

SENATE BILL NO. 65

INTRODUCED BY K. REGIER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS, A DESCRIPTION OF DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, SOBRIETY MONITORING PROGRAM, ~~FORFEITURE PROVISIONS~~, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVERS LICENSE, OPEN CONTAINER VIOLATION, REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; PROVIDING DEFINITIONS; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 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, 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, 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, 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, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through ~~49~~ 17], unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] and:

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

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

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a



1 prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)],
2 an offense that meets the definition of aggravated driving under the influence, a similar offense under previous
3 laws of this state or the laws of another state, or a second or subsequent violation of [section 2(1)(f)]; or

4 (d) the person refuses to give a breath sample as required in [section 8] and the person's driver's license
5 or privilege to drive was suspended, canceled, or revoked under the provisions of an implied consent statute.

6 (2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains
7 0.5% or more of alcohol by volume.

8 (3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol
9 per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

10 (4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers,
11 including the driver.

12 (5) "Camper" has the meaning provided in 61-1-101.

13 (6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

14 (7) "Drug" means any substance, that when taken into the human body can impair a person's ability to
15 operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

16 (8) "DUI court" means any court that has established a special docket for handling cases involving
17 persons convicted under [section 3 or 4] and that implements a program of incentives and sanctions intended
18 to assist a participant to complete treatment ordered pursuant to [section 5] and to end the participant's criminal
19 behavior associated with the use of alcohol or drugs.

20 (9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

21 (10) "Motor home" has the meaning provided in 61-1-101.

22 (11) "Motor vehicle" has the meaning provided in 61-1-101.

23 (12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any
24 amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially
25 removed.

26 (13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle
27 is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger
28 is seated in the vehicle, including an unlocked glove compartment.

29 (14) "Passenger for hire" means a passenger for whom consideration is contributed or expected as a
30 condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any

1 other person having an interest in the vehicle.

2 (15) "Prearranged ride" has the meaning provided in 69-12-101.

3 (16) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
4 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

5 (17) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

6

7 **NEW SECTION. Section 2. Driving under influence.** (1) A person commits the offense of driving under
8 the influence if the person drives or is in actual physical control of:

9 (a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under
10 the influence of alcohol, any drug, or a combination of alcohol and any drug;

11 (b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol
12 concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

13 (c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by
14 analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

15 (d) a noncommercial vehicle within this state when a passenger for hire is a passenger in the vehicle at
16 the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood,
17 breath, or other bodily substance, is 0.04 or more;

18 (e) a noncommercial vehicle or commercial motor vehicle within this state while the person's
19 delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood
20 or other bodily substance, is 5 ng/ml or more;

21 (f) a vehicle within this state when the person is under 21 years of age at the time of the offense while
22 the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance,
23 is 0.02 or more but less than 0.08.

24 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use
25 alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating
26 subsection (1).

27 (3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been
28 committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol,
29 the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's
30 blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise

1 to the following inferences:

2 (a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person
3 was not under the influence of alcohol;

4 ~~(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may~~
5 ~~be considered with other competent evidence in determining whether the person was under the influence of~~
6 ~~alcohol; IF THERE WAS AT THAT TIME AN ALCOHOL CONCENTRATION IN EXCESS OF 0.04 BUT LESS THAN 0.08, THAT FACT~~
7 ~~MAY NOT GIVE RISE TO ANY INFERENCE THAT THE PERSON WAS OR WAS NOT UNDER THE INFLUENCE OF ALCOHOL, BUT~~
8 ~~THE FACT MAY BE CONSIDERED WITH OTHER COMPETENT EVIDENCE IN DETERMINING THE GUILT OR INNOCENCE OF THE~~
9 ~~PERSON; AND~~

10 (c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person
11 was under the influence of alcohol. The inference is rebuttable.

12 (4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing
13 on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
14 drugs.

15 (5) Each municipality in this state is given authority to enact this section, with the word "state" changed
16 to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the
17 imposition of the fines and penalties provided in the ordinance.

18 (6) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

19 (7) When the same acts may establish the commission of an offense under subsection (1), a person
20 charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1).
21 However, the person may be convicted of only one offense under this section or of a similar offense under
22 previous laws of this state.

23
24 **NEW SECTION. Section 3. Penalty for driving under influence -- first through third offenses.** (1)

25 (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall
26 be punished as follows:

27 (i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6 months and
28 by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age
29 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48
30 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000;

1 (ii) for a second violation, by imprisonment for not less than 7 consecutive days or more than 1 year and
2 by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of
3 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than
4 14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

5 (iii) for a third violation, by imprisonment for not less than 30 consecutive days or more than 1 year and
6 by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of
7 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than
8 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

9 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
10 [section 4] for a fourth or subsequent offense of driving under the influence, including [section 2(1)(a), (1)(b),
11 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section
12 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
13 violation of [section 2(1)(f)].

14 (c) If the person has a prior conviction or pending charge for a violation of driving under the influence,
15 including [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving
16 under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state,
17 or a second or subsequent violation of [section 2(1)(f)], and the violation meets the definition of aggravated driving
18 under the influence in [section 1], the person shall be punished as provided in subsection (4) of this section.

19 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of [section
20 2(1)(b), (1)(c), (1)(d), or (1)(e)] shall be punished as follows:

21 (i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than \$600
22 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time
23 of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less
24 than \$1,200 or more than \$2,000;

25 (ii) for a second violation, by imprisonment for not less than 5 consecutive days or more than 1 year and
26 by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of
27 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than
28 10 consecutive days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000; or

29 (iii) for a third violation, by imprisonment for not less than 30 consecutive days or more than 1 year and
30 by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of

1 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than
2 60 consecutive days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

3 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
4 [section 4] for a fourth or subsequent offense of driving under the influence, including [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 in [section
6 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
7 violation of [section 2(1)(f)].

8 (c) If the person has a prior conviction or pending charge for a violation of driving under the influence,
9 including [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving
10 under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state,
11 or a second or subsequent violation of [section 2(1)(f)], and the violation meets the definition for aggravated
12 driving under the influence in [section 1], the person shall be punished as provided in subsection (4) of this
13 section.

14 (3) (a) A person convicted of a violation of [section 2(1)(f)] shall be punished as follows:

15 (i) For a first violation, the person must be fined not less than \$200 or more than \$500, except that if one
16 or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be fined
17 not less than \$400 or more than \$1,000. A conviction under this section may not be counted as a prior conviction
18 under [section 2], a similar offense under previous laws of this state, or a similar offense under the laws of another
19 state.

20 (ii) Except as provided in 61-8-723, for a second violation, the person shall be sentenced in accordance
21 with subsection (2)(a)(ii). A conviction under this section must be counted as a prior conviction under [section
22 2], a similar offense under previous laws of this state, or a similar offense under the laws of another state.

23 (iii) Except as provided in section 61-8-723, for a third or subsequent violation, the person shall be
24 sentenced in accordance with subsection (2)(a)(iii). A conviction under this section must be counted as a prior
25 conviction under [section 2], a similar offense under previous laws of this state, or a similar offense under the laws
26 of another state.

27 (4) (a) If a violation of [section 2] meets the definition of aggravated driving under the influence in [section
28 1], the person shall be punished as follows:

29 (i) for a first violation, by imprisonment for not less than 2 consecutive days or more than 1 year and by
30 a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of

1 the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1
2 year and by a fine of \$2,000;

3 (ii) for a second violation, by imprisonment for not less than 15 consecutive days or more than 1 year and
4 by a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time
5 of the offense, the person shall be punished by imprisonment for not less than 45 consecutive days or more than
6 1 year and by a fine of \$5,000; or

7 (iii) For a third violation, by imprisonment for not less than 60 consecutive days or more than 1 year and
8 by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time
9 of the offense, the person shall be punished by imprisonment for not less than 120 days or more than 1 year and
10 by a fine of \$10,000.

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

14 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending
15 the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During
16 any suspended portion of sentence imposed by the court:

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

19 (ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available
20 and if imposed by the court; and

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

23 (d) If the person has a prior conviction or pending charge for a violation of driving under the influence,
24 including [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], a similar offense under previous laws of this state or the laws of another state,
26 or a second or subsequent violation of [section 2(1)(f)] that meets the definition of aggravated driving under the
27 influence in [section 1], the person shall be punished as provided in this subsection (4).

28 (e) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
29 [section 4] for a fourth or subsequent offense of driving under the influence, including [section 2(1)(a), (1)(b),
30 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section

1 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
 2 violation of [section 2(1)(f)].

3 (5) In addition to the punishment provided in this section, regardless of disposition, the person shall
 4 comply with the chemical dependency education course and chemical dependency treatment provisions in
 5 [section 5] as ordered by the court.

6
 7 **NEW SECTION. Section 4. Penalty for driving under influence -- fourth and subsequent offenses.**

8 (1) Except as provided in subsection (4), a person is guilty of a felony if:

9 (a) the person is convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b),
 10 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section
 11 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
 12 violation of [section 2(1)(f)];

13 (b) the person has either a single conviction under 45-5-106 or any combination of three or more prior
 14 convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), or 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 influence in
 16 [section 1], a similar offense under previous laws of this state or the laws of another state, or a second or
 17 subsequent violation of [section 2(1)(f)]; and

18 (c) the offense under 45-5-104, if applicable, occurred while the person was operating a vehicle while
 19 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided
 20 in [section 2(1)].

21 (2) A person found guilty of a felony under subsection (1) shall be punished by:

22 (a) (i) ~~either:~~

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

28 ~~(B)(ii)~~ being sentenced to either the department of corrections or the Montana state prison or Montana
 29 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the
 30 term imposed under subsection (2)(a)(i)(A); and

1 ~~(ii)~~(iii) a fine of not less than \$5,000 or more than \$10,000; or

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

4 (ii) a fine of not less than \$5,000 or more than \$10,000.

5 (c) If sentenced under subsection (2)(b), the person may be entitled to a suspended sentence and is not
6 eligible for a deferred imposition of sentence.

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

9 (4) (a) A person meeting the following criteria shall be punished by imprisonment for not more than 10
10 years and by a fine of not less than \$5,000 or more than \$10,000:

11 (i) the person is convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b),
12 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section
13 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
14 violation of [section 2(1)(f)];

15 (ii) the person has either a single conviction under 45-5-106 or any combination of four or more prior
16 convictions under 45-5-104, 45-5-205, 45-5-628(1)(e) or driving under the influence, including [section 2(1)(a),
17 (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in
18 [section 1], a similar offense under previous laws of this state or the laws of another state, or a second or
19 subsequent violation of [section 2(1)(f)]; and

20 (iii) the offense under 45-5-104, if applicable, occurred while the person was operating a vehicle while
21 under the influence as provided in [section 1(1) and section 2] or a similar offense under previous laws of this
22 state and the person was previously sentenced under either subsection (2)(a) or (2)(b).

23 (b) If sentenced under this subsection (4), the person is not eligible for a deferred sentence and the first
24 3 years of the imposed sentence may not be suspended.

25 (5) If a person has previously been convicted and sentenced under subsection (4) on a different occasion
26 other than the first, the person shall be fined not less than \$5,000 or more than \$10,000 and sentenced for a term
27 of not less than 5 years or more than 25 years. The first 5 years of the imposed sentence may not be suspended.

28 (6) The court shall, as a condition of probation, order that:

29 (a) the person abide by the standard conditions of probation promulgated by the department of
30 corrections;

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

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

4 (d) the person may not consume alcoholic beverages;

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

6 (f) the person enter in and remain in an aftercare treatment program for the entire probationary period;

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

8 (h) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock
9 device.

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

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

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

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

15 (d) community service;

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

18 (f) any combination of the restrictions or conditions listed in subsections (7)(a) through (7)(e).

19 (8) Following initial placement of a defendant in a treatment facility under subsection (3), the department
20 of corrections may, at its discretion, place the offender in another facility or program.

21 (9) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
22 46-23-1031 apply to persons sentenced under this section.

23
24 **NEW SECTION. Section 5. Driving under influence -- assessment, education, and treatment**
25 **required.** (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant
26 convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition
27 of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the
28 laws of another state shall complete a chemical dependency assessment and:

29 (a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education
30 course; or

1 (b) for a second or subsequent conviction for a violation of driving under the influence, including [section
2 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the
3 influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or a
4 second or subsequent violation of [section 2(1)(f)], except a fourth or subsequent conviction for which the
5 defendant completes a residential alcohol treatment program under [section 4(3)], or as required by subsection
6 (8) of this section, chemical dependency treatment.

7 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical
8 dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before
9 sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

10 ~~(3) The chemical dependency assessment and the chemical dependency education course must be~~
11 ~~completed at a treatment program approved by the department of public health and human services and must~~
12 ~~be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs.~~

13 (A) THE CHEMICAL DEPENDENCY ASSESSMENT MUST BE CONDUCTED BY A LICENSED ADDICTION COUNSELOR.
14 THE CHEMICAL DEPENDENCY EDUCATION COURSE MUST BE CONDUCTED BY A CERTIFIED INSTRUCTOR AT A TREATMENT
15 PROGRAM APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. IN ADDITION TO THE PUNISHMENTS
16 PROVIDED IN [SECTIONS 3 AND 4], REGARDLESS OF DISPOSITION, A DEFENDANT CONVICTED OF A VIOLATION OF DRIVING
17 UNDER THE INFLUENCE FOR A FIRST OR SECOND TIME WHO DOES NOT MEET THE CLINICAL CRITERIA FOR MODERATE OR
18 SEVERE CHEMICAL DEPENDENCY MUST COMPLETE AN EVIDENCE-BASED INTERVENTION THAT IS APPROPRIATE TO THE
19 LEVEL OF OFFENSE AND IS APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. FOR A FIRST
20 CONVICTION, THE EVIDENCE-BASED INTERVENTION MAY INCLUDE A CHEMICAL DEPENDENCY EDUCATION COURSE.

21 (B) The defendant may attend a treatment program of the defendant's choice as long as the treatment
22 services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the
23 education course, and chemical dependency treatment and may use health insurance to cover the costs when
24 possible.

25 ~~(4) The assessment must describe the defendant's level of addiction, if any, and contain a~~
26 ~~recommendation as to education, treatment, or both. The assessment must conform to quality standards required~~
27 ~~by the department of public health and human services. THE ASSESSMENT MUST BE CONDUCTED BY A LICENSED~~
28 ~~ADDICTION COUNSELOR USING NATIONAL STANDARD PRACTICE ASSESSMENT AND PLACEMENT CRITERIA THAT HAS BEEN~~
29 ~~APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. IT MUST PRESCRIBE THE LEVEL OF CARE THAT~~
30 ~~IS CLINICALLY WARRANTED TO TREAT THE DEFENDANT'S DISORDER.~~ A defendant who disagrees with the initial

1 assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction
2 counselor or a program approved by the department of public health and human services.

3 (5) The treatment provided to the defendant at a treatment program must be at a level ~~appropriate to the~~
4 ~~defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to~~
5 ~~diagnosis and patient placement rules adopted by the department of public health and human services.~~ OF CARE
6 PRESCRIBED IN A DEFENDANT'S CLINICAL ASSESSMENT AS DESCRIBED IN SUBSECTION (4). The rules ~~must include~~
7 DEFINING LEVELS OF CARE AND TREATMENT MUST MANDATE evidence-based treatment programs or courses approved
8 by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's
9 appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection,
10 the court shall order an appropriate level of treatment based on the determination of one of the counselors.

11 (6) Each counselor providing education or treatment shall, at the commencement of the education or
12 treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or
13 treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the
14 court of the failure.

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

17 (8) (a) Chemical dependency treatment must be ordered for a first-time OR SECOND-TIME offender
18 convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition
19 of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or
20 the laws of another state, upon a finding of moderate or severe alcohol or drug use disorder made by a licensed
21 addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health
22 and human services.

23 (b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be
24 required to attend a chemical dependency education course.

25 (9) (a) On a ~~second or subsequent~~ THIRD conviction, the treatment program provided for in subsection
26 (5) ~~must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the~~
27 ~~program.~~ ONE OF THE FOLLOWING:

28 (i) DUI OR DRUG TREATMENT COURT;

29 (ii) INPATIENT TREATMENT, IF THE ASSESSMENT COMPLETED SUPPORTS IT; OR

30 (iii) OUTPATIENT TREATMENT WITH APPROPRIATE CLINICAL MONITORING FOR A PERIOD SPECIFIED IN A

1 DEFENDANT'S INDIVIDUALIZED TREATMENT PLAN.

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

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

7 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3]
8 and orders the person to complete chemical dependency treatment under this section, the judge retains
9 jurisdiction to impose any suspended sentence for up to 1 year.

10

11 NEW SECTION. Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and
12 drug monitoring program -- forfeiture of vehicle. (1) For a person convicted of a first offense of driving under
13 the influence, including [section 2] or a similar offense under previous laws of this state or the laws of another
14 state, the court may:

15 ~~_____ (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in~~
16 ~~44-4-1203;~~

17 ~~_____ (b) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~
18 ~~and require the person to pay the cost of leasing, installing, and maintaining the device; or~~

19 ~~_____ (c) require the person to participate in a court-approved alcohol or drug detection testing program and~~
20 ~~to pay the fees associated with the testing program.~~

21 (2) On a second or subsequent conviction for a violation of driving under the influence, including [section
22 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense
23 under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the
24 suspension or revocation was that the person was convicted of a violation of driving under the influence, including
25 [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar
26 offense under previous laws of this state or the laws of another state, or the suspension was under [section 8]
27 or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who
28 believed that the person might be driving under the influence, the court shall:

29 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in
30 44-4-1203 and to pay the fees associated with the program;

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

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

6 ~~(3) (a) In addition to the conditions listed in subsection (2), the court may order that each motor vehicle
 7 owned by the person at the time of the offense be seized and subjected to the procedure provided under [section
 8 42].~~

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

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

18
 19 **NEW SECTION. Section 7. Driving under influence -- conviction defined -- place of imprisonment**

20 **-- home arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the
 21 number of convictions for prior offenses referred to in [sections 1 through 4], "conviction", as defined in 45-2-101,
 22 means:

23 (i) a final conviction in this state, or on a federally recognized Indian reservation, within a municipality
 24 for a municipal ordinance enacted under the authority granted in [section 2(5)];

25 (ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the defendant's
 26 appearance in court in this state, in another state, or on a federally recognized Indian reservation; or

27 (iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c),
 28 (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section 1], a
 29 similar offense under previous laws of this state or the laws of another state, or a second or subsequent violation
 30 of [section 2(1)(f)].

1 ~~(b) All previous convictions must be used for sentencing purposes.~~ (i) EXCEPT AS PROVIDED IN SUBSECTION
2 (1)(B)(II), AN OFFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED FOR THE PURPOSES OF SENTENCING IF
3 LESS THAN 10 YEARS HAVE ELAPSED BETWEEN THE COMMISSION OF THE PRESENT OFFENSE AND A PREVIOUS CONVICTION
4 UNLESS THE OFFENSE IS THE OFFENDER'S THIRD OR SUBSEQUENT OFFENSE, IN WHICH CASE ALL PREVIOUS CONVICTIONS
5 MUST BE USED FOR SENTENCING PURPOSES.

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

8 (c) For the purpose of determining the number of subsequent convictions for a violation of driving under
9 the influence, including [sections 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of
10 aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the
11 laws of another state, or a second or subsequent violation of [section 2(1)(f)], the following must be counted:

12 (i) a previous conviction under [section 3] for violation of driving under the influence, including [section
13 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the
14 influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or a
15 second or subsequent violation of [section 2(1)(f)];

16 (ii) a previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while
17 the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b),
18 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section
19 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
20 violation of [section 2(1)(f)]; and

21 (iii) a previous conviction for a violation of 45-5-106, 45-5-205, or 45-5-628(1)(e).

22 (2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under
23 [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court.
24 The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose
25 restrictions on the defendant's ability to leave the premises of the facility and may require that the defendant
26 follow the rules of the facility. The facility may be, but is not required to be, a community-based prerelease center
27 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing
28 court.

29 (3) Subject to the limitations set forth in [section 3] concerning minimum periods of imprisonment, the
30 court may order that a term of imprisonment imposed under [section 3] be served by imprisonment under home

1 arrest, as provided in Title 46, chapter 18, part 10.

2 (4) A court may not defer imposition of sentence under [section 3 or 4].

3 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses
4 and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section
5 2].

6

7 **NEW SECTION. Section 8. Implied consent -- blood or breath tests for alcohol, drugs, or both --**

8 **refusal to submit to test --~~administrative license suspension.~~** (1) A person who operates or is in actual

9 physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is
10 considered to have given consent to a test or tests of the person's blood, breath, or other bodily substance for
11 the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

12 (2) (a) The test or tests must be administered at the direction of a peace officer when:

13 (i) the peace officer has particularized suspicion to believe that the person has been driving or has been
14 in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public
15 while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a
16 violation of driving under the influence as provided in [section 2] or an offense that meets the definition of
17 aggravated driving under the influence in [section 1];

18 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that
19 the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(f)]; or

20 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
21 a vehicle or commercial motor vehicle:

22 (A) in violation of driving under the influence as provided in [section 2], and the person has been placed
23 under arrest;

24 (B) in violation of driving under the influence as provided in [section 2], and the person has been involved
25 in a motor vehicle crash or collision resulting in property damage;

26 (C) and the person has been involved in a motor vehicle crash or collision resulting in serious bodily
27 injury, as defined in 45-2-101, or death; or

28 (D) in violation of driving under the influence as provided in [section 2] and meets the definition of
29 aggravated driving under the influence in [section 1].

30 (b) A peace officer may designate which test or tests are administered.

1 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
2 refusal has not withdrawn consent.

3 (4) If a person refuses to submit to one or more tests requested by the peace officer, the officer:

4 (a) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's
5 blood for testing; and

6 (b) shall immediately seize the person's driver license and immediately forward the license to the
7 department, along with a report certified under penalty of law stating the basis for the testing request and
8 confirming that the person refused to submit to one or more tests requested by the peace officer.

9 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
10 temporary driving permit, which is effective 24 hours after issuance and is valid for 5 days following the date of
11 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
12 provided in [section 9].

13 (6) A nonresident driver's license seized under this section must be sent by the department to the
14 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
15 more tests requested by the peace officer.

16 (7) This section does not apply to tests, samples, and analyses of blood, breath, or other bodily
17 substances used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for
18 a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

19 (8) This section does not prohibit the release of information obtained from tests, samples, and analyses
20 of blood or breath for law enforcement purposes as provided in 46-4-301 and [section 11(6)].

21
22 **NEW SECTION. Section 9. Right of appeal to court.** (1) Within 30 days after notice of the right to a
23 hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or
24 revocation in the district court in the county where the arrest was made.

25 (2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days'
26 written notice of the hearing to the county attorney of the county where the arrest was made and to the city
27 attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal
28 court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney
29 cannot agree on who will represent the state, the county attorney shall represent the state.

30 (3) Upon request of the petitioner, the court may order the department to return the seized license or

1 issue a stay of the suspension or revocation action pending the hearing.

2 (4) The court shall take testimony and examine the facts of the case, except that the issues are limited
3 to whether:

4 (a) a peace officer had particularized suspicion to believe that the person had been driving or was in
5 actual physical control of a vehicle within this state while under the influence of alcohol, drugs, or a combination
6 of the two and the person was detained for a violation of [section 2] or met the definition of aggravated driving
7 under the influence in [section 1];

8 (b) the person is under 21 years of age and was placed under arrest for a violation of [section 2(1)(f)];

9 (c) the officer had probable cause to believe that the person was driving or in actual physical control of
10 a vehicle in violation of [section 2] and the person was involved in a motor vehicle accident or collision resulting
11 in property damage, bodily injury, or death; and

12 (d) the person refused to submit to one or more tests designated by the officer.

13 (5) For a noncommercial driver whose refusal took place in a noncommercial vehicle, the court shall order
14 the department to either:

15 (a) remove the refusal from the driving record because of the issues in subsection (4) and no other;

16 (b) keep the refusal on the driving record and order the department to suspend the driver's license or
17 privilege to drive for the duration of the suspension period under [section 8]; or

18 (c) keep the refusal on the driving record and order the department to take no further suspension action
19 against the driver.

20 (6) (a) For a commercial driver or for a driver operating a commercial motor vehicle, the court shall order
21 the department to either:

22 (i) remove the refusal from the driving record because of the issues in subsection (4) and no other; or

23 (ii) keep the refusal on the driving record and order the department to suspend the driver's license or
24 privilege to drive for the duration of the original suspension under [section 8] or 61-8-802.

25 (b) For a commercial driver or a driver who was operating a commercial vehicle, the court may not order
26 the department to:

27 (i) leave the refusal on the driving record and not take the suspension under [section 8] or 61-8-802; or

28 (ii) permanently stay the suspension taken under [section 8] or 61-8-802.

29 (7) If the court does not issue a ruling on the appeal within 1 year of filing, the department shall deem the
30 court to have denied the petition and shall suspend the driver for the duration of the original suspension under

1 [section 8] or 61-8-802.

2 (8) This section does not grant a right of appeal to a state court if a driver's license is initially seized,
3 suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle
4 operators.

5

6 **NEW SECTION. Section 10. Evidence admissible -- conditions of admissibility.** (1) Upon the trial
7 of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation
8 of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving
9 under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state,
10 or 61-8-805:

11 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol
12 and drugs in the person at the time of a test, as shown by an analysis of the person's blood, breath, or other
13 bodily substance, is admissible. A positive test result does not, in itself, prove that the person was under the
14 influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of
15 a violation of [section 2] based on the presence of a drug or drugs in the person unless some other competent
16 evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving
17 or in actual physical control of a motor vehicle within this state.

18 (b) a report of the facts and results of one or more tests of a person's blood, breath, or other bodily
19 substance is admissible in evidence if:

20 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic
21 sciences division of the department to administer the test; or

22 (ii) a blood sample or other bodily substance sample was analyzed in a laboratory operated or certified
23 by the department or in a laboratory exempt from certification under the rules of the department and, if the sample
24 was blood, the blood was withdrawn from the person by a person competent to do so under [section 11(1)];

25 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person
26 is admissible in evidence if it was made by a person trained by the department or by a person who has received
27 training recognized by the department.

28 (2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a
29 sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or
30 proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical

1 control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or
2 a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the
3 influence. The inference is rebuttable.

4 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing on
5 the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
6 drugs.

7
8 **NEW SECTION. Section 11. Administration of tests.** (1) Only a licensed physician, registered nurse,
9 phlebotomist trained in a licensed hospital or educational institution, or other medical personnel trained in a
10 licensed hospital or educational institution to withdraw blood may, at the order or request of a peace officer,
11 withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or
12 any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath or
13 other bodily substances.

14 (2) In addition to any test administered at the direction of a peace officer, a person may request that an
15 independent blood sample be drawn by a physician or registered nurse for the purpose of determining any
16 measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person.
17 The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The
18 officer may, but has no duty to, transport the person to a medical facility or otherwise assist the person in
19 obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the
20 test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in
21 evidence of any test given at the direction of a peace officer.

22 (3) Upon the request of the person tested, full information concerning any test given at the direction of
23 the peace officer must be made available to the person or the person's attorney.

24 (4) A licensed physician, registered nurse, phlebotomist trained in a licensed hospital or educational
25 institution, or other medical personnel trained in a licensed hospital or educational institution does not incur any
26 civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace
27 officer to administer the test.

28 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving
29 of tests and may require certification of training to administer the tests as considered necessary.

30 (6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the

1 definition of aggravated driving under the influence in [section 1], or has violated 61-8-805 and a sample of blood,
 2 breath, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for
 3 analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of
 4 a subpoena as provided in 46-4-301.

5
 6 ~~NEW SECTION. Section 12. Forfeiture procedure.~~ (1) A motor vehicle forfeited under [section 6] must
 7 be seized by the arresting agency within 10 days after the conviction and must be disposed of as provided in Title
 8 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to
 9 the extent applicable.

10 ~~(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency~~
 11 ~~within 20 days after the seizure of the motor vehicle.~~

12 ~~(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first~~
 13 ~~to the holders of security interests who have presented proper proof of their claims, up to the amount of the~~
 14 ~~interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the~~
 15 ~~arresting agency.~~

16 ~~(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle~~
 17 ~~to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the~~
 18 ~~motor vehicle.~~

19 ~~(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return~~
 20 ~~of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section~~
 21 ~~but is found by the court to be without fault.~~

22
 23 ~~NEW SECTION. Section 13. Prohibition on transfer, sale, or encumbrance of vehicles subject to~~
 24 ~~forfeiture -- penalty.~~ (1) It is unlawful for the owner of a vehicle subject to forfeiture under [section 6] to transfer,
 25 sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the
 26 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying
 27 charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise
 28 terminated.

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

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

3
4 **NEW SECTION. Section 12. Ignition interlock device -- assisting in starting and operating --**
5 **circumventing -- penalty.** (1) It is unlawful for a person who is subject to a restriction under [section 46 14] to
6 operate a vehicle that is not equipped with an ignition interlock device.

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

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

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

12 (5) This section does not apply if:
13 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock
14 device is done for the purpose of safety or mechanical repair of the device or the vehicle; and
15 (b) the person subject to the restriction does not operate the vehicle.

16
17 **NEW SECTION. Section 13. Department rules regarding ignition interlock devices -- ignition**
18 **interlock device provider requirements.** (1) The department shall adopt rules providing for the approval of
19 ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

20 (2) The department's rules must be based on federal standards issued for similar devices.
21 (3) An ignition interlock device that is approved by the department must also:
22 (a) be designed so it does not impede safe operation of the vehicle;
23 (b) correlate well with the level established for alcohol impairment;
24 (c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;
25 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration
26 equivalence;
27 (e) resist tampering and show evidence of tampering if it is attempted;
28 (f) be difficult to circumvent;
29 (g) minimize inconvenience of a sober user;
30 (h) operate reliably over the range of automobile environments and in connection with various

1 manufacturing standards; and

2 (i) be manufactured by a person who is adequately insured for product liability.

3 (4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock
4 device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is
5 subject to criminal prosecution.

6
7 **NEW SECTION. Section 14. Driving under influence -- probationary driver's license.** (1) ~~The court~~
8 ~~may recommend a~~ A probationary noncommercial driver's license ~~for~~ MAY BE ISSUED TO a person convicted of a
9 first offense for misdemeanor driving under the influence UNLESS THE REPORT OF CONVICTION INCLUDES A
10 STATEMENT THAT THE COURT DOES NOT RECOMMEND A PROBATIONARY LICENSE.

11 (2) If recommending a probationary license for a person convicted of a second or subsequent offense
12 for misdemeanor driving under the influence, the court shall for the duration of the suspension under 61-5-208:

13 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in
14 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 interlock device
16 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and
17 maintaining the device; or

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

20
21 **NEW SECTION. Section 15. Unlawful possession of open alcoholic beverage container in motor**
22 **vehicle on highway.** (1) Except as provided in subsection (2), a person commits the offense of unlawful
23 possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses
24 an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

25 (2) This section does not apply to an open alcoholic beverage container:

26 (a) in a locked glove compartment or storage compartment;

27 (b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;

28 (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

29 (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not
30 normally occupied by the driver or a passenger; or

1 (e) in the immediate possession of a passenger:

2 (i) of a bus, taxi, limousine, or prearranged ride that is used for the transportation of persons for
3 compensation and that includes the provision of a hired driver; or

4 (ii) in the living quarters of a camper, travel trailer, or motor home.

5 (3) Subsections (2)(a), (2)(b), (2)(c), and (2)(d) apply only to transportation of open alcoholic beverage
6 containers and do not allow for the consumption of alcoholic beverages in these areas in or on a vehicle.

7 (4) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container
8 in a motor vehicle shall be fined an amount not to exceed \$100.

9 (b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101,
10 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an
11 insurance company may not hold a violation of this section against the insured or increase premiums because
12 of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a
13 violation of this section.

14

15 **NEW SECTION. Section 16. Suspension of imprisonment sentence for DUI court participation.**

16 (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an
17 imprisonment sentence under [sections 3 and 4], except for the mandatory minimum imprisonment term.

18 (2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court,
19 the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must
20 commence from the effective date of the revocation.

21

22 **NEW SECTION. Section 17. Mandatory suspension of license following certain implied consent**

23 **action.** (1) The department shall suspend an individual's driver license if the department receives a report for an
24 implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an
25 individual has refused a test or tests of the person's blood, breath, or other bodily substance for determining any
26 measured amount or detected presence of alcohol or drugs in the person's body.

27 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the
28 public highways has been suspended may not have the license or privilege renewed or restored until the
29 revocation or suspension duration has been completed.

30 (b) The department shall apply the appropriate sanction to the driver based on the reported conviction

1 and prior offenses.

2 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's
3 license or privilege to drive is restored.

4 (d) The duration of the suspension commences from the date of violation.

5 (e) If a person refuses tests for the same incident, the department may not consider each a separate
6 refusal for purposes of suspension.

7 (f) The department may not issue a probationary license during the suspension issued under this part.

8 (3) (a) A person who has an implied consent violation shall pay the department an administrative fee of
9 \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

10 (b) There is a blood-draw search warrant processing account in the state special revenue fund
11 established pursuant to 17-2-
12 102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the
13 account and may be used only for providing forensic analysis of a driver's blood to determine the presence of
14 alcohol or drugs.

15 (4) (a) Upon receiving a report of an implied consent violation, the department shall:

16 (i) for a first violation, suspend the driver's license or driving privilege for 6 months; or

17 (ii) for a second violation, suspend the driver's license or driving privilege for 1 year.

18 (b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial
19 driver's license or was driving a commercial vehicle at the time of the refusal, in addition to any action taken
20 against the driver's noncommercial driving privileges, the department shall apply a major offense to the driving
21 record and take the appropriate suspension as provided in 61-8-802.

22 (5) A nonresident driver's license seized under this section must be sent by the department to the
23 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
24 more tests.

25 (6) The department may recognize the seizure of a license of a tribal member by a peace officer acting
26 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
27 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
28 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
29 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
30 under this subsection is not reviewable under [section 9].

1

2 **Section 18.** Section 23-2-535, MCA, is amended to read:

3 **"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1)

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

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

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

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

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

20

21 **Section 19.** Section 44-4-1205, MCA, is amended to read:

22 **"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program --**

23 **probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may
24 stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety
25 program.

26 (b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of~~
27 ~~61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of
28 ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in
29 violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program,
30 the court may, upon the individual's successful completion of a court-approved chemical dependency treatment

1 program and proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety
 2 program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302,
 3 notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a
 4 suspension period before a probationary license may be issued.

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

8 (2) Upon an offender's participation in the sobriety program and payment of the fees required by
 9 44-4-1204:

10 (a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of~~
 11 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of
 12 ~~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
 13 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of
 14 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the
 15 crime;

16 (b) the court may condition the granting of a suspended execution of sentence or probation for an
 17 individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1],
 18 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
 19 aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other
 20 statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a
 21 contributing factor in the commission of the crime;

22 (c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving
 23 under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section
 24 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
 25 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
 26 of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

27 (d) the department of corrections may establish conditions for conditional release for ~~a violation of~~
 28 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of
 29 ~~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
 30 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of

1 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the
2 crime.

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

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

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

12 or

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

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

16 (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),
17 (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

18 (B) has been convicted of a violation of a statute or regulation in another state or on a federally
19 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),
20 (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

21 (C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state,
22 in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406,~~
23 ~~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
24 [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

25 (5) As used in this section, "conviction" has the meaning provided in 45-2-101."
26

27 **Section 20.** Section 45-5-106, MCA, is amended to read:

28 **"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular
29 homicide while under the influence if the person negligently causes the death of another human being while the
30 person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)].

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

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

6

7 **Section 21.** Section 45-5-205, MCA, is amended to read:

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

12 (2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be
13 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
14 shall be ordered to pay restitution as provided in 46-18-241.

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

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

21

22 **Section 22.** Section 45-5-207, MCA, is amended to read:

23 **"45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that
24 creates a substantial risk of death or serious bodily injury to another commits the offense of criminal
25 endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any
26 steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing,
27 or manufacturing equipment.

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

30 (3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed

1 \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

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

3

4 **Section 23.** Section 45-5-628, MCA, is amended to read:

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

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

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

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

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

15 (e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401,~~
16 ~~61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in
17 [section 1] with a child in the vehicle; or

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

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

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

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

26

27 **Section 24.** Section 46-16-130, MCA, is amended to read:

28 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who
29 has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified
30 period of time based on one or more of the following conditions:

- 1 (i) that the defendant may not commit any offense;
- 2 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a
3 relationship to the conduct upon which the charge against the defendant is based;
- 4 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include
5 treatment, counseling, training, or education;
- 6 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;
- 7 or
- 8 (v) any other reasonable conditions.
- 9 (b) The agreement must be in writing, must be signed by the parties, and must state that the defendant
10 waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the
11 admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and
12 there is a trial on the charge.
- 13 (c) The prosecution must be deferred for the period specified in the agreement unless there has been
14 a violation of its terms.
- 15 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon
16 expiration and compliance with the terms of the agreement.
- 17 (2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine
18 the appropriateness of proceedings pursuant to Title 53, chapter 21.
- 19 (3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of
20 prosecution may be entered into only after the prosecutor provides notice to the court.
- 21 (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
22 aggravated driving under the influence as defined in [section 1] may not be deferred."

23

24 **Section 25.** Section 46-18-201, MCA, is amended to read:

25 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
26 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
27 of sentence, except as otherwise specifically provided by statute, for a period:

28 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
29 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
30 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless

1 of whether any other conditions are imposed.

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

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

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

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

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

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

16 (iv) commitment of:

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

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

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

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

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

- 1 (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.
- 2 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
- 3 sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the
- 4 deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection
- 5 (1)(a) or (2) may include but are not limited to:
- 6 (a) limited release during employment hours as provided in 46-18-701;
- 7 (b) incarceration in a detention center not exceeding 180 days;
- 8 (c) conditions for probation;
- 9 (d) payment of the costs of confinement;
- 10 (e) payment of a fine as provided in 46-18-231;
- 11 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 12 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 13 (h) with the approval of the facility or program, an order that the offender be placed in a community
- 14 corrections facility or program as provided in 53-30-321;
- 15 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
- 16 of corrections that space is available and that the offender is a suitable candidate, an order that the offender be
- 17 placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not
- 18 to exceed 1 year;
- 19 (j) community service;
- 20 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 21 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 22 (m) participation in a day reporting program provided for in 53-1-203;
- 23 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part
- 24 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or~~
- 25 ~~subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any
- 26 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a
- 27 contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the
- 28 abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the
- 29 commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent
- 30 violation of the statute;

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

3 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
4 protection of the victim or society;

5 (q) with approval of the program and confirmation by the department of corrections that space is
6 available, an order that the offender be placed in a residential treatment program; or

7 (r) any combination of the restrictions or conditions listed in this subsection (4).

8 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
9 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
10 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
11 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
12 sentence is deferred or suspended.

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

17 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
18 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
19 5.

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

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

25 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
26

27 **Section 26.** Section 46-18-236, MCA, is amended to read:

28 **"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1)
29 Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon
30 conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in

1 addition to other taxable court costs, fees, or fines, as follows:

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

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

4 (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~
5 ~~61-8-411~~ or [section 2].

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

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

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

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

22 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections
23 (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
24 salaries of the city or town attorney and deputies.

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

30 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may

1 retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate
 2 program, including a program operated by a private, nonprofit organization, that provides the services specified
 3 in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

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

8 (c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim
 9 and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims
 10 compensation and assistance program in the department of justice for deposit in the account provided for in
 11 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

12 **46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture --**
 13 **administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original
 14 jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond
 15 or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

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

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

18 (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~
 19 ~~61-8-411~~ or [section 2].

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

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

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

28 (5) The charges collected under subsection (1), except those collected under subsections (1)(a) and
 29 (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer.
 30 If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under

1 subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's
2 court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the
3 county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county
4 government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be
5 deposited with the finance officer or treasurer of the consolidated government.

6 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections
7 (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
8 salaries of the city or town attorney and deputies.

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

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

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

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

26

27 **Section 27.** Section 50-46-320, MCA, is amended to read:

28 **"50-46-320. Limitations of act.** (1) This part does not permit:

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

- 1 (b) except as provided in subsection (3), the use of marijuana by a registered cardholder:
- 2 (i) in a health care facility as defined in 50-5-101;
- 3 (ii) in a school or a postsecondary school as defined in 20-5-402;
- 4 (iii) on or in any property owned by a school district or a postsecondary school;
- 5 (iv) on or in any property leased by a school district or a postsecondary school when the property is being
- 6 used for school-related purposes;
- 7 (v) in a school bus or other form of public transportation;
- 8 (vi) when ordered by any court of competent jurisdiction into a correctional facility or program;
- 9 (vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;
- 10 (viii) at a public park, public beach, public recreation center, or youth center;
- 11 (ix) in or on the property of any church, synagogue, or other place of worship;
- 12 (x) in plain view of or in a place open to the general public; or
- 13 (xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare
- 14 of children.
- 15 (2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana
- 16 or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a
- 17 manner that is visible from the street or other public area.
- 18 (3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows
- 19 use of marijuana by a registered cardholder.
- 20 (4) Nothing in this part may be construed to require:
- 21 (a) a government medical assistance program, a group benefit plan that is covered by the provisions of
- 22 Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to
- 23 reimburse an individual for costs associated with the use of marijuana by a registered cardholder;
- 24 (b) an employer to accommodate the use of marijuana by a registered cardholder;
- 25 (c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular
- 26 activities; or
- 27 (d) a landlord to allow a tenant who is a registered cardholder, provider, marijuana-infused products
- 28 provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana
- 29 concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.
- 30 (5) Nothing in this part may be construed to:

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

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

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

8 (7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid
9 registry identification card is driving under the influence of marijuana may apply for a search warrant to require
10 the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~
11 [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml or more may be charged with a
12 violation of ~~61-8-401 or 61-8-411~~ [section 2(1)(a) or (1)(e)].

13 (b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection
14 (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted
15 of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense
16 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].
17 A revocation under this section must be for the period of suspension or revocation set forth:

18 (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),
19 or (1)(e)]; or

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

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

24 (8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject
25 to revocation of the person's license from the date of the violation until a period of up to 1 year after the
26 department of revenue certifies compliance with 15-64-103 or 15-64-104."
27

28 **Section 28.** Section 53-9-103, MCA, is amended to read:

29 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

- 1 (a) a victim;
- 2 (b) a dependent of a deceased victim; or
- 3 (c) an authorized person acting on behalf of any of them.
- 4 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for
- 5 economic loss otherwise compensable under this part that the claimant has received or that is readily available
- 6 to the claimant from:
- 7 (a) the offender;
- 8 (b) the government of the United States or any agency thereof, a state or any of its political subdivisions,
- 9 or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them
- 10 excess or secondary to benefits under this part;
- 11 (c) social security, medicare, and medicaid;
- 12 (d) workers' compensation;
- 13 (e) wage continuation programs of any employer;
- 14 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of
- 15 the criminally injurious conduct;
- 16 (g) a contract, including an insurance contract, providing hospital and other health care services or
- 17 benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for
- 18 benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are
- 19 a primary source.
- 20 (h) a crime victims compensation program operated by the state in which the victim was injured or killed
- 21 that compensates residents of this state injured or killed in that state; or
- 22 (i) any other third party.
- 23 (3) "Criminally injurious conduct" means conduct that:
- 24 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331,
- 25 committed outside of the United States against a resident of this state;
- 26 (b) results in bodily injury or death or involves domestic violence in a home where minor children were
- 27 present; and
- 28 (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person
- 29 engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally
- 30 injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle

1 unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires
2 the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a
3 motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor
4 vehicle while under the influence, as that term is defined in ~~61-8-404~~ section 1; or

5 (d) is committed in a state without a crime victims compensation program that covers a resident of this
6 state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

7 (4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or
8 partially dependent upon the victim for care or support and includes a child of the victim conceived before the
9 victim's death but born after the victim's death, including a child that is conceived as a result of the criminally
10 injurious conduct.

11 (5) "Office" means the office of victims services established in 2-15-2016.

12 (6) "Victim" means:

13 (a) a person who suffers bodily injury or death as a result of:

14 (i) criminally injurious conduct;

15 (ii) the person's good faith effort to prevent criminally injurious conduct; or

16 (iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally
17 injurious conduct; or

18 (b) a minor child present in a home where domestic violence occurred."

19

20 **Section 29.** Section 61-1-101, MCA, is amended to read:

21 **"61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following
22 definitions apply:

23 (1) (a) "Authorized agent" means a person who has executed a written agreement with the department
24 and is specifically authorized by the department to electronically access and update the department's motor
25 vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or
26 purposes on behalf of a third party.

27 (b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited
28 partnership, limited liability company, association, joint venture, state agency, local government unit, another state
29 government, the United States, a political subdivision of this or another state, or any other legal or commercial
30 entity.

1 (2) "Authorized agent agreement" means the written agreement executed between an authorized agent
2 and the department that sets the technical and operational program standards, compliance criteria, payment
3 options, and service expectations by which the authorized agent is required to operate in performing specific
4 motor vehicle or driver-related record functions.

5 (3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the
6 transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the
7 transportation of persons for compensation.

8 (4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited
9 liability company, or other legal entity recognized under state law.

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

11 (5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to
12 an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a
13 cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

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

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

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

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

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

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

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

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

30 (ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is

- 1 greater;
- 2 (iii) is designed to transport at least 16 passengers, including the driver;
- 3 (iv) is a school bus; or
- 4 (v) is of any size and is used in the transportation of hazardous materials.
- 5 (b) The following vehicles are not commercial motor vehicles:
- 6 (i) an authorized emergency vehicle:
- 7 (A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
- 8 (B) operated when responding to or returning from an emergency call or operated in another official
- 9 capacity;
- 10 (ii) a vehicle:
- 11 (A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
- 12 (B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana
- 13 within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles
- 14 of the farm, including any area within that perimeter that is in the adjoining state; and
- 15 (C) not used to transport goods for compensation or for hire; or
- 16 (iii) a vehicle operated for military purposes by active duty military personnel, a member of the military
- 17 reserves, a member of the national guard on active duty, including personnel on full-time national guard duty,
- 18 personnel in part-time national guard training, and national guard military technicians, or active duty United States
- 19 coast guard personnel.
- 20 (c) For purposes of this subsection (9):
- 21 (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or
- 22 crops or the raising of livestock owned by or under the direct control of that person;
- 23 (ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight
- 24 of a combination or articulated vehicle;
- 25 (iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of
- 26 a single vehicle; and
- 27 (iv) "school bus" has the meaning provided in 49 CFR 383.5.
- 28 (10) "Commission" means the state transportation commission.
- 29 (11) "Custom-built motorcycle" means a motorcycle that is equipped with:
- 30 (a) an engine that was manufactured 20 years prior to the current calendar year and that has been

1 altered from the manufacturer's original design; or

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

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

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

6 (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current
7 calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least
8 25 years old; and

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

11 (13) "Customer identification number" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) an individual establishes residence;

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

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

11 (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer,
12 or pole trailer that it owns or leases.

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

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

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

19 (a) any temporary license or learner license;

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

21 (c) any nonresident's driving privilege;

22 (d) a motorcycle endorsement; or

23 (e) a commercial driver's license.

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

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

30 (24) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or

1 persons and golf equipment and that has an average speed of less than 15 miles per hour.

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

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

6 (26) "Hazardous material" means:

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

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

10 (27) "Highway" or "public highway" means the entire width between the boundary lines of every publicly
11 maintained way when any part of the publicly maintained way is open to the use of the public for purposes of
12 vehicular travel.

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

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

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

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

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

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

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

25 (a) has four wheels;

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

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

30 (d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power

1 grid or from renewable electrical energy sources;

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

3 (f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle

4 identification number as provided in 49 CFR, part 565; and

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

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

8 (a) a temporary license or learner license;

9 (b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of
10 61-5-122, whether or not the person holds a valid driver's license; and

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

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

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

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

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

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

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

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

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

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

30 (vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle

1 identification number as provided in 49 CFR, part 565;

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

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

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

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

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

9 (39) "Montana resident" means:

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

11 (b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a
12 registered agent in this state.

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

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

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

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

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

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

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

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

30 (43) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces

1 5 horsepower or less.

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

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

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

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

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

10 (i) cooking, refrigeration, or icebox;

11 (ii) self-contained toilet;

12 (iii) heating or air conditioning, or both;

13 (iv) potable water supply, including a faucet and sink; or

14 (v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

15 (45) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported,
16 that:

17 (i) is propelled by its own power, using an internal combustion engine or an electric motor;

18 (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

19 (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a
20 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

21 (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a
22 "pocket rocket".

23 (c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility
24 device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for
25 use by a physically disabled person.

26 (46) (a) "Motor vehicle" means:

27 (i) a vehicle propelled by its own power and designed or used to transport persons or property on the
28 highways of the state;

29 (ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

30 (iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated

1 pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

2 (b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive
3 mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically
4 propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means
5 of mobility for that person.

6 (47) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or
7 equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as
8 the result of a retail sale.

9 (48) "Nonresident" means a person who is not a Montana resident.

10 (49) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered
11 as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle
12 club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

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

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

19 (b) The term does not include:

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

21 (ii) snowmobiles; or

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

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

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

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

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

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

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

11 (57) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having
12 a seat or saddle on which the operator sits.

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

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

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

18 (b) The term does not include streetcars.

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

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

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

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

1 vehicle for the registration period indicated in the receipt.

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

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

10 (66) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular
11 travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways,
12 the term refers to any roadway separately but not to all roadways collectively.

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

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

15 (68) "School zone" means an area near a school beginning at the school's front door, encompassing the
16 campus and school property, and including the streets directly adjacent to the school property and for as many
17 blocks surrounding the school as determined by the local authority establishing a special speed limit under
18 61-8-310(1)(d).

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

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

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

27 (72) "Special mobile equipment" means a vehicle not designed for the transportation of persons or
28 property on the highways but incidentally operated or moved over the highways, including road construction or
29 maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is
30 permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this

1 subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) required vehicle and owner information; and

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

10 (b) that, when placed in a durable license-plate style plastic pouch approved by the department and
11 displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat,
12 sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

29 **Section 30.** Section 61-2-107, MCA, is amended to read:

30 **"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.**

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

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

8

9 **Section 31.** Section 61-2-302, MCA, is amended to read:

10 **"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by**
11 **offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and
12 improvement program or programs. The programs may consist of classroom instruction in rules of the road,
13 driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
14 subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the
15 requirements for obtaining a restricted probationary driver's license.

16 (2) Except when otherwise provided or restricted by statute, a person whose driver's license is
17 suspended or revoked by the department, unless the suspension or revocation was for an offense under
18 ~~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
19 rehabilitation and improvement program established under this section if the person's license is:

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

22 (b) revoked and the person has:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
23 restrictions imposed on a restricted license issued to the person under this section."
24

25 **Section 32.** Section 61-5-125, MCA, is amended to read:

26 **"61-5-125. Authority of department -- rulemaking authority.** (1) The department shall administer and
27 enforce the provisions of this chapter.

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

30 (a) must specifically address the functional abilities and skills required for a person to exercise ordinary

1 and reasonable control in the safe operation of a motor vehicle on a highway;

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

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

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

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

12 (d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

13 (e) may take into consideration any nationally recognized standards or recommended practices for
14 assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor
15 vehicle on the highway;

16 (f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational
17 limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

18 (g) may be derived from medical guidelines and information compiled by driver licensing medical
19 advisory or review boards from other jurisdictions, as well as information received from advocacy groups for
20 persons with disabilities and senior citizens; and

21 (h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation,
22 or condition as a justification for denial of a license.

23 (3) The department shall adopt rules governing the issuance of a hardship license to an underage
24 applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid learner
25 license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's
26 licensed parent or guardian is not available to accompany the licensee due to employment or circumstances
27 related to the operation of a farm or ranch and the licensee is required to drive more than 7 miles from the
28 licensee's residence to the licensee's school bus stop.

29 (4) The department may adopt additional rules governing:

30 (a) acceptable methods of proof of identification that must be supplied by a person upon application for

1 or renewal of a driver's license;

2 (b) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license
3 fees;

4 (c) circumstances under which the department may issue a probationary license to a person whose
5 license has been suspended or revoked or a person whose license is subject to a discretionary suspension or
6 revocation;

7 (d) restrictions and duration to be imposed upon a probationary license;

8 (e) renewal of a driver's license by a person in the military assigned to active duty who had a valid
9 Montana driver's license at the time of entering active duty;

10 (f) issuance of a replacement driver's license; ~~and~~

11 (g) a determination of the driver's license expiration date, minimum and maximum license terms, and
12 license renewal requirements for a driver's license issued to a person who is a foreign national whose presence
13 in the United States is temporarily authorized under federal law;

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

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

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

20

21 **Section 33.** Section 61-5-205, MCA, is amended to read:

22 **"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration**
23 **of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the
24 department receives ~~notice from a court or another licensing jurisdiction~~ a report of conviction, as defined in
25 61-5-213, in this state or a violation of a similar statute or regulation in another state or on a federally recognized
26 Indian reservation, that the individual has been convicted of any of the following offenses:

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

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

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

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

3 (e) fleeing from or eluding a peace officer; or

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

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

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

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

12 ~~—— (b) three reckless driving offenses committed within a period of 12 months; or~~

13 ~~—— (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle~~
14 ~~was used in the commission of the offense.~~

15 ~~(3)(2)~~ A revocation under subsections (1)(a), (1)(b), and (1)(d) through ~~(1)(f)~~ (1)(g) must be for a period
16 of 1 year. A revocation under subsection (1)(c) must be for a period of 1 year, except that a revocation must be
17 for 2 years if the offender received a felony conviction under 61-7-103.

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

22 (a) a misdemeanor offense of driving under the influence of alcohol or drugs;

23 (b) three reckless driving offenses committed within a period of 12 months; or

24 (c) a theft offense if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the
25 commission of the offense.

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

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

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

30 (i) 30 days for a first offense;

- 1 (ii) 6 months for a second offense; and
 2 (iii) 1 year for a third or subsequent offense."

3
 4 **Section 34.** Section 61-5-208, MCA, is amended to read:

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

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

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

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

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

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

1 ~~the license suspension remains in effect until treatment is completed.~~

2 (b) The department shall apply the appropriate sanction to the driver based on the reported and prior
 3 convictions, as defined in 61-5-213, in this state or a violation of a similar statute or regulation in another state
 4 or on a federally recognized Indian reservation.

5 (c) The driver must pay all reinstatement and administrative fees owed to the department before a
 6 probationary license is issued or a driver's license or privilege to drive is restored.

7 ~~(3)(a)(d)~~ Except as provided in subsection (3)(b) (2)(e) or as provided in 61-8-802, the period duration
 8 of the suspension or revocation for a person convicted of any offense that makes mandatory the suspension or
 9 revocation of the person's driver's license commences from the date of conviction, or forfeiture of bail as defined
 10 in 61-5-213, or from the date of the event mandating an administrative suspension or revocation.

11 ~~(b)(e)~~ A suspension commences from the last day of the prior suspension or revocation period if the
 12 suspension is for a conviction of driving with a suspended or revoked license. If the reported conviction is for
 13 driving with a suspended or revoked license or while declared a habitual traffic offender, the suspension
 14 commences from the last day of the sanction that resulted in the offender being suspended.

15 ~~(4)(f) If~~ In addition to any other permitted sanction, if a person is convicted of a violation of 61-8-401,
 16 61-8-406, 61-8-411, or 61-8-465 driving under the influence of alcohol or drugs while a commercial driver while
 17 operating a commercial motor vehicle, the department shall suspend the person's commercial driver's license
 18 or commercial privilege to drive as provided in 61-8-802.

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

21 (a) for a misdemeanor first offense:

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

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

25 (b) for a misdemeanor second offense:

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

27 (ii) may not issue a probationary license during the period of suspension until the person completes at
 28 least 45 days of the 1-year suspension, unless the department receives a report that:

29 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,
 30 and the report of conviction includes a recommendation from the court that a probationary license be issued

1 subject to the requirements of [section 46 14]; or

2 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license
3 as provided in [section 48 16]; and

4 (iii) after the mandatory 45-day waiting period, may issue a probationary license when the court makes
5 a recommendation for a probationary license as provided in [section 46 14] or for an out-of-state conviction upon
6 receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section 5];

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

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

9 (ii) may not issue a probationary license during the period of suspension until the person completes at
10 least 45 90 days of the 1-year suspension, unless the department receives a report that:

11 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,
12 and the report of conviction includes a recommendation from the court that a probationary license be issued
13 subject to the requirements of [section 46 14]; or

14 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license
15 as provided in [section 48 16]; and

16 (iii) after the mandatory 45-day waiting period, may issue a probationary license when the court makes
17 a recommendation for a probationary license as provided in [section 46 14] or for an out-of-state conviction upon
18 receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section 5].

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

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

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

25 (ii) may not issue a probationary license until the person completes 90 days of the 1-year revocation;

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

27 (iv) may issue a probationary license after the mandatory 90-day waiting period when the judgment has
28 as a condition of probation that the person may not operate a motor vehicle unless:

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

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

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

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

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

7 (a) for a first offense:

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

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

11 (b) for a second offense:

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

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

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

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

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

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

22

23 **Section 35.** Section 61-5-212, MCA, is amended to read:

24 **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**
25 **without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory
26 exemption or during a suspension or revocation period if the person drives:

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

30 (ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended,

1 or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle
 2 or from obtaining a commercial driver's license; or

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

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

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

11 (iii) If the reason for the suspension or revocation was that the person was convicted of a violation of
 12 ~~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
 13 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
 14 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be
 15 driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6
 16 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to
 17 perform up to 40 hours of community service.

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

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

26

27 **Section 36.** Section 61-5-218, MCA, is amended to read:

28 **"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as
 29 provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving
 30 privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the

1 driver's license or driving privilege reinstated.

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

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

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

9 (3) The department shall deposit the fees collected under subsection (1) in the general fund."
10

11 **Section 37.** Section 61-5-231, MCA, is amended to read:

12 **"61-5-231. Authorization of probationary license by DUI court -- definition.** (1) If a person convicted
13 of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under
14 ~~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
15 under ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)], or aggravated driving under the influence under ~~61-8-465~~ as
16 defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's
17 discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any
18 other conditions imposed within the scope of the court's authority.

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

22 ~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for~~
23 ~~handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and~~
24 ~~that implements a program of incentives and sanctions intended to assist a participant in completing treatment~~
25 ~~ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the~~
26 ~~influence of alcohol or drugs or with excessive alcohol concentration."~~
27

28 **Section 38.** Section 61-5-405, MCA, is amended to read:

29 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to**
30 **licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article

1 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],
 2 the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

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

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

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

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

10 (3) Court abstracts or reports of conviction received by the department that name an individual licensed
 11 in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action
 12 against the driver's license or driving privilege of the individual as may be required elsewhere in this title."
 13

14 **Section 39.** Section 61-8-101, MCA, is amended to read:

15 **"61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public"
 16 means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public
 17 travel that is in common use by the public.

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

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

21 (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
 22 operating a vehicle while under the influence of drugs, apply anywhere within this state;

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

27 (3) The operation of motor vehicles directly across the public roads and highways of this state, especially
 28 as required in the transportation of natural resource products, including agricultural products and livestock, shall
 29 not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways
 30 of this state open to the public, provided that such crossings are adequately marked with warning signs or

1 devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any
2 damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the
3 public highway involved."

4

5 **Section 40.** Section 61-8-102, MCA, is amended to read:

6 **"61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state must
7 be as consistent as possible with the interpretation of similar laws in other states.

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

9 (a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title
10 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

11 (b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride,
12 irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an
13 electrically assisted bicycle.

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

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

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

23 (f) "Crosswalk" means:

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

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

29 (g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem
30 wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than

1 20 miles an hour on a paved, level surface.

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

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

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

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

10 (ii) is approved by the department pursuant to ~~61-8-444~~ section 45 13; and

11 (iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific
12 amount of an alcoholic beverage.

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

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

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

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

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

30 (o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination

1 of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but
2 is not limited to the vehicles listed in 61-1-101(9)(b).

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

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

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

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

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

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

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

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

19 (x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a
20 roadway and the adjacent property lines and that is intended for use by pedestrians.

21 (y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by
22 which traffic is alternately directed to stop and to proceed.

23 (z) "Urban district" means the territory contiguous to and including any street that is built up with
24 structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a
25 distance of one-fourth mile or more."

26

27 **Section 41.** Section 61-8-805, MCA, is amended to read:

28 **"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or**
29 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual
30 physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's

1 license or commercial privilege to drive. The peace officer who determines that the person is operating a
 2 commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's
 3 commercial driver's license and, on behalf of the department, give the person written notice of the license
 4 suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from
 5 the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04
 6 or more, the department shall apply a major offense to the driving record and take the appropriate suspension
 7 as provided in 61-8-802. ~~suspend the license, with no provision for a restricted probationary commercial license,~~
 8 ~~for:~~

9 ~~—— (a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that~~
 10 ~~if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the~~
 11 ~~suspension must be for 3 years; and~~

12 ~~—— (b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at~~
 13 ~~any time as determined from the records of the department, subject to federal rules allowing for driver~~
 14 ~~rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years'~~
 15 ~~suspension.~~

16 (2) A peace officer who determines that a commercial motor vehicle operator has a measured amount
 17 or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place
 18 the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

19 (3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use
 20 alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

21 (4) For purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b),
 22 (1)(c), (1)(d), or (1)(e)] while operating a commercial motor vehicle or a prior refusal to be tested under an implied
 23 consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used
 24 in determining the length of the license suspension ~~under subsection (1).~~"

25

26 **Section 42.** Section 61-8-807, MCA, is amended to read:

27 **"61-8-807. Administration of tests.** Tests required under this part must be administered as provided
 28 in ~~61-8-405~~ [section 11]."

29

30 **Section 43.** Section 61-11-101, MCA, is amended to read:

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

8 (2) A court having jurisdiction over offenses committed under a statute of this state or a municipal
9 ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or
10 ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after
11 the conviction. The court may recommend that the department issue a restricted probationary license on the
12 condition that the individual comply with the requirement that the person attend and complete a chemical
13 dependency education course, treatment, or both, as ordered by the court under ~~64-8-732~~ [section 5].

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

17 (4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license
18 or who is required to hold a commercial driver's license, a court may not take any action, including deferring
19 imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or
20 ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving
21 record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial
22 driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a
23 person who holds any other type of driver's license.

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

28 (5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307
29 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or
30 drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406,~~

1 ~~61-8-410, or 61-8-411~~ [section 2(1)], the court in which the conviction occurs shall require the person to surrender
 2 the registry identification card or license.

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

6 **Section 44.** Section 67-1-211, MCA, is amended to read:

7 **"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests. (1)**

8 If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined
 9 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
 10 influence of alcohol and is in violation of 67-1-204.

11 (2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the
 12 act alleged under subsection (1) and any other competent evidence bearing on the question of whether the
 13 person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is
 14 admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation
 15 of 67-1-204.

16 (3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation
 17 of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

18 (4) A person who operates an aircraft over the lands and waters of this state is considered to have given
 19 consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or
 20 detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to
 21 operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a
 22 combination of the two. The test must be administered at the direction of a peace officer who has reasonable
 23 grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft
 24 while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which
 25 of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the
 26 person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

27 (5) If a person charged with a violation of 67-1-204 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 in the
 29 person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding
 30 arising out of acts alleged to have been committed in violation of 67-1-204.

1 (6) 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 determine any measured
3 amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with
4 violation of 67-1-204."

5

6 **NEW SECTION. Section 45. Repealer.** The following sections of the Montana Code Annotated are
7 repealed:

- 8 61-8-401. Driving under influence of alcohol or drugs -- definitions.
- 9 61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test --
10 administrative license suspension.
- 11 61-8-403. Right of appeal to court.
- 12 61-8-404. Evidence admissible -- conditions of admissibility.
- 13 61-8-405. Administration of tests.
- 14 61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more --
15 operation of commercial vehicle by person with alcohol concentration of 0.04 or more.
- 16 61-8-407. Definition of alcohol concentration.
- 17 61-8-408. Multiple convictions prohibited.
- 18 61-8-409. Preliminary alcohol screening test.
- 19 61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.
- 20 61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of
21 delta-9-tetrahydrocannabinol.
- 22 61-8-421. Forfeiture procedure.
- 23 61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.
- 24 61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.
- 25 61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider
26 requirements.
- 27 61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
28 ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 29 61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.
- 30 61-8-461. Definitions.

- 1 61-8-465. Aggravated DUI.
- 2 61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.
- 3 61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level --
4 first through third offense.
- 5 61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
6 under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence --
7 penalty for fourth or subsequent offense.
- 8 61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
9 assessment, education, and treatment required.
- 10 61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
11 ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 12 61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
13 conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence
14 not allowed.
- 15 61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

16

17 **NEW SECTION. Section 46. Codification instruction.** [Sections 1 through ~~49~~ 17] are intended to be
18 codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1
19 through ~~49~~ 17].

20

21 **NEW SECTION. Section 47. Effective date.** [This act] is effective January 1, 2020.

22

23 **NEW SECTION. Section 48. Applicability.** [This act] applies to DUI incidents taking place on or after
24 [the effective date of this act].

25 - END -