

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, ~~44-4-1202~~, ~~44-4-1203~~, 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) or (B) 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)~~ (2)(A); and~~

1 ~~(ii)(iii)(c)~~ 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)~~ (2) 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)~~ SUBSECTION (2).

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~~ 1 YEAR or more than 25 years. The first ~~5 years~~ 1 YEAR of the imposed sentence may not
 28 be suspended.

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

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

1 corrections;

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

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

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

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

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

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

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

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

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

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

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

16 (d) community service;

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

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

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

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

24

25 **NEW SECTION. Section 5. Driving under influence -- assessment, education, and treatment**

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

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

1 course; or

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

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

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

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

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

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

1 IS CLINICALLY WARRANTED TO TREAT THE DEFENDANT'S DISORDER. A defendant who disagrees with the initial
 2 assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction
 3 counselor or a program approved by the department of public health and human services.

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

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

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

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

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

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

29 (i) DUI OR DRUG TREATMENT COURT;

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

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

2 OR

3 (III)(IV) OUTPATIENT TREATMENT WITH APPROPRIATE CLINICAL MONITORING FOR A PERIOD SPECIFIED IN A

4 DEFENDANT'S INDIVIDUALIZED TREATMENT PLAN.

5 (B) IN THE EVENT THAT A DEFENDANT'S CHEMICAL DEPENDENCY ASSESSMENT DOES NOT SUPPORT ANY OF THE

6 ABOVE, A DEFENDANT MAY PETITION THE COURT FOR AN ALTERNATIVE SENTENCE.

7 (C) IF THE DEFENDANT IS SENTENCED TO A PROGRAM OPERATED THROUGH THE DEPARTMENT OF CORRECTIONS,

8 THE DEPARTMENT SHALL CONFIRM THAT SPACE IS AVAILABLE SO THAT THE COURT MAY ORDER THAT THE OFFENDER BE

9 PLACED INTO THE CHEMICAL DEPENDENCY TREATMENT PROGRAM.

10 ~~(b)(c)(d)~~ If a defendant fails to comply with the monitoring program imposed under subsection ~~(9)(a)(iii)~~

11 ~~(9)(A)(IV)~~, the court shall revoke the suspended sentence, if any, shall impose any remaining portion of the

12 suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

13 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3]

14 and orders the person to complete chemical dependency treatment under this section, the judge retains

15 jurisdiction to impose any suspended sentence for up to 1 year.

16

17 **NEW SECTION. Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and**

18 **drug monitoring program -- forfeiture of vehicle.** (1) For a person convicted of a first offense of driving under

19 the influence, including [section 2] or a similar offense under previous laws of this state or the laws of another

20 state, the court may:

21 ~~—— (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in~~

22 ~~44-4-1203;~~

23 ~~—— (b) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~

24 ~~and require the person to pay the cost of leasing, installing, and maintaining the device; or~~

25 ~~—— (c) require the person to participate in a court-approved alcohol or drug detection testing program and~~

26 ~~to pay the fees associated with the testing program.~~

27 (2) On a second or subsequent conviction for a violation of driving under the influence, including [section

28 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense

29 under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the

30 suspension or revocation was that the person was convicted of a violation of driving under the influence, including

1 [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar
 2 offense under previous laws of this state or the laws of another state, or the suspension was under [section 8]
 3 or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who
 4 believed that the person might be driving under the influence, the court shall:

5 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in
 6 44-4-1203 and to pay the fees associated with the program;

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

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

12 ~~(3) (a) In addition to the conditions listed in subsection (2), the court may order that each motor vehicle~~
 13 ~~owned by the person at the time of the offense be seized and subjected to the procedure provided under [section~~
 14 ~~12].~~

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

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

24
 25 **NEW SECTION. Section 7. Driving under influence -- conviction defined -- place of imprisonment**
 26 **-- home arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the
 27 number of convictions for prior offenses referred to in [sections 1 through 4], "conviction", as defined in 45-2-101,
 28 means:

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

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

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

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

12 (II) SUBSECTION (1)(B)(I) DOES NOT APPLY TO AN OFFENDER FOR WHOM AN EXPUNGEMENT PURSUANT TO
13 46-18-1101 HAS BEEN ORDERED.

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

18 (i) a previous conviction under [section 3] for violation of driving under the influence, including [section
19 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the
20 influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or a
21 second or subsequent violation of [section 2(1)(f)];

22 (ii) a previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while
23 the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b),
24 (1)(c), (1)(d), or (1)(e)], an offense that meets the definition of aggravated driving under the influence in [section
25 1], a similar offense under previous laws of this state or the laws of another state, or a second or subsequent
26 violation of [section 2(1)(f)]; and

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

28 (2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under
29 [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court.
30 The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose

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

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

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

9 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses
 10 and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section
 11 2].

12
 13 **NEW SECTION. Section 8. Implied consent -- blood or breath tests for alcohol, drugs, or both --**

14 **refusal to submit to test -- ~~administrative license suspension.~~** (1) A person who operates or is in actual
 15 physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is
 16 considered to have given consent to a test or tests of the person's blood, breath, or other bodily substance for
 17 the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

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

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

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

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

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

30 (B) in violation of driving under the influence as provided in [section 2], and the person has been involved

1 in a motor vehicle crash or collision resulting in property damage;

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

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

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

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

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

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

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

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

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

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

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

27

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

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

6 (3) Upon request of the petitioner, the court may order the department to return the seized license or
7 issue a stay of the suspension or revocation action pending the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (7) If the court does not issue a ruling on the appeal within 1 year of filing, the department shall deem the
6 court to have denied the petition and shall suspend the driver for the duration of the original suspension under
7 [section 8] or 61-8-802.

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

11
12 **NEW SECTION. Section 10. Evidence admissible -- conditions of admissibility.** (1) Upon the trial
13 of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation
14 of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving
15 under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state,
16 or 61-8-805:

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

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

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

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

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

4 (2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a
5 sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or
6 proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical
7 control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or
8 a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the
9 influence. The inference is rebuttable.

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

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

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

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

30 (4) A licensed physician, registered nurse, phlebotomist trained in a licensed hospital or educational

1 institution, or other medical personnel trained in a licensed hospital or educational institution does not incur any
 2 civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace
 3 officer to administer the test.

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

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

11
 12 ~~NEW SECTION. Section 12. Forfeiture procedure.~~ (1) A motor vehicle forfeited under [section 6] must
 13 be seized by the arresting agency within 10 days after the conviction and must be disposed of as provided in Title
 14 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to
 15 the extent applicable.

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

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

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

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

28
 29 ~~NEW SECTION. Section 13. Prohibition on transfer, sale, or encumbrance of vehicles subject to~~
 30 ~~forfeiture -- penalty.~~ (1) It is unlawful for the owner of a vehicle subject to forfeiture under [section 6] to transfer,

1 ~~sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the~~
 2 ~~underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying~~
 3 ~~charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise~~
 4 ~~terminated.~~

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

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

9
 10 **NEW SECTION. Section 12. Ignition interlock device -- assisting in starting and operating --**

11 **circumventing -- penalty.** (1) It is unlawful for a person who is subject to a restriction under [section 46 14] to
 12 operate a vehicle that is not equipped with an ignition interlock device.

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

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

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

18 (5) This section does not apply if:

19 (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock
 20 device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

21 (b) the person subject to the restriction does not operate the vehicle.

22
 23 **NEW SECTION. Section 13. Department rules regarding ignition interlock devices -- ignition**

24 **interlock device provider requirements.** (1) The department shall adopt rules providing for the approval of
 25 ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

26 (2) The department's rules must be based on federal standards issued for similar devices.

27 (3) An ignition interlock device that is approved by the department must also:

28 (a) be designed so it does not impede safe operation of the vehicle;

29 (b) correlate well with the level established for alcohol impairment;

30 (c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

1 (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration
2 equivalence;

3 (e) resist tampering and show evidence of tampering if it is attempted;

4 (f) be difficult to circumvent;

5 (g) minimize inconvenience of a sober user;

6 (h) operate reliably over the range of automobile environments and in connection with various
7 manufacturing standards; and

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

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

12

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

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

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in
20 44-4-1203 and to pay the fees associated with the program;

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

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

26

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

- 1 (2) This section does not apply to an open alcoholic beverage container:
- 2 (a) in a locked glove compartment or storage compartment;
- 3 (b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;
- 4 (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;
- 5 (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not
- 6 normally occupied by the driver or a passenger; or
- 7 (e) in the immediate possession of a passenger:
- 8 (i) of a bus, taxi, limousine, or prearranged ride that is used for the transportation of persons for
- 9 compensation and that includes the provision of a hired driver; or
- 10 (ii) in the living quarters of a camper, travel trailer, or motor home.

11 (3) Subsections (2)(a), (2)(b), (2)(c), and (2)(d) apply only to transportation of open alcoholic beverage

12 containers and do not allow for the consumption of alcoholic beverages in these areas in or on a vehicle.

13 (4) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container

14 in a motor vehicle shall be fined an amount not to exceed \$100.

15 (b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101,

16 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an

17 insurance company may not hold a violation of this section against the insured or increase premiums because

18 of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a

19 violation of this section.

20

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

22 (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an

23 imprisonment sentence under ~~[sections 3 and 4]~~ [SECTION 3], except for the mandatory minimum imprisonment

24 term.

25 (2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court,

26 the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must

27 commence from the effective date of the revocation.

28

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

30 **action.** (1) The department shall suspend an individual's driver license if the department receives a report for an

1 implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an
2 individual has refused a test or tests of the person's blood, breath, or other bodily substance for determining any
3 measured amount or detected presence of alcohol or drugs in the person's body.

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

7 (b) The department shall apply the appropriate sanction to the driver based on the reported conviction
8 and prior offenses.

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

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

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

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

15 (3) (a) A person who has an implied consent violation shall pay the department an administrative fee of
16 \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

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

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

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

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

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

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

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

7

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

9 **"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1)

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

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

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

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

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

26

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

28 **"44-4-1202. Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of
 29 this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege
 30 shall accept the corresponding responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (g) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug
 2 in an individual's breath or body fluid, including blood, urine, saliva, or perspiration, and includes any combination
 3 of the use of in-person or remote breath testing, drug patch testing, urinalysis testing, saliva testing, or continuous
 4 remote ~~sensing~~, or transdermal alcohol monitoring. With the concurrence of the department and consistent with
 5 44-4-1203, alternate body fluids may be approved for testing.

6 (h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant test
 7 event."
 8

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

10 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety
 11 and drug monitoring program within the department to be administered by the attorney general.

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

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

15 (ii) is available at an affordable cost.

16 (b) Primary testing methods for alcohol include twice-a-day, in-person breath testing at a central location
 17 and other methodologies approved by the department. Primary testing methodologies must utilize devices that
 18 are capable of determining alcohol concentrations below an equivalent breath alcohol concentration of 0.010
 19 grams per 210 liters of breath. If the primary testing methodology is a breath alcohol analysis, the device utilized
 20 must be listed on the most recent conforming products list for evidential breath alcohol measurement devices as
 21 published by the national highway traffic safety administration.

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

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

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

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

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

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

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

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

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

20 ~~(7)(6)~~ All alcohol or drug testing ordered by a court must utilize the data management technology plan
21 provided for in 44-4-1204(4). All alcohol or drug testing ordered by a court must utilize the data management
22 technology system in accordance with the data management technology plan provided for in 44-4-1204(4). The
23 data is owned by the state and maintained by the department. Approved testing methodologies, whether
24 designated as primary or hardship, must be capable of electronically transferring data directly into the data
25 management technology system through a department-approved interface.

26 ~~(8)(7) Alcohol~~ In order to provide a more complete record of drug and alcohol testing results, any alcohol
27 or drug testing required by the department of corrections pursuant to this part other state or local agencies must
28 may utilize the data management technology plan provided for in 44-4-1204(4) system."
29

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

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

5 (b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of~~
 6 ~~61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of
 7 ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in
 8 violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program,
 9 the court may, upon the individual's ~~successful completion of a court-approved chemical dependency treatment~~
 10 ~~program and~~ OBTAINING proof of insurance pursuant to 61-6-301, notify the department that as a participant in the
 11 sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302,
 12 notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a
 13 suspension period before a probationary license may be issued.

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

17 (2) Upon an offender's participation in the sobriety program and payment of the fees required by
 18 44-4-1204:

19 (a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of~~
 20 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of
 21 ~~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
 22 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of
 23 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the
 24 crime;

25 (b) the court may condition the granting of a suspended execution of sentence or probation for an
 26 individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1],
 27 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
 28 aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other
 29 statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a
 30 contributing factor in the commission of the crime;

1 (c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving
 2 under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section
 3 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
 4 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
 5 of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

6 (d) the department of corrections may establish conditions for conditional release for ~~a violation of~~
 7 ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of
 8 ~~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
 9 as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of
 10 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the
 11 crime.

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

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

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

21 or

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

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

25 (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),
 26 (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

27 (B) has been convicted of a violation of a statute or regulation in another state or on a federally
 28 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),
 29 (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

30 (C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state,

1 in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406,~~
 2 ~~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
 3 [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

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

6 **Section 22.** Section 45-5-106, MCA, is amended to read:

7 **"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular
 8 homicide while under the influence if the person negligently causes the death of another human being while the
 9 person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)].

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

12 (3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state
 13 prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a
 14 sentence may not be deferred."
 15

16 **Section 23.** Section 45-5-205, MCA, is amended to read:

17 **"45-5-205. Negligent vehicular assault -- penalty.** (1) A person who negligently operates a vehicle,
 18 other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other
 19 drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury
 20 to another commits the offense of negligent vehicular assault.

21 (2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be
 22 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
 23 shall be ordered to pay restitution as provided in 46-18-241.

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

27 (4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of
 28 incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the
 29 fine or restitution, the term of incarceration may be imposed."
 30

1 **Section 24.** Section 45-5-207, MCA, is amended to read:

2 **"45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that
3 creates a substantial risk of death or serious bodily injury to another commits the offense of criminal
4 endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any
5 steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing,
6 or manufacturing equipment.

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

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

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

12

13 **Section 25.** Section 45-5-628, MCA, is amended to read:

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

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

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

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

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

24 (e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401,~~
25 ~~61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in
26 [section 1] with a child in the vehicle; or

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

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

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

3 (4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that
4 is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."
5

6 **Section 26.** Section 46-16-130, MCA, is amended to read:

7 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who
8 has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified
9 period of time based on one or more of the following conditions:

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

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

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

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

16 or

17 (v) any other reasonable conditions.

18 (b) The agreement must be in writing, must be signed by the parties, and must state that the defendant
19 waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the
20 admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and
21 there is a trial on the charge.

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

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

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

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

30 (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

1 aggravated driving under the influence as defined in [section 1] may not be deferred."

2

3 **Section 27.** Section 46-18-201, MCA, is amended to read:

4 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
5 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
6 of sentence, except as otherwise specifically provided by statute, for a period:

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

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

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

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

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

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

21 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
22 46-8-113;

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

25 (iv) commitment of:

26 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
27 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
28 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),
29 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

30 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense

1 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in
2 an appropriate correctional facility or program;

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

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

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

10 (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.

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

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

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

17 (c) conditions for probation;

18 (d) payment of the costs of confinement;

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

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

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

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

24 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
25 of corrections that space is available and that the offender is a suitable candidate, an order that the offender be
26 placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not
27 to exceed 1 year;

28 (j) community service;

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

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

- 1 (m) participation in a day reporting program provided for in 53-1-203;
- 2 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part
3 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or~~
4 ~~subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any
5 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a
6 contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the
7 abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the
8 commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent
9 violation of the statute;
- 10 (o) participation in a restorative justice program approved by court order and payment of a participation
11 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 12 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
13 protection of the victim or society;
- 14 (q) with approval of the program and confirmation by the department of corrections that space is
15 available, an order that the offender be placed in a residential treatment program; or
- 16 (r) any combination of the restrictions or conditions listed in this subsection (4).
- 17 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
18 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
19 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
20 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
21 sentence is deferred or suspended.
- 22 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
23 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to
24 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
25 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- 26 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
27 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
28 5.
- 29 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender
30 unless the court specifies otherwise.

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

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

6 **Section 28.** Section 46-18-236, MCA, is amended to read:

7 **"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1)

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

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

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

13 (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~
 14 ~~61-8-411~~ or [section 2].

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

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

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

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

1 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections
 2 (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
 3 salaries of the city or town attorney and deputies.

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

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

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

17 (c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim
 18 and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims
 19 compensation and assistance program in the department of justice for deposit in the account provided for in
 20 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

21 **46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture --**
 22 **administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original
 23 jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond
 24 or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

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

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

27 (c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or~~
 28 ~~61-8-411~~ or [section 2].

29 (2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay
 30 the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of

1 the charge imposed by this section.

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

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

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

15 (6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections
16 (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
17 salaries of the city or town attorney and deputies.

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

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

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

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

5

6 **Section 29.** Section 50-46-320, MCA, is amended to read:

7 **"50-46-320. Limitations of act.** (1) This part does not permit:

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

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

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

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

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

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

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

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

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

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

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

21 (x) in plain view of or in a place open to the general public; or

22 (xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare
23 of children.

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

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

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

30 (a) a government medical assistance program, a group benefit plan that is covered by the provisions of

1 Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to
2 reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

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

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

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

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

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

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

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

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

22 (b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection
23 (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted
24 of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense
25 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].

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

27 (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),
28 or (1)(e)]; or

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

30 (c) If an individual's registry identification card or license is subject to renewal during the revocation

1 period, the individual may not renew the card until the full revocation period has elapsed. The card or license may
2 be renewed only if the individual submits all materials required for renewal.

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

6

7 **Section 30.** Section 53-9-103, MCA, is amended to read:

8 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

10 (a) a victim;

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

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

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

16 (a) the offender;

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

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

21 (d) workers' compensation;

22 (e) wage continuation programs of any employer;

23 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of
24 the criminally injurious conduct;

25 (g) a contract, including an insurance contract, providing hospital and other health care services or
26 benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for
27 benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are
28 a primary source.

29 (h) a crime victims compensation program operated by the state in which the victim was injured or killed
30 that compensates residents of this state injured or killed in that state; or

1 (i) any other third party.

2 (3) "Criminally injurious conduct" means conduct that:

3 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331,
4 committed outside of the United States against a resident of this state;

5 (b) results in bodily injury or death or involves domestic violence in a home where minor children were
6 present; and

7 (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person
8 engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally
9 injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle
10 unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires
11 the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a
12 motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor
13 vehicle while under the influence, as that term is defined in ~~61-8-404~~ section 1; or

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

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

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

21 (6) "Victim" means:

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

23 (i) criminally injurious conduct;

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

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

27 (b) a minor child present in a home where domestic violence occurred."
28

29 **Section 31.** Section 61-1-101, MCA, is amended to read:

30 **"61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following

1 definitions apply:

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate
2 a class of commercial motor vehicle; or
- 3 (b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid
4 commercial driver's license.
- 5 (9) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in
6 commerce to transport passengers or property if the vehicle:
- 7 (i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more,
8 whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- 9 (ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is
10 greater;
- 11 (iii) is designed to transport at least 16 passengers, including the driver;
- 12 (iv) is a school bus; or
- 13 (v) is of any size and is used in the transportation of hazardous materials.
- 14 (b) The following vehicles are not commercial motor vehicles:
- 15 (i) an authorized emergency vehicle:
- 16 (A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
- 17 (B) operated when responding to or returning from an emergency call or operated in another official
18 capacity;
- 19 (ii) a vehicle:
- 20 (A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
- 21 (B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana
22 within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles
23 of the farm, including any area within that perimeter that is in the adjoining state; and
- 24 (C) not used to transport goods for compensation or for hire; or
- 25 (iii) a vehicle operated for military purposes by active duty military personnel, a member of the military
26 reserves, a member of the national guard on active duty, including personnel on full-time national guard duty,
27 personnel in part-time national guard training, and national guard military technicians, or active duty United States
28 coast guard personnel.
- 29 (c) For purposes of this subsection (9):
- 30 (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or

1 crops or the raising of livestock owned by or under the direct control of that person;

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

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

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

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

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

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

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

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

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

15 (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current
16 calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least
17 25 years old; and

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

20 (13) "Customer identification number" means:

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

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

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

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

30 (14) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the

1 business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers,
2 semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special
3 mobile equipment that is not registered in the name of the person.

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

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

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

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

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

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

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

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

17 (a) an individual establishes residence;

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

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

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

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

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

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

28 (a) any temporary license or learner license;

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

30 (c) any nonresident's driving privilege;

1 (d) a motorcycle endorsement; or

2 (e) a commercial driver's license.

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

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

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

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

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

15 (26) "Hazardous material" means:

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

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

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

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

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

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

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

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

30 (31) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility

1 vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

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

4 (a) has four wheels;

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

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

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

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

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

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

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

17 (a) a temporary license or learner license;

18 (b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of
19 61-5-122, whether or not the person holds a valid driver's license; and

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

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

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

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

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

1 that:

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

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

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

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

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

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

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

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

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

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

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

18 (39) "Montana resident" means:

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

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

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

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

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

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

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

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

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

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

9 (43) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces
10 5 horsepower or less.

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

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

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

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

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

19 (i) cooking, refrigeration, or icebox;

20 (ii) self-contained toilet;

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

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

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

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

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

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

28 (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a
29 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

30 (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a

1 "pocket rocket".

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

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

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

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

9 (iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated
10 pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

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

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

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

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

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

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

28 (b) The term does not include:

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

30 (ii) snowmobiles; or

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

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

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

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

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

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

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

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

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

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

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

27 (b) The term does not include streetcars.

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

29 (61) "Registration" or "register" means the act or process of creating an electronic record, maintained by
30 the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration

1 decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

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

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

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

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

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

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

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

24 (68) "School zone" means an area near a school beginning at the school's front door, encompassing the
25 campus and school property, and including the streets directly adjacent to the school property and for as many
26 blocks surrounding the school as determined by the local authority establishing a special speed limit under
27 61-8-310(1)(d).

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

30 (70) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for

1 carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that
2 of its load rests on or is carried by another vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (76) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the

1 dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when
2 space at the dealer's established place of business is not available.

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

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

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

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

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

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

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

17 (i) required vehicle and owner information; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7

8 **Section 32.** Section 61-2-107, MCA, is amended to read:

9 **"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.**

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

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

17

18 **Section 33.** Section 61-2-302, MCA, is amended to read:

19 **"61-2-302. Establishment of driver rehabilitation and improvement program -- participation by**

20 **offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and
21 improvement program or programs. The programs may consist of classroom instruction in rules of the road,
22 driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
23 subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the
24 requirements for obtaining a restricted probationary driver's license.

25 (2) Except when otherwise provided or restricted by statute, a person whose driver's license is
26 suspended or revoked by the department, unless the suspension or revocation was for an offense under
27 ~~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
28 rehabilitation and improvement program established under this section if the person's license is:

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

- 1 (b) revoked and the person has:
- 2 (i) completed at least 3 months of a 1-year revocation; or
- 3 (ii) completed 1 year of a 3-year revocation; and
- 4 (iii) met the requirements for reobtaining a Montana driver's license.
- 5 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the
- 6 enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the
- 7 driver rehabilitation and improvement program provided for in this section may be stayed if that person complies
- 8 with the requirements established for the driver rehabilitation and improvement program and meets the eligibility
- 9 requirements of subsection (2).
- 10 (4) If a person's driver's license has been surrendered before the person's selection for participation in
- 11 the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's
- 12 agreement to participate in the program.
- 13 (5) The stay of enforcement of any suspension or revocation action must be terminated and the
- 14 suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation
- 15 and improvement program or fails to meet the attendance or other requirements established for participation in
- 16 the program.
- 17 (6) This part does not create a right to be included in any program established under this part.
- 18 (7) The department may establish a schedule of fees that may be charged to those persons participating
- 19 in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining
- 20 the program.
- 21 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the
- 22 peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.
- 23 (9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary
- 24 license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon
- 25 issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the
- 26 license.
- 27 (b) The department may not issue a restricted probationary license that would permit an individual to
- 28 drive a commercial motor vehicle during a period in which:
- 29 (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or
- 30 (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

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

3

4 **Section 34.** Section 61-5-125, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

30 (h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation,

1 or condition as a justification for denial of a license.

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

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

9 (a) acceptable methods of proof of identification that must be supplied by a person upon application for
10 or renewal of a driver's license;

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

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

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

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

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

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

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

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

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

29

30 **Section 35.** Section 61-5-205, MCA, is amended to read:

1 **"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration**
 2 **of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the
 3 department receives ~~notice from a court or another licensing jurisdiction~~ a report of conviction, as defined in
 4 61-5-213, in this state or a violation of a similar statute or regulation in another state or on a federally recognized
 5 Indian reservation, that the individual has been convicted of any of the following offenses:

- 6 (a) negligent homicide resulting from the operation of a motor vehicle;
- 7 (b) any felony in the commission of which a motor vehicle is used;
- 8 (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle
 9 accident resulting in the death or personal injury of another;
- 10 (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter
 11 or under any other law relating to the ownership or operation of motor vehicles;
- 12 (e) fleeing from or eluding a peace officer; ~~or~~
- 13 (f) ~~negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.~~ negligent operation of
 14 a vehicle, other than a bicycle, while under the influence of alcohol or drugs or both and causing bodily injury to
 15 another; or
- 16 (g) a felony offense of driving under the influence of alcohol or drugs or both.

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

- 20 ~~—— (a) a driving offense under 61-8-401, 61-8-406, or 61-8-411;~~
- 21 ~~—— (b) three reckless driving offenses committed within a period of 12 months; or~~
- 22 ~~—— (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle~~
 23 ~~was used in the commission of the offense.~~

24 ~~(3)(2)~~ (2) A revocation under subsections (1)(a), (1)(b), and (1)(d) through ~~(1)(f)~~ (1)(g) must be for a period
 25 ~~of 1 year.~~ A revocation under subsection (1)(c) must be for ~~a period of 1 year,~~ except that a revocation must be
 26 for 2 years if the offender received a felony conviction under 61-7-103.

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

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

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

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

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

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

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

9 (i) 30 days for a first offense;

10 (ii) 6 months for a second offense; and

11 (iii) 1 year for a third or subsequent offense."

12
13 **Section 36.** Section 61-5-208, MCA, is amended to read:

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

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

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

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

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

1 ~~passes and the person has not completed chemical dependency treatment, as required under 61-8-732, the~~
 2 ~~license suspension remains in effect until treatment is completed.~~

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

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

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

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

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

24 ~~(4)(f) If~~ In addition to any other permitted sanction, if a person is convicted of a violation of 61-8-401,
 25 61-8-406, 61-8-411, or 61-8-465 driving under the influence of alcohol or drugs while a commercial driver while
 26 operating a commercial motor vehicle, the department shall suspend the person's commercial driver's license
 27 or commercial privilege to drive as provided in 61-8-802.

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

30 (a) for a misdemeanor first offense:

- 1 (i) shall suspend the driver's license or privilege to drive for 6 months; and
2 (ii) may issue a probationary license during the period of suspension, unless the report of conviction
3 includes a statement that the court does not recommend a probationary license;
4 (b) for a misdemeanor second offense:
5 (i) shall suspend the driver's license or privilege to drive for 1 year;
6 (ii) may not issue a probationary license during the period of suspension until the person completes at
7 least ~~45~~ 180 days of the 1-year suspension, unless the department receives a report that:
8 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,
9 and the report of conviction includes a recommendation from the court that a probationary license be issued
10 subject to the requirements of [section ~~46~~ 14]; or
11 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license
12 as provided in [section ~~48~~ 16]; and
13 (iii) after the mandatory ~~45-day~~ 180-DAY waiting period, may issue a probationary license when the court
14 makes a recommendation for a probationary license as provided in [section ~~46~~ 14] or for an out-of-state conviction
15 upon receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section
16 5];
17 (c) for a misdemeanor third offense or subsequent offense:
18 (i) shall suspend the driver's license or privilege to drive for 1 year;
19 (ii) may not issue a probationary license during the period of suspension until the person completes at
20 least ~~45~~ ~~90~~ 180 days of the 1-year suspension, unless the department receives a report that:
21 (A) the person is enrolled in the 24/7 sobriety and drug monitoring program, as provided in 44-4-1203,
22 and the report of conviction includes a recommendation from the court that a probationary license be issued
23 subject to the requirements of [section ~~46~~ 14]; or
24 (B) the person is enrolled in a DUI treatment court and the DUI court recommends a probationary license
25 as provided in [section ~~48~~ 16]; and
26 (iii) after the mandatory ~~45-day~~ 180-DAY waiting period, may issue a probationary license when the court
27 makes a recommendation for a probationary license as provided in [section ~~46~~ 14] or for an out-of-state conviction
28 upon receipt of proof of enrollment in an alcohol or drug education course or treatment as provided in [section
29 5].
30 (4) For a suspension ordered under subsection (3), the driver's license or privilege to drive must remain

1 suspended until the duration of the suspension ends and the department receives proof of completion of
 2 mandatory treatment under [section 5].

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

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

6 (ii) may not issue a probationary license until the person completes ~~90~~ 180 days of the 1-year revocation;

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

8 (iv) may issue a probationary license after the mandatory ~~90-day~~ 180-DAY waiting period when the
 9 judgment has as a condition of probation that the person may not operate a motor vehicle unless:

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

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

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

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

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

18 (a) for a first offense:

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

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

22 (b) for a second offense:

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

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

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

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

- 1 ~~—— (i) operation is authorized by the person's probation officer; or~~
 2 ~~—— (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."~~

3

4 **Section 37.** Section 61-5-212, MCA, is amended to read:

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

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

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

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

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

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

22 (iii) If the reason for the suspension or revocation was that the person was convicted of a violation of
 23 ~~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
 24 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
 25 for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be
 26 driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6
 27 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to
 28 perform up to 40 hours of community service.

29 (2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of
 30 driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and

1 be issued a driver's license was suspended or revoked, the department shall extend the period of suspension
2 or revocation for an additional 1-year period.

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

7

8 **Section 38.** Section 61-5-218, MCA, is amended to read:

9 **"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as
10 provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving
11 privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the
12 driver's license or driving privilege reinstated.

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

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

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

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

21

22 **Section 39.** Section 61-5-231, MCA, is amended to read:

23 **"61-5-231. Authorization of probationary license by DUI court --definition.** (1) If a person convicted
24 of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under
25 ~~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
26 under ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)], or aggravated driving under the influence under ~~61-8-465~~ as
27 defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's
28 discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any
29 other conditions imposed within the scope of the court's authority.

30 (2) If the participant fails to comply with the court's conditions, the court may revoke the probationary

1 driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208
 2 commencing from the date of the court's revocation of the probationary license.

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

8

9 **Section 40.** Section 61-5-405, MCA, is amended to read:

10 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to**
 11 **licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article
 12 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],
 13 the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

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

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

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

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

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

24

25 **Section 41.** Section 61-8-101, MCA, is amended to read:

26 **"61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public"
 27 means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public
 28 travel that is in common use by the public.

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

- 1 (a) where a different place is specifically referred to in a given section;
- 2 (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
- 3 operating a vehicle while under the influence of drugs, apply anywhere within this state;
- 4 (c) the provisions of 61-8-301 and ~~61-8-401~~ except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402
- 5 through 61-8-405, and 61-8-465 [section 2], except under the influence of a dangerous drug and [section 2(2)],
- 6 with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to
- 7 the public.
- 8 (3) The operation of motor vehicles directly across the public roads and highways of this state, especially
- 9 as required in the transportation of natural resource products, including agricultural products and livestock, shall
- 10 not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways
- 11 of this state open to the public, provided that such crossings are adequately marked with warning signs or
- 12 devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any
- 13 damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the
- 14 public highway involved."

15

16 **Section 42.** Section 61-8-102, MCA, is amended to read:

17 **"61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state must

18 be as consistent as possible with the interpretation of similar laws in other states.

- 19 (2) As used in this chapter, unless the context requires otherwise, the following definitions apply:
- 20 (a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title
- 21 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.
- 22 (b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride,
- 23 irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an
- 24 electrically assisted bicycle.
- 25 (c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.
- 26 (d) "Business district" means the territory contiguous to and including a highway when within any 600
- 27 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to
- 28 hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on
- 29 one side or 300 feet collectively on both sides of the highway.
- 30 (e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or

1 occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or
2 roadway except at the points and in the manner as determined by the public authority having jurisdiction over the
3 highway, street, or roadway.

4 (f) "Crosswalk" means:

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

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

10 (g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem
11 wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than
12 20 miles an hour on a paved, level surface.

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

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

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

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

21 (ii) is approved by the department pursuant to ~~61-8-441~~ section 45 13; and

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

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

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

1 must be regarded as a separate intersection.

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

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

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

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

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

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

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

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

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

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

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

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

30 (x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a

1 roadway and the adjacent property lines and that is intended for use by pedestrians.

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

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

7

8 **Section 43.** Section 61-8-805, MCA, is amended to read:

9 **"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or**

10 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual
11 physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's
12 license or commercial privilege to drive. The peace officer who determines that the person is operating a
13 commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's
14 commercial driver's license and, on behalf of the department, give the person written notice of the license
15 suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from
16 the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04
17 or more, the department shall apply a major offense to the driving record and take the appropriate suspension
18 as provided in 61-8-802. ~~suspend the license, with no provision for a restricted probationary commercial license,~~
19 ~~for:~~

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

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

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

30 (3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use

1 alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

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

6

7 **Section 44.** Section 61-8-807, MCA, is amended to read:

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

10

11 **Section 45.** Section 61-11-101, MCA, is amended to read:

12 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 13 **of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory
 14 the suspension or revocation of the driver's license or commercial driver's license of the person by the
 15 department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then
 16 held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record
 17 of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that
 18 fact in its report to the department.

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

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

28 (4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license
 29 or who is required to hold a commercial driver's license, a court may not take any action, including deferring
 30 imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or

1 ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving
 2 record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial
 3 driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a
 4 person who holds any other type of driver's license.

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

9 (5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307
 10 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or
 11 drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406,~~
 12 ~~61-8-410, or 61-8-411~~ [section 2(1)], the court in which the conviction occurs shall require the person to surrender
 13 the registry identification card or license.

14 (b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy
 15 of the conviction to the department of public health and human services."
 16

17 **Section 46.** Section 67-1-211, MCA, is amended to read:

18 **"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1)
 19 If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined
 20 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
 21 influence of alcohol and is in violation of 67-1-204.

22 (2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the
 23 act alleged under subsection (1) and any other competent evidence bearing on the question of whether the
 24 person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is
 25 admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation
 26 of 67-1-204.

27 (3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation
 28 of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

29 (4) A person who operates an aircraft over the lands and waters of this state is considered to have given
 30 consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or

1 detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to
 2 operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a
 3 combination of the two. The test must be administered at the direction of a peace officer who has reasonable
 4 grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft
 5 while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which
 6 of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the
 7 person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

8 (5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood,
 9 breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the
 10 person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding
 11 arising out of acts alleged to have been committed in violation of 67-1-204.

12 (6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition
 13 of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured
 14 amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with
 15 violation of 67-1-204."

16
 17 **NEW SECTION. Section 47. Repealer.** The following sections of the Montana Code Annotated are
 18 repealed:

- 19 61-8-401. Driving under influence of alcohol or drugs -- definitions.
 20 61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test --
 21 administrative license suspension.
 22 61-8-403. Right of appeal to court.
 23 61-8-404. Evidence admissible -- conditions of admissibility.
 24 61-8-405. Administration of tests.
 25 61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more --
 26 operation of commercial vehicle by person with alcohol concentration of 0.04 or more.
 27 61-8-407. Definition of alcohol concentration.
 28 61-8-408. Multiple convictions prohibited.
 29 61-8-409. Preliminary alcohol screening test.
 30 61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.

- 1 61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of
 2 delta-9-tetrahydrocannabinol.
- 3 61-8-421. Forfeiture procedure.
- 4 61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.
- 5 61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.
- 6 61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider
 7 requirements.
- 8 61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
 9 ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 10 61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.
- 11 61-8-461. Definitions.
- 12 61-8-465. Aggravated DUI.
- 13 61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.
- 14 61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level --
 15 first through third offense.
- 16 61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
 17 under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence --
 18 penalty for fourth or subsequent offense.
- 19 61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
 20 assessment, education, and treatment required.
- 21 61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
 22 ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 23 61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration --
 24 conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence
 25 not allowed.
- 26 61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

27

28 **NEW SECTION. Section 48. Codification instruction.** [Sections 1 through ~~49~~ 17] are intended to be
 29 codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1
 30 through ~~49~~ 17].

