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As of: August 23, 2010 (12:12pm)

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**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act establishing the offense of aggravated driving under the influence; providing penalties; amending sections 61-8-402, 61-8-404, 61-8-101, 61-8-409, 61-8-714, 61-8-722, 61-8-731, and 61-8-734, MCA; and providing an immediate effective date, an applicability date, and a retroactive applicability date."

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

NEW SECTION. **Section 1. Aggravated DUI.** (1) A person

commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

(a) the person's alcohol concentration is 0.20 or more;

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

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

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-

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1 8-402 within 10 years of the commission of the present offense;

2 (e) the person has one prior conviction or pending charge
3 for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or
4 this section within 3 years of the commission of the present
5 offense, or two or more prior convictions or pending charges, or
6 any combination thereof, for violations of 45-5-106, 45-5-205,
7 61-8-401, 61-8-406, or this section within 7 years of the
8 commission of the present offense; or

9 (f) the person is involved in a motor vehicle accident or
10 collision resulting in property damage or bodily injury to
11 another.

12 (2) A person convicted of the offense of aggravated driving
13 under the influence shall be punished by:

14 (a) a probationary term of not less than 1 year or more
15 than 3 years;

16 (b) a fine of not less than \$1,000 or more than \$5,000; and

17 (c) a term of imprisonment of not more than 1 year, part or
18 all of which may be suspended, to be served concurrently with the
19 initial probationary term imposed in subsection (2)(a).

20 (3) During the probationary term imposed by the court under
21 subsection (2)(a):

22 (a) the person is subject to all conditions of probation,
23 including mandatory participation in any drug or DUI courts if
24 available; and

25 (b) if the person violates any condition of probation or any
26 treatment requirement during the probationary term, the court may
27 impose the remainder of any imprisonment term that was imposed

1 and suspended.

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

4

5 **Section 2.** Section 61-8-402, MCA, is amended to read:

6 **"61-8-402. Blood or breath tests for alcohol, drugs, or**

7 **both.** (1) A person who operates or is in actual physical control
8 of a vehicle upon ways of this state open to the public is
9 considered to have given consent to a test or tests of the
10 person's blood or breath for the purpose of determining any
11 measured amount or detected presence of alcohol or drugs in the
12 person's body.

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

15 (i) the officer has reasonable grounds to believe that the
16 person has been driving or has been in actual physical control of
17 a vehicle upon ways of this state open to the public while under
18 the influence of alcohol, drugs, or a combination of the two and
19 the person has been placed under arrest for a violation of
20 61-8-401 or [section 1];

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

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

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

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

4 (C) in violation of [section 1].

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

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

10 (4) If an arrested person refuses to submit to one or more
11 tests requested and designated by the officer as provided in
12 subsection (2), the refused test or tests may not be given, but
13 the officer shall, on behalf of the department, immediately seize
14 the person's driver's license. The peace officer shall
15 immediately forward the license to the department, along with a
16 report certified under penalty of law stating which of the
17 conditions set forth in subsection (2)(a) provides the basis for
18 the testing request and confirming that the person refused to
19 submit to one or more tests requested and designated by the peace
20 officer. Upon receipt of the report, the department shall suspend
21 the license for the period provided in subsection (6).

22 (5) Upon seizure of a driver's license, the peace officer
23 shall issue, on behalf of the department, a temporary driving
24 permit, which is effective 12 hours after issuance and is valid
25 for 5 days following the date of issuance, and shall provide the
26 driver with written notice of the license suspension and the
27 right to a hearing provided in 61-8-403.

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1 (6) (a) Except as provided in subsection (6)(b), the
2 following suspension periods are applicable upon refusal to
3 submit to one or more tests:

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

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

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

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

16 (ii) upon a second or subsequent refusal, suspend the
17 person's commercial driver's license for life, subject to
18 department rules adopted to implement federal rules allowing for
19 license reinstatement, if the person is otherwise eligible, upon
20 completion of a minimum suspension period of 10 years. If the
21 person has a prior conviction of a major offense listed in
22 61-8-802(2) arising from a separate incident, the conviction has
23 the same effect as a previous testing refusal for purposes of
24 this subsection (6)(b).

25 (7) A nonresident driver's license seized under this
26 section must be sent by the department to the licensing authority
27 of the nonresident's home state with a report of the

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1 nonresident's refusal to submit to one or more tests.

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

12 (9) A suspension under this section is subject to review as
13 provided in this part.

14 (10) This section does not apply to blood and breath tests,
15 samples, and analyses used for purposes of medical treatment or
16 care of an injured motorist or related to a lawful seizure for a
17 suspected violation of an offense not in this part."

18 {Internal References to 61-8-402:
19 ok 61-2-107 ok 61-5-212 ok 61-5-212 ok 61-5-218
20 ok 61-8-101 * ok 61-8-409 ok 61-8-409 ok 61-8-409
21 ok 61-8-409 ok 61-8-409 ok 61-8-733 }

22

23 **Section 3.** Section 61-8-404, MCA, is amended to read:

24 **"61-8-404. Evidence admissible -- conditions of**
25 **admissibility.** (1) Upon the trial of a criminal action or other
26 proceeding arising out of acts alleged to have been committed by
27 a person in violation of 61-8-401, 61-8-406, 61-8-410, [section
28 1], or 61-8-805:

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1 (a) evidence of any measured amount or detected presence of
2 alcohol, drugs, or a combination of alcohol and drugs in the
3 person at the time of a test, as shown by an analysis of the
4 person's blood or breath, is admissible. A positive test result
5 does not, in itself, prove that the person was under the
6 influence of a drug or drugs at the time the person was in
7 control of a motor vehicle. A person may not be convicted of a
8 violation of 61-8-401 based upon the presence of a drug or drugs
9 in the person unless some other competent evidence exists that
10 tends to establish that the person was under the influence of a
11 drug or drugs while driving or in actual physical control of a
12 motor vehicle within this state.

13 (b) a report of the facts and results of one or more tests
14 of a person's blood or breath is admissible in evidence if:

15 (i) a breath test or preliminary alcohol screening test was
16 performed by a person certified by the forensic sciences division
17 of the department to administer the test;

18 (ii) a blood sample was analyzed in a laboratory operated or
19 certified by the department or in a laboratory exempt from
20 certification under the rules of the department and the blood was
21 withdrawn from the person by a person competent to do so under
22 61-8-405(1);

23 (c) a report of the facts and results of a physical,
24 psychomotor, or physiological assessment of a person is
25 admissible in evidence if it was made by a person trained by the
26 department or by a person who has received training recognized by
27 the department.

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1 (2) If the person under arrest refused to submit to one or
2 more tests as provided in this section, proof of refusal is
3 admissible in any criminal action or proceeding arising out of
4 acts alleged to have been committed while the person was driving
5 or in actual physical control of a vehicle upon the ways of this
6 state open to the public, while under the influence of alcohol,
7 drugs, or a combination of alcohol and drugs. The trier of fact
8 may infer from the refusal that the person was under the
9 influence. The inference is rebuttable.

10 (3) The provisions of this part do not limit the
11 introduction of any other competent evidence bearing on the
12 question of whether the person was under the influence of
13 alcohol, drugs, or a combination of alcohol and drugs."

14 {*Internal References to 61-8-404:*
15 *A 61-8-101 * }*

16
17 **Section 4.** Section 61-8-101, MCA, is amended to read:

18 **"61-8-101. Application -- exceptions.** (1) As used in this
19 chapter, "ways of this state open to the public" means any
20 highway, road, alley, lane, parking area, or other public or
21 private place adapted and fitted for public travel that is in
22 common use by the public.

23 (2) The provisions of this chapter relating to the
24 operation of vehicles refer exclusively to the operation of
25 vehicles upon highways except:

26 (a) where a different place is specifically referred to in
27 a given section;

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1 (b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c),
2 and (2), with regard to operating a vehicle while under the
3 influence of drugs, apply anywhere within this state;

4 (c) the provisions of 61-8-301 and 61-8-401 except
5 subsections (1)(b), (1)(c), and (2) thereof, ~~and~~ 61-8-402 through
6 61-8-405, and [section 1], with regard to operating a vehicle
7 while under the influence of alcohol, apply upon all ways of this
8 state open to the public.

9 (3) The operation of motor vehicles directly across the
10 public roads and highways of this state, especially as required
11 in the transportation of natural resource products, including
12 agricultural products and livestock, shall not be considered to
13 be the operation of such vehicles on the public roads and
14 highways of this state or on ways of this state open to the
15 public, provided that such crossings are adequately marked with
16 warning signs or devices. Such crossings are subject to
17 provisions relating to stopping before entry and to restoration
18 of any damage as may reasonably be prescribed by the state or
19 local agency in control of safety of operation of the public
20 highway involved."

21 {Internal References to 61-8-101:
22 OK 49-4-302 ok 61-6-301 ok 61-12-401 }

23

24 **Section 5.** Section 61-8-409, MCA, is amended to read:

25 **"61-8-409. Preliminary alcohol screening test.** (1) A person
26 who operates or is in actual physical control of a vehicle upon
27 ways of this state open to the public is considered to have given

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1 consent to a preliminary alcohol screening test of the person's
2 breath, for the purpose of estimating the person's alcohol
3 concentration, upon the request of a peace officer who has a
4 particularized suspicion that the person was driving or in actual
5 physical control of a vehicle upon ways of this state open to the
6 public while under the influence of alcohol or in violation of
7 61-8-410 or [section 1].

8 (2) The person's obligation to submit to a test under
9 61-8-402 is not satisfied by the person submitting to a
10 preliminary alcohol screening test pursuant to this section.

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

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

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

26 (6) The provisions of 61-8-402(3) through (8) that do not
27 conflict with this section are applicable to refusals under this

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1 section. If a person refuses a test requested under 61-8-402 and
2 this section for the same incident, the department may not
3 consider each a separate refusal for purposes of suspension under
4 61-8-402.

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

10 {Internal References to 61-8-409:
11 ok 61-5-212 ok 61-5-212 ok 61-8-733 }

12

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

14 **"61-8-714. Penalty for driving under influence of alcohol**
15 **or drugs -- first through third offense.** (1) Except as provided
16 in subsection (4) or (5), a person convicted of a violation of
17 61-8-401 shall be punished by imprisonment for not less than 24
18 consecutive hours or more than 6 months and by a fine of not less
19 than \$300 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
21 of the offense, the person shall be punished by imprisonment for
22 not less than 48 consecutive hours or more than 12 months and by
23 a fine of not less than \$600 or more than \$2,000. The initial 24
24 hours of the imprisonment term must be served and may not be
25 served under home arrest. The mandatory imprisonment sentence may
26 not be suspended unless the judge finds that the imposition of
27 the imprisonment sentence will pose a risk to the person's

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1 physical or mental well-being. Except for the initial 24 hours of
2 the imprisonment term, notwithstanding 46-18-201(2), the
3 imprisonment sentence may be suspended for a period of up to 1
4 year pending successful completion of court-ordered chemical
5 dependency assessment, education, or treatment by the person.

6 (2) Except as provided in subsection (4) or (5), on a
7 second conviction, the person shall be punished by a fine of not
8 less than \$600 or more than \$1,000 and by imprisonment for not
9 less than 7 days or more than 6 months, except that if one or
10 more passengers under 16 years of age were in the vehicle at the
11 time of the offense, the person shall be punished by a fine of
12 not less than \$1,200 or more than \$2,000 and by imprisonment for
13 not less than 14 days or more than 12 months. At least 48 hours
14 of the imprisonment term must be served and served consecutively
15 and may not be served under home arrest. The imposition or
16 execution of the first 5 days of the imprisonment sentence may
17 not be suspended. Except for the initial 5 days of the
18 imprisonment term, notwithstanding 46-18-201(2), the imprisonment
19 sentence may be suspended for a period of up to 1 year pending
20 successful completion of a chemical dependency treatment program
21 by the person.

22 (3) Except as provided in subsection (4) or (5), on the
23 third conviction, the person shall be punished by imprisonment
24 for a term of not less than 30 days or more than 1 year and by a
25 fine of not less than \$1,000 or more than \$5,000, except that if
26 one or more passengers under 16 years of age were in the vehicle
27 at the time of the offense, the person shall be punished by

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1 imprisonment for a term of not less than 60 days or more than 12
2 months and by a fine of not less than \$2,000 or more than
3 \$10,000. At least 48 hours of the imprisonment term must be
4 served and served consecutively and may not be served under home
5 arrest. The imposition or execution of the first 10 days of the
6 imprisonment sentence may not be suspended. The remainder of the
7 imprisonment sentence may be suspended for a period of up to 1
8 year pending successful completion of a chemical dependency
9 treatment program by the person.

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

14 (5) If the person has a prior conviction or pending charge
15 for a violation of [section 1], the person shall be punished as
16 provided in [section 1]."

17 {Internal References to 61-8-714:
18 ok 61-8-401 ok 61-8-401 ok 61-8-442 ok 61-8-442
19 ok 61-8-732 ok 61-8-732 ok 61-8-733 all ok 61-8-734
20 61-8-734 61-8-734 61-8-734 61-8-734
21 61-8-734 }

22
23 **Section 7.** Section 61-8-722, MCA, is amended to read:

24 **"61-8-722. Penalty for driving with excessive alcohol**
25 **concentration -- first through third offense.** (1) Except as
26 provided in subsection (4) or (5), a person convicted of a
27 violation of 61-8-406 shall be punished by imprisonment for not
28 more than 10 days and by a fine of not less than \$300 or more
29 than \$1,000, except that if one or more passengers under 16 years

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1 of age were in the vehicle at the time of the offense, the person
2 shall be punished by imprisonment for not more than 20 days and
3 by a fine of not less than \$600 or more than \$2,000.

4 (2) Except as provided in subsection (4) or (5), on a
5 second conviction of a violation of 61-8-406, the person shall be
6 punished by imprisonment for not less than 5 days, to be served
7 in the county jail and not on home arrest, or more than 30 days
8 and by a fine of not less than \$600 or more than \$1,000, except
9 that if one or more passengers under 16 years of age were in the
10 vehicle at the time of the offense, the person shall be punished
11 by imprisonment for not less than 10 days, which may not be
12 served on home arrest, or more than 60 days and by a fine of not
13 less than \$1,200 or more than \$2,000. The imposition or execution
14 of the first 5 days of the imprisonment sentence may not be
15 suspended.

16 (3) Except as provided in subsection (4) or (5), on a third
17 conviction of a violation of 61-8-406, the person shall be
18 punished by imprisonment for not less than 10 days, to be served
19 in the county jail and not on home arrest, or more than 6 months
20 and by a fine of not less than \$1,000 or more than \$5,000, except
21 that if one or more passengers under 16 years of age were in the
22 vehicle at the time of the offense, the person shall be punished
23 by imprisonment for not less than 20 days, which may not be
24 served on home arrest, or more than 12 months and by a fine of
25 not less than \$2,000 or more than \$10,000. The imposition or
26 execution of the first 10 days of the imprisonment sentence may
27 not be suspended.

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

5 (5) If the person has a prior conviction or pending charge
6 for a violation of [section 1], the person shall be punished as
7 provided in [section 1]."

8 {Internal References to 61-8-722:

9 ok 61-8-401 ok 61-8-406 ok 61-8-442 ok 61-8-442
10 ok 61-8-732 ok 61-8-733 all ok 61-8-734 61-8-734
11 61-8-734 61-8-734 61-8-734 61-8-734 }

12
13 **Section 8.** Section 61-8-731, MCA, is amended to read:

14 **"61-8-731. Driving under influence of alcohol or drugs --**
15 **driving with excessive alcohol concentration -- penalty for**
16 **fourth or subsequent offense.** (1) Except as provided in
17 subsection (3), if a person is convicted of a violation of
18 61-8-401 or 61-8-406 and the person has either a single
19 conviction under 45-5-106 or any combination of three or more
20 prior convictions under 45-5-104, 45-5-205, 61-8-401, ~~or~~
21 61-8-406, or [section 1], and the offense under 45-5-104 occurred
22 while the person was operating a vehicle while under the
23 influence of alcohol, a dangerous drug, any other drug, or any
24 combination of the three, as provided in 61-8-401(1), the person
25 is guilty of a felony and shall be punished by:

26 (a) sentencing the person to the department of corrections
27 for placement in an appropriate correctional facility or program
28 for a term of 13 months. The court shall order that if the person

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1 successfully completes a residential alcohol treatment program
2 operated or approved by the department of corrections, the
3 remainder of the 13-month sentence must be served on probation.
4 The imposition or execution of the 13-month sentence may not be
5 deferred or suspended, and the person is not eligible for parole.

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

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

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

17 (3) If a person is convicted of a violation of 61-8-401 or
18 61-8-406, the person has either a single conviction under
19 45-5-106 or any combination of four or more prior convictions
20 under 45-5-104, 45-5-205, 61-8-401, ~~or~~ 61-8-406, or [section 1],
21 and the offense under 45-5-104 occurred while the person was
22 operating a vehicle while under the influence of alcohol, a
23 dangerous drug, any other drug, or any combination of the three,
24 as provided in 61-8-401(1), and the person was, upon a prior
25 conviction, placed in a residential alcohol treatment program
26 under subsection (2), whether or not the person successfully
27 completed the program, the person shall be sentenced to the

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1 department of corrections for a term of not less than 13 months
2 or more than 5 years or be fined an amount of not less than
3 \$1,000 or more than \$10,000, or both.

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

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

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

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

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

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

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

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

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

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

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

27 (b) payment of costs as provided in 46-18-232 and

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1 46-18-233;

2 (c) payment of costs of assigned counsel as provided in
3 46-8-113;

4 (d) community service;

5 (e) any other reasonable restrictions or conditions
6 considered necessary for rehabilitation or for the protection of
7 society; or

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

10 (6) Following initial placement of a defendant in a
11 treatment facility under subsection (2), the department of
12 corrections may, at its discretion, place the offender in another
13 facility or program.

14 (7) The provisions of 46-18-203, 46-23-1001 through
15 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply
16 to persons sentenced under this section."

17 {Internal References to 61-8-731:

18 ok 61-5-208 ok 61-8-401 * ok 61-8-401 * ok 61-8-406 *
19 ok 61-8-714 ok 61-8-722 ok 61-8-732 ok 61-8-732
20 all ok 61-8-734 61-8-734 61-8-734 61-8-734 }

21

22 **Section 9.** Section 61-8-734, MCA, is amended to read:

23 **"61-8-734. Driving under influence of alcohol or drugs --**

24 **driving with excessive alcohol concentration -- conviction**

25 **defined -- place of imprisonment -- home arrest -- exceptions --**

26 **deferral of sentence not allowed.** (1) (a) For the purpose of

27 determining the number of convictions for prior offenses referred

28 to in [section 1], 61-8-714, 61-8-722, or 61-8-731, "conviction"

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1 means a final conviction, as defined in 45-2-101, in this state,
2 conviction for a violation of a similar statute or regulation in
3 another state or on a federally recognized Indian reservation, or
4 a forfeiture of bail or collateral deposited to secure the
5 defendant's appearance in court in this state, in another state,
6 or on a federally recognized Indian reservation, which forfeiture
7 has not been vacated.

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

14 (c) A previous conviction under 61-8-714 or 61-8-722 for
15 violation of 61-8-401 or 61-8-406 may be counted for purposes of
16 determining the number of a subsequent conviction for violation
17 of either 61-8-401 or 61-8-406.

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

1 center may accept or reject a defendant referred by the
2 sentencing court.

3 (3) Subject to the limitations set forth in 61-8-714 and
4 61-8-722 concerning minimum periods of imprisonment, the court
5 may order that a term of imprisonment imposed under either
6 section be served by imprisonment under home arrest, as provided
7 in Title 46, chapter 18, part 10.

8 (4) A court may not defer imposition of sentence under
9 61-8-714, 61-8-722, or 61-8-731.

10 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and
11 61-5-208(2), relating to suspension of driver's licenses and
12 later reinstatement of driving privileges, apply to any
13 conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401
14 or 61-8-406."

15 {Internal References to 61-8-734:
16 ok 61-8-401 ok 61-8-401 ok 61-8-406 }

17
18 NEW SECTION. **Section 10. {standard} Codification**
19 **instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 61, chapter 8, part 4, and the provisions
21 of Title 61, chapter 8, part 4, apply to [section 1].

22
23 NEW SECTION. **Section 11. {standard} Effective date.** [This
24 act] is effective on passage and approval.

25
26 NEW SECTION. **Section 12. {standard} Applicability.** [This
27 act] applies to offenses committed on or after [the effective

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1 date of this act].

2

3 NEW SECTION. **Section 13. {standard} Retroactive**

4 **applicability.** For the purpose of determining the number of
5 prior refusals to submit to testing under 61-8-402 and of
6 convictions for prior offenses referred to in [section 1], [this
7 act] applies retroactively, within the meaning of 1-2-109, to
8 refusals made and to violations of 45-5-106, 45-5-205, 61-8-401,
9 or 61-8-406 committed prior to [the effective date of this act].

10

- END -

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13 Agency : LSD
14 Phone : 444-4025}