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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA

13 **Section 1.** Section 61-8-1007, MCA, is amended to read:

14 **"61-8-1007. Penalty for driving under influence — first through third offenses.** (1) (a) Except as
15 provided in subsection (1)(b) or (1)(c), a person convicted of a violation an offense of 61-8-1002 (1)(a) shall be
16 punished as follows:

17 (i) for a first violation offense, by imprisonment for not less than 24 consecutive hours or more
18 than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers
19 under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by
20 imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200
21 or more than \$2,000:

22 (ii) for a second violation offense, by imprisonment for not less than 7 days or more than 1 year
23 and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16
24 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for
25 not less than 14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000, or

26 (iii) for a third violation offense, by imprisonment for not less than 30 days or more than 1 year and
27 by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of
28 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less

1 consecutive days or more than 1 year and by a fine of \$10,000.

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

5 (c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
6 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
7 1009. During any suspended portion of sentence imposed by the court:

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

10 (ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if
11 available and if imposed by the court; and

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

14 (d) If the person has a prior conviction offense under 45-5-106, the person shall be punished as
15 provided in 61-8-1008.

16 (5) In addition to the punishment provided in this section, regardless of disposition, the person
17 shall comply with the chemical dependency education course and chemical dependency treatment provisions in
18 61-8-1009 as ordered by the court.

19 (6) A person punished pursuant to this section is subject to mandatory revocation or suspension of
20 the person's driver's license as provided in chapter 5."

21

22 **Section 1.** Section 61-8-1011, MCA, is amended to read:

23 **"61-8-1011. Driving under influence -- conviction PRIOR OFFENSE CONVICTION defined -- place of
imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of
24 determining the number of convictions for prior offenses referred to in 61-8-1001, 61-8-1002, 61-8-1007, and
25 61-8-1008, "conviction" "prior offense" "CONVICTION" means:

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

Amendment - 1st Reading/2nd House-blue - Requested by: Bill Mercer - (S) Judiciary

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Drafter: Julianne Burkhardt,

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

4 (iii) a conviction, or A pending OR SUBSEQUENT offense IF THE PENDING OR SUBSEQUENT OFFENSE
5 RESULTS IN A CONVICTION PRIOR TO SENTENCING FOR THE PRESENT OFFENSE, for a violation of driving under the
6 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated
7 driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of
8 another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian
9 reservation.

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

14 (c) A previous conviction offense CONVICTION for a violation of driving under the influence, including
15 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the
16 influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or a
17 violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, and
18 as otherwise defined in subsection (1)(a) may be counted for the purposes of determining the number of a
19 subsequent conviction offense CONVICTION for a violation of driving under the influence under 61-8-1002.

20 (d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred
21 while the person was operating a vehicle in violation of driving under the influence, including 61-8-1002(1)(a),
22 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
23 1001, or a similar offense under previous laws of this state or the laws of another state, and a previous
24 conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the
25 number of a subsequent conviction for a violation of driving under the influence under 61-8-1002.

26 (2) Except as provided in 61-8-1008, the court may order that a term of imprisonment imposed
27 under 61-8-1007 or 61-8-1008 be served in another facility made available by the county and approved by the
28 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility.

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1 The court may impose restrictions on the defendant's ability to leave the premises of the facility and may
2 require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a
3 community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a
4 defendant referred by the sentencing court.

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

8 (4) A court may not defer imposition of sentence under 61-8-1007 or 61-8-1008.

9 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's
10 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-1007 for a violation of
11 61-8-1002."

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- END -