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HOUSE BILL NO. 404

INTRODUCED BY T. FALK, T. WELCH, J. SCHILLINGER, L. SHELDON-GALLOWAY, G. OBLANDER, P.  
GREEN, G. KMETZ, B. BARKER, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DRIVING UNDER THE INFLUENCE LAWS;  
PROVIDING REVISED PENALTIES FOR A FIRST OFFENSE; AND AMENDING SECTION 61-8-1007, MCA."

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

**Section 1.** Section 61-8-1007, MCA, is amended to read:

**"61-8-1007. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of 61-8-1002(1)(a) shall be punished as follows:

(i) for a first violation, by imprisonment for not less than ~~24 consecutive hours~~ 4 days 24 consecutive hours or more than 6 months and by a fine of not less than ~~\$600~~ \$1,000 or more than ~~\$1,000~~ \$1,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 5 days 48 consecutive hours or more than 1 year and by a fine of not less than ~~\$1,200~~ \$1,800 or more than ~~\$2,000~~ \$2,500;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and 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 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and 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 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided

1 in 61-8-1008.

2 (c) If the person has a prior conviction or pending charge for a violation of driving under the  
3 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
4 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-  
5 1001, the person shall be punished as provided in subsection (4).

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

9 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
10 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
11 1009. During any suspended portion of sentence imposed by the court:

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

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

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

18 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-  
19 1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

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

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

28 (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a

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

4 (b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided  
5 in 61-8-1008.

6 (c) If the person has a prior conviction or pending charge for a violation of driving under the  
7 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
8 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-  
9 1001, the person shall be punished as provided in subsection (4).

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

13 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
14 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
15 1009. During any suspended portion of sentence imposed by the court:

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

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

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

22 (3) (a) A person convicted of a violation of 61-8-1002(1)(e) shall be punished as follows:

23 (i) Upon a first conviction under this section, a person shall be punished by a fine of not less than  
24 \$100 or more than \$500.

25 (ii) Upon a second conviction under this section, a person shall be punished by a fine of not less  
26 than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than  
27 10 days.

28 (iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine

1 of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not  
2 less than 24 consecutive hours or more than 60 days.

3 (iv) In addition to the punishment provided in this section, regardless of disposition:

4 (A) the person shall comply with the chemical dependency education course and chemical  
5 dependency treatment provisions in 61-8-1009 as ordered by the court; and

6 (B) the department shall suspend the person's driver's license for 90 days upon the first conviction,  
7 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or  
8 probationary driver's license may not be issued during the suspension period until the person has paid a license  
9 reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the  
10 offense, has completed at least 30 days of the suspension period.

11 (b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-  
12 1007, 61-8-1008, and 61-8-1011.

13 (4) (a) A person convicted of a violation under 61-8-1002 charged as aggravated driving under the  
14 influence, as defined in 61-8-1001, shall be punished as follows:

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

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

23 (iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year  
24 and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the  
25 time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or  
26 more than 1 year and by a fine of \$10,000.

27 (b) The mandatory minimum imprisonment term may not be served under home arrest and may  
28 not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the

1 person's physical or mental well-being.

2 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
3 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
4 1009. During any suspended portion of sentence imposed by the court:

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

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

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

11 (d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided  
12 in 61-8-1008.

13 (5) In addition to the punishment provided in this section, regardless of disposition, the person  
14 shall comply with the chemical dependency education course and chemical dependency treatment provisions in  
15 61-8-1009 as ordered by the court.

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

18 - END -