

HOUSE BILL NO. 542

INTRODUCED BY S. KELLY, S. KLAKKEN, T. SHARP, E. BYRNE, A. REGIER, J. ETCHART, G. KMETZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PENALTIES FOR DRIVING UNDER THE INFLUENCE; REVISING PENALTIES FOR ~~SECOND, THIRD, AND SUBSEQUENT DRIVING UNDER THE INFLUENCE~~ OFFENSES; AND AMENDING SECTIONS 61-8-1007 AND 61-8-1008, MCA."

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

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

**"61-8-1007. Penalty for driving under influence -- first through third and second offenses. (1)**

(a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of 61-8-1002(1)(a) shall be punished as follows:

(i) for a first violation, by imprisonment for not less than ~~24~~ 72 consecutive hours ~~3 DAYS~~ or more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 5 DAYS or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000; or

(ii) for a second violation, by imprisonment for not less than ~~7~~ 30 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~44~~ 45 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; ~~or~~

~~(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and 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 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.~~

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

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-1001, the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will ~~pose a risk to the person's physical or mental well-being~~ result in an incarceration facility incurring unreasonably burdensome costs in order to provide care or services for the person's medical condition.

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

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

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

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

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000; or

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000; ~~or~~

~~(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and 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 age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-1001, the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will ~~pose a risk to the person's physical or mental well-being~~ result in an incarceration facility incurring unreasonably burdensome costs in order to provide care or services for the person's medical condition.

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

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

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

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

(3) (a) A person convicted of a violation of 61-8-1002(1)(e) shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100 or more than \$500.

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

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

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

(A) — the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-1009 as ordered by the court; and

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

(b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-1007, 61-8-1008, and 61-8-1011.

(4) (a) A person convicted of a violation under 61-8-1002 charged as aggravated driving under the influence, as defined in 61-8-1001, shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days 72 hours or more than 1 year and by a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of \$2,000; or

(ii) for a second violation, by imprisonment for not less than ~~45~~ 45 days or more than 1 year and by a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of \$5,000; or

(iii) — for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of \$10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may

not be suspended, ~~unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.~~

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

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

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

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

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

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

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

**Section 2.** Section 61-8-1008, MCA, is amended to read:

**"61-8-1008. Penalty for driving under influence -- ~~fourth~~ third and subsequent offenses.** (1) (a)

A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of ~~three~~ two or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while

under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in 61-8-1002(1)(a), is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which ~~must~~ MAY be suspended, and a fine of not less than \$5,000 or more than \$10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than \$5,000 or more than \$10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

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

(F) the person enter in and remain in an aftercare treatment program for the entirety of the

probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

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

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

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

(D) community service;

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

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and who has also been convicted under either 45-5-106 or any combination of ~~four~~three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-1002(1)(a), and the person was previously sentenced under subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000, and by imprisonment in the state prison for a term of not ~~more than~~ LESS THAN 5 YEARS OR MORE THAN 10 years. The person is not eligible for a deferred imposition of sentence.

(3) If a person has previously been convicted and sentenced under subsection (2), the person

shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not ~~more than~~ LESS THAN 7 YEARS OR MORE THAN 25 years. The person is not eligible for a deferred imposition of sentence.

(4) If a person who is presently being sentenced has previously been convicted and sentenced under subsection (3) on one or more occasions, the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not less than ~~5~~ 10 years or more than 25 years. The first ~~5~~ 10 years of the sentence may not be suspended.

(5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

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

(7) (a) On a third conviction of driving under the influence in violation of 61-8-1002(1)(e), a person shall be punished by a fine of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(b) In addition to the punishment provided in this subsection (7), regardless of disposition:

(i) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-1009 as ordered by the court; and

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

(c) A person convicted of a fourth violation of driving under the influence under 61-8-1002(1)(e) is guilty of a felony and subject to the punishments described in subsections (1)(a) and (1)(b). A person convicted of a fifth or subsequent violation under 61-8-1002(1)(e) is subject to the punishments described in subsections (2) through (4)."

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