

1 HOUSE BILL NO. 769
 2 INTRODUCED BY C. KNUDSEN, J. WINDY BOY, S. KERNS, S. ESSMANN, B. MITCHELL, M. BINKLEY, K.
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 4

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

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

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

12 **"46-18-1107. When expungement presumed.** Expungement is presumed if the person requesting
 13 expungement is not currently being detained for the commission of an offense, is not charged with the
 14 commission of an offense, and does not have charges pending for the commission of a new offense, as verified
 15 by the prosecution office responsible for a conviction for which expungement is being requested, and:

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

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

23 (3) the person requesting expungement is requesting an expungement of a conviction provided for
 24 in 61-8-1007(1)(a)(i)(A) and (1)(a)(i)(B)."
 25

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

27 **"46-18-1108. When expungement not presumed.** (1) Expungement may not be presumed if the
 28 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

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

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

1 provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education
2 course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

3 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
4 recommendation as to education, treatment, or both. The assessment must conform to quality standards
5 required by the department of public health and human services. A defendant who disagrees with the initial
6 assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction
7 counselor or a program approved by the department of public health and human services.

8 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate
9 to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant
10 to diagnosis and patient placement rules adopted by the department of public health and human services. The
11 rules must include evidence-based treatment programs or courses approved by the department that are likely
12 to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If
13 more than one counselor makes a determination as provided in this subsection, the court shall order an
14 appropriate level of treatment based on the determination of one of the counselors.

15 (6) Each counselor providing education or treatment shall, at the commencement of the education
16 or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course
17 or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify
18 the court of the failure.

19 (7) A court or counselor may not require attendance at a self-help program other than at an open
20 meeting, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help
21 programs.

22 (8) (a) ~~Chemical~~ Except as provided in 61-8-1007(1)(a)(i)(A) and (1)(a)(i)(B), chemical dependency
23 treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the
24 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
25 61-8-1001, or a similar offense under previous laws of this state or the laws of another state upon a finding of
26 moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis
27 and patient placement rules adopted by the department of public health and human services.

28 (b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not

1 also be required to attend a chemical dependency education course.

2 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5)
3 must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the
4 program.

5 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the
6 court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence,
7 and may include additional monthly monitoring for up to an additional 1 year.

8 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-
9 1007 and orders the person to complete chemical dependency treatment under this section, the judge retains
10 jurisdiction to impose any suspended sentence for up to 1 year."
11

12 **Section 5.** Section 61-8-1010, MCA, is amended to read:

13 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**
14 **monitoring program.** (1) ~~For~~ Except as provided in 61-8-1007(1)(a)(i)(A) and (1)(a)(i)(B), for a person
15 convicted of a first offense of driving under the influence, including 61-8-1002, an offense that meets the
16 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another
17 state, in addition to the punishments listed in 61-8-1007, the court may, regardless of disposition and if a
18 probationary license is recommended by the court, require the person to comply with the conditions listed in
19 subsection (2)(a) or (2)(b).

20 (2) On a second or subsequent conviction for a violation of driving under the influence, including
21 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
22 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
23 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
24 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
25 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
26 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
27 a peace officer who believed that the person might be driving under the influence, in addition to the
28 punishments listed in 61-8-1002 and 61-8-1007, the court shall require the person:

1 (a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or
2 require the person to participate in a court-approved alcohol or drug detection testing program and to pay the
3 fees associated with the program;

4 (b) if recommending that a probationary license be issued to the person, restrict the person to
5 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
6 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

7 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
8 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
9 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
10 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be
11 forfeited under this section for any act or omission established by the owner to have been committed or omitted
12 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
13 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
14 security interest is subject to the secured person's interest if the person did not know and could not have
15 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."
16

17 **Section 6.** Section 61-8-1011, MCA, is amended to read:

18 **"61-8-1011. Driving under influence -- conviction defined -- place of imprisonment -- home**
19 **arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) ~~For~~ Except as provided in 61-8-
20 1007(1)(a)(i)(A) and (1)(a)(i)(B), for the purpose of determining the number of convictions for prior offenses
21 referred to in 61-8-1001, 61-8-1002, 61-8-1007, and 61-8-1008, "conviction" means:

22 (i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally
23 recognized Indian reservation;

24 (ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the
25 defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation;
26 or

27 (iii) a conviction for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b),
28 (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a

1 similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or
2 regulation in another state or on a federally recognized Indian reservation.

3 (b) An offender is considered to have been previously convicted for the purposes of sentencing if
4 less than 10 years have elapsed between the commission of the present offense and a previous conviction
5 unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be
6 used for sentencing purposes.

7 (c) A previous conviction for a violation of driving under the influence, including 61-8-1002(1)(a),
8 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
9 1001, or a similar offense under previous laws of this state or the laws of another state, or a violation of a
10 similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise
11 defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent
12 conviction for a violation of driving under the influence under 61-8-1002.

13 (d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred
14 while the person was operating a vehicle in violation of driving under the influence, including 61-8-1002(1)(a),
15 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
16 1001, or a similar offense under previous laws of this state or the laws of another state, and a previous
17 conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the
18 number of a subsequent conviction for a violation of driving under the influence under 61-8-1002.

19 (2) Except as provided in 61-8-1008, the court may order that a term of imprisonment imposed
20 under 61-8-1007 or 61-8-1008 be served in another facility made available by the county and approved by the
21 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility.
22 The court may impose restrictions on the defendant's ability to leave the premises of the facility and may
23 require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a
24 community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a
25 defendant referred by the sentencing court.

26 (3) Subject to the limitations set forth in 61-8-1007 concerning minimum periods of imprisonment,
27 the court may order that a term of imprisonment imposed under 61-8-1007 be served by imprisonment under
28 home arrest, as provided in Title 46, chapter 18, part 10.

