



AN ACT INCREASING PENALTIES FOR 5TH AND SUBSEQUENT DUI OFFENSES; AMENDING SECTION 61-8-731, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 61-8-731, MCA, is amended to read:

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

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

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

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

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

years, with required completion; and

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

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

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

(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 either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 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 person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, ~~upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both~~ previously sentenced under subsection (1)(a) or (1)(b), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.

(4) If a person has previously been convicted and sentenced under subsection (3), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.

(5) If a person who is presently being sentenced has previously been convicted and sentenced under subsection (4) on one or more occasions, the person shall be punished by a fine of not less 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 more than 25 years. The first 5 years of the sentence may not be suspended.

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

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

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment

under this section;

- (c) that the person may not frequent an establishment where alcoholic beverages are served;
- (d) that the person may not consume alcoholic beverages;
- (e) that the person may not operate a motor vehicle unless authorized by the person's probation

officer;

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

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

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

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

- (a) payment of a fine as provided in 46-18-231;
- (b) payment of costs as provided in 46-18-232 and 46-18-233;
- (c) payment of costs of assigned counsel as provided in 46-8-113;
- (d) community service;
- (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the

protection of society; or

(f) any combination of the restrictions or conditions listed in subsections ~~(5)(a)~~ (7)(a) through ~~(5)(e)~~ (7)(e).

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

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

**Section 2. Coordination instruction.** If both Senate Bill No. 365 and [this act] are passed and approved, then [section 4 of Senate Bill No. 365] must be amended as follows:

**"Section 4. Penalty for driving under influence -- fourth and subsequent offenses.** (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than \$5,000 or more than \$10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than \$5,000 or more than \$10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

- (A) the person abide by the standard conditions of probation promulgated by the department of corrections;
- (B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;
- (C) the person may not frequent an establishment where alcoholic beverages are served;
- (D) the person may not consume alcoholic beverages;
- (E) the person may not operate a motor vehicle unless authorized by the person's probation officer;
- (F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;
- (G) the person submit to random or routine drug and alcohol testing; and
- (H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and
- (v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:
  - (A) payment of a fine as provided in 46-18-231;
  - (B) payment of costs as provided in 46-18-232 and 46-18-233;
  - (C) payment of costs of assigned counsel as provided in 46-8-113;
  - (D) community service;
  - (E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
  - (F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, ~~who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program,~~ and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section

2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], and the person was previously sentenced under subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or being fined an amount a fine of not less than \$5,000 or more than \$10,000, or both and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.

(3) If a person has previously been convicted and sentenced under subsection (2), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.

(4) If a person who is presently being sentenced has previously been convicted and sentenced under subsection (3) on one or more occasions, the person shall be punished by a fine of not less 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 more than 25 years. The first 5 years of the sentence may not be suspended.

~~(3)~~(5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

~~(4)~~(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5."

**Section 3. Applicability.** [This act] applies to offenses committed on or after October 1, 2021.

- END -

I hereby certify that the within bill,  
HB 115, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

HOUSE BILL NO. 115

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

MCGILLVRAY

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