

1 HOUSE BILL NO. 115

2 INTRODUCED BY B. MERCER, D. SKEES, B. USHER, M. STROMSWOLD, C. FRIEDEL, M. LANG, T.

3 MCGILLVRAY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PENALTIES FOR 5TH AND SUBSEQUENT DUI
6 OFFENSES; AMENDING SECTION 61-8-731, MCA; AND PROVIDING AN APPLICABILITY DATE."7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:9
10 **Section 1.** Section 61-8-731, MCA, is amended to read:11 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
12 **concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the**
13 **influence -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is
14 convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction
15 under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-
16 628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was
17 operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination
18 of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:19 (a) (i) being sentenced to the department of corrections for placement in an appropriate correctional
20 facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the
21 person successfully completes a residential alcohol treatment program approved by the department of
22 corrections, the remainder of the sentence must be served on probation. The imposition or execution of the
23 sentence may not be deferred or suspended, and the person is not eligible for parole.24 (ii) being sentenced to either the department of corrections or the Montana state prison or Montana
25 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the
26 term imposed under subsection (1)(a); and

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

28 (b) (i) being sentenced to an appropriate treatment court program for a term of not more than 5

1 years, with required completion; and

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

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

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

7 (3) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has
8 either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104,
9 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, the offense under 45-5-104 occurred while the
10 person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any
11 combination of the three, as provided in 61-8-401(1), and the person was, ~~upon a prior conviction, placed in a~~
12 ~~residential alcohol treatment program under subsection (2), whether or not the person successfully completed~~
13 ~~the program, the person shall be sentenced to the department of corrections for a term of not less than 13~~
14 ~~months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both~~
15 ~~previously sentenced under subsection (1)(a) or (1)(b), the person shall be punished by a fine of not less than~~
16 ~~\$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 10 years. The~~
17 ~~person is not eligible for a deferred imposition of sentence, and the first 3 years of the sentence may not be~~
18 ~~suspended.~~

19 ~~(4) If a person who is presently being sentenced under subsection (3) has previously been convicted~~
20 ~~and sentenced under subsection (3) on a different occasion, the person shall be punished by a fine of not less~~
21 ~~than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or~~
22 ~~more than 25 years. The first 5 years of the sentence may not be suspended. THE PERSON IS NOT ELIGIBLE FOR A~~
23 ~~DEFERRED IMPOSITION OF SENTENCE.~~

24 ~~(5) IF A PERSON WHO IS PRESENTLY BEING SENTENCED HAS PREVIOUSLY BEEN CONVICTED AND SENTENCED~~
25 ~~UNDER SUBSECTION (4) ON ONE OR MORE OCCASIONS, THE PERSON SHALL BE PUNISHED BY A FINE OF NOT LESS THAN~~
26 ~~\$5,000 OR MORE THAN \$10,000 AND BY IMPRISONMENT IN THE STATE PRISON FOR A TERM OF NOT LESS THAN 5 YEARS~~
27 ~~OR MORE THAN 25 YEARS. THE FIRST 5 YEARS OF THE SENTENCE MAY NOT BE SUSPENDED.~~

28 ~~(4)(5) (6)~~ (6) The court shall, as a condition of probation, order:

- 1 (a) that the person abide by the standard conditions of probation promulgated by the department of
 2 corrections;
- 3 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment
 4 under this section;
- 5 (c) that the person may not frequent an establishment where alcoholic beverages are served;
- 6 (d) that the person may not consume alcoholic beverages;
- 7 (e) that the person may not operate a motor vehicle unless authorized by the person's probation
 8 officer;
- 9 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the
 10 probationary period;
- 11 (g) that the person submit to random or routine drug and alcohol testing; and
- 12 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
 13 interlock system.

14 ~~(5)(6)~~ (7) The sentencing judge may impose upon the defendant any other reasonable restrictions or
 15 conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited
 16 to:

- 17 (a) payment of a fine as provided in 46-18-231;
- 18 (b) payment of costs as provided in 46-18-232 and 46-18-233;
- 19 (c) payment of costs of assigned counsel as provided in 46-8-113;
- 20 (d) community service;
- 21 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
 22 protection of society; or
- 23 (f) any combination of the restrictions or conditions listed in subsections ~~(5)(a)~~ ~~(6)(a)~~ (7)(A) through
 24 ~~(5)(e)~~ ~~(6)(e)~~ (7)(E).

25 ~~(6)(7)~~ (8) Following initial placement of a defendant in a treatment facility under subsection (2), the
 26 department of corrections may, at its discretion, place the offender in another facility or program.

27 ~~(7)(8)~~ (9) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-
 28 1014, and 46-23-1031 apply to persons sentenced under this section."

