

Amendment - 1st Reading/2nd House-blue - Requested by: Jason Small - (S) Business, Labor, and Economic Affairs

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

HB0437.001.001

1 HOUSE BILL NO. 437

2 INTRODUCED BY K. ZOLNIKOV

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL DRUG LAWS; REMOVING
5 ITEMS RELATED TO TESTING DRUGS FROM THE LIST OF PARAPHERNALIA; ADDING KRATOM TO THE
6 LIST OF SPECIFIC DANGEROUS DRUGS INCLUDED IN SCHEDULE I OF THE CONTROLLED
7 SUBSTANCES ACT; REMOVING THE LIMITATION ON THE TYPE OF TETRAHYDROCANNABINOLS THAT
8 MUST BE PRESENT TO CONSTITUTE DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-10-
9 103, 50-32-222, AND 61-8-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 45-10-103, MCA, is amended to read:

14 **"45-10-103. Criminal possession of drug paraphernalia.** Except as provided in Title 16, chapter 12,
15 or 50-32-609, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant,
16 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, ~~test~~, analyze,
17 pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
18 dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be
19 imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A
20 person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of
21 sentence of imprisonment."

22
23 **Section 2.** Section 50-32-222, MCA, is amended to read:

24 **"50-32-222. Specific dangerous drugs included in Schedule I.** Schedule I consists of the drugs
25 and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this
26 section.

27 (1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are

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- 1 opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the
2 existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:
- 3 (a) acetyl-alpha-methylfentanyl, also known as N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-
4 phenylacetamide;
 - 5 (b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or
6 methadyl acetate;
 - 7 (c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl)piperidin-4-yl propanoate;
 - 8 (d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-
9 acetylmethadol, levomethadyl acetate, or LAAM;
 - 10 (e) alphameprodine;
 - 11 (f) alphamethadol;
 - 12 (g) alpha-methylfentanyl, also known as (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]
13 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
 - 14 (h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-
15 phenylpropanamide;
 - 16 (i) benzethidine;
 - 17 (j) betacetylmethadol;
 - 18 (k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-
19 phenylpropanamide;
 - 20 (l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-
21 piperidinyl]-N-phenylpropanamide;
 - 22 (m) betameprodine;
 - 23 (n) betamethadol;
 - 24 (o) betaprodine;
 - 25 (p) clonitazene;
 - 26 (q) dextromoramide;
 - 27 (r) diampromide;

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- 1 (s) diethylthiambutene;
- 2 (t) difenoxin;
- 3 (u) dimenoxadol;
- 4 (v) dimepheptanol;
- 5 (w) dimethylthiambutene;
- 6 (x) dioxaphetyl butyrate;
- 7 (y) dipipanone;
- 8 (z) ethylmethylthiambutene;
- 9 (aa) etonitazene;
- 10 (bb) etoxeridine;
- 11 (cc) furethidine;
- 12 (dd) hydroxypethidine;
- 13 (ee) ketobemidone;
- 14 (ff) levomoramide;
- 15 (gg) levophenacymorphan;
- 16 (hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-
- 17 phenylpropanamide;
- 18 (ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-
- 19 phenylpropanamide;
- 20 (jj) morpheridine;
- 21 (kk) MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);
- 22 (ll) noracymethadol;
- 23 (mm) norlevorphanol;
- 24 (nn) normethadone;
- 25 (oo) norpipanone;
- 26 (pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-
- 27 piperidiny]propanamide;

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- 1 (qq) PEPAP, also known as (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 2 (rr) phenadoxone;
- 3 (ss) phenampromide;
- 4 (tt) phenomorphan;
- 5 (uu) phenoperidine;
- 6 (vv) piritramide;
- 7 (ww) proheptazine;
- 8 (xx) properidine;
- 9 (yy) propiram;
- 10 (zz) racemoramide;
- 11 (aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;
- 12 (bbb) tilidine; and
- 13 (ccc) trimeperidine.
- 14 (2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, positional, and
- 15 geometric isomers.
- 16 (3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the
- 17 following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those
- 18 salts, isomers, and salts of isomers is possible within the specific chemical designation:
- 19 (a) acetorphine;
- 20 (b) acetyldihydrocodeine;
- 21 (c) benzylmorphine;
- 22 (d) codeine methylbromide;
- 23 (e) codeine-N-oxide;
- 24 (f) cyprenorphine;
- 25 (g) desomorphine;
- 26 (h) dihydromorphine;
- 27 (i) drotebanol;

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- 1 (j) etorphine, except hydrochloride salt;
- 2 (k) heroin;
- 3 (l) hydromorphenol;
- 4 (m) methylodesorphine;
- 5 (n) methyldihydromorphine;
- 6 (o) morphine methylbromide;
- 7 (p) morphine methylsulfonate;
- 8 (q) morphine-N-oxide;
- 9 (r) myrophine;
- 10 (s) nicocodeine;
- 11 (t) nicomorphine;
- 12 (u) normorphine;
- 13 (v) pholcodine; and
- 14 (w) thebacon.
- 15 (4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any
- 16 material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic
- 17 substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and
- 18 salts of isomers is possible within the specific chemical designation:
- 19 (a) alpha-ethyltryptamine, also known as etryptamine, monase, alpha-ethyl-1H-indole-3-
- 20 ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;
- 21 (b) alpha-methyltryptamine, also known as AMT;
- 22 (c) 4-bromo-2,5-dimethoxyamphetamine, also known as 4-bromo-2, 5-dimethoxy-alpha-
- 23 methylphenethylamine, and 4-bromo-2,5-DMA;
- 24 (d) 4-bromo-2,5-dimethoxyphenethylamine, also known as 2-(4-bromo-2,5-dimethoxyphenyl)-1-
- 25 aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;
- 26 (e) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-alpha-methylphenethylamine and
- 27 2,5-DMA;

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- 1 (f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;
- 2 (g) 3,4-methylenedioxyamphetamine;
- 3 (h) 2,5-dimethoxy-4-ethylamphetamine, also known as DOET;
- 4 (i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;
- 5 (j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;
- 6 (k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;
- 7 (l) 5-methoxy-3,4-methylenedioxyamphetamine;
- 8 (m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2, 5-dimethoxy-alpha-
- 9 methylphenethylamine, DOM, and STP;
- 10 (n) 3,4-methylenedioxymethamphetamine, also known as MDMA;
- 11 (o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-
- 12 3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;
- 13 (p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4
- 14 (methylenedioxy)phenethylamine and N-hydroxy MDA;
- 15 (q) 3,4,5-trimethoxyamphetamine;
- 16 (r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-
- 17 dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;
- 18 (s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;
- 19 (t) dimethyltryptamine, also known as DMT;
- 20 (u) hashish;
- 21 (v) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-
- 22 pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;
- 23 (w) kratom, meaning any parts of the plant mitragyna speciosa, whether growing or not, and any
- 24 compound, manufacture, salt, derivative, mixture, or preparation of that plant, including but not limited to
- 25 mitragynine and 7-hydroxymitragynine.
- 26 ~~(w)(x)~~ lysergic acid diethylamide, also known as LSD;
- 27 ~~(x)(y)~~ marijuana;

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1 ~~(y)~~(z) mescaline;

2 ~~(z)~~(aa) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-

3 dibenzo[b,d]pyran and synhexyl;

4 ~~(aa)~~(bb) peyote, meaning all parts of the plant presently classified botanically as *lophophora williamsii*

5 lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every

6 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;

7 ~~(bb)~~(cc) N-ethyl-3-piperidyl benzilate;

8 ~~(cc)~~(dd) N-methyl-3-piperidyl benzilate;

9 ~~(dd)~~(ee) psilocybin;

10 ~~(ee)~~(ff) psilocyn;

11 ~~(ff)~~(gg) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant

12 or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar

13 chemical structure and pharmacological activity, such as those listed in subsections (4)~~(ff)~~(gg)(i) through

14 (4)~~(ff)~~(gg)(iii). Because nomenclature of these substances is not internationally standardized, compounds of

15 these structures, regardless of numerical designation of atomic positions covered, are included in the category

16 as follows:

17 (i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

18 (ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

19 (iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

20 ~~(gg)~~(hh) ethylamine analog of phencyclidine, also known as N-ethyl-1-phenylcyclohexylamine, (1-

21 phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

22 ~~(hh)~~(ii) pyrrolidine analog of phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,

23 and PHP;

24 ~~(ii)~~(jj) thiophene analog of phencyclidine, also known as 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-

25 thienyl analog of phencyclidine, TPCP, and TCP;

26 ~~(jj)~~(kk) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy;

27 ~~(kk)~~(ll) synthetic cannabinoids, including:

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- 1 (i) unless specifically excepted or listed in another schedule, any chemical compound chemically
2 synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any
3 quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those groups that
4 contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts,
5 isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic
6 cannabinoid chemical analogs in the following groups:
- 7 (A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring
8 to any extent;
- 9 (B) naphthylmethylindoles, whether or not substituted in the indole ring to any extent or the
10 naphthyl ring to any extent;
- 11 (C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl
12 ring to any extent;
- 13 (D) naphthylmethylindenes, whether or not substituted in the indene ring to any extent or the
14 naphthyl ring to any extent;
- 15 (E) acetylindoles, whether or not substituted in the indole ring to any extent or the acetyl group to
16 any extent;
- 17 (F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl
18 ring to any extent;
- 19 (G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring
20 to any extent; and
- 21 (H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to
22 any extent;
- 23 (ii) any compound that has been demonstrated to have agonist binding activity at one or more
24 cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have
25 agonist binding activity at one or more cannabinoid receptors;
- 26 (iii) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- 27 (iv) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-

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- 1 tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-
- 2 tetrahydrocannabinol);
- 3 (v) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the
- 4 dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;
- 5 (vi) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);
- 6 (vii) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);
- 7 (viii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);
- 8 (ix) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);
- 9 (x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);
- 10 (xi) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-
- 11 (1-pentylindol-3-yl)methanone;
- 12 (xii) the following substances, except where contained in cannabis or cannabis resin, namely
- 13 tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:
- 14 (A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 15 naphthalenylmethanone (also known as WIN-55,212-2);
- 16 (B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or
- 17 (C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-
- 18 1-yl]acetate;
- 19 ~~(H)~~(mm) Salvia divinorum, also known as salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9- (acetyloxy)-
- 20 2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho[2,1-c] pyran-7-carboxylic acid methyl ester;
- 21 ~~(mm)~~(nn) substituted cathinones, including any compound, except bupropion or compounds listed in
- 22 another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the
- 23 following ways:
- 24 (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl,
- 25 hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other
- 26 univalent substituents;
- 27 (ii) by substitution at the 3-position with an alkyl substituent;

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1 (iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen
2 atom in a cyclic structure; and

3 (iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl
4 groups, whether further substituted or not;

5 ~~(ff)~~(oo) any compound not listed in this code, in an administrative rule regulating controlled
6 substances or approved for use by the United States food and drug administration that is structurally derived
7 from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

8 (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or
9 halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent
10 substituents;

11 (ii) by substitution at the 3-position with an alkyl substituent;

12 (iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen
13 atom in a cyclic structure; and

14 (iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups,
15 whether further substituted or not.

16 (5) (a) For the purposes of subsection (4), the term "isomer" includes the optical, positional, and
17 geometric isomers.

18 (b) Subsection ~~(4)(kk)~~(4)(ll) does not apply to synthetic cannabinoids approved by the United
19 States food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The
20 department of public health and human services shall adopt a rule listing the approved cannabinoids and shall
21 update the rule as necessary to keep the list current.

22 (6) Depressants. Unless specifically excepted or listed in another schedule, any material,
23 compound, mixture, or preparation that contains any quantity of the following substances is a depressant
24 having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers
25 whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical
26 designation:

27 (a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-

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- 1 hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;
- 2 (b) mecloqualone; and
- 3 (c) methaqualone.
- 4 (7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound,
- 5 mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant
- 6 effect on the central nervous system, including its salts, isomers, and salts of isomers:
- 7 (a) aminorex, also known as aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-
- 8 phenyl-2-oxazolamine;
- 9 (b) cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-
- 10 aminopropiophenone, and norephedrone;
- 11 (c) fenethylamine;
- 12 (d) methcathinone, also known as 2-(methylamino)-propionophenone, alpha-
- 13 (methylamino)propionophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone,
- 14 monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432,
- 15 including its salts, optical isomers, and salts of optical isomers;
- 16 (e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;
- 17 (f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-
- 18 phenyl-2-oxazolamine;
- 19 (g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;
- 20 (h) N-ethylamphetamine; and
- 21 (i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine and N,N-
- 22 alpha-trimethylphenethylamine.
- 23 (8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation
- 24 that contains any quantity of the following substances is included in this category:
- 25 (a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and
- 26 salts of isomers); and
- 27 (b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thethylfentanyl), its optical isomers,

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1 salts, and salts of isomers).

2 (9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then
3 any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must
4 automatically be rescheduled from Schedule I to the same schedule it is placed in by the United States drug
5 enforcement administration.

6 (10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this
7 designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous
8 drug analogue."
9

10 **Section 3.** Section 61-8-1002, MCA, is amended to read:

11 **"61-8-1002. Driving under influence.** (1) A person commits the offense of driving under the influence
12 if the person drives or is in actual physical control of:

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

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

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

20 (d) a noncommercial vehicle or commercial motor vehicle within this state while the person's ~~delta-~~
21 ~~9-tetrahydrocannabinol~~-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the
22 person's blood or other bodily substance, is 5 ng/ml or more; or

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

26 (2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
27 been committed by any person driving or in actual physical control of a vehicle while under the influence of