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As of: October 13, 2016 (2:50pm)

LCj003

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising sentencing laws (subcommittee recommendations); amending sections 45-2-101, 45-5-207, 45-5-214, 45-6-301, 45-6-309, 45-6-316, 45-6-317, 45-6-325, 45-6-332, 45-8-101, 45-8-102, 45-8-111, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 46-1-202, 46-13-110, 46-18-201, 46-18-204, 46-18-222, 53-30-403, 61-5-102, 61-5-208, 61-5-212, 61-6-302, 61-6-304, 61-8-407, 61-8-410, 61-8-732, and 61-11-101, MCA;;."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions resulting in a pecuniary loss to the victim of at least \$1,500 in value motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output,

processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private

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detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its

value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on

by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an

action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of

payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant

does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense,

confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of

responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or

that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a

substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

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(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this

state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands

or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not

limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

{*Internal References to 45-2-101:*

2-18-704	10-1-205	13-37-108	15-1-216
15-30-2101	15-39-108	15-68-520	15-72-115
23-5-156	33-22-136	40-4-219	40-6-402
41-3-205	41-3-609	41-3-1012	44-4-1205
45-5-206	45-5-210	45-5-220	45-5-507
45-5-621	45-8-108	45-9-208	45-10-108
46-5-212	46-9-511	46-18-220	46-18-226
46-18-303	50-15-403	50-20-109	50-20-401
50-71-120	52-2-736	53-20-129	53-20-140
61-5-405	61-7-118	61-8-402	61-8-460
61-8-725	61-8-734	61-9-520	61-13-104
80-7-1019	80-7-1019	87-2-101	87-6-101
87-6-202	87-6-206	87-6-905	

Section 2. Section 45-5-207, MCA, is amended to read:

"45-5-207. Criminal endangerment -- penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, as defined in 61-8-407, alone is not sufficient to support a criminal endangerment charge.

~~(2)~~(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

{*Internal References to 45-5-207:*
40-15-102x 9/5 }

Section 3. Section 45-5-214, MCA, is amended to read:

"45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as

defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or regional jail or detention facility, or a health care facility; or

(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, ~~unless the charge is filed in district court, in which case the district court has jurisdiction.~~

(4) As used in this section, the following definitions apply:

(a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(b) "Emergency responder" means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

{*Internal References to 45-5-214: None.*}

Section 4. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
- (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
- (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the

owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided

in 33-1-1202 or 33-1-1302;

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

(c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed ~~\$1,500~~ \$500 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined ~~\$1,500~~ an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined ~~\$1,500~~ an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than ~~30~~ 5 days or more than ~~6 months~~ 1 year.

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(b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,500 and less than \$5,000 in value shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(ii) A person convicted of the theft of property exceeding \$5,000 in value, part of a common scheme, or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed ~~\$50,000~~ \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

~~(ii)~~(iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(c) A person convicted of the offense of theft of property

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exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(10) A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to qualify for a deferred imposition of sentence as long as they have not been convicted of a misdemeanor or felony offense within 5 years."

{*Internal References to 45-6-301:*

26-1-608	27-1-718	33-1-1211	33-1-1302
33-17-1102	33-18-401	33-22-2009	39-51-3203
39-71-316	39-71-316	39-71-316	39-71-701
39-71-702	39-71-1006	45-1-205	45-6-314
45-6-315	45-6-328	45-6-328	45-6-328
45-6-328	45-6-328	45-6-328	45-6-328
45-6-328	45-6-328	45-8-405	53-2-107
53-9-111	61-5-205	69-14-1206	69-14-1206 }

Section 5. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time

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provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$1,500 in value shall be fined not to exceed \$500. ~~\$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding \$1,500 in value ~~shall be~~

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imprisoned in the state prison for a term not to exceed 10 years. and less than \$5,000 in value shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(c) A person convicted of failure to return rental or leased personal property exceeding \$5,000 in value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both."

{*Internal References to 45-6-309: None.*}

Section 6. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be

paid by the depository.

(3) (a) A person convicted of issuing a bad check not exceeding \$1,500 in value shall be fined not to exceed \$1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500, or both.

(b) A person convicted of issuing a bad check exceeding \$1,500 in value and less than \$5,000 in value shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(c) A person convicted of issuing a bad check exceeding

\$5,000 in value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both."

{*Internal References to 45-6-316:*
27-1-717 44-1-1103}

Section 7. Section 45-6-317, MCA, is amended to read:

"45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when the person purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting the financial condition of the person making or directing another to make the statement for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card that was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

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(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card that has expired when the credit card clearly indicates the expiration date.

(2) (a) A person convicted of the offense of deceptive practices where the value of any property, labor, or services obtained or attempted to be obtained does not exceed \$1,500 in value shall be fined not to exceed ~~\$1,500~~ \$500. ~~or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500, or both.~~

(b) A person convicted of deceptive practices where the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500 in value and is less than \$5,000 in value shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 3 years,

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or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(c) A person convicted of deceptive practices where the value of any property, labor, or services obtained or attempted to be obtained exceeds \$5,000 in value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both."

{*Internal References to 45-6-317:*
33-1-1302 37-51-104 45-2-311}

Section 8. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers the document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) (a) A person convicted of the offense of forgery not exceeding \$1,500 in value shall be fined not to exceed ~~\$1,500~~ \$500. ~~or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both. A~~ person convicted of a second offense shall be fined \$1,500 an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,500 an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

(b) A person convicted of the offense of forgery exceeding

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\$1,500 and less than \$5,000 in value shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(c) A person convicted of forgery exceeding \$5,000 in value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both."

{*Internal References to 45-6-325:*
45-8-405}

Section 9. Section 45-6-332, MCA, is amended to read:

"45-6-332. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than \$1,500 was gained

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or was attempted to be gained shall be fined an amount not to exceed \$500. ~~\$1,500, imprisoned in the county jail for a term not to exceed 6 months, or both.~~ If the victim is a minor, the offender shall be fined an amount not to exceed \$3,000, imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than 30 5 days or more than 1 year.

(b) A person convicted of the offense of theft of identity if an economic benefit of exceeding \$1,500 or more and less than \$5,000 was gained or was attempted to be gained shall be fined an amount not to exceed ~~\$10,000~~ \$5,000, imprisoned in a state prison for a term not to exceed ~~10~~ 3 years, or both. If the victim is a minor, the offender shall be fined an amount not to exceed \$20,000, imprisoned in a state prison for a term not to exceed 20 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000, or both.

(c) A person convicted of theft of identity if an economic benefit exceeding \$5,000 in value was gained or attempted to be

gained shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) As used in this section, "personal identifying information" includes but is not limited to the name, date of birth, address, telephone number, driver's license number, social security number or other federal government identification number, tribal identification card number, place of employment, employee identification number, mother's maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant."

{*Internal References to 45-6-332:*

30-14-1701 30-14-1712 30-14-1728 31-3-132
33-18-605 33-19-410 46-24-218 46-24-219
46-24-220 }

Section 10. Section 45-8-101, MCA, is amended to read:

"45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

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- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) rendering vehicular or pedestrian traffic impassable;
- (e) rendering the free ingress or egress to public or private places impassable;
- (f) disturbing or disrupting any lawful assembly or public meeting;
- (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100 ~~or be imprisoned in the county jail for a term not to exceed 10 days, or both.~~

(3) A person convicted of a violation of ~~subsection (1)(i)~~ subsections (1)(g) through (i) shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

{*Internal References to 45-8-101:*
23-1-122 23-2-526 87-1-506}

Section 11. Section 45-8-102, MCA, is amended to read:

"45-8-102. Failure of disorderly persons to disperse. (1)

Where ~~two~~ one or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~10 days~~ 1 day, or both."

{*Internal References to 45-8-102: None.*}

Section 12. Section 45-8-111, MCA, is amended to read:

"45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if the person knowingly creates, conducts, or maintains a public nuisance.

(3) Any act that affects an entire community or neighborhood or any considerable number of persons, as specified in subsection (1)(a), is no less a nuisance because the extent of

the annoyance or damage inflicted upon individuals is unequal.

(4) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined an amount not to exceed \$500 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both~~. Each day of the conduct constitutes a separate offense."

{*Internal References to 45-8-111:*

7-14-2141 16-6-312 23-1-122 23-2-526
87-1-506 }

Section 13. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1)

Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101. A person convicted of criminal distribution of

marijuana or its derivatives in an amount less than 60 grams shall be imprisoned for a term not to exceed 5 years and may be fined not more than \$5,000 or both.

~~(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(19)(d), or an opiate, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(3) (a) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~— (b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~— (c) The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.~~

(2) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101 shall be sentenced as provided in 45-9-102.

~~(4)~~(3) A person convicted of criminal distribution of

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dangerous drugs not otherwise provided for in ~~subsection (2), (3), or (5)~~ subsection (1), (2), or (4) shall be imprisoned in the state prison for a term ~~of not less than 1 year or more than life~~ not to exceed 25 years or be fined an amount of not more than \$50,000, or both.

~~(5)~~(4) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted ~~pursuant to subsection (2)~~, the person shall be imprisoned in the state prison for ~~not less than 4 years or more than life~~ a term not to exceed 40 years and may be fined not more than \$50,000, ~~except as provided in 46-18-222.~~

(b) If convicted of ~~the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution,~~ a second or subsequent offense of criminal distribution of dangerous drugs to a minor, the person shall be imprisoned in the state prison for ~~not less than 20 years or more than~~ a term not to exceed life and may be fined not more than \$50,000, ~~except as provided in 46-18-222.~~

~~(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(d) If convicted pursuant to subsection (4), the person~~

~~shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(6)(5)~~ Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

{*Internal References to 45-9-101:*

41-3-102	41-5-206	45-9-109	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	46-18-205	46-18-231	}

Section 14. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1)

Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of ~~not less than \$100 or more than~~ not to exceed \$500 ~~and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence.~~

(a) A person convicted of a second ~~or subsequent~~ offense under this subsection is punishable by a fine not to exceed ~~\$1,000~~ \$500 or by imprisonment in the county jail for a term not

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to exceed ~~1 year 6 months~~, or in the state prison for a term not to exceed 3 years or by or both.

(b) A person convicted of a third or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both.

(c) This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

~~(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.~~

~~(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 2 years or more than not to exceed 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:~~

~~(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or~~

~~(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than not to exceed 5 years. If the person successfully completes a residential~~

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~~methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.~~

~~—— (b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.~~

~~—— (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:~~

~~—— (i) the person to abide by the standard conditions of probation established by the department of corrections;~~

~~—— (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;~~

~~—— (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;~~

~~(iv) that the person may not consume alcoholic beverages;~~

~~—— (v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and~~

~~—— (vi) the person to submit to random or routine drug and alcohol testing.~~

~~(6)~~(3) A person convicted of criminal possession of dangerous drugs not otherwise provided for in ~~subsections (2) through (5)~~ subsections (1) or (2) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed ~~\$50,000~~ \$5,000, or both.

~~(7)~~(4) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

~~(8)~~(5) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

{*Internal References to 45-9-102:*

41-5-206 45-9-108 45-9-127 46-18-205
46-18-231 53-1-203 80-18-111 }

Section 15. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute.

(1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) ~~A person convicted of criminal possession of an opiate, as defined in 50-32-101, with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.~~ A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of

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marijuana or 1 gram of hashish shall be imprisoned in the state prison for a term of not more than 5 years or be fined in a an amount not to exceed \$5,000, or both.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

{*Internal References to 45-9-103:*

41-5-206	45-9-108	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
46-18-205	46-18-231	80-18-111	}

Section 16. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of ~~a narcotic drug, as defined in 50-32-101(19)(d), or an opiate, as defined in 50-32-101,~~ dangerous drugs, as defined in 50-32-101, shall be imprisoned in the state prison for a term of ~~not less than 5 years or more than life~~ not to exceed

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25 years and may be fined not more than \$50,000, ~~except as provided in 46-18-222.~~

~~(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. The penalties provided for in this subsection also apply to the criminal production or manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.~~

~~(4)~~(3) A person convicted of criminal production or manufacture of marijuana, or tetrahydrocannabinol, ~~or a dangerous drug not referred to in subsections (2) and (3)~~ shall be imprisoned in the state prison for a term not to exceed ~~10~~ 5 years and may be fined not more than ~~\$50,000~~ \$5,000, except that if ~~the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life~~ a term not to exceed 25 years and may be fined

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not more than \$50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. ~~A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.~~

~~(5)~~(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

{*Internal References to 45-9-110:*

41-3-102	41-5-206	45-9-108	45-9-132
45-9-132	45-9-132	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
45-9-206	45-9-206	45-9-206	45-9-206
70-24-321	70-33-321	80-18-111	}

Section 17. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) "Arrest" means taking a person into custody in the

manner authorized by law.

(4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged;
or

(c) differs from the offense charged only in the respect

that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of

this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

~~(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:~~

~~—— (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;~~

~~—— (b) less than 5 years have elapsed between the commission of the present offense and either:~~

~~—— (i) the previous felony conviction; or~~

~~—— (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and~~

~~—— (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the~~

~~postconviction hearing.~~

~~(19)~~(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

~~(20)~~(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

~~(21)~~(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

~~(22)~~(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

~~(23)~~(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

~~(24)~~(23) "Search warrant" means an order that is:

- (a) in writing;
- (b) in the name of the state;
- (c) signed by a judge;

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(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

~~(25)~~(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

~~(26)~~(25) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

~~(27)~~(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

~~(28)~~(27) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

~~(29)~~(28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

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~~(30)~~(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

~~(31)~~(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

{*Internal References to 46-1-202:*

1-1-207	7-16-2322	7-32-201	7-32-201
44-2-117	44-2-801	44-4-401	44-11-303
45-5-501	45-8-209	80-7-1019	87-6-202
87-6-206 all ok 9/5 }			

Section 18. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing

records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

~~(g) notice of seeking persistent felony offender status, 46-13-108;~~

~~(h)~~(g) motion to suppress, 46-13-301 and 46-13-302;

~~(i)~~(h) motion to dismiss, 46-13-401 and 46-13-402;

~~(j)~~(i) motion for change of place of trial, 46-13-203 through 46-13-205;

~~(k)~~(j) reasonableness of bail, Title 46, chapter 9; and

~~(l)~~(k) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

{*Internal References to 46-13-110:*
41-5-1502 46-13-108 46-14-311 all ok 9/5
}

Section 19. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of

guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment

of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

~~(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;~~

~~(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;~~

~~(vii)~~(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period

of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

~~(viii)~~(vi) any combination of subsections (2) and (3)(a)(i) through ~~(3)(a)(vii)~~ (3)(a)(v).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

~~(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;~~

~~(i)(h)~~ with ~~the approval of the prerelease center or prerelease program~~ and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a ~~prerelease center or prerelease~~ chemical dependency treatment program for a period not to exceed 1 year;

~~(j)(i)~~ community service;

~~(k)(j)~~ home arrest as provided in Title 46, chapter 18, part 10;

~~(l)(k)~~ payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

~~(m)(l)~~ with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

~~(n)(m)~~ participation in a day reporting program provided for in 53-1-203;

~~(o)(n)~~ participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was

a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

~~(p)~~(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

~~(q)~~(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(r)~~(q) any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(q)~~ (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through

61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or in state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or before sentencing.

~~(9)~~(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

{Internal References to 46-18-201:

41-5-208 *	41-5-2510	45-6-106	46-8-114
46-18-104	46-18-202	46-18-219	46-18-222
46-18-241	46-18-241	46-23-215	53-1-203
53-1-203	53-1-203	53-30-403a	61-5-214
61-5-214	61-5-214	61-8-732	}

Section 20. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. (1)

Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred or upon termination of the time remaining on a deferred sentence under 46-18-208:

(a) for a felony conviction, the court shall strike the

plea of guilty or nolo contendere, or verdict of guilty from the record and order that the charge or charges against the defendant be dismissed provided that a petition for revocation under 46-18-203 has not been filed; or

(b) for a misdemeanor conviction, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed.

(2) A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown."

{*Internal References to 46-18-204: None.*}

Section 21. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), and

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46-18-224, ~~and 46-18-502(3)~~, and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings contained in a psychosexual evaluation report

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prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

{*Internal References to 46-18-222:*

45-5-102	45-5-103	45-5-202	45-5-210
45-5-222	45-5-222	45-5-302	45-5-303
45-5-401	45-5-503	45-5-503	45-5-503
45-5-503	45-5-507	45-5-601	45-5-602
45-5-603	45-5-603	45-5-625	45-8-404
45-8-404	45-9-101	45-9-101	45-9-101
45-9-101	45-9-101	45-9-101	45-9-101
45-9-102	45-9-103	45-9-109	45-9-110
45-9-110	45-9-110	46-18-201	46-18-205
46-18-205	46-18-205	46-18-219	46-18-221
46-18-221	46-18-221	46-18-223	46-18-224
46-18-224	46-18-226	46-18-226	46-18-502r all others ok 9/5 }

Section 22. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp incarceration program -- eligibility -- rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate:

(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201(4)(m)(4)(1);

(b) shall obtain the concurrence of the sentencing court;

and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department, which shall request and consider the written recommendation of the prosecuting attorney's office. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

{*Internal References to 53-30-403:*
46-18-201 53-1-202 }

Section 23. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed -- penalties. (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a ~~first~~ violation of this section is a fine of not more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months.~~

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the ~~penalties~~ penalty in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the

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holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or
(ii) the passengers or type or types of cargo being transported.

(3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.

(4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

{*Internal References to 61-5-102:*
61-5-104 61-5-212}

Section 24. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.

(1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction

includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed ~~a chemical dependency education course, treatment, or both,~~ as required under 61-8-732, the license suspension remains in effect until the ~~course or treatment, or both, are~~ is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed ~~a chemical dependency education course or treatment, or both,~~ as required under 61-8-732, the license suspension remains in effect until the ~~course or treatment, or both, are~~ is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

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(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

{*Internal References to 61-5-208:*

44-4-1205 44-4-1205 50-46-320 61-5-205
61-5-231 61-8-734 }

Section 25. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without valid license or licensing exemption -- seizure of vehicle or rendering vehicle

inoperable. (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period ~~shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.~~ A person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

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(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not ~~less than 2 days~~ or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

~~(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is~~

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~~suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.~~

~~—— (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.~~

~~—— (5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.~~

~~—— (6) A court may not suspend or defer imposition of penalties provided by this section."~~

{*Internal References to 61-5-212:*
61-8-422 61-8-733 61-8-733 }

Section 26. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a

posted indemnity bond, as required by 61-6-301.

(2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle as proof of compliance with 61-6-301 either:

(i) an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner; or

(ii) an electronic device on which an electronic document issued by the insurance carrier showing proof of compliance with 61-6-301 may be displayed.

(b) If the insurance card or electronic document is issued under a commercial automobile insurance policy or a self-insured fleet, the insurance card or electronic document must indicate the status as "commercially insured" or "fleet".

(c) A motor vehicle owner or operator shall exhibit the insurance card or display the electronic document on demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department.

(d) A person commits an offense under this subsection if the person fails to carry in the motor vehicle the insurance card or an electronic device on which the electronic document may be displayed or fails to exhibit the insurance card or display the electronic document on demand of a person specified in subsection (2)(c).

(e) For the purposes of this subsection (2), "insurance card" includes an electronic representation or equivalent of a documentary insurance card that the insurer delivers by

electronic means, as defined in 33-15-601, to satisfy the requirements of this subsection (2).

(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the ~~arresting~~ issuing officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time ~~of arrest~~ the alleged violation took place; or

(b) when the system under 61-6-157 is not available, the person produces in court or to the office of the ~~arresting~~ issuing officer proof of insurance valid at the time ~~of arrest~~ the alleged violation took place."

{*Internal References to 61-6-302:*

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61-6-105 61-6-123 61-6-142 61-6-157
61-6-304 61-6-309 61-11-203 }

Section 27. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or both.~~ A second conviction is punishable by a fine of \$350 ~~or by imprisonment in the county jail for not more than 10 days, or both.~~ A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than ~~6 months~~ 10 days, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall report the surrender of the registration receipt and license plates to the department, which shall immediately suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates

for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

~~(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.~~

~~(5) A court may not defer imposition of penalties provided by this section.~~

~~(6)~~(4) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction."

{Internal References to 61-6-304:
61-6-105}

Section 28. Section 61-8-407, MCA, is amended to read:

"61-8-407. Definition of alcohol concentration. For purposes of 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

{Internal References to 61-8-407:
23-2-535 67-1-211 67-1-211 }

Section 29. Section 61-8-410, MCA, is amended to read:

"61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

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

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\$500.

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

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

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

(a) the person shall comply with the ~~chemical dependency education course~~ and chemical dependency treatment provisions in 61-8-732 as ordered by the court; and

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

(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."

{*Internal References to 61-8-410:*

45-5-628	46-16-130	50-46-320	50-46-320
50-46-320	61-5-212	61-8-401	61-8-402

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61-8-403 61-8-404 61-8-405 61-8-409
61-8-409 61-11-101 }

Section 30. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

(a) a chemical dependency assessment; and

~~(b) a chemical dependency education course; and~~

~~(c)~~(b) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

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

(3) The chemical dependency assessment ~~and the chemical dependency education course~~ must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor.

The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, ~~the education course,~~ and chemical dependency treatment.

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

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

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

program, the counselor shall notify the court of the failure.

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

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

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

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

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year."

{*Internal References to 61-8-732:*

61-5-208a 61-5-208a 61-5-231 x 61-8-401x *
61-8-401x * 61-8-406x * 61-8-410a 61-8-411 *

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61-8-714x 61-8-714 x 61-8-722x 61-8-722 x
61-8-741 x 61-11-101 a }

Section 31. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete ~~a~~ chemical dependency ~~education course,~~ treatment, ~~or both,~~ as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving

under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry identification card.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

{Internal References to 61-11-101:
61-5-307 61-5-307 61-5-308 61-8-442
61-10-154 }

The following sections of the Montana Code Annotated are repealed: NEW SECTION. **Section 32. {standard} Repealer.**

45-9-208. Mandatory dangerous drug information course.

45-10-108. Mandatory dangerous drug information course.

46-13-108. Notice by prosecutor seeking persistent felony offender status.

46-18-501. Definition of persistent felony offender.

46-18-502. Sentencing of persistent felony offender.

{Internal References to 45-9-208: None.
Internal References to 45-10-108: None.
Internal References to 46-13-108: 46-13-110a
Internal References to 46-18-501: 46-18-502r
Internal References to 46-18-502: 46-18-222a }

NEW SECTION. **Section 33. {standard} Effective date.** [This act] is effective July 1, 2017.

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NEW SECTION. **Section 34. {standard} Applicability.** [This act] applies to offenses committed on or after July 1, 2017.

- END -

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