  
2 within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles  
3 of the farm, including any area within that perimeter that is in the adjoining state; and

4 (C) not used to transport goods for compensation or for hire; or

5 (iii) a vehicle operated for military purposes by active duty military personnel, a member of the military  
6 reserves, a member of the national guard on active duty, including personnel on full-time national guard duty,  
7 personnel in part-time national guard training, and national guard military technicians, or active duty United States  
8 coast guard personnel.

9 (c) For purposes of this subsection (9):

10 (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or  
11 crops or the raising of livestock owned by or under the direct control of that person;

12 (ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight  
13 of a combination or articulated vehicle;

14 (iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of  
15 a single vehicle; and

16 (iv) "school bus" has the meaning provided in 49 CFR 383.5.

17 (10) "Commission" means the state transportation commission.

18 (11) "Custom-built motorcycle" means a motorcycle that is equipped with:

19 (a) an engine that was manufactured 20 years prior to the current calendar year and that has been  
20 altered from the manufacturer's original design; or

21 (b) an engine that was manufactured to resemble an engine 20 or more years old and that has been  
22 constructed in whole or in part from nonoriginal materials.

23 (12) "Custom vehicle" means a motor vehicle other than a motorcycle that:

24 (a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

25 (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current  
26 calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least  
27 25 years old; and

28 (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal  
29 materials.

30 (13) "Customer identification number" means:

1 (a) a driver's license or identification card number when the customer is an individual who has been  
2 issued a driver's license or identification card by a state driver licensing authority;

3 (b) a federal employer or tax identification number when the customer is a business entity that has been  
4 issued a federal employer or tax identification number;

5 (c) the identification number assigned by the secretary of state to a business entity authorized to do  
6 business in this state under Title 35 if the customer is a business entity that does not have a federal employer  
7 or tax identification number other than a social security number; or

8 (d) if the customer has not been issued one of the numbers described in subsections (13)(a) through  
9 (13)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

10 (14) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the  
11 business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers,  
12 semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special  
13 mobile equipment that is not registered in the name of the person.

14 (b) The term does not include the following:

15 (i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting  
16 under a judgment or order of any court of competent jurisdiction;

17 (ii) employees of the persons included in subsection (14)(b)(i) when engaged in the specific performance  
18 of their duties as employees; or

19 (iii) public officers while performing or in the operation of their duties.

20 (15) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load  
21 to be carried on the vehicle as stated by the registrant in the application for registration.

22 (16) "Department" means the department of justice acting directly or through its duly authorized officers  
23 or agents.

24 (17) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer  
25 tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

26 (18) "Domiciled" means a place where:

27 (a) an individual establishes residence;

28 (b) a business entity maintains its principal place of business;

29 (c) the business entity's registered agent maintains an address; or

30 (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer,

1 or pole trailer that it owns or leases.

2 (19) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as  
3 maintained by the department on the individual Montana driving record and the CDLIS driver record for that  
4 person.

5 (20) "Driver" means a person who drives or is in actual physical control of a vehicle.

6 (21) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by  
7 the laws of this state, including:

8 (a) any temporary license or learner license;

9 (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

10 (c) any nonresident's driving privilege;

11 (d) a motorcycle endorsement; or

12 (e) a commercial driver's license.

13 (22) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is  
14 self-balancing, and is designed to transport only one person with an electric propulsion system that limits the  
15 maximum speed of the device to 12 1/2 miles an hour.

16 (23) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either  
17 directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which  
18 a remuneration is obtained or derived for transportation service.

19 (24) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or  
20 persons and golf equipment and that has an average speed of less than 15 miles per hour.

21 (b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability  
22 insurance requirements under this title.

23 (25) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the  
24 vehicle.

25 (26) "Hazardous material" means:

26 (a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be  
27 placarded under 49 CFR, part 172; or

28 (b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

29 (27) "Highway" or "public highway" means the entire width between the boundary lines of every publicly  
30 maintained way when any part of the publicly maintained way is open to the use of the public for purposes of

1 vehicular travel.

2 (28) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make  
3 arrests for violations of traffic regulations.

4 (29) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively  
5 used by the owner of the vehicle in the conduct of the owner's agricultural operations.

6 (30) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

7 (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

8 (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain,  
9 commonly referred to as a donor vehicle.

10 (31) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility  
11 vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

12 (32) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported,  
13 that:

14 (a) has four wheels;

15 (b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified  
16 by the manufacturer;

17 (c) is propelled by its own power, using an electric motor or other device that transforms stored electrical  
18 energy into the motion of the vehicle;

19 (d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power  
20 grid or from renewable electrical energy sources;

21 (e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

22 (f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle  
23 identification number as provided in 49 CFR, part 565; and

24 (g) is equipped as provided in 61-9-432.

25 (33) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed  
26 electric vehicle or a golf cart issued under or granted by the laws of this state, including:

27 (a) a temporary license or learner license;

28 (b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of  
29 61-5-122, whether or not the person holds a valid driver's license; and

30 (c) a nonresident's similarly restricted driving privilege.

1 (34) "Manufactured home" has the meaning provided in 15-24-201.

2 (35) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers,  
3 semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular  
4 business.

5 (36) "Manufacturer's certificate of origin" means the original paper record produced and issued by the  
6 manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and  
7 transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must  
8 establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of  
9 ownership of the vehicle to the person or persons named in the certificate.

10 (37) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported,  
11 that:

12 (i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

13 (ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical  
14 energy into the motion of the vehicle;

15 (iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power  
16 grid or from renewable electrical energy sources;

17 (iv) is fully enclosed and includes at least one door for entry;

18 (v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

19 (vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle  
20 identification number as provided in 49 CFR, part 565;

21 (vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that  
22 indicates the vehicle's maximum speed rating; and

23 (viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

24 (b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and  
25 registration under Title 61, chapter 3.

26 (c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

27 (38) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

28 (39) "Montana resident" means:

29 (a) an individual who resides in Montana as determined under 1-1-215; or

30 (b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a

1 registered agent in this state.

2 (40) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any  
3 machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal  
4 source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

5 (b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard  
6 or any successor federal agency.

7 (41) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by  
8 a court that are operating motor vehicles on a public highway in this state for the transportation of property for  
9 hire on a commercial basis.

10 (b) The term does not include motor carriers regulated under Title 69, chapter 12.

11 (42) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that  
12 is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or  
13 more attachments and a seat for the conveyance of a passenger.

14 (b) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

15 (c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been  
16 modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

17 (d) The term does not include a tractor, a bicycle or a moped as defined in 61-8-102, a motorized  
18 nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

19 (43) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces  
20 5 horsepower or less.

21 (b) The term does not include a bicycle or a moped, as defined in 61-8-102, or a motorized nonstandard  
22 vehicle.

23 (44) "Motor home" means a motor vehicle:

24 (a) designed to provide temporary living quarters, built as an integral part of or permanently attached to  
25 a self-propelled motor vehicle chassis or van;

26 (b) containing permanently installed independent life support systems that meet the ANSIA/A119.2  
27 standard; and

28 (c) providing at least four of the following types of facilities:

29 (i) cooking, refrigeration, or icebox;

30 (ii) self-contained toilet;

- 1 (iii) heating or air conditioning, or both;
- 2 (iv) potable water supply, including a faucet and sink; or
- 3 (v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.
- 4 (45) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported,
- 5 that:
- 6 (i) is propelled by its own power, using an internal combustion engine or an electric motor;
- 7 (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and
- 8 (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a
- 9 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.
- 10 (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a
- 11 "pocket rocket".
- 12 (c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility
- 13 device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for
- 14 use by a physically disabled person.
- 15 (46) (a) "Motor vehicle" means:
- 16 (i) a vehicle propelled by its own power and designed or used to transport persons or property on the
- 17 highways of the state;
- 18 (ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or
- 19 (iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated
- 20 pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.
- 21 (b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive
- 22 mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically
- 23 propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means
- 24 of mobility for that person.
- 25 (47) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or
- 26 equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as
- 27 the result of a retail sale.
- 28 (48) "Nonresident" means a person who is not a Montana resident.
- 29 (49) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered
- 30 as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle

1 club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

2 (b) The term does not include operation of a motor vehicle for routine or ordinary household  
3 maintenance, employment, education, or other similar purposes.

4 (50) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country  
5 travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to  
6 motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land  
7 transportation deriving motive power from any source other than muscle or wind.

8 (b) The term does not include:

9 (i) vehicles designed primarily for travel on, over, or in the water;

10 (ii) snowmobiles; or

11 (iii) motor vehicles designed to transport persons or property on the highways unless the vehicle is used  
12 for off-road recreation on public lands.

13 (51) "Operator" means a person who is in actual physical control of a motor vehicle.

14 (52) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an  
15 agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions  
16 stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the  
17 event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,  
18 for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the  
19 person in whom is vested the right of possession or control.

20 (53) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

21 (54) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering  
22 a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting,  
23 standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

24 (55) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached  
25 to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle  
26 and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members  
27 capable generally of sustaining themselves as beams between the supporting connections.

28 (56) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for  
29 violations of traffic regulations.

30 (57) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having

1 a seat or saddle on which the operator sits.

2 (b) The term does not include golf carts.

3 (58) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on  
4 stationary rails.

5 (59) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars  
6 coupled to the engine, that is operated on rails.

7 (b) The term does not include streetcars.

8 (60) "Recreational vehicle" includes a motor home, travel trailer, or camper.

9 (61) "Registration" or "register" means the act or process of creating an electronic record, maintained by  
10 the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration  
11 decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

12 (62) "Registration decal" means an adhesive sticker produced by the department and issued by the  
13 department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole  
14 trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the  
15 registration period indicated on the sticker as recorded by the department under 61-3-101.

16 (63) "Registration receipt" means a paper record that is produced and issued or, if authorized by the  
17 department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer  
18 to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title  
19 for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the  
20 vehicle for the registration period indicated in the receipt.

21 (64) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer,  
22 motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes  
23 other than resale.

24 (65) "Revocation" means the termination by action of the department of a person's driver's license,  
25 privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license  
26 for a period of time designated by law, during which the license or privilege may not be renewed, restored, or  
27 exercised. An application for a new license may be presented and acted on by the department after the expiration  
28 of the period of the revocation.

29 (66) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular  
30 travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways,

1 the term refers to any roadway separately but not to all roadways collectively.

2 (67) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

3 (b) The term does not include a canoe or kayak propelled by wind.

4 (68) "School zone" means an area near a school beginning at the school's front door, encompassing the  
5 campus and school property, and including the streets directly adjacent to the school property and for as many  
6 blocks surrounding the school as determined by the local authority establishing a special speed limit under  
7 61-8-310(1)(d).

8 (69) "Sell" means to transfer ownership from one person to another person or from a dealer to another  
9 person for consideration.

10 (70) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for  
11 carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that  
12 of its load rests on or is carried by another vehicle.

13 (71) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding  
14 accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that  
15 is not otherwise registered or licensed under the laws of the state of Montana.

16 (72) "Special mobile equipment" means a vehicle not designed for the transportation of persons or  
17 property on the highways but incidentally operated or moved over the highways, including road construction or  
18 maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is  
19 permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this  
20 subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

21 (73) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

22 (i) was not originally constructed under a distinctive make, model, or type by a generally recognized  
23 manufacturer of motor vehicles;

24 (ii) has been structurally modified so that it does not have the same appearance as similar vehicles from  
25 a generally recognized manufacturer of motor vehicles;

26 (iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from  
27 other vehicles;

28 (iv) has been constructed or assembled by using major component parts from one or more manufactured  
29 vehicles and that cannot be identified as a specific make or model; or

30 (v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

1 (b) The term does not include a motor vehicle that has been repaired or restored to its original design  
2 by replacing parts.

3 (74) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is  
4 constructed on a truck chassis or that has special features for occasional off-road use.

5 (b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

6 (75) (a) "Stop", when required, means complete cessation from movement.

7 (b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle,  
8 whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the  
9 directions of a police officer, highway patrol officer, or traffic control sign or signal.

10 (76) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the  
11 dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when  
12 space at the dealer's established place of business is not available.

13 (77) "Street" means the entire width between the boundary lines of every publicly maintained way when  
14 any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

15 (78) "Street rod" means a motor vehicle, other than a motorcycle, that:

16 (a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949,  
17 including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

18 (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal  
19 materials.

20 (79) "Suspension" means the temporary withdrawal by action of the department of a person's driver's  
21 license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's  
22 license for a period of time designated by law.

23 (80) "Temporary registration permit" means a paper record:

24 (a) issued by the department, an authorized agent, a county treasurer, or a person, using a  
25 department-approved electronic interface after an electronic record has been transmitted to the department, that  
26 contains:

27 (i) required vehicle and owner information; and

28 (ii) the purpose for which the record was generated; and

29 (b) that, when placed in a durable license-plate style plastic pouch approved by the department and  
30 displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat,

1 sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

2 (i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title,  
3 whichever first occurs; or

4 (ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

5 (81) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances  
6 either singly or together while using any highways for purposes of travel.

7 (82) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for  
8 carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests on  
9 the towing vehicle.

10 (b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

11 (83) "Transaction summary receipt" means an electronic record produced and issued by the department,  
12 its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the  
13 department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain  
14 a unique transaction record number and summarize and verify the electronic filing of the transaction described  
15 in the receipt on the electronic record of title maintained under 61-3-101.

16 (84) "Travel trailer" means a vehicle:

17 (a) that is 40 feet or less in length;

18 (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

19 (c) with gross trailer area of less than 320 square feet; and

20 (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used  
21 as a principal residence.

22 (85) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the  
23 transportation of property.

24 (86) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and  
25 not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

26 (87) "Under the influence" has the meaning provided in ~~61-8-401~~ [section 1].

27 (88) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or given  
28 away or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer,  
29 wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is  
30 commonly known as "secondhand" within the ordinary meaning of that term.

1 (89) "Van" means a motor vehicle designed for the transportation of at least six persons and not more  
2 than nine persons and intended for but not limited to family or personal transportation without compensation.

3 (90) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn  
4 on a public highway, except devices moved by animal power or used exclusively on stationary rails or tracks.

5 (b) The term does not include a manually or mechanically propelled wheelchair or other low-powered,  
6 mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is  
7 used as a means of mobility for that person.

8 (91) "Vehicle identification number" means the number, letters, or combination of numbers and letters  
9 assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for  
10 the purpose of identifying the motor vehicle or a component part of the motor vehicle.

11 (92) "Vessel" means every description of watercraft, unless otherwise defined by the department, other  
12 than a seaplane on the water, used or capable of being used as a means of transportation on water.

13 (93) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money  
14 or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor  
15 vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile  
16 equipment only to dealers and auto auctions licensed under chapter 4, part 1."

17

18 **SECTION 32. SECTION 61-2-107, MCA, IS AMENDED TO READ:**

19 **"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.**

20 (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or  
21 revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to  
22 the department a fee of \$200 in addition to any other fines, ~~forfeitures~~, and penalties assessed as a result of  
23 conviction for a violation of the traffic laws of the state.

24 (2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund  
25 and the other half in an account in the state special revenue fund to be used for funding county drinking and  
26 driving prevention programs as provided in 61-2-108."

27

28 **SECTION 33. SECTION 61-2-302, MCA, IS AMENDED TO READ:**

29 **"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by**

30 **offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and

1 improvement program or programs. The programs may consist of classroom instruction in rules of the road,  
2 driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other  
3 subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the  
4 requirements for obtaining a restricted probationary driver's license.

5 (2) Except when otherwise provided or restricted by statute, a person whose driver's license is  
6 suspended or revoked by the department, unless the suspension or revocation was for an offense under  
7 ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], may participate in any driver  
8 rehabilitation and improvement program established under this section if the person's license is:

9 (a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was  
10 imposed under the authority provided in Title 61, chapter 8, part 8; or

11 (b) revoked and the person has:

12 (i) completed at least 3 months of a 1-year revocation; or

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

14 (iii) met the requirements for reobtaining a Montana driver's license.

15 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the  
16 enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the  
17 driver rehabilitation and improvement program provided for in this section may be stayed if that person complies  
18 with the requirements established for the driver rehabilitation and improvement program and meets the eligibility  
19 requirements of subsection (2).

20 (4) If a person's driver's license has been surrendered before the person's selection for participation in  
21 the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's  
22 agreement to participate in the program.

23 (5) The stay of enforcement of any suspension or revocation action must be terminated and the  
24 suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation  
25 and improvement program or fails to meet the attendance or other requirements established for participation in  
26 the program.

27 (6) This part does not create a right to be included in any program established under this part.

28 (7) The department may establish a schedule of fees that may be charged to those persons participating  
29 in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining  
30 the program.

1 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the  
2 peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

3 (9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary  
4 license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon  
5 issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the  
6 license.

7 (b) The department may not issue a restricted probationary license that would permit an individual to  
8 drive a commercial motor vehicle during a period in which:

9 (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

10 (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

11 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the  
12 restrictions imposed on a restricted license issued to the person under this section."

13

14 **SECTION 34. SECTION 61-5-125, MCA, IS AMENDED TO READ:**

15 **"61-5-125. Authority of department -- rulemaking authority.** (1) The department shall administer and  
16 enforce the provisions of this chapter.

17 (2) The department shall adopt rules setting standards to govern driver's license examinations and  
18 reexaminations. The rules:

19 (a) must specifically address the functional abilities and skills required for a person to exercise ordinary  
20 and reasonable control in the safe operation of a motor vehicle on a highway;

21 (b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and  
22 restricted licensure and may include minimum field of vision and depth perception requirements and hearing  
23 requirements for unrestricted and restricted licensure;

24 (c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability  
25 to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test  
26 may consist of:

27 (i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration  
28 of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

29 (ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the  
30 department, as related to a specific physical or mental condition or conditions or a request for reexamination;

- 1 (d) must include operational restrictions based upon the visual acuity of an applicant or licensee;
- 2 (e) may take into consideration any nationally recognized standards or recommended practices for  
3 assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor  
4 vehicle on the highway;
- 5 (f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational  
6 limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;
- 7 (g) may be derived from medical guidelines and information compiled by driver licensing medical  
8 advisory or review boards from other jurisdictions, as well as information received from advocacy groups for  
9 persons with disabilities and senior citizens; and
- 10 (h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation,  
11 or condition as a justification for denial of a license.
- 12 (3) The department shall adopt rules governing the issuance of a hardship license to an underage  
13 applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid learner  
14 license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's  
15 licensed parent or guardian is not available to accompany the licensee due to employment or circumstances  
16 related to the operation of a farm or ranch and the licensee is required to drive more than 7 miles from the  
17 licensee's residence to the licensee's school bus stop.
- 18 (4) The department may adopt additional rules governing:
- 19 (a) acceptable methods of proof of identification that must be supplied by a person upon application for  
20 or renewal of a driver's license;
- 21 (b) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license  
22 fees;
- 23 (c) circumstances under which the department may issue a probationary license to a person whose  
24 license has been suspended or revoked or a person whose license is subject to a discretionary suspension or  
25 revocation;
- 26 (d) restrictions and duration to be imposed upon a probationary license;
- 27 (e) renewal of a driver's license by a person in the military assigned to active duty who had a valid  
28 Montana driver's license at the time of entering active duty;
- 29 (f) issuance of a replacement driver's license; ~~and~~
- 30 (g) a determination of the driver's license expiration date, minimum and maximum license terms, and

1 license renewal requirements for a driver's license issued to a person who is a foreign national whose presence  
2 in the United States is temporarily authorized under federal law;

3 (h) issuance and cancellation of probationary or restricted driver licenses, including the requirements for  
4 issuing a probationary license when the person is convicted in an out-of-state jurisdiction;

5 (i) the determination of the appropriate sanction to apply based on a conviction or administrative action,  
6 including the duration and requirements for restoration; and

7 (j) the procedures for the collection, distribution, and strict accountability of any funds received for fees  
8 collected for an implied consent refusal."

9

10 **SECTION 35. SECTION 61-5-205, MCA, IS AMENDED TO READ:**

11 **"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration**  
12 **of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the  
13 department receives ~~notice from a court or another licensing jurisdiction~~ a report of conviction, as defined in  
14 61-5-213, in this state or a violation of a similar statute or regulation in another state or on a federally recognized  
15 Indian reservation, that the individual has been convicted of any of the following offenses:

16 (a) negligent homicide resulting from the operation of a motor vehicle;

17 (b) any felony in the commission of which a motor vehicle is used;

18 (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle  
19 accident resulting in the death or personal injury of another;

20 (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter  
21 or under any other law relating to the ownership or operation of motor vehicles;

22 (e) fleeing from or eluding a peace officer; ~~or~~

23 (f) ~~negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.~~ negligent operation of  
24 a vehicle, other than a bicycle, while under the influence of alcohol or drugs or both and causing bodily injury to  
25 another; or

26 (g) a felony offense of driving under the influence of alcohol or drugs or both.

27 ~~(2) The department shall suspend an individual's driver's license or driving privilege if the department~~  
28 ~~receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the~~  
29 ~~following offenses:~~

30 ~~—— (a) a driving offense under 61-8-401, 61-8-406, or 61-8-411;~~

1 ~~\_\_\_\_\_ (b) three reckless driving offenses committed within a period of 12 months; or~~  
 2 ~~\_\_\_\_\_ (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle~~  
 3 ~~was used in the commission of the offense.~~

4 ~~(3)(2)~~ A revocation under subsections (1)(a), (1)(b), and (1)(d) through ~~(4)(f)~~ (1)(g) must be for a period  
 5 of 1 year. A revocation under subsection (1)(c) must be for a period of 1 year, except that a revocation must be  
 6 for 2 years if the offender received a felony conviction under 61-7-103.

7 (3) The department shall suspend an individual's driver's license or driving privilege if the department  
 8 receives a report of a conviction, as defined in 61-5-213, in this state or a violation of a similar statute or regulation  
 9 in another state or on a federally recognized Indian reservation, that the individual has been convicted of any of  
 10 the following offenses:

11 (a) a misdemeanor offense of driving under the influence of alcohol or drugs;  
 12 (b) three reckless driving offenses committed within a period of 12 months; or  
 13 (c) a theft offense if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the  
 14 commission of the offense.

15 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection ~~(2)~~ (3) must  
 16 be for a period the duration of 1 year.

17 (b) A suspension under subsection ~~(2)(a)~~ (3)(a) must be for the period duration set forth in 61-5-208.

18 (c) A suspension under subsection ~~(2)(c)~~ (3)(c) must be for ~~one of the following periods:~~

19 (i) 30 days for a first offense;  
 20 (ii) 6 months for a second offense; and  
 21 (iii) 1 year for a third or subsequent offense."

22  
 23 **SECTION 36. SECTION 61-5-208, MCA, IS AMENDED TO READ:**  
 24 **"61-5-208. Period Duration of suspension or revocation -- limitation on issuance of probationary**  
 25 **license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or  
 26 privilege to drive a motor vehicle on the public highways, except as permitted by law.

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

- 1           ~~(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:~~
- 2           ~~—— (i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first~~
- 3 ~~offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall suspend the driver's license~~
- 4 ~~or driving privilege of the person for a period of 6 months;~~
- 5           ~~—— (ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a~~
- 6 ~~second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in~~
- 7 ~~61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year~~
- 8 ~~and may not issue a probationary license during the period of suspension unless the person completes at least~~
- 9 ~~45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a~~
- 10 ~~probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period~~
- 11 ~~passes and the person has not completed chemical dependency treatment, as required under 61-8-732, the~~
- 12 ~~license suspension remains in effect until treatment is completed.~~
- 13           ~~(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third~~
- 14 ~~or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465] within the time period specified~~
- 15 ~~in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1~~
- 16 ~~year and may not issue a probationary license during the period of suspension unless the person completes at~~
- 17 ~~least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court~~
- 18 ~~that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension~~
- 19 ~~period passes and the person has not completed chemical dependency treatment, as required under 61-8-732,~~
- 20 ~~the license suspension remains in effect until treatment is completed.~~
- 21           (b) The department shall apply the appropriate sanction to the driver based on the reported and prior
- 22 convictions, as defined in 61-5-213, in this state or a violation of a similar statute or regulation in another state
- 23 or on a federally recognized Indian reservation.
- 24           (c) The driver must pay all reinstatement and administrative fees owed to the department before a
- 25 probationary license is issued or a driver's license or privilege to drive is restored.
- 26           ~~(3) (a)(d) Except as provided in subsection (3)(b) (2)(e) or as provided in 61-8-802, the period duration~~
- 27 ~~of the suspension or revocation for a person convicted of any offense that makes mandatory the suspension or~~
- 28 ~~revocation of the person's driver's license commences from the date of conviction, or forfeiture of bail as defined~~
- 29 ~~in 61-5-213, or from the date of the event mandating an administrative suspension or revocation.~~
- 30           ~~(b)(e) A suspension commences from the last day of the prior suspension or revocation period if the~~

1 ~~suspension is for a conviction of driving with a suspended or revoked license. If the reported conviction is for~~  
 2 ~~driving with a suspended or revoked license or while declared a habitual traffic offender, the suspension~~  
 3 ~~commences from the last day of the sanction that resulted in the offender being suspended.~~

4 ~~(4)(f) If~~ In addition to any other permitted sanction, if a person is convicted of a violation of 61-8-401,  
 5 61-8-406, 61-8-411, or 61-8-465 driving under the influence of alcohol or drugs while a commercial driver while  
 6 operating a commercial motor vehicle, the department shall suspend the person's commercial driver's license  
 7 or commercial privilege to drive as provided in 61-8-802.

8 (3) Upon receiving a report of a person's conviction for a misdemeanor offense of driving under the  
 9 influence of alcohol or drugs, the department:

10 (a) for a misdemeanor first offense:

11 (i) shall suspend the driver's license or privilege to drive for 6 months; and

12 (ii) may issue a probationary license during the period of suspension, unless the report of conviction  
 13 includes a statement that the court does not recommend a probationary license;

14 (b) for a misdemeanor second offense:

15 (i) shall suspend the driver's license or privilege to drive for 1 year;

16 (ii) may not issue a probationary license during the period of suspension until the person completes at  
 17 least 180 days of the 1-year suspension, unless the department receives a report that:

18 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,  
 19 and the report of conviction includes a recommendation from the court that a probationary license be issued  
 20 subject to the requirements of [section 14]; or

21 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license  
 22 as provided in [section 16]; and

23 (iii) after the mandatory 180-day waiting period, may issue a probationary license when the court makes  
 24 a recommendation for a probationary license as provided in [section 14] or for an out-of-state conviction upon  
 25 receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section 5];

26 (c) for a misdemeanor third offense or subsequent offense:

27 (i) shall suspend the driver's license or privilege to drive for 1 year;

28 (ii) may not issue a probationary license during the period of suspension until the person completes at  
 29 least 180 days of the 1-year suspension, unless the department receives a report that:

30 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,

1 and the report of conviction includes a recommendation from the court that a probationary license be issued  
2 subject to the requirements of [section 14]; or

3 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license  
4 as provided in [section 16]; and

5 (iii) after the mandatory 180-day waiting period, may issue a probationary license when the court makes  
6 a recommendation for a probationary license as provided in [section 14] or for an out-of-state conviction upon  
7 receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section 5].

8 (4) For a suspension ordered under subsection (3), the driver's license or privilege to drive must remain  
9 suspended until the duration of the suspension ends and the department receives proof of completion of  
10 mandatory treatment under [section 5].

11 (5) (a) Upon receiving a report of a person's conviction for a felony offense of driving under the influence  
12 of alcohol or drugs, the department:

13 (i) shall revoke the driver's license or privilege to drive for 1 year;

14 (ii) may not issue a probationary license until the person completes 180 days of the 1-year revocation;

15 (iii) shall mark on the person's driver license the duration of the restrictions; and

16 (iv) may issue a probationary license after the mandatory 180-day waiting period when the judgment has  
17 as a condition of probation that the person may not operate a motor vehicle unless:

18 (A) operation is authorized by the person's probation officer;

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

20 (C) the person is enrolled in the 24/7 sobriety and drug monitoring program as provided in 44-4-1203.

21 (b) The department may not restore full driving privileges until the duration of the revocation period ends  
22 and the department receives proof of completion of treatment as required in [section 5].

23 (6) Upon receiving a report of a person's conviction for driving under the influence of alcohol or drugs  
24 while under 21 years of age with a blood alcohol concentration of greater than 0.02 and less than 0.08, the  
25 department:

26 (a) for a first offense:

27 (i) shall suspend the driver's license or privilege to drive for a duration of 6 months; and

28 (ii) may issue a probationary license if the person was under 18 years of age at the time of the offense  
29 and completed at least 60 days of the suspension period;

30 (b) for a second offense:

1           (i) shall suspend the driver's license or privilege to drive for 1 year;  
 2           (ii) may issue a probationary license if the person was under 18 years of age at the time of the offense  
 3 and completed at least 60 days of the suspension period.

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

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

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

10 ~~—— (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."~~

11

12           **SECTION 37. SECTION 61-5-212, MCA, IS AMENDED TO READ:**

13           **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**  
 14 **without licensing exemption. (1) (a) A person commits the offense of driving a motor vehicle without statutory**  
 15 **exemption or during a suspension or revocation period if the person drives:**

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

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

22           (iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided  
 23 in 61-5-104.

24           (b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption  
 25 for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may  
 26 be fined not more than \$500.

27           (ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a  
 28 suspension or revocation period shall be fined an amount not to exceed \$500 or be imprisoned for a term of not  
 29 more than 6 months, or both.

30           (iii) If the reason for the suspension or revocation was that the person was convicted of a violation of

1 ~~61-8-401, 61-8-406, or 61-8-411~~ section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e) or a similar offense under the laws  
 2 of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ section 8 or a similar law of any other state  
 3 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be  
 4 driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6  
 5 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to  
 6 perform up to 40 hours of community service.

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

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

15

16 **SECTION 38. SECTION 61-5-218, MCA, IS AMENDED TO READ:**

17 **"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as  
 18 provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving  
 19 privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the  
 20 driver's license or driving privilege reinstated.

21 (2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205  
 22 or ~~61-8-402~~ section 8 shall pay a reinstatement fee as required by 61-2-107.

23 (b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be  
 24 reinstated without payment of a reinstatement fee.

25 (c) The reinstatement fee required under subsection (1) must be waived by the department when a court  
 26 notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has  
 27 determined that the person is indigent under the standards set forth in 47-1-111.

28 (3) The department shall deposit the fees collected under subsection (1) in the general fund."  
 29

30 **SECTION 39. SECTION 61-5-231, MCA, IS AMENDED TO READ:**

1           **"61-5-231. Authorization of probationary license by DUI court -- definition.** (1) If a person convicted  
 2 of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under  
 3 ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration  
 4 under ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)], or aggravated driving under the influence ~~under 61-8-465~~ as  
 5 defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's  
 6 discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any  
 7 other conditions imposed within the scope of the court's authority.

8           (2) If the participant fails to comply with the court's conditions, the court may revoke the probationary  
 9 driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208  
 10 commencing from the date of the court's revocation of the probationary license.

11           ~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for~~  
 12 ~~handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and~~  
 13 ~~that implements a program of incentives and sanctions intended to assist a participant in completing treatment~~  
 14 ~~ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the~~  
 15 ~~influence of alcohol or drugs or with excessive alcohol concentration."~~

16

17           **SECTION 40. SECTION 61-5-405, MCA, IS AMENDED TO READ:**

18           **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to**  
 19 **licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article  
 20 IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, ~~61-8-401~~ [section 2],  
 21 the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

22           (2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension,  
 23 revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct  
 24 reported as it would if the conduct had occurred in this state for:

25           (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a  
 26 motor vehicle (61-5-303);

27           (b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

28           (c) convictions of careless driving resulting in death or reckless driving resulting in death.

29           (3) Court abstracts or reports of conviction received by the department that name an individual licensed  
 30 in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action

1 against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

2

3 **SECTION 41. SECTION 61-8-101, MCA, IS AMENDED TO READ:**

4 **"61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public"  
5 means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public  
6 travel that is in common use by the public.

7 (2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation  
8 of vehicles upon highways except:

9 (a) where a different place is specifically referred to in a given section;

10 (b) the provisions of 61-8-301 and ~~61-8-401(1)(b), (1)(c), and (2)~~ [section 2(1) and (2)], with regard to  
11 operating a vehicle while under the influence of drugs, apply anywhere within this state;

12 (c) the provisions of 61-8-301 and ~~61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402~~  
13 ~~through 61-8-405, and 61-8-465~~ [section 2], except under the influence of a dangerous drug and [section 2(2)],  
14 with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to  
15 the public.

16 (3) The operation of motor vehicles directly across the public roads and highways of this state, especially  
17 as required in the transportation of natural resource products, including agricultural products and livestock, shall  
18 not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways  
19 of this state open to the public, provided that such crossings are adequately marked with warning signs or  
20 devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any  
21 damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the  
22 public highway involved."

23

24 **SECTION 42. SECTION 61-8-102, MCA, IS AMENDED TO READ:**

25 **"61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state must  
26 be as consistent as possible with the interpretation of similar laws in other states.

27 (2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

28 (a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title  
29 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

30 (b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride,

1 irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an  
2 electrically assisted bicycle.

3 (c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.

4 (d) "Business district" means the territory contiguous to and including a highway when within any 600  
5 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to  
6 hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on  
7 one side or 300 feet collectively on both sides of the highway.

8 (e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or  
9 occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or  
10 roadway except at the points and in the manner as determined by the public authority having jurisdiction over the  
11 highway, street, or roadway.

12 (f) "Crosswalk" means:

13 (i) that part of a roadway at an intersection included within the connections of the lateral lines of the  
14 sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges  
15 of the traversable roadway; or

16 (ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing  
17 by lines or other markings on the surface.

18 (g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem  
19 wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than  
20 20 miles an hour on a paved, level surface.

21 (h) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic on  
22 a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person,  
23 except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic  
24 hazard, must be equipped as required by the rules of the department of transportation.

25 (i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later  
26 dedicated to public use.

27 (j) "Ignition interlock device" means ignition equipment that:

28 (i) analyzes the breath to determine blood alcohol concentration;

29 (ii) is approved by the department pursuant to ~~61-8-441~~ [section 13]; and

30 (iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific

1 amount of an alcoholic beverage.

2 (k) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb  
3 lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one  
4 another at or approximately at right angles or the area within which vehicles traveling on different highways joining  
5 at any other angle may come in conflict.

6 (ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway  
7 of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting  
8 highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways  
9 must be regarded as a separate intersection.

10 (l) "Laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular  
11 traffic.

12 (m) "Local authorities" means every county, municipal, and other local board or body having authority  
13 to enact laws relating to traffic under the constitution and laws of this state.

14 (n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular  
15 propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source  
16 may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level  
17 surface. The device must be equipped with a power drive system that functions directly or automatically only and  
18 does not require clutching or shifting by the operator after the drive system is engaged.

19 (o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination  
20 of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but  
21 is not limited to the vehicles listed in 61-1-101(9)(b).

22 (p) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with  
23 this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of  
24 regulating, warning, or guiding traffic.

25 (q) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled  
26 wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically  
27 disabled person.

28 (r) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

29 (s) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel  
30 by the owner and those having express or implied permission from the owner, but not by other persons.

1 (t) "Residence district" means the territory contiguous to and including a highway not comprising a  
 2 business district when the property on the highway for a distance of 300 feet or more is primarily improved with  
 3 residences or residences and buildings in use for business.

4 (u) "Right-of-way" means the privilege of the immediate use of the roadway.

5 (v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular  
 6 travel, including the paved shoulder.

7 (w) "School bus" has the meaning provided in 20-10-101.

8 (x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a  
 9 roadway and the adjacent property lines and that is intended for use by pedestrians.

10 (y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by  
 11 which traffic is alternately directed to stop and to proceed.

12 (z) "Urban district" means the territory contiguous to and including any street that is built up with  
 13 structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a  
 14 distance of one-fourth mile or more."

15

16 **SECTION 43. SECTION 61-8-805, MCA, IS AMENDED TO READ:**

17 **"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or**

18 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual

19 physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's

20 license or commercial privilege to drive. The peace officer who determines that the person is operating a

21 commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's

22 commercial driver's license and, on behalf of the department, give the person written notice of the license

23 suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from

24 the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04

25 or more, the department shall apply a major offense to the driving record and take the appropriate suspension

26 as provided in 61-8-802. ~~suspend the license, with no provision for a restricted probationary commercial license,~~

27 ~~for:~~

28 ~~— (a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that~~

29 ~~if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the~~

30 ~~suspension must be for 3 years; and~~

1 ~~\_\_\_\_\_ (b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at~~  
 2 ~~any time as determined from the records of the department, subject to federal rules allowing for driver~~  
 3 ~~rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years'~~  
 4 ~~suspension.~~

5 (2) A peace officer who determines that a commercial motor vehicle operator has a measured amount  
 6 or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place  
 7 the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

8 (3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use  
 9 alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

10 (4) For purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ section 2(1)(a), (1)(b),  
 11 (1)(c), (1)(d), or (1)(e) while operating a commercial motor vehicle or a prior refusal to be tested under an implied  
 12 consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used  
 13 in determining the length of the license suspension ~~under subsection (1).~~"

14

15 **SECTION 44. SECTION 61-8-807, MCA, IS AMENDED TO READ:**

16 **"61-8-807. Administration of tests.** Tests required under this part must be administered as provided  
 17 in ~~61-8-405~~ section 11."

18

19 **SECTION 45. SECTION 61-11-101, MCA, IS AMENDED TO READ:**

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

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 or license issued pursuant to 50-46-307  
18 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or  
19 drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406,~~  
20 ~~61-8-410, or 61-8-411~~ [section 2(1)], the court in which the conviction occurs shall require the person to surrender  
21 the registry identification card or license.

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

25 **SECTION 46. SECTION 67-1-211, MCA, IS AMENDED TO READ:**

26 **"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests. (1)**  
27 If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined  
28 in [section 1], of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the  
29 influence of alcohol and is in violation of 67-1-204.

30 (2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the

1 act alleged under subsection (1) and any other competent evidence bearing on the question of whether the  
 2 person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is  
 3 admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation  
 4 of 67-1-204.

5 (3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation  
 6 of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

7 (4) A person who operates an aircraft over the lands and waters of this state is considered to have given  
 8 consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or  
 9 detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to  
 10 operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a  
 11 combination of the two. The test must be administered at the direction of a peace officer who has reasonable  
 12 grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft  
 13 while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which  
 14 of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the  
 15 person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

16 (5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood,  
 17 breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the  
 18 person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding  
 19 arising out of acts alleged to have been committed in violation of 67-1-204.

20 (6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition  
 21 of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured  
 22 amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with  
 23 violation of 67-1-204."

24  
 25 **NEW SECTION. SECTION 47. REPEALER. THE FOLLOWING SECTIONS OF THE MONTANA CODE ANNOTATED**

26 **ARE REPEALED:**

27 **61-8-401. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DEFINITIONS.**

28 **61-8-402. IMPLIED CONSENT -- BLOOD OR BREATH TESTS FOR ALCOHOL, DRUGS, OR BOTH -- REFUSAL TO SUBMIT**  
 29 **TO TEST -- ADMINISTRATIVE LICENSE SUSPENSION.**

30 **61-8-403. RIGHT OF APPEAL TO COURT.**

- 1 61-8-404. EVIDENCE ADMISSIBLE -- CONDITIONS OF ADMISSIBILITY.
- 2 61-8-405. ADMINISTRATION OF TESTS.
- 3 61-8-406. OPERATION OF NONCOMMERCIAL VEHICLE BY PERSON WITH ALCOHOL CONCENTRATION OF 0.08 OR  
4 MORE -- OPERATION OF COMMERCIAL VEHICLE BY PERSON WITH ALCOHOL CONCENTRATION OF 0.04 OR  
5 MORE.
- 6 61-8-407. DEFINITION OF ALCOHOL CONCENTRATION.
- 7 61-8-408. MULTIPLE CONVICTIONS PROHIBITED.
- 8 61-8-409. PRELIMINARY ALCOHOL SCREENING TEST.
- 9 61-8-410. OPERATION OF VEHICLE BY PERSON UNDER 21 YEARS OF AGE WITH ALCOHOL CONCENTRATION OF 0.02  
10 OR MORE.
- 11 61-8-411. OPERATION OF NONCOMMERCIAL VEHICLE OR COMMERCIAL VEHICLE BY PERSON UNDER INFLUENCE OF  
12 DELTA-9-TETRAHYDROCANNABINOL.
- 13 61-8-421. FORFEITURE PROCEDURE.
- 14 61-8-422. PROHIBITION ON TRANSFER, SALE, OR ENCUMBRANCE OF VEHICLES SUBJECT TO FORFEITURE --  
15 PENALTY.
- 16 61-8-440. IGNITION INTERLOCK DEVICE -- ASSISTING IN STARTING AND OPERATING -- CIRCUMVENTING -- PENALTY.
- 17 61-8-441. DEPARTMENT RULES REGARDING IGNITION INTERLOCK DEVICES -- IGNITION INTERLOCK DEVICE  
18 PROVIDER REQUIREMENTS.
- 19 61-8-442. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING WITH EXCESSIVE ALCOHOL  
20 CONCENTRATION -- IGNITION INTERLOCK DEVICE -- 24/7 SOBRIETY AND DRUG MONITORING PROGRAM  
21 -- FORFEITURE OF VEHICLE.
- 22 61-8-460. UNLAWFUL POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER IN MOTOR VEHICLE ON HIGHWAY.
- 23 61-8-461. DEFINITIONS.
- 24 61-8-465. AGGRAVATED DUI.
- 25 61-8-714. PENALTY FOR DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- FIRST THROUGH THIRD OFFENSE.
- 26 61-8-722. PENALTY FOR DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION OR  
27 DELTA-9-TETRAHYDROCANNABINOL LEVEL -- FIRST THROUGH THIRD OFFENSE.
- 28 61-8-731. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING WITH EXCESSIVE ALCOHOL  
29 CONCENTRATION -- UNDER INFLUENCE OF DELTA-9-TETRAHYDROCANNABINOL -- AGGRAVATED DRIVING  
30 UNDER THE INFLUENCE -- PENALTY FOR FOURTH OR SUBSEQUENT OFFENSE.

1 61-8-732. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING WITH EXCESSIVE ALCOHOL  
 2 CONCENTRATION -- ASSESSMENT, EDUCATION, AND TREATMENT REQUIRED.

3 61-8-733. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING WITH EXCESSIVE ALCOHOL  
 4 CONCENTRATION -- IGNITION INTERLOCK DEVICE -- 24/7 SOBRIETY AND DRUG MONITORING PROGRAM  
 5 -- FORFEITURE OF VEHICLE.

6 61-8-734. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING WITH EXCESSIVE ALCOHOL  
 7 CONCENTRATION -- CONVICTION DEFINED -- PLACE OF IMPRISONMENT -- HOME ARREST -- EXCEPTIONS  
 8 -- DEFERRAL OF SENTENCE NOT ALLOWED.

9 61-8-741. SUSPENSION OF IMPRISONMENT SENTENCE FOR DUI COURT PARTICIPATION -- DUI COURT DEFINED.

10  
 11 NEW SECTION. SECTION 48. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 17] ARE INTENDED TO BE  
 12 CODIFIED AS AN INTEGRAL PART OF TITLE 61, CHAPTER 8, AND THE PROVISIONS OF TITLE 61, CHAPTER 8, APPLY TO  
 13 [SECTIONS 1 THROUGH 17].

14  
 15 COORDINATION SECTION. SECTION 49. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 362 AND  
 16 [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH BILLS AMEND SECTIONS 44-4-1202, 44-4-1203, AND 44-4-1205,  
 17 THEN SENATE BILL NO. 362 IS VOID.

18  
 19 COORDINATION SECTION. SECTION 50. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 346 AND  
 20 [THIS ACT] ARE PASSED AND APPROVED AND IF [THIS ACT] AMENDS 61-5-125 AND SENATE BILL NO. 346 REPEALS  
 21 61-5-125, THEN [SECTION 30] OF SENATE BILL NO. 346 IS VOID AND [SECTION 23] OF SENATE BILL NO. 346 MUST READ  
 22 AS FOLLOWS:

23 "NEW SECTION. Section 23. Rulemaking authority -- driver's licenses and identification cards.

24 (1) The department may adopt rules to administer and enforce the provisions of Title 61, chapter 5.

25 (2) The department may adopt rules governing acceptable methods of proof of identification, including  
 26 name, date of birth, and authorized presence, that an individual must submit when applying for a license or  
 27 identification card, including a new, renewal, or replacement license or identification card.

28 (3) The department may adopt rules governing the determination of the driver's license expiration date,  
 29 minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person  
 30 who is a foreign national whose presence in the United States is temporarily authorized under federal law.

1 (4) The department shall adopt rules governing the calculation of grace periods for renewals and the  
2 calculation of other time periods established by statute or federal regulation.

3 (5) The department may adopt rules governing the renewal of a driver's license by a person in the military  
4 assigned to active duty who had a valid Montana driver's license at the time of entering active duty.

5 (6) The department shall adopt rules to set the standards for driver license examinations and  
6 reexaminations.

7 (7) The department may adopt rules to set the standards for photographs, certifications, and signature  
8 requirements for the issuance of driver's licenses.

9 (8) The department shall adopt rules establishing the functional abilities and skills required to exercise  
10 ordinary and reasonable control to safely operate a motor vehicle. The rules:

11 (a) must include operational restrictions based on the driver's ability and skills;

12 (b) may direct the design of one or more types of skills tests. A skills test may consist of:

13 (i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration  
14 of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

15 (ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the  
16 department, as related to a specific physical or mental condition or conditions or a request for reexamination.

17 (c) must include appropriate licensing criteria relating to the use of adaptive equipment or operational  
18 limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction.

19 (9) The department shall adopt rules establishing vision requirements for a person to safely operate a  
20 motor vehicle. The rules:

21 (a) must include the minimum uncorrected or corrected visual acuity requirements for both unrestricted  
22 and restricted licenses and operational restrictions based on the visual acuity of an applicant or licensee,  
23 including the use of bioptic lenses; and

24 (b) may include minimum field of vision and depth perception requirements for both unrestricted and  
25 restricted licenses.

26 (10) The rules in subsections (8) and (9):

27 (a) may take into consideration any nationally recognized standards or recommended practices or  
28 standards of other jurisdictions for assessment of a person's functional abilities and skills;

29 (b) may be derived from medical guidelines and information compiled by driver licensing medical advisory  
30 or review boards from other jurisdictions, as well as information received from advocacy groups for persons with

1 disabilities and senior citizens; and

2 (c) except as provided in 61-5-105, may not use a person's age or a person's physical or mental disability,  
3 limitation, or condition as a justification for the denial of a license.

4 (11) The department shall adopt rules governing the issuance of a restricted learner license, including  
5 when the department may issue a restricted learner license to allow for a driver to practice driving skills.

6 (12) The department shall adopt rules governing the issuance of a hardship license to a person who is  
7 at least 13 years of age and because of individual hardship needs a restricted driver's license, including a person  
8 who holds a learner license under 61-5-106. The department must consider, among other criteria, whether a  
9 hardship license is needed because the applicant's parent or guardian is not available to accompany the licensee,  
10 whether due to employment or circumstances related to the operation of a farm or ranch or because the parent  
11 or guardian does not hold a valid driver's license, and the licensee is required to drive to the licensee's school  
12 bus stop.

13 (13) The department may adopt rules governing probationary licenses, including:

14 (a) issuance to a person whose license has been suspended or revoked or whose license is subject to  
15 a discretionary suspension or revocation;

16 (b) the establishment of restrictions and duration placed on a probationary license;

17 (c) the expiration of a probationary license;

18 ~~(d) the cancellation of a probationary license for violating the restrictions on the probationary license or~~  
19 ~~for another law violation; and~~

20 (d) issuance and cancellation of probationary or restricted driver's licenses, including the requirements  
21 for issuing a probationary license when the person is convicted in an out-of-state jurisdiction;

22 (e) the determination of the appropriate sanction to apply based on a conviction or administrative action,  
23 including the duration and requirements for restoration;

24 (f) the procedures for the collection, distribution, and strict accountability of any funds received for fees  
25 collected for an implied consent refusal; and

26 ~~(e)(g)~~ the issuance, withdrawal, and monitoring of a restricted-use driving permit issued under 61-5-232.

27 (14) The department may adopt rules governing the requirements for a veteran designation on a driver's  
28 license or identification card.

29 (15) The department may adopt rules governing the issuance of a replacement driver's license.

30 (16) The department may adopt rules governing the certification process for cooperative driver testing

1 program instructors.

2 (17) The department may adopt rules for the implementation of online driver's license renewal.

3 (18) The department shall adopt rules governing the issuance, renewal, and cancellation of identification  
4 cards that align with the proof of identity, residence, and authorized presence standards for a driver's license.

5 (19) The department may adopt rules for determining moving violations.

6 (20) The department may adopt rules for charging a fee for not appearing at a scheduled commercial  
7 skills test or motorcycle test and for the waiver of the fee for good cause shown.

8 (21) The department may adopt rules governing the conditions under which an applicant is eligible to  
9 receive a driver's license or identification card by expedited service and to set the fee for expedited service.

10 (22) The department may adopt rules to implement any other provision of this title."  
11

12 **COORDINATION SECTION. SECTION 51. COORDINATION INSTRUCTION.** IF [THIS ACT], [HOUSE BILL NO. 2],  
13 AND [SENATE BILL NO. 352] ARE PASSED AND APPROVED, THEN [THE SECTION PROVIDING APPROPRIATIONS FOR SENATE  
14 BILL NO. 65] IN [SENATE BILL NO. 352] MUST READ:

15 "If [this act], [House Bill No. 2], and [Senate Bill No. 352] are passed and approved, then [House Bill No.  
16 2] is amended to include a new section that reads:

17 "**NEW SECTION. Section 13. Appropriations.** (1) There is appropriated to the department of justice,  
18 forensic sciences division, \$142,688 from the general fund for the fiscal year beginning July 1, 2019, and \$86,376  
19 from the general fund for the fiscal year beginning July 1, 2020, for the purpose of complying with [House Bill No.  
20 685].

21 (2) There is appropriated to the department of justice, Montana highway patrol, \$26,830 from the state  
22 special revenue account established in 44-1-110 for the fiscal year beginning July 1, 2019, and \$14,430 from the  
23 state special revenue account established in 44-1-110 for the fiscal year beginning July 1, 2020, for the purpose  
24 of complying with [House Bill No. 685].

25 (3) There is appropriated to the office of state public defender \$62,081 from the general fund for the fiscal  
26 year beginning July 1, 2019, and \$125,506 from the general fund for the fiscal year beginning July 1, 2020, for  
27 the purpose of complying with [House Bill No. 685]."  
28

29 **NEW SECTION. Section 52. Effective date.** [This act] is effective ~~July 1, 2019~~ JANUARY 1, 2020.  
30

