

HOUSE BILL NO. 488

INTRODUCED BY K. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING DRIVING UNDER  
5 THE INFLUENCE OF ALCOHOL OR DRUGS; ESTABLISHING A BLOOD-DRAW SEARCH WARRANT  
6 PROCESSING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PROVIDING FOR THE IMPOSITION  
7 OF A FINE UPON A PERSON'S REFUSAL TO SUBMIT TO A BLOOD-DRAW TEST; AUTHORIZING THE  
8 DEPARTMENT OF JUSTICE TO ADOPT RULES FOR THE COLLECTION, ADMINISTRATION, AND  
9 ACCOUNTABILITY OF BLOOD-DRAW REFUSAL FINES; REVISING LAWS AND PENALTIES RELATED TO  
10 THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
11 INCREASING FINES FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;  
12 INCREASING FINES FOR THE OFFENSE OF DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION OR  
13 DELTA-9-TETRAHYDROCANNABINOL; REVISING LAWS AND PENALTIES RELATING TO THE OFFENSE  
14 OF FELONY DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; REVISING PENALTIES AND  
15 SENTENCING PROVISIONS FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR  
16 DRUGS; AMENDING SECTIONS 46-16-130, 61-5-208, 61-5-231, 61-8-401, 61-8-402, 61-8-403, 61-8-405,  
17 61-8-408, 61-8-409, 61-8-421, 61-8-442, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734,  
18 AND 61-8-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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22 **NEW SECTION. Section 1. Blood-draw search warrant processing account -- source of funds --**  
23 **designated use.** There is a blood-draw search warrant processing account in the state special revenue fund  
24 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to 61-8-402(6) must  
25 be deposited in the account and may be used only for the purpose of providing forensic analysis of a driver's  
26 blood to determine the presence of alcohol or drugs.

27  
28 **Section 2.** Section 46-16-130, MCA, is amended to read:  
29 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who  
30 has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified

1 period of time based on one or more of the following conditions:

2 (i) that the defendant may not commit any offense;

3 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a  
4 relationship to the conduct upon which the charge against the defendant is based;

5 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include  
6 treatment, counseling, training, or education;

7 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;

8 or

9 (v) any other reasonable conditions.

10 (b) The agreement must be in writing, must be signed by the parties, and must state that the defendant  
11 waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the  
12 admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and  
13 there is a trial on the charge.

14 (c) The prosecution must be deferred for the period specified in the agreement unless there has been  
15 a violation of its terms.

16 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon  
17 expiration and compliance with the terms of the agreement.

18 (2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine  
19 the appropriateness of proceedings pursuant to Title 53, chapter 21.

20 (3) After a charge has been filed, a deferral of prosecution may be entered into only with the approval  
21 of the court.

22 (4) A prosecution for a violation of 61-8-401, 61-8-406, 61-8-410, ~~or 61-8-411~~, or 61-8-465 may not be  
23 deferred."

24

25 **Section 3.** Section 61-5-208, MCA, is amended to read:

26 **"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license**  
27 **-- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to  
28 drive a motor vehicle on the public highways, except as permitted by law.

29 (2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section,  
30 a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or

1 revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or  
2 suspension period has been completed.

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

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

7 (ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a  
8 second offense of violating 61-8-401, 61-8-406, ~~or 61-8-411~~, or 61-8-465 within the time period specified in  
9 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year  
10 and may not issue a probationary license during the period of suspension unless the person completes at least  
11 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a  
12 probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period  
13 passes and the person has not completed a chemical dependency education course, treatment, or both, as  
14 required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are  
15 completed.

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

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

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

30 (4) If a person is convicted of a violation of 61-8-401, 61-8-406, ~~or 61-8-411~~, or 61-8-465 while operating

1 a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

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

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

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

8 (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."  
9

10 **Section 4.** Section 61-5-231, MCA, is amended to read:

11 **"61-5-231. Authorization of probationary license by DUI court -- definition.** (1) If a person convicted  
12 of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under  
13 61-8-401 or 61-8-411, ~~or~~ driving with excessive alcohol concentration under 61-8-406, or aggravated driving  
14 under the influence under 61-8-465 is participating in a DUI court, the court may, in the court's discretion,  
15 authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed  
16 within the scope of the court's authority.

17 (2) If the participant fails to comply with the court's conditions, the court may revoke the probationary  
18 driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208  
19 commencing from the date of the court's revocation of the probationary license.

20 (3) For purposes of this section, "DUI court" means any court that has established a special docket for  
21 handling cases involving persons charged with violations under 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465  
22 and that implements a program of incentives and sanctions intended to assist a participant in completing  
23 treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving  
24 under the influence of alcohol or drugs or with excessive alcohol concentration."  
25

26 **Section 5.** Section 61-8-401, MCA, is amended to read:

27 **"61-8-401. Driving under influence of alcohol or drugs -- definitions.** (1) It is unlawful and  
28 punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the  
29 influence of:

30 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the

1 public;

2 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

3 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

4 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within  
5 this state.

6 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use  
7 alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating  
8 subsection (1).

9 (3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any  
10 combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

11 (b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that  
12 the term does not include a bicycle.

13 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been  
14 committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol,  
15 the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's  
16 blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following  
17 inferences:

18 (a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person  
19 was not under the influence of alcohol.

20 (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may  
21 not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be  
22 considered with other competent evidence in determining the guilt or innocence of the person.

23 (c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person  
24 was under the influence of alcohol. The inference is rebuttable.

25 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing  
26 upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and  
27 drugs.

28 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-411,  
29 61-8-465, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with  
30 the word "state" in 61-8-406, 61-8-411, 61-8-465, and subsection (1) of this section changed to read

1 "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition  
2 of the fines and penalties provided in the ordinance.

3 (7) Absolute liability as provided in 45-2-104 is imposed for a violation of this section."  
4

5 **Section 6.** Section 61-8-402, MCA, is amended to read:

6 **"61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit**  
7 **to test -- administrative license suspension.** (1) A person who operates or is in actual physical control of a  
8 vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the  
9 person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol  
10 or drugs in the person's body.

11 (2) (a) The test or tests must be administered at the direction of a peace officer when:

12 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual  
13 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,  
14 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

15 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

16 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of  
17 a vehicle:

18 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision  
19 resulting in property damage;

20 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in  
21 45-2-101, or death; or

22 (C) in violation of 61-8-465.

23 (b) The arresting or investigating officer may designate which test or tests are administered.

24 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of  
25 refusal is considered not to have withdrawn the consent provided by subsection (1).

26 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer  
27 as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5),  
28 but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace  
29 officer shall immediately forward the license to the department, along with a report certified under penalty of law  
30 stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

1 confirming that the person refused to submit to one or more tests requested and designated by the peace officer.  
 2 Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(7)~~ (8).

3 (5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this  
 4 section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the  
 5 arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205,  
 6 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search  
 7 warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

8 (6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall  
 9 pay the department an administrative fee of \$300, which must be deposited in the state special revenue account  
 10 established pursuant to [section 1]. THE PERSON'S DRIVER'S LICENSE MAY NOT BE REINSTATED UNTIL THE  
 11 ADMINISTRATIVE FEE PROVIDED IN THIS SUBSECTION (6) IS PAID.

12 (b) The department shall adopt rules establishing procedures for the collection, distribution, and strict  
 13 accountability of any funds received pursuant to this section.

14 ~~(6)(7)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
 15 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of  
 16 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing  
 17 provided in 61-8-403.

18 ~~(7)(8)~~ (a) Except as provided in subsection ~~(7)(b)~~ (8)(b), the following suspension periods are applicable  
 19 upon refusal to submit to one or more tests:

20 (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

21 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the  
 22 records of the department, a suspension of 1 year with no provision for a restricted probationary license.

23 (b) If a person who refuses to submit to one or more tests under this section is the holder of a  
 24 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,  
 25 the department shall:

26 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

27 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,  
 28 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person  
 29 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior  
 30 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same

1 effect as a previous testing refusal for purposes of this subsection ~~(7)(b)~~ (8)(b).

2 ~~(8)(9)~~ A nonresident driver's license seized under this section must be sent by the department to the  
3 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or  
4 more tests.

5 ~~(9)(10)~~ The department may recognize the seizure of a license of a tribal member by a peace officer  
6 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or  
7 reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or  
8 regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions  
9 occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the  
10 department under this subsection is not reviewable under 61-8-403.

11 ~~(10)(11)~~ A suspension under this section is subject to review as provided in this part.

12 ~~(11)(12)~~ This section does not apply to tests, samples, and analyses of blood or breath used for purposes  
13 of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an  
14 offense not in this part, or performed pursuant to a search warrant.

15 ~~(12)(13)~~ This section does not prohibit the release of information obtained from tests, samples, and  
16 analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

17

18 **Section 7.** Section 61-8-403, MCA, is amended to read:

19 **"61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been  
20 given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the  
21 district court in the county where the arrest was made.

22 (2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days'  
23 written notice of the hearing to the county attorney of the county where the arrest was made and to the city  
24 attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal  
25 court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney  
26 cannot agree on who will represent the state, the county attorney shall represent the state.

27 (3) Upon request of the petitioner, the court may order the department to return the seized license or  
28 issue a stay of the suspension or revocation action pending the hearing.

29 (4) (a) The court shall take testimony and examine the facts of the case, except that the issues are  
30 limited to whether:



1 (i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual  
2 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,  
3 or a combination of the two and the person was placed under arrest for violation of 61-8-401 or 61-8-465;

4 (ii) the person is under 21 years of age and was placed under arrest for a violation of 61-8-410;

5 (iii) the officer had probable cause to believe that the person was driving or in actual physical control of  
6 a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting  
7 in property damage, bodily injury, or death; and

8 (iv) the person refused to submit to one or more tests designated by the officer.

9 (b) Based on the issues in subsection (4)(a) and no others, the court shall determine whether the  
10 petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

11 (5) This section does not grant a right of appeal to a state court if a driver's license is initially seized,  
12 suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle  
13 operators."

14

15 **Section 8.** Section 61-8-405, MCA, is amended to read:

16 **"61-8-405. Administration of tests.** (1) Only a physician, registered nurse, or other qualified person  
17 acting under the supervision and direction of a physician or registered nurse may, at the request of a peace  
18 officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol,  
19 drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of  
20 breath.

21 (2) In addition to any test administered at the direction of a peace officer, a person may request that an  
22 independent blood sample be drawn by a physician or registered nurse for the purpose of determining any  
23 measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person.  
24 The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The  
25 officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining  
26 the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The  
27 failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any  
28 test given at the direction of a peace officer.

29 (3) Upon the request of the person tested, full information concerning any test given at the direction of  
30 the peace officer must be made available to the person or the person's attorney.

1 (4) A physician, registered nurse, or other qualified person acting under the supervision and direction  
 2 of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper  
 3 administering of a blood test when requested in writing by a peace officer to administer a test.

4 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving  
 5 of tests and may require certification of training to administer the tests as considered necessary.

6 (6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406,  
 7 61-8-410, 61-8-411, 61-8-465, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is  
 8 taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace  
 9 officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."  
 10

11 **Section 9.** Section 61-8-408, MCA, is amended to read:

12 **"61-8-408. Multiple convictions prohibited.** When the same acts may establish the commission of an  
 13 offense under 61-8-401 and 61-8-406, ~~or 61-8-401 and 61-8-411, 61-8-401 and 61-8-465, 61-8-406 and~~  
 14 ~~61-8-411, 61-8-406 and 61-8-465, or 61-8-411 and 61-8-465,~~ a person charged with the conduct may be  
 15 prosecuted for a violation of 61-8-401 and 61-8-406, ~~or 61-8-401 and 61-8-411, 61-8-401 and 61-8-465, 61-8-406~~  
 16 ~~and 61-8-411, 61-8-406 and 61-8-465, or 61-8-411 and 61-8-465.~~ However, the person may be convicted of only  
 17 one offense under 61-8-401, 61-8-406, ~~or 61-8-411, or 61-8-465.~~"  
 18

19 **Section 10.** Section 61-8-409, MCA, is amended to read:

20 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical  
 21 control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary  
 22 alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration,  
 23 upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual  
 24 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in  
 25 violation of 61-8-410 or 61-8-465.

26 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting  
 27 to a preliminary alcohol screening test pursuant to this section.

28 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit  
 29 to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's  
 30 license.

1 (4) If the person refuses to submit to a test under this section, a test will not be given except as provided  
2 in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in  
3 61-8-402.

4 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited  
5 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual  
6 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in  
7 violation of 61-8-410 and whether the person refused to submit to the test.

8 (6) The provisions of 61-8-402(3) through ~~(9)~~ (10) that do not conflict with this section are applicable to  
9 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same  
10 incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

11 (7) A test may not be conducted or requested under this section unless both the peace officer and the  
12 instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant  
13 to rules adopted under the authority of 61-8-405(5)."  
14

15 **Section 11.** Section 61-8-421, MCA, is amended to read:

16 **"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the  
17 arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2.  
18 Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

19 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days  
20 after the seizure of the motor vehicle.

21 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner  
22 of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the  
23 owner was not convicted of a second or subsequent offense under 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465.  
24 It is not a defense that the convicted person owns the motor vehicle jointly with another person.

25 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first  
26 to the holders of security interests who have presented proper proof of their claims, up to the amount of the  
27 interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the  
28 arresting agency.

29 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle  
30 to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the

1 motor vehicle.

2 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return  
3 of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section  
4 but is found by the court to be without fault."

5

6 **Section 12.** Section 61-8-442, MCA, is amended to read:

7 **"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
8 **concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**  
9 **vehicle.** (1) In addition to the punishments provided in 61-8-714, ~~and~~ 61-8-722, and 61-8-465, regardless of  
10 disposition and if a probationary license is recommended by the court, the court may, for a person convicted of  
11 a first offense under 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465:

12 (a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device  
13 during the probationary period and require the person to pay the reasonable cost of leasing, installing, and  
14 maintaining the device; or

15 (b) require the person to participate in a court-approved alcohol or drug detection testing program and  
16 pay the fees associated with the testing program.

17 (2) If a person is convicted of a second or subsequent violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, or  
18 61-8-465, in addition to the punishments provided in 61-8-714, ~~and~~ 61-8-722, and 61-8-465, regardless of  
19 disposition, the court shall:

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

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

26 (c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected  
27 to the forfeiture procedure provided under 61-8-421.

28 (3) Any restriction or requirement imposed under this section must be included in a report of the  
29 conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's  
30 driving record maintained by the department in accordance with 61-11-102.

1 (4) The duration of a restriction imposed under this section must be monitored by the department."  
 2

3 **Section 13.** Section 61-8-465, MCA, is amended to read:

4 **"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence  
 5 if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and ~~at the time of the offense:~~

6 (a) the person's ~~blood~~ alcohol concentration, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH,  
 7 is 0.16 or more;

8 (b) the person is under the order of a court or the department to equip any motor vehicle the person  
 9 operates with an approved ignition interlock device;

10 (c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of  
 11 a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;

12 (d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's  
 13 driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the  
 14 commission of the present offense; or

15 (e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401,  
 16 61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or more  
 17 prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401,  
 18 61-8-406, or 61-8-411.

19 (2) ~~A~~ Except as provided in subsection (6), a person convicted of a first violation of the offense of  
 20 aggravated driving under the influence shall be punished by:

21 (a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at  
 22 the time of the offense, a fine of \$2,000; and

23 (b) a term of imprisonment of for not less than 48 consecutive hours or more than 1 year, part of which  
 24 may be suspended, except for the mandatory minimum sentences set forth in 61-8-714 except that if one or more  
 25 passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not  
 26 less than 72 consecutive hours.

27 (3) Except as provided in subsection (6), a person convicted of a second violation of the offense of  
 28 aggravated driving under the influence shall be punished by:

29 (a) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at  
 30 the time of the offense, a fine of \$5,000; and

1 (b) a term of imprisonment for not less than 15 consecutive days or more than 1 year, except that if one  
2 or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment  
3 for not less than 45 consecutive days.

4 (i) Except for the minimum term of imprisonment provided in subsection (3)(b), the mandatory minimum  
5 imprisonment term may be suspended pending successful completion of court-ordered chemical dependency  
6 assessment, education, or treatment by the person.

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

10 (4) Except as provided in subsection (6), a person convicted of a third violation of the offense of  
11 aggravated driving under the influence shall be punished by:

12 (a) a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at  
13 the time of the offense, a fine of \$10,000; and

14 (b) a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if one  
15 or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment  
16 for not less than 90 consecutive days.

17 (i) Except for the minimum term of imprisonment provided in subsection (4)(b), the mandatory minimum  
18 imprisonment term may be suspended pending successful completion of court-ordered chemical dependency  
19 assessment, education, or treatment by the person.

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

23 ~~(3)~~(5) During the suspended sentence imposed by the court under subsection (2)(b), (3)(b), or (4)(b):

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

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

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

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

1 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive  
 2 alcohol concentration, under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under the  
 3 influence.

4 ~~(4)~~(7) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."  
 5

6 **Section 14.** Section 61-8-714, MCA, is amended to read:

7 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

8 (1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be  
 9 punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less  
 10 than ~~\$300~~ \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the  
 11 vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive  
 12 hours or more than 1 year and by a fine of not less than ~~\$600~~ \$1,200 or more than \$2,000.

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

16 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
 17 successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

18 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401  
 19 shall be punished by a fine of not less than ~~\$600~~ \$1,200 or more than ~~\$1,000~~ \$2,000 and by imprisonment for  
 20 not less than 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in  
 21 the vehicle at the time of the offense, the person shall be punished by a fine of not less than ~~\$1,200~~ \$2,400 or  
 22 more than ~~\$2,000~~ \$4,000 and by imprisonment for not less than 14 days or more than 1 year.

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

26 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
 27 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

28 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401  
 29 shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not  
 30 less than ~~\$1,000~~ \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were

1 in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than  
2 60 days or more than 1 year and by a fine of not less than ~~\$2,000~~ \$5,000 or more than \$10,000.

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

6 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
7 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

8 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
9 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
10 alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under  
11 the influence.

12 (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall  
13 be punished as provided in 61-8-465."  
14

15 **Section 15.** Section 61-8-722, MCA, is amended to read:

16 **"61-8-722. Penalty for driving with excessive alcohol concentration or**  
17 **delta-9-tetrahydrocannabinol level -- first through third offense.** (1) Except as provided in subsection (4) or  
18 (5), a person convicted of a first violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not more  
19 than 6 months and by a fine of not less than ~~\$300~~ \$600 or more than \$1,000, except that if one or more  
20 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished  
21 by imprisonment for not more than 6 months and by a fine of not less than ~~\$600~~ \$1,200 or more than \$2,000.

22 (2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406  
23 or 61-8-411 shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not  
24 less than ~~\$600~~ \$1,200 or more than ~~\$1,000~~ \$2,000, except that if one or more passengers under 16 years of age  
25 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10  
26 days or more than 1 year and by a fine of not less than ~~\$1,200~~ \$2,400 or more than ~~\$2,000~~ \$4,000.

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

30 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending



1 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

2 (3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or  
 3 61-8-411 shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not  
 4 less than ~~\$1,000~~ \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were  
 5 in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days  
 6 or more than 1 year and by a fine of not less than ~~\$2,000~~ \$5,000 or more than \$10,000.

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

10 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending  
 11 the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

12 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
 13 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
 14 alcohol concentration.

15 (5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall  
 16 be punished as provided in 61-8-465."

17

18 **Section 16.** Section 61-8-731, MCA, is amended to read:

19 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
 20 **concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence**  
 21 **-- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted  
 22 of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465, the person has either a single conviction under  
 23 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e),  
 24 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a  
 25 vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,  
 26 as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

27 (a) sentencing the person to the department of corrections for placement in an appropriate correctional  
 28 facility or program for a term of 13 months. The court shall order that if the person successfully completes a  
 29 residential alcohol treatment program operated or approved by the department of corrections, the remainder of  
 30 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may

1 not be deferred or suspended, and the person is not eligible for parole.

2 (b) sentencing the person to either the department of corrections or the Montana state prison or Montana  
3 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the  
4 term imposed under subsection (1)(a); and

5 (c) a fine in an amount of not less than ~~\$1,000~~ \$5,000 or more than \$10,000.

6 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a  
7 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

8 (3) If a person is convicted of a violation of 61-8-401, 61-8-406, ~~or 61-8-411~~, or 61-8-465, the person has  
9 either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104,  
10 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the  
11 person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any  
12 combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a  
13 residential alcohol treatment program under subsection (2), whether or not the person successfully completed  
14 the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months  
15 or more than 5 years or be fined an amount of not less than ~~\$1,000~~ \$5,000 or more than \$10,000, or both.

16 (4) The court shall, as a condition of probation, order:

17 (a) that the person abide by the standard conditions of probation promulgated by the department of  
18 corrections;

19 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment  
20 under this section;

21 (c) that the person may not frequent an establishment where alcoholic beverages are served;

22 (d) that the person may not consume alcoholic beverages;

23 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

24 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the  
25 probationary period;

26 (g) that the person submit to random or routine drug and alcohol testing; and

27 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition  
28 interlock system.

29 (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions  
30 during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

- 1 (a) payment of a fine as provided in 46-18-231;
- 2 (b) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (c) payment of costs of assigned counsel as provided in 46-8-113;
- 4 (d) community service;
- 5 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 6 protection of society; or
- 7 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).
- 8 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department
- 9 of corrections may, at its discretion, place the offender in another facility or program.
- 10 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
- 11 46-23-1031 apply to persons sentenced under this section."
- 12

13 **Section 17.** Section 61-8-732, MCA, is amended to read:

14 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

15 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments provided

16 in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation

17 of 61-8-401, 61-8-406, ~~or 61-8-411~~, or 61-8-465 shall complete:

- 18 (a) a chemical dependency assessment;
- 19 (b) a chemical dependency education course; and
- 20 (c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a
- 21 fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under
- 22 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

23 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical

24 dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before

25 sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

26 (3) The chemical dependency assessment and the chemical dependency education course must be

27 completed at a treatment program approved by the department of public health and human services and must

28 be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the

29 defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The

30 defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

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

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

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

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

18           (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of  
19 61-8-401, 61-8-406, ~~or 61-8-411~~, or 61-8-465 upon a finding of chemical dependency made by a licensed  
20 addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health  
21 and human services.

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

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

27           (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and  
28 orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction  
29 to impose any suspended sentence for up to 1 year."  
30

1           **Section 18.** Section 61-8-733, MCA, is amended to read:

2           **"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol**  
3 **concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**  
4 **vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, or  
5 61-8-465 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation  
6 was that the person was convicted of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465 or a similar  
7 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  
8 any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the  
9 person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212,  
10 61-8-465, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

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

14           (b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in  
15 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved  
16 alcohol or drug detection testing program and pay the fees associated with the testing program; or

17           (c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected  
18 to the procedure provided under 61-8-421.

19           (2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier  
20 is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to  
21 or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established  
22 by the owner to have been committed or omitted by a person other than the owner while the vehicle was  
23 unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the  
24 United States.

25           (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest  
26 if the person did not know and could not have reasonably known of the unlawful possession, use, or other act  
27 on which the forfeiture is sought."  
28

29           **Section 19.** Section 61-8-734, MCA, is amended to read:

30           **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**

1 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**  
 2 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses  
 3 referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in  
 4 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally  
 5 recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance  
 6 in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not  
 7 been vacated.

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

12 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401, 61-8-406, ~~or 61-8-411,~~  
 13 or 61-8-465, AND A PREVIOUS CONVICTION FOR A VIOLATION OF 45-5-104, 45-5-205, OR 45-5-628(1)(E), WHEN THE  
 14 OFFENSE UNDER 45-5-104 OCCURRED WHILE THE PERSON WAS OPERATING A VEHICLE IN VIOLATION OF 61-8-401(1), may  
 15 be counted for purposes of determining the number of a subsequent conviction for violation of 61-8-401,  
 16 61-8-406, ~~or 61-8-411,~~ or 61-8-465.

17 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under  
 18 61-8-465, 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and  
 19 approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment  
 20 in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and  
 21 require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a  
 22 community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a  
 23 defendant referred by the sentencing court.

24 (3) Subject to the limitations set forth in 61-8-465, 61-8-714, and 61-8-722 concerning minimum periods  
 25 of imprisonment, the court may order that a term of imprisonment imposed under ~~either section~~ those sections  
 26 be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

27 (4) A court may not defer imposition of sentence under 61-8-465, 61-8-714, 61-8-722, or 61-8-731.

28 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses  
 29 and later reinstatement of driving privileges, apply to any conviction under 61-8-465, 61-8-714, or 61-8-722 for  
 30 a violation of 61-8-401, 61-8-406, ~~or 61-8-411,~~ or 61-8-465."

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**Section 20.** Section 61-8-741, MCA, is amended to read:

**"61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.**

(1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-465, 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401, 61-8-406, ~~or~~ 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration."

NEW SECTION. **Section 21. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [section 1].

NEW SECTION. **Section 22. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

NEW SECTION. **Section 23. Effective date.** [This act] is effective on passage and approval.

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