

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 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 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 14 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.

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

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

9 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
10 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
11 1009. During any suspended portion of sentence imposed by the court:

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

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

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

18 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of 61-8-
19 1002(1)(b), (1)(c), or (1)(d) shall be punished as follows:

20 (i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than
21 \$600 or more than \$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, the person shall be punished by imprisonment for not more than 6 months and by a fine
23 of not less than \$1,200 or more than \$2,000; or

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

28 (iii) ~~for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a~~

1 fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age
2 were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60
3 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

6 (c) If the person has a prior conviction or pending charge for a violation of driving under the
7 influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), or a similar offense under previous laws of this
8 state or the laws of another state that meets the definition of aggravated driving under the influence in 61-8-
9 1001, the person shall be punished as provided in subsection (4).

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

14 (e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
15 pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-
16 1009. During any suspended portion of sentence imposed by the court:

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

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

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

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

24 (i) Upon a first conviction under this section, a person shall be punished by a fine of not less than
25 \$100 or more than \$500.

26 (ii) Upon a second conviction under this section, a person shall be punished by a fine of not less
27 than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than
28 10 days.

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

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

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

7 (B) — the department shall suspend the person's driver's license for 90 days upon the first conviction,
8 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or
9 probationary driver's license may not be issued during the suspension period until the person has paid a license
10 reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the
11 offense, has completed at least 30 days of the suspension period.

12 (b) A conviction under this section may not be counted as a prior offense or conviction under 61-8-
13 1007, 61-8-1008, and 61-8-1011.

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

16 (i) for a first violation, by imprisonment for not less than 2 days 72 hours or more than 1 year and
17 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
18 of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than
19 1 year and by a fine of \$2,000; or

20 (ii) for a second violation, by imprisonment for not less than ~~45~~ 45 days or more than 1 year and by
21 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
22 the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by
23 a fine of \$5,000; or.

24 (iii) — for a third violation, by imprisonment for not less than ~~40~~ consecutive days or more than 1 year
25 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
26 time of the offense, the person shall be punished by imprisonment for not less than ~~90~~ consecutive days or
27 more than 1 year and by a fine of \$10,000.

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

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

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

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

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

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

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

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

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

19

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

21 **"61-8-1008. Penalty for driving under influence -- fourth third and subsequent offenses.** (1) (a)

22 A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or
23 (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
24 offense under previous laws of this state or the laws of another state, who has also been convicted under either
25 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
26 under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of
27 aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the
28 laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while

1 under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in 61-8-
2 1002(1)(a), is guilty of a felony and shall be punished by:

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

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

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

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

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

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

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

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

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

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

26 (D) the person may not consume alcoholic beverages;

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

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

1 probationary period;

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

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

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

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

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

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

11 (D) community service;

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

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

16 (2) A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a),
17 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
18 1001, or a similar offense under previous laws of this state or the laws of another state, and who has also been
19 convicted under either 45-5-106 or any combination of ~~four~~three or more prior convictions under 45-5-104, 45-
20 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
21 that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under
22 previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the
23 person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any
24 combination of the three, as provided in 61-8-1002(1)(a), and the person was previously sentenced under
25 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
26 \$10,000, and by imprisonment in the state prison for a term of not more than 10 years. The person is not
27 eligible for a deferred imposition of sentence.

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

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

3 (4) If a person who is presently being sentenced has previously been convicted and sentenced
4 under subsection (3) on one or more occasions, the person shall be punished by a fine of not less than \$5,000
5 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or more than
6 25 years. The first 5 years of the sentence may not be suspended.

7 (5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-
8 1014, and 46-23-1031 apply to a person sentenced under this section.

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

11 (7) (a) On a third conviction of driving under the influence in violation of 61-8-1002(1)(e), a person
12 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
13 older, by incarceration for not less than 24 consecutive hours or more than 60 days.

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

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

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

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

26 - END -