

1 **** BILL NO. ****

2 INTRODUCED BY ****

3 BY REQUEST OF THE ****

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONVICTION FOR CRIMINAL
6 ENDANGERMENT WHERE THE UNDERLYING FACTS INCLUDE THE OPERATION OF A MOTOR
7 VEHICLE AND THE USE OF ALCOHOL COUNTS AS A CONVICTION FOR DRIVING UNDER THE
8 INFLUENCE FOR COUNTING PURPOSES; AND AMENDING SECTIONS 45-5-207 AND 61-8-1011, MCA."

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

11
12 **Section 1.** Section 45-5-207, MCA, is amended to read:

13 **"45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that
14 creates a substantial risk of death or serious bodily injury to another commits the offense of criminal
15 endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood
16 any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting,
17 processing, or manufacturing equipment.

18 (2) A high blood alcohol concentration, alone is not sufficient to support a criminal endangerment
19 charge.

20 (3) A person convicted of the offense of criminal endangerment shall be fined an amount not to
21 exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

22 (4) As used in this section, "alcohol concentration" has the meaning provided in 61-8-1001.

23 (5) A conviction for criminal endangerment where the underlying factual allegations involve the
24 operation of a motor vehicle and the use of alcohol shall count as a conviction for purposes of 61-8-1011. The
25 sentencing court shall set forth in any oral pronouncement of sentence and subsequent written judgment that
26 the conviction for criminal endangerment counts as an offense for stacking purposes under 61-8-1011(1)."

27
28 **Section 2.** Section 61-8-1011, MCA, is amended to read:

1 **"61-8-1011. Driving under influence -- conviction defined -- place of imprisonment -- home**

2 **arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the number
3 of convictions for prior offenses referred to in 61-8-1001, 61-8-1002, 61-8-1007, ~~and~~ 61-8-1008, 45-5-628(1)(e),
4 and 45-5-207, "conviction" means:

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

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

9 ~~or~~

10 (iii) a conviction, or a pending or subsequent offense if the pending or subsequent offense results
11 in a conviction prior to sentencing for the present offense, for a violation of driving under the influence, including
12 61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), or (1)(f), an offense that meets the definition of aggravated driving under
13 the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or
14 a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation;

15 (iv) a conviction for criminal endangerment under 45-5-207 in which the underlying facts include
16 operation of a motor vehicle and the use of alcohol; or

17 (v) a conviction for criminal child endangerment under 45-5-628(1)(e).

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

22 (c) A previous conviction for a violation of driving under the influence, including 61-8-1002(1)(a),
23 (1)(b), (1)(c), (1)(d), or (1)(f), an offense that meets the definition of aggravated driving under the influence in
24 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or a violation of a
25 similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise
26 defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent
27 conviction for a violation of driving under the influence under 61-8-1002.

28 (d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred

1 while the person was operating a vehicle in violation of driving under the influence, including 61-8-1002(1)(a),
2 (1)(b), (1)(c), (1)(d), or (1)(f), an offense that meets the definition of aggravated driving under the influence in
3 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, and a previous
4 conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the
5 number of a subsequent conviction for a violation of driving under the influence under 61-8-1002.

6 (2) Except as provided in 61-8-1008, the court may order that a term of imprisonment imposed
7 under 61-8-1007 or 61-8-1008 be served in another facility made available by the county and approved by the
8 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility.
9 The court may impose restrictions on the defendant's ability to leave the premises of the facility and may
10 require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a
11 community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a
12 defendant referred by the sentencing court.

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

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

17 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's
18 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-1007 for a violation of
19 61-8-1002."

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