

SENATE BILL NO. 357

INTRODUCED BY C. WOLKEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONVICTION FOR CRIMINAL CHILD
5 ENDANGERMENT COUNTS AS A PRIOR OFFENSE TOWARDS FELONY DRIVING UNDER THE
6 INFLUENCE; AMENDING SECTION 61-8-731, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
7 AND AN APPLICABILITY DATE."

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

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11 **Section 1.** Section 61-8-731, MCA, is amended to read:
12 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
13 **concentration -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a
14 person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, the person has either a single conviction
15 under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e),
16 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a
17 vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three,
18 as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

19 (a) sentencing the person to the department of corrections for placement in an appropriate correctional
20 facility or program for a term of 13 months. The court shall order that if the person successfully completes a
21 residential alcohol treatment program operated or approved by the department of corrections, the remainder of
22 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may
23 not be deferred or suspended, and the person is not eligible for parole.

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

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

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

30 (3) If a person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, the person has either a

1 single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,
2 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 person was
3 operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination
4 of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential
5 alcohol treatment program under subsection (2), whether or not the person successfully completed the program,
6 the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than
7 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) community service;

27 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
28 protection of society; or

29 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

30 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department

1 of corrections may, at its discretion, place the offender in another facility or program.

2 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
3 46-23-1031 apply to persons sentenced under this section."

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5 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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7 NEW SECTION. **Section 3. Applicability.** [This act] applies to sentencing for conduct that occurred
8 on or after [the effective date of this act].

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