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HOUSE BILL NO. 769

INTRODUCED BY C. KNUDSEN, J. WINDY BOY, S. KERNS, S. ESSMANN, B. MITCHELL, M. BINKLEY, K. SEEKINS-CROWE, E. BUTTREY, L. JONES, C. HINKLE, R. LYNCH, J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFERRED IMPOSITION OF SENTENCE AND EXPUNGEMENT FOR CERTAIN FIRST-OFFENSE DRIVING UNDER INFLUENCE CONVICTIONS; AND AMENDING SECTIONS 46-18-1107, 46-18-1108, 61-8-1007, 61-8-1009, 61-8-1010, AND 61-8-1011, MCA."

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

**Section 1.** Section 46-18-1107, MCA, is amended to read:

**"46-18-1107. When expungement presumed.** Expungement is presumed if the person requesting expungement is not currently being detained for the commission of an offense, is not charged with the commission of an offense, and does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for a conviction for which expungement is being requested, and:

(1) the person has not been convicted of any offense in this state, another state, or federal court for a period of 5 years since the person completed the sentencing terms for the offense or offenses for which expungement is being requested, including payment of any financial obligations or successful completion of court-ordered treatment; ~~or~~

(2) the person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is being held back in any way from enlisting or holding a certain position due to prior conviction; or

(3) the person requesting expungement is requesting an expungement of a conviction provided for in 61-8-1007(1)(a)(i)(A) and (1)(a)(i)(B)."

**Section 2.** Section 46-18-1108, MCA, is amended to read:

**"46-18-1108. When expungement not presumed.** (1) Expungement may not be presumed if the person seeking expungement has one or more convictions for assault under 45-5-201, partner or family

1 member assault under 45-5-206, stalking under 45-5-220, sexual assault under 45-5-502, a violation of a  
2 protective order under 45-5-626, or driving under the influence of alcohol or drugs, however named, under Title  
3 61, chapter 8, part 10, or any offense that carries a statutorily enhanced penalty as a result of the offender  
4 driving under the influence of alcohol or drugs.

5 (2) In making the determination of whether expungement should be granted, the district court shall  
6 consider:

7 (a) the age of the petitioner at the time the offense was committed;

8 (b) the length of time between the offense and the request;

9 (c) the rehabilitation of the petitioner;

10 (d) the likelihood that the person will reoffend; and

11 (e) any other factor the court considers relevant.

12 (3) Subsection (1) does not apply to an offense provided for in 61-8-1007(1)(a)(i)(A) and

13 (1)(a)(i)(B)."

14

15 **Section 3.** Section 61-8-1007, MCA, is amended to read:

16 **"61-8-1007. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as  
17 provided in subsection (1)(b) or (1)(c), a person convicted of a violation of 61-8-1002(1)(a) shall be punished as  
18 follows:

19 (i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6  
20 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under  
21 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for  
22 not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than  
23 \$2,000; A person may be eligible for a deferred imposition of sentence as follows:

24 (A) For a first violation, when the person's alcohol concentration, as shown by analysis of the  
25 person's blood, breath, or other bodily substance, is ~~0.08~~ 0.12 or less, no property damage occurred, and no  
26 passengers under 16 years of age were in the vehicle at the time of the offense, the offense does not qualify as  
27 aggravated driving under the influence under 61-8-1001(1)(a) through (1)(d) and the person is eligible for a  
28 deferred imposition of sentence and a probationary license.

1           (B) If the person is sentenced to a deferred imposition of sentence, the person may be required to  
2 have a chemical dependency evaluation and may be sentenced to the 24/7 sobriety and drug monitoring  
3 program. The person's driver's license may not be suspended. If the person receives a deferred imposition of  
4 sentence and fulfills all of the conditions of the deferred imposition of sentence, the sentence may be expunged  
5 under Title 46, chapter 18, part 11. If the court determines the person is not eligible for a deferred imposition of  
6 sentence, the penalties provided in this part and in subsection (1)(a)(i) of this section apply.

7           (ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a  
8 fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age  
9 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14  
10 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

11           (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a  
12 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age  
13 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60  
14 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

17           (c) If the person has a prior conviction or pending charge for a violation of driving under the  
18 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
19 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-  
20 1001, the person shall be punished as provided in subsection (4).

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

24           (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
25 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
26 1009. During any suspended portion of sentence imposed by the court:

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

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

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

5 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-  
6 1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

7 (i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than  
8 \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at  
9 the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine  
10 of not less than \$1,200 or more than \$2,000;

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

15 (iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a  
16 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age  
17 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60  
18 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

21 (c) If the person has a prior conviction or pending charge for a violation of driving under the  
22 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this  
23 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-  
24 1001, the person shall be punished as provided in subsection (4).

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

28 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year

**Amendment - 1st Reading-white - Requested by: Casey Knudsen - (H) Judiciary**

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0769.001.001

1 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
2 1009. During any suspended portion of sentence imposed by the court:

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

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

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

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

10 (i) Upon a first conviction under this section, a person shall be punished by a fine of not less than  
11 \$100 or more than \$500.

12 (ii) Upon a second conviction under this section, a person shall be punished by a fine of not less  
13 than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than  
14 10 days.

15 (iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine  
16 of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not  
17 less than 24 consecutive hours or more than 60 days.

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

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

21 (B) the department shall suspend the person's driver's license for 90 days upon the first conviction,  
22 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or  
23 probationary driver's license may not be issued during the suspension period until the person has paid a license  
24 reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the  
25 offense, has completed at least 30 days of the suspension period.

26 (b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-  
27 1007, 61-8-1008, and 61-8-1011.

28 (4) (a) A person convicted of a violation under 61-8-1002 charged as aggravated driving under the

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68th Legislature 2023

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HB0769.001.001

1 influence, as defined in 61-8-1001, shall be punished as follows:

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

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

10 (iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year  
11 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  
12 time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or  
13 more than 1 year and by a fine of \$10,000.

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

17 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year  
18 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-  
19 1009. During any suspended portion of sentence imposed by the court:

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

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

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

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

28 (5) ~~In~~ Except as provided in subsections (1)(a)(i)(A) and (1)(a)(i)(B), in addition to the punishment

1 provided in this section, regardless of disposition, the person shall comply with the chemical dependency  
2 education course and chemical dependency treatment provisions in 61-8-1009 as ordered by the court.

3 (6) ~~A-Except as provided in subsections (1)(a)(i)(A) and (1)(a)(i)(B), a person punished pursuant to~~  
4 this section is subject to mandatory revocation or suspension of the person's driver's license as provided in  
5 chapter 5."  
6

7 **Section 4.** Section 61-8-1009, MCA, is amended to read:

8 **"61-8-1009. Driving under influence -- assessment, education, and treatment required.** (1) ~~h~~  
9 Except as provided in 61-8-1007(1)(a)(i)(A) and (1)(a)(i)(B), in addition to the punishments provided in 61-8-  
10 1007 and 61-8-1008, regardless of disposition, a defendant convicted of a violation of driving under the  
11 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in  
12 61-8-1001, or a similar offense under previous laws of this state or the laws of another state shall complete a  
13 chemical dependency assessment and:

14 (a) for a first conviction, except as provided in subsection (8)(b), and 61-8-1007(1)(a)(i)(A) and  
15 (1)(a)(i)(B), a chemical dependency education course; and

16 (b) for a second or subsequent conviction for a violation of driving under the influence, including  
17 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the  
18 influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, except  
19 a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program  
20 under 61-8-1008(1)(a)(i), or as required by subsection (8) of this section, chemical dependency treatment.

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

25 (3) The chemical dependency assessment and the chemical dependency education course must  
26 be completed at a treatment program approved by the department of public health and human services and  
27 must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs.  
28 The defendant may attend a treatment program of the defendant's choice as long as the treatment services are