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House BILL NO. 559

INTRODUCED BY

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Clark

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING CONVICTIONS FROM TRIBAL COURTS OR FEDERAL ENCLAVES FOR THE PURPOSE OF DETERMINING NUMBER OF PRIOR CONVICTIONS AND MAINTAINING INDIVIDUAL DRIVING RECORDS; AMENDING SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. (Temporary) Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) payment of the costs of confinement;

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

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

3 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

4 (viii) with the approval of the facility or program, an order that the offender be placed in a
5 community corrections facility or program as provided in 53-30-321;

6 (ix) community service;

7 (x) home arrest as provided in Title 46, chapter 18, part 10;

8 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
9 society;

10 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

11 or

12 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

13 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
14 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
15 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
16 restrictions or conditions may include any of those listed in subsection (1)(a).

17 (c) impose a fine as provided by law for the offense;

18 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
19 counsel as provided in 46-8-113;

20 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
21 the defendant to the department of corrections for placement in an appropriate correctional institution or
22 program;

23 (f) with the approval of the facility or program, order the offender to be placed in a community
24 corrections facility or program as provided in 53-30-321; or

25 (g) impose any combination of subsections (1)(b) through (1)(f).

26 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
27 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
28 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
29 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

30 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

1 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
2 a felony, regardless of whether any other conditions are imposed.

3 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
4 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
5 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
6 allowed for jail or home arrest time already served.

7 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
8 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
9 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
10 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

11 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
12 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

13 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
14 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
15 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
16 suspended.

17 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
18 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
19 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

20 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
21 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
22 Title 46, chapter 23, part 5.

23 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
24 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
25 program.

26 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
27 imprisonment of the offender in the state prison, including placement of the offender in a community
28 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
29 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
30 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were

1 not selected, based on the criteria contained in 46-18-225.

2 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
3 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

4 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
5 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
6 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
7 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
8 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

9 (i) jail base release;

10 (ii) jail time not exceeding 180 days;

11 (iii) conditions for probation;

12 (iv) payment of the costs of confinement;

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

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

15 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

16 (viii) with the approval of the facility or program, an order that the offender be placed in a
17 community corrections facility or program as provided in 53-30-321;

18 (ix) community service;

19 (x) home arrest as provided in Title 46, chapter 18, part 10;

20 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
21 society;

22 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

23 or

24 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

25 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
26 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
27 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
28 restrictions or conditions may include any of those listed in subsection (1)(a).

29 (c) impose a fine as provided by law for the offense;

30 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

1 counsel as provided in 46-8-113;

2 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
3 the defendant to the department of corrections for placement in an appropriate correctional institution or
4 program;

5 (f) with the approval of the facility or program, order the offender to be placed in a community
6 corrections facility or program as provided in 53-30-321; or

7 (g) impose any combination of subsections (1)(b) through (1)(f).

8 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
9 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
10 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
11 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

12 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
13 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
14 a felony, regardless of whether any other conditions are imposed.

15 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
16 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
17 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
18 allowed for jail or home arrest time already served.

19 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
20 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
21 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
22 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

23 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
24 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

25 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
26 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
27 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
28 suspended.

29 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
30 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

1 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

2 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
3 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
4 Title 46, chapter 23, part 5.

5 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
6 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
7 offender program.

8 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
9 imprisonment of the offender in the state prison, including placement of the offender in a community
10 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
11 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
12 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
13 not selected, based on the criteria contained in 46-18-225.

14 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
15 not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 61-8-401, MCA, is amended to read:

18 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
19 provided in 61-8-714, ~~and 61-8-723,~~ [sections 9, 10, and 11] for any person who is under the influence
20 of:

21 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
22 to the public;

23 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

24 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
26 within this state.

27 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
28 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
29 of violating subsection (1).

30 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any

1 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
2 diminished.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
4 been committed by any person driving or in actual physical control of a vehicle while under the influence
5 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
6 person's blood, urine, or breath, shall give rise to the following inferences:

7 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
8 person was not under the influence of alcohol.

9 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
10 fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of alcohol
11 but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or innocence
12 of the person.

13 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
14 person was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
16 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a any
17 combination of ~~the two~~ alcohol and drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
19 61-8-722, [sections 9, 10, and 11] and subsections (1) through (5) of this section, with the word "state"
20 in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given
21 jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~
22 provided in those sections.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
24

25 **Section 3.** Section 61-8-406, MCA, is amended to read:

26 "**61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is
27 unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, [sections 9, 10, and 11] for any person
28 to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while
29 the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10
30 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

1 **Section 4.** Section 61-8-421, MCA, is amended to read:

2 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or~~
3 ~~61-8-722~~ [section 10] must be seized by the arresting agency within 10 days after the conviction and
4 disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions
5 of Title 44, chapter 12, part 2, apply to the extent applicable.

6 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within
7 20 days after the seizure of the motor vehicle.

8 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The
9 owner of the motor vehicle may rebut the presumption by proving a defense under ~~61-8-714(3)(b)(iii) or~~
10 ~~61-8-722(3)(b)(iii)~~ [section 10(2)] or by proving that the owner was not convicted of a ~~second or~~
11 ~~subsequent offense under 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406.~~ It is
12 not a defense that the convicted person owns the motor vehicle jointly with another person.

13 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be
14 distributed first to the holders of security interests who have presented proper proof of their claims, up to
15 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to
16 the general fund of the arresting agency.

17 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor
18 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated
19 value of the motor vehicle.

20 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons
21 include return of the motor vehicle without a sale to an owner who is unable to present an adequate
22 defense under this section but is found by the court to be without fault."
23

24 **Section 5.** Section 61-8-422, MCA, is amended to read:

25 "**61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
26 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6)~~ seizure
27 under 61-5-212 or seizure and forfeiture under 61-8-714 or 61-8-722 [section 10] to transfer, sell, or
28 encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the
29 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the
30 underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying

1 charge is otherwise terminated.

2 (2) The prohibition against transfer of title may not be stayed pending the determination of an
3 appeal from the conviction on the underlying charge.

4 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned
5 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

6

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

8 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) ~~Except as provided in~~
9 ~~subsections (8) and (9), a~~ A person convicted of a violation of 61-8-401 shall be punished by imprisonment
10 ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a
11 fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served
12 in the county jail and may not be served under home arrest. The imprisonment sentence may not be
13 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
14 defendant's physical or mental well-being.

15 (2) ~~Except as provided in subsection (8), on~~ On a second conviction, the person shall be punished
16 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, ~~at least~~
17 ~~48 hours of which must be served consecutively,~~ or more than 6 months. At least 48 hours of the
18 imprisonment term must be served consecutively in the county jail and may not be served under home
19 arrest. ~~Except as provided in subsection (8),~~ 3 Three days of the imprisonment sentence may not be
20 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
21 defendant's physical or mental well-being.

22 (3) (a) ~~Except as provided in subsection (8), on~~ On the third conviction, the person shall be
23 punished by imprisonment for a term of not less than 30 days, ~~at least 48 hours of which must be served~~
24 ~~consecutively,~~ or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
25 hours of the imprisonment term must be served consecutively in the county jail and may not be served
26 under home arrest. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary~~
27 ~~providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or
28 execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred~~
29 ~~within 5 years of the first offense~~ may not be suspended.

30 (b) (i) ~~On the third or subsequent conviction, the court, in addition to any other penalty imposed~~

1 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
2 ~~seized and subjected to the procedure provided under 61-8-421.~~

3 ~~(iii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
4 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
5 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
6 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
7 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
8 ~~criminal laws of this state or the United States.~~

9 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
10 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
11 ~~or other act on which the forfeiture is sought.~~

12 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
13 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
14 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (8), notwithstanding any provision~~
15 ~~to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ The
16 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
17 subsequent offense may not be suspended.

18 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
19 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
20 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
21 ~~treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made~~
22 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
23 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
24 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
25 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
26 ~~department of public health and human services, which must include alcohol or drug treatment, or both.~~
27 ~~As long as the alcohol information course is approved as provided in this subsection and the treatment is~~
28 ~~provided by a certified chemical dependency counselor, the defendant may attend the information course~~
29 ~~and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment~~
30 ~~program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined~~

1 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
2 ~~by the department of corrections. Upon determination, the court shall order the defendant's appropriate~~
3 ~~level of treatment. If more than one counselor makes a determination as provided in this subsection, the~~
4 ~~court shall order an appropriate level of treatment based upon the determination of one of the counselors.~~
5 ~~On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for~~
6 ~~a period of at least 1 year from the date of admission to the program. A court or counselor may not require~~
7 ~~attendance at a self help program other than at an "open meeting" as that term is defined by the self help~~
8 ~~program. A defendant may voluntarily participate in self help programs. Each counselor providing education~~
9 ~~or treatment shall, at the commencement of the education or treatment, notify the court that the defendant~~
10 ~~has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend~~
11 ~~the information course or treatment program, the counselor shall notify the court of the failure.~~

12 ~~(6) For the purpose of determining the number of convictions under this section, "conviction"~~
13 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
14 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
15 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
16 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
17 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
18 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
19 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
20 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
21 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
22 ~~only be obtained by district court order upon good cause shown.~~

23 ~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
24 ~~violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

25 ~~(8) The court may order that a term of imprisonment imposed under this section be served in~~
26 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
27 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~
28 ~~on the defendant's ability to leave the premises of the facility and require that the defendant follow the~~
29 ~~rules of that facility. The facility may be, but is not required to be, a community based prerelease center~~
30 ~~as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the~~

1 sentencing court.

2 ~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 3 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 4 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

5 ~~(10) A court may not defer imposition of sentence under this section."~~

6

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

8 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in~~
 9 ~~subsection (9),~~ a A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not
 10 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

11 (2) ~~Except as provided in subsection (9),~~ on On a second conviction of a violation of 61-8-406,
 12 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 13 county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than
 14 \$500.

15 (3) ~~(a) Except as provided in subsection (9),~~ on On a third conviction of a violation of 61-8-406,
 16 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 17 county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than
 18 \$1,000.

19 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
 20 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
 21 ~~seized and subjected to the procedure provided under 61-8-421.~~

22 ~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
 23 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
 24 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
 25 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
 26 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
 27 ~~criminal laws of this state or the United States.~~

28 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
 29 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
 30 ~~or other act on which the forfeiture is sought.~~

1 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
2 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
3 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9), notwithstanding any other~~
4 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The
5 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
6 subsequent offense may not be suspended.

7 ~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and~~
8 ~~suspension of driver's licenses, apply to any conviction under 61-8-406.~~

9 ~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
10 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
11 ~~of public health and human services, which must include alcohol or drug treatment, or both, in accordance~~
12 ~~with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the~~
13 ~~commencement of the education or treatment, notify the court that the defendant has been enrolled in a~~
14 ~~course or treatment program. If the defendant fails to attend the course or the treatment program, the~~
15 ~~counselor shall notify the court of the failure.~~

16 ~~(7) For the purpose of determining the number of convictions under this section, "conviction"~~
17 ~~means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a~~
18 ~~forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or~~
19 ~~another state, which forfeiture has not been vacated. An offender is considered to have been previously~~
20 ~~convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the~~
21 ~~present offense and a previous conviction, unless the offense is the offender's fourth or subsequent~~
22 ~~offense, in which case all previous convictions must be used for sentencing purposes. If there has not been~~
23 ~~an additional conviction for an offense under this section for a period of 5 years after a prior conviction~~
24 ~~under this section, then all records and data relating to the prior conviction are confidential criminal justice~~
25 ~~information, as defined in 45-5-103, and public access to the information may only be obtained by district~~
26 ~~court order upon good cause shown.~~

27 ~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
28 ~~violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

29 ~~(9) The court may order that a term of imprisonment imposed under this section be served in~~
30 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~

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

6 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
 7 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
 8 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

9 (11) A court may not defer imposition of sentence under this section."
 10

11 **Section 8.** Section 61-11-101, MCA, is amended to read:

12 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 13 **of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory
 14 the suspension or revocation of the driver's license of the person by the department, the court in which
 15 ~~such~~ the conviction is had shall require the surrender to it of all driver's licenses then held by the person
 16 ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the
 17 same time forward a record of ~~such~~ the conviction to the department, providing that if ~~such~~ the person
 18 does not possess a driver's license the court shall ~~so~~ indicate that fact in its report to the department.

19 (2) Every court having jurisdiction over offenses committed under any act of this state or municipal
 20 ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the
 21 department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a
 22 violation of any ~~such~~ motor vehicle laws, other than regulations governing standing or parking, and may
 23 recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also
 24 recommend that the department issue a restricted probationary license on the condition that the individual
 25 comply with the requirement that ~~he~~ the person attend and complete an alcohol information course as
 26 provided in ~~61-8-714 and 61-8-722~~ [section 9]. The department shall issue a restricted probationary license
 27 unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary
 28 license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation
 29 of those restrictions.

30 (3) Any court or other agency of this state, or a subdivision ~~thereof~~ of the state, ~~which~~ that has

1 jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any~~
2 ~~such~~ the action and the adjudication upon which it is based to the department within 5 days on forms
3 furnished by the department.

4 (4) A tribal court of a federally recognized Indian reservation may report convictions under tribal
5 law or regulation regulating the operation of motor vehicles to the department for recording purposes under
6 this chapter. Convictions under federal law or regulations governing the operation of motor vehicles on
7 federal enclaves may also be reported to the department under this section."

8
9 **NEW SECTION. Section 9. Driving under influence of alcohol or drugs -- driving with excessive**
10 **alcohol concentration -- alcohol information course required.** (1) (a) In addition to the punishments provided
11 in 61-8-714 and 61-8-722, regardless of disposition, a defendant convicted of a violation of 61-8-401 or
12 61-8-406 shall complete an alcohol information course at an alcohol treatment program approved by the
13 department of public health and human services, which may include alcohol or drug treatment, or both.

14 (b) As long as the alcohol information course is approved as provided in this section and the
15 treatment is provided by a certified chemical dependency counselor, the defendant may attend the
16 information course and treatment program of the defendant's choice. The treatment provided to the
17 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
18 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
19 placement rules adopted by the department of public health and human services. Upon determination, the
20 court shall order the defendant's appropriate level of treatment. If more than one counselor makes a
21 determination as provided in this subsection, the court shall order an appropriate level of treatment based
22 upon the determination of one of the counselors.

23 (c) Each counselor providing education or treatment shall, at the commencement of the education
24 or treatment, notify the court that the defendant has been enrolled in an alcohol information course or
25 treatment program. If the defendant fails to attend the information course or treatment program, the
26 counselor shall notify the court of the failure.

27 (d) A court or counselor may not require attendance at a self-help program other than at an "open
28 meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in
29 self-help programs.

30 (2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a

1 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
2 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
3 public health and human services.

4 (3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation
5 of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of
6 disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
7 approved by the department of public health and human services, which must include alcohol or drug
8 treatment, or both.

9 (b) (i) On a second or subsequent conviction, the treatment program provided for in subsection
10 (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
11 the program.

12 (ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i),
13 the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence,
14 and may include additional monthly monitoring for up to an additional 6 months.

15

16 **NEW SECTION. Section 10. Driving under influence of alcohol or drugs -- driving with excessive**
17 **alcohol concentration -- forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of
18 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and
19 any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the
20 time of the offense to be seized and subjected to the procedure provided under 61-8-421.

21 (2) A vehicle used by a person as a common carrier in the transaction of business as a common
22 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
23 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
24 omission established by the owner to have been committed or omitted by a person other than the owner
25 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
26 criminal laws of this state or the United States.

27 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's
28 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
29 or other act on which the forfeiture is sought.

30

1 **NEW SECTION. Section 11. Driving under influence of alcohol or drugs -- driving with excessive**
2 **alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral**
3 **of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714
4 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in
5 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, a federal
6 enclave, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure
7 the defendant's appearance in court in this state, another state, a federal enclave, or a federally recognized
8 Indian reservation, which forfeiture has not been vacated.

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

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

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

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

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

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

30

1 **NEW SECTION.** **Section 12. Codification instruction.** [Sections 9, 10, and 11] are intended to be
2 codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7,
3 apply to [sections 9, 10, and 11].

4

5 **NEW SECTION.** **Section 13. Applicability.** [This act] applies to offenses committed on or after
6 October 1, 1997.

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0559, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising and recodifying penalty laws relating to alcohol or drugs and driving-related offenses.

ASSUMPTIONS:

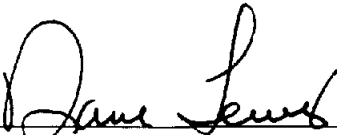
1. This bill provides that tribal courts may report DUI/BAC convictions to the Department of Justice (DOJ). As a result, the DOJ will process additional driver license suspensions and subsequent reinstatements.
2. The DOJ estimates that 210 additional driver licenses will be reinstated in FY99 and 160 in FY98 (210 x 75%) as a result of this bill. Each reinstatement will pay \$100 to the general fund, of which half will go to counties to help fund approved DUI programs. Estimated additional revenue is \$16,000 in FY98 and \$21,000 in FY99.
3. The Highway Patrol pays incarceration costs for their DUI convictions. The impact of mandating that at least 1 to 2 days must be spent in the county jail has no impact since the Patrol would pay whether the court order was a house arrest or time in the county jail.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
Department of Justice:	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Grants to counties (01)	\$8,000	\$10,500
<u>Revenues:</u>		
DUI Reinstatement (01)	\$16,000	\$21,000
<u>Net Impact on Fund Balance: (revenue minus expense)</u>		
General fund (01)	\$8,000	\$10,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Authorized county DUI programs would receive approximately an additional \$8,000 in FY98 and \$10,500 in FY99.

 2.20.97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DUANE GRIMES, PRIMARY SPONSOR DATE

Fiscal Note for HB0559, as introduced

HB 559

1 HOUSE BILL NO. 559

2 INTRODUCED BY GRIMES, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS
5 RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR
6 SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED
7 SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING
8 FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE
9 IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE
10 ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE
11 INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING
12 CONVICTIONS FROM TRIBAL COURTS OR FEDERAL ENCLAVES FOR THE PURPOSE OF DETERMINING
13 NUMBER OF PRIOR CONVICTIONS AND MAINTAINING INDIVIDUAL DRIVING RECORDS; AMENDING
14 SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101,
15 MCA; AND PROVIDING AN APPLICABILITY DATE."

16

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

18

19 Section 1. Section 46-18-201, MCA, is amended to read:

20 "46-18-201. (Temporary) Sentences that may be imposed. (1) Whenever a person has been found
21 guilty of an offense upon a verdict or a plea of guilty, the court may:22 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
23 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
24 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
25 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
26 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

27 (i) jail base release;

28 (ii) jail time not exceeding 180 days;

29 (iii) conditions for probation;

30 (iv) payment of the costs of confinement;

- 1 (v) payment of a fine as provided in 46-18-231;
- 2 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 4 (viii) with the approval of the facility or program, an order that the offender be placed in a
5 community corrections facility or program as provided in 53-30-321;
- 6 (ix) community service;
- 7 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
9 society;
- 10 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 or
- 12 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 13 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
14 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
15 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
16 restrictions or conditions may include any of those listed in subsection (1)(a).
- 17 (c) impose a fine as provided by law for the offense;
- 18 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
19 counsel as provided in 46-8-113;
- 20 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
21 the defendant to the department of corrections for placement in an appropriate correctional institution or
22 program;
- 23 (f) with the approval of the facility or program, order the offender to be placed in a community
24 corrections facility or program as provided in 53-30-321; or
- 25 (g) impose any combination of subsections (1)(b) through (1)(f).
- 26 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
27 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
28 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
29 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 30 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

1 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
2 a felony, regardless of whether any other conditions are imposed.

3 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
4 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
5 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
6 allowed for jail or home arrest time already served.

7 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
8 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
9 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
10 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

11 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
12 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

13 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
14 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
15 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
16 suspended.

17 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
18 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
19 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

20 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
21 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
22 Title 46, chapter 23, part 5.

23 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
24 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
25 program.

26 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
27 imprisonment of the offender in the state prison, including placement of the offender in a community
28 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
29 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
30 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were

1 not selected, based on the criteria contained in 46-18-225.

2 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
3 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

4 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ section 11 for
5 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
6 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
7 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
8 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

9 (i) jail base release;

10 (ii) jail time not exceeding 180 days;

11 (iii) conditions for probation;

12 (iv) payment of the costs of confinement;

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

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

15 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

16 (viii) with the approval of the facility or program, an order that the offender be placed in a
17 community corrections facility or program as provided in 53-30-321;

18 (ix) community service;

19 (x) home arrest as provided in Title 46, chapter 18, part 10;

20 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
21 society;

22 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

23 or

24 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

25 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
26 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
27 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
28 restrictions or conditions may include any of those listed in subsection (1)(a).

29 (c) impose a fine as provided by law for the offense;

30 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

1 counsel as provided in 46-8-113;

2 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
 3 the defendant to the department of corrections for placement in an appropriate correctional institution or
 4 program;

5 (f) with the approval of the facility or program, order the offender to be placed in a community
 6 corrections facility or program as provided in 53-30-321; or

7 (g) impose any combination of subsections (1)(b) through (1)(f).

8 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
 9 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
 10 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
 11 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

12 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
 13 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
 14 a felony, regardless of whether any other conditions are imposed.

15 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
 16 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
 17 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
 18 allowed for jail or home arrest time already served.

19 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
 20 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
 21 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
 22 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

23 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
 24 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

25 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
 26 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
 27 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
 28 suspended.

29 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
 30 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

1 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

2 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
3 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
4 Title 46, chapter 23, part 5.

5 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
6 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
7 offender program.

8 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
9 imprisonment of the offender in the state prison, including placement of the offender in a community
10 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
11 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
12 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
13 not selected, based on the criteria contained in 46-18-225.

14 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
15 not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 61-8-401, MCA, is amended to read:

18 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
19 provided in 61-8-714, ~~and 61-8-723, [sections 9, 10, and 11]~~ **[SECTION 13]** for any person who is under
20 the influence of:

21 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
22 to the public;

23 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

24 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
26 within this state.

27 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
28 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
29 of violating subsection (1).

30 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any

1 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
2 diminished.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
4 been committed by any person driving or in actual physical control of a vehicle while under the influence
5 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
6 person's blood, urine, or breath, shall give rise to the following inferences:

7 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
8 person was not under the influence of alcohol.

9 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
10 fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of alcohol
11 but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or innocence
12 of the person.

13 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
14 person was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
16 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a any
17 combination of ~~the two~~ alcohol and drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
19 61-8-722, [sections 9, 10, and 11] [SECTION 13] and subsections (1) through (5) of this section, with the
20 word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance
21 and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties
22 ~~therein~~ provided in those sections.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
24

25 **Section 3.** Section 61-8-406, MCA, is amended to read:

26 **"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is
27 unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, [sections 9, 10, and 11] [SECTION 13]
28 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the
29 public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or
30 urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this

1 section."

2

3 **Section 4.** Section 61-8-421, MCA, is amended to read:

4 **"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or~~
5 ~~61-8-722~~ [section 10] must be seized by the arresting agency within 10 days after the conviction and
6 disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions
7 of Title 44, chapter 12, part 2, apply to the extent applicable.

8 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within
9 20 days after the seizure of the motor vehicle.

10 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The
11 owner of the motor vehicle may rebut the presumption by proving a defense under ~~61-8-714(3)(b)(ii) or~~
12 ~~61-8-722(3)(b)(iii)~~ [section 10(2)] or by proving that the owner was not convicted of a ~~second or~~
13 ~~subsequent offense under 61-5-212 or of a~~ third or subsequent offense under 61-8-401 or 61-8-406. It is
14 not a defense that the convicted person owns the motor vehicle jointly with another person.

15 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be
16 distributed first to the holders of security interests who have presented proper proof of their claims, up to
17 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to
18 the general fund of the arresting agency.

19 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor
20 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated
21 value of the motor vehicle.

22 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons
23 include return of the motor vehicle without a sale to an owner who is unable to present an adequate
24 defense under this section but is found by the court to be without fault."

25

26 **Section 5.** Section 61-8-422, MCA, is amended to read:

27 **"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
28 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6)~~ seizure
29 under 61-5-212 or seizure and forfeiture under 61-8-714 or 61-8-722 [section 10] to transfer, sell, or
30 encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the

1 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the
 2 underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying
 3 charge is otherwise terminated.

4 (2) The prohibition against transfer of title may not be stayed pending the determination of an
 5 appeal from the conviction on the underlying charge.

6 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned
 7 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

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

10 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) ~~Except as provided in~~
 11 ~~subsections (8) and (9), a~~ A person convicted of a violation of 61-8-401 shall be punished by imprisonment
 12 ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a
 13 fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served
 14 in the county jail and may not be served under home arrest. The imprisonment sentence may not be
 15 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 16 defendant's physical or mental well-being.

17 (2) ~~Except as provided in subsection (8), on~~ On a second conviction, the person shall be punished
 18 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, ~~at least~~
 19 ~~48 hours of which must be served consecutively,~~ or more than 6 months. At least 48 hours of the
 20 imprisonment term must be served consecutively in the county jail and may not be served under home
 21 arrest. ~~Except as provided in subsection (8), 3~~ Three days of the imprisonment sentence may not be
 22 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 23 defendant's physical or mental well-being.

24 (3) ~~(a) Except as provided in subsection (8), on~~ On the third conviction, the person shall be
 25 punished by imprisonment for a term of not less than 30 days, ~~at least 48 hours of which must be served~~
 26 ~~consecutively,~~ or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
 27 hours of the imprisonment term must be served consecutively in the county jail and may not be served
 28 under home arrest. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary~~
 29 ~~providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or
 30 execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred~~

1 ~~within 5 years of the first offense~~ may not be suspended.

2 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
3 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
4 ~~seized and subjected to the procedure provided under 61-8-421.~~

5 ~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
6 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
7 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
8 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
9 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
10 ~~criminal laws of this state or the United States.~~

11 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
12 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
13 ~~or other act on which the forfeiture is sought.~~

14 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
15 punished [by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not
16 less than \$1,000 or more than \$10,000] [AS PROVIDED IN SECTION 13]. Except as provided in subsection
17 ~~(8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence~~
18 ~~imposed under this subsection, the~~ The imposition or execution of the first 6 months of the imprisonment
19 sentence imposed for a fourth or subsequent offense may not be suspended.

20 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
21 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
22 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
23 ~~treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made~~
24 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
25 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
26 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
27 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
28 ~~department of public health and human services, which must include alcohol or drug treatment, or both.~~
29 ~~As long as the alcohol information course is approved as provided in this subsection and the treatment is~~
30 ~~provided by a certified chemical dependency counselor, the defendant may attend the information course~~

1 ~~and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment~~
2 ~~program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined~~
3 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
4 ~~by the department of corrections. Upon determination, the court shall order the defendant's appropriate~~
5 ~~level of treatment. If more than one counselor makes a determination as provided in this subsection, the~~
6 ~~court shall order an appropriate level of treatment based upon the determination of one of the counselors.~~
7 ~~On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for~~
8 ~~a period of at least 1 year from the date of admission to the program. A court or counselor may not require~~
9 ~~attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help~~
10 ~~program. A defendant may voluntarily participate in self-help programs. Each counselor providing education~~
11 ~~or treatment shall, at the commencement of the education or treatment, notify the court that the defendant~~
12 ~~has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend~~
13 ~~the information course or treatment program, the counselor shall notify the court of the failure.~~

14 ~~(6) For the purpose of determining the number of convictions under this section, "conviction"~~
15 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
16 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
17 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
18 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
19 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
20 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
21 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
22 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
23 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
24 ~~only be obtained by district court order upon good cause shown.~~

25 ~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
26 ~~violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

27 ~~(8) The court may order that a term of imprisonment imposed under this section be served in~~
28 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
29 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~
30 ~~on the defendant's ability to leave the premises of the facility and require that the defendant follow the~~

1 ~~rules of that facility. The facility may be, but is not required to be, a community-based prerelease center~~
 2 ~~as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the~~
 3 ~~sentencing court.~~

4 ~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 5 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 6 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

7 ~~(10) A court may not defer imposition of sentence under this section."~~

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

10 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in~~
 11 ~~subsection (9),~~ a A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not
 12 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

13 (2) ~~Except as provided in subsection (9),~~ on On a second conviction of a violation of 61-8-406,
 14 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 15 county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than
 16 \$500.

17 (3) (a) ~~Except as provided in subsection (9),~~ on On a third conviction of a violation of 61-8-406,
 18 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 19 county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than
 20 \$1,000.

21 (b) (i) ~~On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
 22 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
 23 ~~seized and subjected to the procedure provided under 61-8-421.~~

24 (ii) ~~A vehicle used by a person as a common carrier in the transaction of business as a common~~
 25 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
 26 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
 27 ~~emission established by the owner to have been committed or omitted by a person other than the owner~~
 28 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
 29 ~~criminal laws of this state or the United States.~~

30 (iii) ~~Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~

1 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
2 or other act on which the forfeiture is sought.

3 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
4 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
5 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9), notwithstanding any other~~
6 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The
7 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
8 subsequent offense may not be suspended.

9 (5) ~~The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and~~
10 ~~suspension of driver's licenses, apply to any conviction under 61-8-406.~~

11 (6) ~~In addition to the punishment provided in this section, regardless of disposition, the defendant~~
12 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
13 ~~of public health and human services, which must include alcohol or drug treatment, or both, in accordance~~
14 ~~with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the~~
15 ~~commencement of the education or treatment, notify the court that the defendant has been enrolled in a~~
16 ~~course or treatment program. If the defendant fails to attend the course or the treatment program, the~~
17 ~~counselor shall notify the court of the failure.~~

18 (7) ~~For the purpose of determining the number of convictions under this section, "conviction"~~
19 ~~means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a~~
20 ~~forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or~~
21 ~~another state, which forfeiture has not been vacated. An offender is considered to have been previously~~
22 ~~convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the~~
23 ~~present offense and a previous conviction, unless the offense is the offender's fourth or subsequent~~
24 ~~offense, in which case all previous convictions must be used for sentencing purposes. If there has not been~~
25 ~~an additional conviction for an offense under this section for a period of 5 years after a prior conviction~~
26 ~~under this section, then all records and data relating to the prior conviction are confidential criminal justice~~
27 ~~information, as defined in 45-5-103, and public access to the information may only be obtained by district~~
28 ~~court order upon good cause shown.~~

29 (8) ~~For the purpose of calculating subsequent convictions under this section, a conviction for a~~
30 ~~violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

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

8 ~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 9 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 10 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

11 ~~(11) A court may not defer imposition of sentence under this section."~~

12
 13 **Section 8.** Section 61-11-101, MCA, is amended to read:

14 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 15 **of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory
 16 the suspension or revocation of the driver's license of the person by the department, the court in which
 17 ~~such~~ the conviction is had shall require the surrender to it of all driver's licenses then held by the person
 18 ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the
 19 same time forward a record of ~~such~~ the conviction to the department, providing that if ~~such~~ the person
 20 does not possess a driver's license the court shall ~~so~~ indicate that fact in its report to the department.

21 (2) Every court having jurisdiction over offenses committed under any act of this state or municipal
 22 ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the
 23 department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a
 24 violation of any ~~such~~ motor vehicle laws, other than regulations governing standing or parking, and may
 25 recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also
 26 recommend that the department issue a restricted probationary license on the condition that the individual
 27 comply with the requirement that ~~he~~ the person attend and complete an alcohol information course as
 28 provided in ~~61-8-714 and 61-8-722~~ [section 9]. The department shall issue a restricted probationary license
 29 unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary
 30 license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation

1 of those restrictions.

2 (3) Any court or other agency of this state, or a subdivision ~~thereof~~ of the state, which that has
3 jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any~~
4 ~~such~~ the action and the adjudication upon which it is based to the department within 5 days on forms
5 furnished by the department.

6 (4) A tribal court of a federally recognized Indian reservation may report convictions under tribal
7 law or regulation regulating the operation of motor vehicles to the department for recording purposes under
8 this chapter. Convictions under federal law or regulations governing the operation of motor vehicles on
9 federal enclaves may also be reported to the department under this section."

10

11 NEW SECTION. Section 9. Driving under influence of alcohol or drugs -- driving with excessive
12 alcohol concentration -- alcohol information course required. (1) (a) In addition to the punishments provided
13 in 61-8-714 and 61-8-722 [AND SECTION 13], regardless of disposition, a defendant convicted of a
14 violation of 61-8-401 or 61-8-406 shall complete an alcohol information course at an alcohol treatment
15 program approved by the department of public health and human services, which may include alcohol or
16 drug treatment, or both.

17 (b) As long as the alcohol information course is approved as provided in this section and the
18 treatment is provided by a certified chemical dependency counselor, the defendant may attend the
19 information course and treatment program of the defendant's choice. The treatment provided to the
20 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
21 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
22 placement rules adopted by the department of public health and human services. Upon determination, the
23 court shall order the defendant's appropriate level of treatment. If more than one counselor makes a
24 determination as provided in this subsection, the court shall order an appropriate level of treatment based
25 upon the determination of one of the counselors.

26 (c) Each counselor providing education or treatment shall, at the commencement of the education
27 or treatment, notify the court that the defendant has been enrolled in an alcohol information course or
28 treatment program. If the defendant fails to attend the information course or treatment program, the
29 counselor shall notify the court of the failure.

30 (d) A court or counselor may not require attendance at a self-help program other than at an "open

1 meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in
2 self-help programs.

3 (2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a
4 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
5 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
6 public health and human services.

7 (3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation
8 of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of
9 disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
10 approved by the department of public health and human services, which must include alcohol or drug
11 treatment, or both.

12 (b) (i) On a second or subsequent conviction, the treatment program provided for in subsection
13 (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
14 the program.

15 (ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i),
16 the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence,
17 and may include additional monthly monitoring for up to an additional 6 months.

18

19 **NEW SECTION. Section 10. Driving under influence of alcohol or drugs -- driving with excessive**
20 **alcohol concentration -- forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of
21 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and
22 any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the
23 time of the offense to be seized and subjected to the procedure provided under 61-8-421.

24 (2) A vehicle used by a person as a common carrier in the transaction of business as a common
25 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
26 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
27 omission established by the owner to have been committed or omitted by a person other than the owner
28 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
29 criminal laws of this state or the United States.

30 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's

1 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
2 or other act on which the forfeiture is sought.

3
4 **NEW SECTION. Section 11. Driving under influence of alcohol or drugs -- driving with excessive**
5 **alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral**
6 **of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714
7 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in
8 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, a federal
9 enclave, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure
10 the defendant's appearance in court in this state, another state, a federal enclave, or a federally recognized
11 Indian reservation, which forfeiture has not been vacated.

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

16 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may
17 be counted for purposes of determining the number of a subsequent conviction for violation of either
18 61-8-401 or 61-8-406.

19 (2) **[EXCEPT AS PROVIDED IN SECTION 13]** The court may order that a term of imprisonment
20 imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and
21 approved by the sentencing court. The defendant, if financially able, shall bear the expense of the
22 imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant follow the rules of that facility. The facility may be,
24 but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease
25 center may accept or reject a defendant referred by the sentencing court.

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

29 (4) A court may not defer imposition of sentence under 61-8-714 or 61-8-722 **[OR SECTION 13]**.

30 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension

1 and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction
2 under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

3
4 NEW SECTION. Section 12. Codification instruction. (1) [Sections 9, 10, and 11] are intended
5 to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8,
6 part 7, apply to [sections 9, 10, and 11].

7 (2) IF [SECTIONS 13 AND 14] ARE EFFECTIVE, THEN THEY ARE INTENDED TO BE CODIFIED AS
8 AN INTEGRAL PART OF TITLE 61, CHAPTER 8, PART 7, AND THE PROVISIONS OF TITLE 61, CHAPTER
9 7, PART 8, APPLY TO [SECTIONS 13 AND 14].

10
11 NEW SECTION. SECTION 13. COORDINATION. (1) (A) IF HOUSE BILL NO. 100 AND [THIS ACT]
12 ARE BOTH PASSED AND APPROVED, THEN HOUSE BILL NO. 100 IS VOID, THE BRACKETED
13 REFERENCES TO "SECTION 13" IN [THIS ACT] ARE EFFECTIVE, THE BRACKETED PHRASE REFERRING
14 TO THE TERM OF IMPRISONMENT AND A FINE FOR A FOURTH CONVICTION IN 61-8-714 IS VOID, AND
15 A NEW SECTION 13 IS ADDED TO [THIS ACT] THAT READS:

16 "NEW SECTION. Section 13. Driving under influence of alcohol or drugs -- driving with excessive
17 alcohol concentration -- penalty for fourth or subsequent offense. (1) (a) On the fourth or subsequent
18 conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be
19 punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of
20 not less than \$1,000 [\$1,500] or more than \$10,000. The imposition or execution of the imprisonment
21 sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for
22 parole.

23 (b) The court shall:

24 (i) specify one of the following facilities as the place in which the initial term of imprisonment must
25 be served:

26 (A) a state prison;

27 (B) a regional correctional facility;

28 (C) a county jail;

29 (D) a boot camp, provided the prior approval of the department of corrections has been obtained;

30 (E) a prerelease center, provided the prior approval of the department of corrections has been

1 obtained; or

2 (F) a state-approved public or private treatment facility; or

3 (ii) sentence the person to the department of corrections for placement in an appropriate
4 correctional institution or program.

5 (c) Following initial placement of a defendant in the facility specified by the court in accordance
6 with subsection (1)(b)(i), the department of corrections may, at its discretion, place the offender in another
7 facility or program.

8 (2) (a) After serving the term of imprisonment imposed under subsection (1)(a), the person shall
9 serve a supervised release term of not less than 1 year or more than 2 years. The release must be
10 supervised by the department of corrections, which may order all or any portion of the supervised release
11 term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to
12 probation, apply to the supervised release.

13 (b) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions
14 during the period of supervised release. Reasonable restrictions or conditions may include:

15 (i) conditions for supervised release;

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

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

18 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

19 (v) community service;

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

22 (vii) any combination of the restrictions or conditions listed in subsections (2)(b)(i) through (2)(b)(vi).

23 (c) If a violation of the restrictions or conditions of the supervised release is established, the court
24 may continue the period of supervised release or may require the defendant to serve the remainder of the
25 supervised release sentence in one of the facilities set forth in subsection (1)(b). The court may credit the
26 remainder of the supervised release or the time to be served in a facility set forth in subsection (1)(b) with
27 all or part of the time already served on supervised release.

28 (3) The court shall order a person who is financially able to pay the costs of imprisonment and
29 supervised release under this section and of the information course and treatment under [section 9]."

30 (b) If House Bill No. 100 and [this act] are not passed and approved, then the bracketed references

1 to "section 13" in [this act] are void.

2 (2) If House Bill No. 208 and [this act] are both passed and approved, then the bracketed amount
3 in [section 13] of [this act] is effective and a new section 14 is added to [this act] that reads:

4 **NEW SECTION. Section 14. Driving under influence of alcohol or drugs -- driving with excessive**
5 **alcohol concentration -- no suspension of fines -- community service as payment.** (1) Except upon written
6 findings of extenuating and mitigating circumstances by the court, no fine imposed under 61-8-714,
7 61-8-722, or [section 13] against a defendant convicted of a violation of 61-8-401 or 61-8-406 may be
8 suspended.

9 (2) If the court determines that the person is unable to pay the fine, the court may sentence the
10 person to supervised community service."

11

12 **NEW SECTION. Section 14. Applicability.** [This act] applies to offenses committed on or after
13 October 1, 1997.

14

-END-

1 HOUSE BILL NO. 559

2 INTRODUCED BY GRIMES, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS
5 RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR
6 SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED
7 SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING
8 FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE
9 IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE
10 ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE
11 INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING
12 CONVICTIONS FROM TRIBAL COURTS OR FEDERAL ENCLAVES FOR THE PURPOSE OF DETERMINING
13 NUMBER OF PRIOR CONVICTIONS AND MAINTAINING INDIVIDUAL DRIVING RECORDS; AMENDING
14 SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101,
15 MCA; AND PROVIDING AN APPLICABILITY DATE."
16

16

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 559

2 INTRODUCED BY GRIMES, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS
5 RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR
6 SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED
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8 FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE
9 IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE
10 ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE
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12 CONVICTIONS FROM TRIBAL COURTS ~~OR FEDERAL ENCLAVES~~ FOR THE PURPOSE OF DETERMINING
13 NUMBER OF PRIOR CONVICTIONS ~~AND MAINTAINING INDIVIDUAL DRIVING RECORDS~~; AMENDING
14 SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101,
15 MCA; AND PROVIDING AN APPLICABILITY DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **Section 1.** Section 46-18-201, MCA, is amended to read:

20 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
21 guilty of an offense upon a verdict or a plea of guilty, the court may:

22 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
23 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
24 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
25 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
26 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- 27 (i) jail base release;
28 (ii) jail time not exceeding 180 days;
29 (iii) conditions for probation;
30 (iv) payment of the costs of confinement;

- 1 (v) payment of a fine as provided in 46-18-231;
- 2 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 4 (viii) with the approval of the facility or program, an order that the offender be placed in a
- 5 community corrections facility or program as provided in 53-30-321;
- 6 (ix) community service;
- 7 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
- 9 society;
- 10 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 or
- 12 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 13 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
- 14 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
- 15 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
- 16 restrictions or conditions may include any of those listed in subsection (1)(a).
- 17 (c) impose a fine as provided by law for the offense;
- 18 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
- 19 counsel as provided in 46-8-113;
- 20 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
- 21 the defendant to the department of corrections for placement in an appropriate correctional institution or
- 22 program;
- 23 (f) with the approval of the facility or program, order the offender to be placed in a community
- 24 corrections facility or program as provided in 53-30-321; or
- 25 (g) impose any combination of subsections (1)(b) through (1)(f).
- 26 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
- 27 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
- 28 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
- 29 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 30 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

1 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
2 a felony, regardless of whether any other conditions are imposed.

3 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
4 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
5 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
6 allowed for jail or home arrest time already served.

7 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
8 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
9 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
10 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

11 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
12 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

13 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
14 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
15 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
16 suspended.

17 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
18 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
19 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

20 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
21 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
22 Title 46, chapter 23, part 5.

23 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
24 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
25 program.

26 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
27 imprisonment of the offender in the state prison, including placement of the offender in a community
28 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
29 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
30 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were

1 not selected, based on the criteria contained in 46-18-225.

2 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
3 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

4 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
5 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
6 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
7 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
8 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

9 (i) jail base release;

10 (ii) jail time not exceeding 180 days;

11 (iii) conditions for probation;

12 (iv) payment of the costs of confinement;

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

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

15 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

16 (viii) with the approval of the facility or program, an order that the offender be placed in a
17 community corrections facility or program as provided in 53-30-321;

18 (ix) community service;

19 (x) home arrest as provided in Title 46, chapter 18, part 10;

20 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
21 society;

22 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

23 or

24 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

25 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
26 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
27 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
28 restrictions or conditions may include any of those listed in subsection (1)(a).

29 (c) impose a fine as provided by law for the offense;

30 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

1 counsel as provided in 46-8-113;

2 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
3 the defendant to the department of corrections for placement in an appropriate correctional institution or
4 program;

5 (f) with the approval of the facility or program, order the offender to be placed in a community
6 corrections facility or program as provided in 53-30-321; or

7 (g) impose any combination of subsections (1)(b) through (1)(f).

8 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
9 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
10 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
11 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

12 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
13 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
14 a felony, regardless of whether any other conditions are imposed.

15 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
16 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
17 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
18 allowed for jail or home arrest time already served.

19 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
20 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
21 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
22 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

23 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
24 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

25 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
26 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
27 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
28 suspended.

29 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
30 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

1 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

2 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
3 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
4 Title 46, chapter 23, part 5.

5 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
6 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
7 offender program.

8 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
9 imprisonment of the offender in the state prison, including placement of the offender in a community
10 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
11 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
12 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
13 not selected, based on the criteria contained in 46-18-225.

14 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
15 not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 61-8-401, MCA, is amended to read:

18 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
19 provided in 61-8-714, ~~and 61-8-723,~~ [sections 9, 10, and 11] [SECTION 13] for any person who is under
20 the influence of:

21 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
22 to the public;

23 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

24 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
26 within this state.

27 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
28 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
29 of violating subsection (1).

30 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any

1 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
2 diminished.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
4 been committed by any person driving or in actual physical control of a vehicle while under the influence
5 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
6 person's blood, urine, or breath, shall give rise to the following inferences:

7 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
8 person was not under the influence of alcohol.

9 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
10 fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of alcohol
11 but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or innocence
12 of the person.

13 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
14 person was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
16 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a any
17 combination of ~~the two~~ alcohol and drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
19 61-8-722, [sections 9, 10, and 11] [SECTION 13] and subsections (1) through (5) of this section, with the
20 word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance
21 and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties
22 ~~therein~~ provided in those sections.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
24

25 **Section 3.** Section 61-8-406, MCA, is amended to read:

26 "**61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is
27 unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, [sections 9, 10, and 11] [SECTION 13]
28 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the
29 public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or
30 urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this

1 section."

2

3 **Section 4.** Section 61-8-421, MCA, is amended to read:

4 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or~~
5 ~~61-8-722~~ [section 10] must be seized by the arresting agency within 10 days after the conviction and
6 disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions
7 of Title 44, chapter 12, part 2, apply to the extent applicable.

8 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within
9 20 days after the seizure of the motor vehicle.

10 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The
11 owner of the motor vehicle may rebut the presumption by proving a defense under ~~61-8-714(3)(b)(ii) or~~
12 ~~61-8-722(3)(b)(iii)~~ [section 10(2)] or by proving that the owner was not convicted of a ~~second or~~
13 ~~subsequent offense under 61-5-212 or of a~~ third or subsequent offense under 61-8-401 or 61-8-406. It is
14 not a defense that the convicted person owns the motor vehicle jointly with another person.

15 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be
16 distributed first to the holders of security interests who have presented proper proof of their claims, up to
17 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to
18 the general fund of the arresting agency.

19 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor
20 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated
21 value of the motor vehicle.

22 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons
23 include return of the motor vehicle without a sale to an owner who is unable to present an adequate
24 defense under this section but is found by the court to be without fault."
25

26 **Section 5.** Section 61-8-422, MCA, is amended to read:

27 "**61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
28 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6)~~ seizure
29 under 61-5-212 or seizure and forfeiture under ~~61-8-714 or 61-8-722~~ [section 10] to transfer, sell, or
30 encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the

1 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the
 2 underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying
 3 charge is otherwise terminated.

4 (2) The prohibition against transfer of title may not be stayed pending the determination of an
 5 appeal from the conviction on the underlying charge.

6 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned
 7 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

8

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

10 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) ~~Except as provided in~~
 11 ~~subsections (8) and (9), a~~ A person convicted of a violation of 61-8-401 shall be punished by imprisonment
 12 ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a
 13 fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served
 14 in the county jail and may not be served under home arrest. The imprisonment sentence may not be
 15 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 16 defendant's physical or mental well-being.

17 (2) ~~Except as provided in subsection (8), on~~ On a second conviction, the person shall be punished
 18 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, ~~at least~~
 19 ~~48 hours of which must be served consecutively,~~ or more than 6 months. At least 48 hours of the
 20 imprisonment term must be served consecutively in the county jail and may not be served under home
 21 arrest. ~~Except as provided in subsection (8),~~ 3 Three days of the imprisonment sentence may not be
 22 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 23 defendant's physical or mental well-being.

24 (3) ~~(a) Except as provided in subsection (8), on~~ On the third conviction, the person shall be
 25 punished by imprisonment for a term of not less than 30 days, ~~at least 48 hours of which must be served~~
 26 ~~consecutively,~~ or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
 27 hours of the imprisonment term must be served consecutively in the county jail and may not be served
 28 under home arrest. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary~~
 29 ~~providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or
 30 execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred~~

1 ~~within 5 years of the first offense may not be suspended.~~

2 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
3 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
4 ~~seized and subjected to the procedure provided under 61-8-421.~~

5 ~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
6 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
7 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
8 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
9 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
10 ~~criminal laws of this state or the United States.~~

11 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
12 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
13 ~~or other act on which the forfeiture is sought.~~

14 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
15 punished [by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not
16 less than \$1,000 or more than \$10,000] [AS PROVIDED IN SECTION 13]. ~~Except as provided in subsection~~
17 ~~(8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence~~
18 ~~imposed under this subsection, the~~ The imposition or execution of the first 6 months of the imprisonment
19 sentence imposed for a fourth or subsequent offense may not be suspended.

20 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
21 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
22 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
23 ~~treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made~~
24 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
25 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
26 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
27 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
28 ~~department of public health and human services, which must include alcohol or drug treatment, or both.~~
29 ~~As long as the alcohol information course is approved as provided in this subsection and the treatment is~~
30 ~~provided by a certified chemical dependency counselor, the defendant may attend the information course~~

1 ~~and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment~~
2 ~~program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined~~
3 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
4 ~~by the department of corrections. Upon determination, the court shall order the defendant's appropriate~~
5 ~~level of treatment. If more than one counselor makes a determination as provided in this subsection, the~~
6 ~~court shall order an appropriate level of treatment based upon the determination of one of the counselors.~~
7 ~~On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for~~
8 ~~a period of at least 1 year from the date of admission to the program. A court or counselor may not require~~
9 ~~attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help~~
10 ~~program. A defendant may voluntarily participate in self-help programs. Each counselor providing education~~
11 ~~or treatment shall, at the commencement of the education or treatment, notify the court that the defendant~~
12 ~~has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend~~
13 ~~the information course or treatment program, the counselor shall notify the court of the failure.~~

14 ~~(6) For the purpose of determining the number of convictions under this section, "conviction"~~
15 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
16 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
17 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
18 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
19 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
20 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
21 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
22 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
23 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
24 ~~only be obtained by district court order upon good cause shown.~~

25 ~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
26 ~~violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

27 ~~(8) The court may order that a term of imprisonment imposed under this section be served in~~
28 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
29 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~
30 ~~on the defendant's ability to leave the premises of the facility and require that the defendant follow the~~

1 ~~rules of that facility. The facility may be, but is not required to be, a community-based prerelease center~~
2 ~~as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the~~
3 ~~sentencing court.~~

4 ~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
5 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
6 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

7 ~~(10) A court may not defer imposition of sentence under this section."~~

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

10 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in~~
11 ~~subsection (9),~~ a A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not
12 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

13 (2) ~~Except as provided in subsection (9),~~ on On a second conviction of a violation of 61-8-406,
14 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
15 county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than
16 \$500.

17 (3) ~~(a) Except as provided in subsection (9),~~ on On a third conviction of a violation of 61-8-406,
18 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
19 county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than
20 \$1,000.

21 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
22 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
23 ~~seized and subjected to the procedure provided under 61-8-421.~~

24 ~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
25 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
26 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
27 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
28 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
29 ~~criminal laws of this state or the United States.~~

30 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~

1 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
2 ~~or other act on which the forfeiture is sought.~~

3 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
4 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
5 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9), notwithstanding any other~~
6 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The
7 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
8 subsequent offense may not be suspended.

9 ~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and~~
10 ~~suspension of driver's licenses, apply to any conviction under 61-8-406.~~

11 ~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
12 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
13 ~~of public health and human services, which must include alcohol or drug treatment, or both, in accordance~~
14 ~~with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the~~
15 ~~commencement of the education or treatment, notify the court that the defendant has been enrolled in a~~
16 ~~course or treatment program. If the defendant fails to attend the course or the treatment program, the~~
17 ~~counselor shall notify the court of the failure.~~

18 ~~(7) For the purpose of determining the number of convictions under this section, "conviction"~~
19 ~~means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a~~
20 ~~forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or~~
21 ~~another state, which forfeiture has not been vacated. An offender is considered to have been previously~~
22 ~~convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the~~
23 ~~present offense and a previous conviction, unless the offense is the offender's fourth or subsequent~~
24 ~~offense, in which case all previous convictions must be used for sentencing purposes. If there has not been~~
25 ~~an additional conviction for an offense under this section for a period of 5 years after a prior conviction~~
26 ~~under this section, then all records and data relating to the prior conviction are confidential criminal justice~~
27 ~~information, as defined in 45-5-103, and public access to the information may only be obtained by district~~
28 ~~court order upon good cause shown.~~

29 ~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
30 ~~violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

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

8 ~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 9 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 10 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

11 ~~(11) A court may not defer imposition of sentence under this section."~~

12
 13 **Section 8.** Section 61-11-101, MCA, is amended to read:

14 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 15 **of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory
 16 the suspension or revocation of the driver's license of the person by the department, the court in which
 17 ~~such~~ the conviction is had shall require the surrender to it of all driver's licenses then held by the person
 18 ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the
 19 same time forward a record of ~~such~~ the conviction to the department, providing that if ~~such~~ the person
 20 does not possess a driver's license the court shall ~~so~~ indicate that fact in its report to the department.

21 (2) Every court having jurisdiction over offenses committed under any act of this state or municipal
 22 ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the
 23 department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a
 24 violation of any ~~such~~ motor vehicle laws, other than regulations governing standing or parking, and may
 25 recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also
 26 recommend that the department issue a restricted probationary license on the condition that the individual
 27 comply with the requirement that ~~he~~ the person attend and complete an alcohol information course as
 28 provided in ~~61-8-714 and 61-8-722~~ [section 9]. The department shall issue a restricted probationary license
 29 unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary
 30 license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation

1 of those restrictions.

2 (3) Any court or other agency of this state, or a subdivision ~~thereof~~ of the state, ~~which that~~ has
3 jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any~~
4 ~~such the~~ action and the adjudication upon which it is based to the department within 5 days on forms
5 furnished by the department.

6 ~~(4) A tribal court of a federally recognized Indian reservation may report convictions under tribal~~
7 ~~law or regulation regulating the operation of motor vehicles to the department for recording purposes under~~
8 ~~this chapter. Convictions under federal law or regulations governing the operation of motor vehicles on~~
9 ~~federal enclaves may also be reported to the department under this section."~~

10

11 **NEW SECTION. Section 9. Driving under influence of alcohol or drugs -- driving with excessive**
12 **alcohol concentration -- alcohol information course required.** (1) (a) In addition to the punishments provided
13 in 61-8-714 and 61-8-722 [**AND SECTION 13**], regardless of disposition, a defendant convicted of a
14 violation of 61-8-401 or 61-8-406 shall complete an alcohol information course at an alcohol treatment
15 program approved by the department of public health and human services, which may include alcohol or
16 drug treatment, or both.

17 (b) As long as the alcohol information course is approved as provided in this section and the
18 treatment is provided by a certified chemical dependency counselor, the defendant may attend the
19 information course and treatment program of the defendant's choice. The treatment provided to the
20 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
21 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
22 placement rules adopted by the department of public health and human services. Upon determination, the
23 court shall order the defendant's appropriate level of treatment. If more than one counselor makes a
24 determination as provided in this subsection, the court shall order an appropriate level of treatment based
25 upon the determination of one of the counselors.

26 (c) Each counselor providing education or treatment shall, at the commencement of the education
27 or treatment, notify the court that the defendant has been enrolled in an alcohol information course or
28 treatment program. If the defendant fails to attend the information course or treatment program, the
29 counselor shall notify the court of the failure.

30 (d) A court or counselor may not require attendance at a self-help program other than at an "open

1 meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in
2 self-help programs.

3 (2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a
4 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
5 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
6 public health and human services.

7 (3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation
8 of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of
9 disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
10 approved by the department of public health and human services, which must include alcohol or drug
11 treatment, or both.

12 (b) (i) On a second or subsequent conviction, the treatment program provided for in subsection
13 (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
14 the program.

15 (ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i),
16 the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence,
17 and may include additional monthly monitoring for up to an additional 6 months.

18

19 **NEW SECTION. Section 10. Driving under influence of alcohol or drugs -- driving with excessive**
20 **alcohol concentration -- forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of
21 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and
22 any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the
23 time of the offense to be seized and subjected to the procedure provided under 61-8-421.

24 (2) A vehicle used by a person as a common carrier in the transaction of business as a common
25 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
26 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
27 omission established by the owner to have been committed or omitted by a person other than the owner
28 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
29 criminal laws of this state or the United States.

30 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's

1 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
2 or other act on which the forfeiture is sought.

3

4 **NEW SECTION. Section 11. Driving under influence of alcohol or drugs -- driving with excessive**
5 **alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral**
6 **of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714
7 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in
8 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, ~~a federal~~
9 ~~enclave~~, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure
10 the defendant's appearance in court in this state, another state, ~~a federal enclave~~, or a federally recognized
11 Indian reservation, which forfeiture has not been vacated.

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

16 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may
17 be counted for purposes of determining the number of a subsequent conviction for violation of either
18 61-8-401 or 61-8-406.

19 (2) **[EXCEPT AS PROVIDED IN SECTION 13]** The court may order that a term of imprisonment
20 imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and
21 approved by the sentencing court. The defendant, if financially able, shall bear the expense of the
22 imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant follow the rules of that facility. The facility may be,
24 but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease
25 center may accept or reject a defendant referred by the sentencing court.

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

29 (4) A court may not defer imposition of sentence under 61-8-714 or 61-8-722 **[OR SECTION 13]**.

30 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension

1 and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction
 2 under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

3

4 NEW SECTION. Section 12. Codification instruction. (1) [Sections 9, 10, and 11] are intended
 5 to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8,
 6 part 7, apply to [sections 9, 10, and 11].

7 (2) IF [SECTIONS 13 AND 14] ARE EFFECTIVE, THEN THEY ARE INTENDED TO BE CODIFIED AS
 8 AN INTEGRAL PART OF TITLE 61, CHAPTER 8, PART 7, AND THE PROVISIONS OF TITLE 61, CHAPTER
 9 7, PART 8, APPLY TO [SECTIONS 13 AND 14].

10

11 NEW SECTION. SECTION 13. COORDINATION. (1) (A) IF HOUSE BILL NO. 100 AND [THIS ACT]
 12 ARE BOTH PASSED AND APPROVED, THEN HOUSE BILL NO. 100 IS VOID, THE BRACKETED
 13 REFERENCES TO "SECTION 13" IN [THIS ACT] ARE EFFECTIVE, THE BRACKETED PHRASE REFERRING
 14 TO THE TERM OF IMPRISONMENT AND A FINE FOR A FOURTH CONVICTION IN 61-8-714 IS VOID, AND
 15 A NEW SECTION 13 IS ADDED TO [THIS ACT] THAT READS:

16 "NEW SECTION. Section 13. Driving under influence of alcohol or drugs -- driving with excessive
 17 alcohol concentration -- penalty for fourth or subsequent offense. (1) (a) On the fourth or subsequent
 18 conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be
 19 punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of
 20 not less than \$1,000 [~~\$1,500~~] or more than \$10,000. The imposition or execution of the imprisonment
 21 sentence imposed for a fourth or subsequent offense may not be suspended. ~~The person is not eligible for~~
 22 ~~parole.~~

23 (b) The court shall:

24 (i) specify one of the following facilities as the place in which the initial term of imprisonment must
 25 be served:

26 (A) a state prison;

27 (B) a regional correctional facility;

28 (C) a county jail;

29 (D) a boot camp, provided the prior approval of the department of corrections has been obtained;

30 (E) a prerelease center, provided the prior approval of the department of corrections has been

1 obtained; or

2 (F) a state-approved public or private treatment facility; or

3 (ii) sentence the person to the department of corrections for placement in an appropriate
4 correctional institution or program.

5 (c) Following initial placement of a defendant in the facility specified by the court in accordance
6 with subsection (1)(b)(i), the department of corrections may, at its discretion, place the offender in another
7 facility or program.

8 (2) (a) After serving the term of imprisonment imposed under subsection (1)(a), the person shall
9 serve a supervised release term of not less than 1 year or more than 2 years. The release must be
10 supervised by the department of corrections, which may order all or any portion of the supervised release
11 term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to
12 probation, apply to the supervised release.

13 (b) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions
14 during the period of supervised release. Reasonable restrictions or conditions may include:

15 (i) conditions for supervised release;

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

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

18 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

19 (v) community service;

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

22 (vii) any combination of the restrictions or conditions listed in subsections (2)(b)(i) through (2)(b)(vi).

23 (c) If a violation of the restrictions or conditions of the supervised release is established, the court
24 may continue the period of supervised release or may require the defendant to serve the remainder of the
25 supervised release sentence in one of the facilities set forth in subsection (1)(b). The court may credit the
26 remainder of the supervised release or the time to be served in a facility set forth in subsection (1)(b) with
27 all or part of the time already served on supervised release.

28 (3) The court shall order a person who is financially able to pay the costs of imprisonment and
29 supervised release under this section and of the information course and treatment under [section 9]."

30 (B) IF HOUSE BILL NO. 100 AND [THIS ACT] ARE NOT PASSED AND APPROVED, THEN THE

1 BRACKETED REFERENCES TO "SECTION 13" IN [THIS ACT] ARE VOID.

2 (2) IF HOUSE BILL NO. 208 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE
3 BRACKETED AMOUNT IN [SECTION 13] OF [THIS ACT] IS EFFECTIVE AND A NEW SECTION 14 IS ADDED
4 TO [THIS ACT] THAT READS:

5 "NEW SECTION. Section 14. Driving under influence of alcohol or drugs -- driving with excessive
6 alcohol concentration -- no suspension of fines -- community service as payment. (1) Except upon written
7 findings of extenuating and mitigating circumstances by the court, no fine imposed under 61-8-714,
8 61-8-722, or [section 13] against a defendant convicted of a violation of 61-8-401 or 61-8-406 may be
9 suspended.

10 (2) If the court determines that the person is unable to pay the fine, the court may sentence the
11 person to supervised community service."
12

13 NEW SECTION. Section 14. Applicability. [This act] applies to offenses committed on or after
14 October 1, 1997.

15 -END-

1 HOUSE BILL NO. 559

2 INTRODUCED BY GRIMES, CLARK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS
 5 RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR
 6 SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED
 7 SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING
 8 FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE
 9 IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE
 10 ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE
 11 INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING
 12 CONVICTIONS FROM TRIBAL COURTS ~~OR FEDERAL ENCLAVES~~ FOR THE PURPOSE OF DETERMINING
 13 NUMBER OF PRIOR CONVICTIONS ~~AND MAINTAINING INDIVIDUAL DRIVING RECORDS~~; AMENDING
 14 SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101,
 15 MCA; AND PROVIDING AN APPLICABILITY DATE."

16

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

18

19 **Section 1.** Section 46-18-201, MCA, is amended to read:

20 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found
 21 guilty of an offense upon a verdict or a plea of guilty, the court may:

22 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
 23 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
 24 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
 25 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
 26 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- 27 (i) jail base release;
- 28 (ii) jail time not exceeding 180 days;
- 29 (iii) conditions for probation;
- 30 (iv) payment of the costs of confinement;

- 1 (v) payment of a fine as provided in 46-18-231;
- 2 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 4 (viii) with the approval of the facility or program, an order that the offender be placed in a
5 community corrections facility or program as provided in 53-30-321;
- 6 (ix) community service;
- 7 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
9 society;
- 10 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 or
- 12 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 13 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
14 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
15 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
16 restrictions or conditions may include any of those listed in subsection (1)(a).
- 17 (c) impose a fine as provided by law for the offense;
- 18 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
19 counsel as provided in 46-8-113;
- 20 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
21 the defendant to the department of corrections for placement in an appropriate correctional institution or
22 program;
- 23 (f) with the approval of the facility or program, order the offender to be placed in a community
24 corrections facility or program as provided in 53-30-321; or
- 25 (g) impose any combination of subsections (1)(b) through (1)(f).
- 26 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
27 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
28 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
29 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 30 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

1 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
2 a felony, regardless of whether any other conditions are imposed.

3 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
4 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
5 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
6 allowed for jail or home arrest time already served.

7 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
8 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
9 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
10 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

11 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
12 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

13 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
14 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
15 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
16 suspended.

17 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
18 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
19 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

20 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
21 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
22 Title 46, chapter 23, part 5.

23 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
24 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
25 program.

26 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
27 imprisonment of the offender in the state prison, including placement of the offender in a community
28 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
29 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
30 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were

1 not selected, based on the criteria contained in 46-18-225.

2 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
3 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

4 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
5 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
6 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
7 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
8 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

9 (i) jail base release;

10 (ii) jail time not exceeding 180 days;

11 (iii) conditions for probation;

12 (iv) payment of the costs of confinement;

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

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

15 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

16 (viii) with the approval of the facility or program, an order that the offender be placed in a
17 community corrections facility or program as provided in 53-30-321;

18 (ix) community service;

19 (x) home arrest as provided in Title 46, chapter 18, part 10;

20 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
21 society;

22 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

23 or

24 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

25 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
26 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
27 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
28 restrictions or conditions may include any of those listed in subsection (1)(a).

29 (c) impose a fine as provided by law for the offense;

30 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

1 counsel as provided in 46-8-113;

2 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
3 the defendant to the department of corrections for placement in an appropriate correctional institution or
4 program;

5 (f) with the approval of the facility or program, order the offender to be placed in a community
6 corrections facility or program as provided in 53-30-321; or

7 (g) impose any combination of subsections (1)(b) through (1)(f).

8 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
9 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
10 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
11 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

12 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
13 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
14 a felony, regardless of whether any other conditions are imposed.

15 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
16 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
17 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
18 allowed for jail or home arrest time already served.

19 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
20 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
21 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
22 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

23 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
24 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

25 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
26 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
27 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
28 suspended.

29 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
30 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

1 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

2 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
3 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
4 Title 46, chapter 23, part 5.

5 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
6 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
7 offender program.

8 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
9 imprisonment of the offender in the state prison, including placement of the offender in a community
10 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
11 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
12 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
13 not selected, based on the criteria contained in 46-18-225.

14 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
15 not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 61-8-401, MCA, is amended to read:

18 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
19 provided in 61-8-714, ~~and 61-8-723, [sections 9, 10, and 11]~~ **[SECTION 13]** for any person who is under
20 the influence of:

21 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
22 to the public;

23 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

24 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
26 within this state.

27 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
28 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
29 of violating subsection (1).

30 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any

1 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
2 diminished.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
4 been committed by any person driving or in actual physical control of a vehicle while under the influence
5 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
6 person's blood, urine, or breath, shall give rise to the following inferences:

7 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
8 person was not under the influence of alcohol.

9 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
10 fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of alcohol
11 but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or innocence
12 of the person.

13 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
14 person was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
16 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a any
17 combination of ~~the two~~ alcohol and drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
19 61-8-722, [sections 9, 10, and 11] [SECTION 13] and subsections (1) through (5) of this section, with the
20 word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance
21 and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties
22 ~~therein~~ provided in those sections.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
24

25 **Section 3.** Section 61-8-406, MCA, is amended to read:

26 "**61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is
27 unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, [sections 9, 10, and 11] [SECTION 13]
28 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the
29 public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or
30 urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this

1 section."

2

3 **Section 4.** Section 61-8-421, MCA, is amended to read:

4 "**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or~~
5 ~~61-8-722~~ [section 10] must be seized by the arresting agency within 10 days after the conviction and
6 disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions
7 of Title 44, chapter 12, part 2, apply to the extent applicable.

8 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within
9 20 days after the seizure of the motor vehicle.

10 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The
11 owner of the motor vehicle may rebut the presumption by proving a defense under ~~61-8-714(3)(b)(iii) or~~
12 ~~61-8-722(3)(b)(iii)~~ [section 10(2)] or by proving that the owner was not convicted of a ~~second or~~
13 ~~subsequent offense under 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406.~~ It is
14 not a defense that the convicted person owns the motor vehicle jointly with another person.

15 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be
16 distributed first to the holders of security interests who have presented proper proof of their claims, up to
17 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to
18 the general fund of the arresting agency.

19 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor
20 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated
21 value of the motor vehicle.

22 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons
23 include return of the motor vehicle without a sale to an owner who is unable to present an adequate
24 defense under this section but is found by the court to be without fault."
25

26 **Section 5.** Section 61-8-422, MCA, is amended to read:

27 "**61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
28 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6)~~ seizure
29 under 61-5-212 or seizure and forfeiture under 61-8-714 or 61-8-722 [section 10] to transfer, sell, or
30 encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the

1 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the
 2 underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying
 3 charge is otherwise terminated.

4 (2) The prohibition against transfer of title may not be stayed pending the determination of an
 5 appeal from the conviction on the underlying charge.

6 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned
 7 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both.”

8

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

10 **“61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) ~~Except as provided in~~
 11 ~~subsections (8) and (9), a~~ A person convicted of a violation of 61-8-401 shall be punished by imprisonment
 12 ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a
 13 fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served
 14 in the county jail and may not be served under home arrest. The imprisonment sentence may not be
 15 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 16 defendant’s physical or mental well-being.

17 (2) ~~Except as provided in subsection (8), on~~ On a second conviction, the person shall be punished
 18 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, ~~at least~~
 19 ~~48 hours of which must be served consecutively,~~ or more than 6 months. At least 48 hours of the
 20 imprisonment term must be served consecutively in the county jail and may not be served under home
 21 arrest. ~~Except as provided in subsection (8), 3~~ Three days of the imprisonment sentence may not be
 22 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
 23 defendant’s physical or mental well-being.

24 (3) ~~(a) Except as provided in subsection (8), on~~ On the third conviction, the person shall be
 25 punished by imprisonment for a term of not less than 30 days, ~~at least 48 hours of which must be served~~
 26 ~~consecutively,~~ or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
 27 hours of the imprisonment term must be served consecutively in the county jail and may not be served
 28 under home arrest. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary~~
 29 ~~providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or
 30 execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred~~

1 ~~within 5 years of the first offense may not be suspended.~~

2 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
3 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
4 ~~seized and subjected to the procedure provided under 61-8-421.~~

5 ~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
6 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
7 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
8 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
9 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
10 ~~criminal laws of this state or the United States.~~

11 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
12 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
13 ~~or other act on which the forfeiture is sought.~~

14 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
15 punished [by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not
16 less than \$1,000 or more than \$10,000] [AS PROVIDED IN SECTION 13]. ~~Except as provided in subsection~~
17 ~~(8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence~~
18 ~~imposed under this subsection, the~~ The imposition or execution of the first 6 months of the imprisonment
19 sentence imposed for a fourth or subsequent offense may not be suspended.

20 ~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
21 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
22 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
23 ~~treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made~~
24 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
25 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
26 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
27 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
28 ~~department of public health and human services, which must include alcohol or drug treatment, or both.~~
29 ~~As long as the alcohol information course is approved as provided in this subsection and the treatment is~~
30 ~~provided by a certified chemical dependency counselor, the defendant may attend the information course~~

1 ~~and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment~~
2 ~~program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined~~
3 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
4 ~~by the department of corrections. Upon determination, the court shall order the defendant's appropriate~~
5 ~~level of treatment. If more than one counselor makes a determination as provided in this subsection, the~~
6 ~~court shall order an appropriate level of treatment based upon the determination of one of the counselors.~~
7 ~~On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for~~
8 ~~a period of at least 1 year from the date of admission to the program. A court or counselor may not require~~
9 ~~attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help~~
10 ~~program. A defendant may voluntarily participate in self-help programs. Each counselor providing education~~
11 ~~or treatment shall, at the commencement of the education or treatment, notify the court that the defendant~~
12 ~~has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend~~
13 ~~the information course or treatment program, the counselor shall notify the court of the failure.~~

14 ~~(6) For the purpose of determining the number of convictions under this section, "conviction"~~
15 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
16 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
17 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
18 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
19 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
20 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
21 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
22 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
23 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
24 ~~only be obtained by district court order upon good cause shown.~~

25 ~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
26 ~~violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

27 ~~(8) The court may order that a term of imprisonment imposed under this section be served in~~
28 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
29 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~
30 ~~on the defendant's ability to leave the premises of the facility and require that the defendant follow the~~

1 ~~rules of that facility. The facility may be, but is not required to be, a community-based prerelease center~~
 2 ~~as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the~~
 3 ~~sentencing court.~~

4 ~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 5 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 6 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

7 ~~(10) A court may not defer imposition of sentence under this section."~~

8

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

10 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in~~
 11 ~~subsection (9), a~~ A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not
 12 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

13 ~~(2) Except as provided in subsection (9), on~~ On a second conviction of a violation of 61-8-406,
 14 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 15 county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than
 16 \$500.

17 ~~(3) (a) Except as provided in subsection (9), on~~ On a third conviction of a violation of 61-8-406,
 18 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
 19 county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than
 20 \$1,000.

21 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
 22 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
 23 ~~seized and subjected to the procedure provided under 61-8-421.~~

24 ~~(iii) A vehicle used by a person as a common carrier in the transaction of business as a common~~
 25 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
 26 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
 27 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
 28 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
 29 ~~criminal laws of this state or the United States.~~

30 ~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~

1 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
2 ~~or other act on which the forfeiture is sought.~~

3 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
4 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
5 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9), notwithstanding any other~~
6 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The
7 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
8 subsequent offense may not be suspended.

9 ~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and~~
10 ~~suspension of driver's licenses, apply to any conviction under 61-8-406.~~

11 ~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
12 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
13 ~~of public health and human services, which must include alcohol or drug treatment, or both, in accordance~~
14 ~~with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the~~
15 ~~commencement of the education or treatment, notify the court that the defendant has been enrolled in a~~
16 ~~course or treatment program. If the defendant fails to attend the course or the treatment program, the~~
17 ~~counselor shall notify the court of the failure.~~

18 ~~(7) For the purpose of determining the number of convictions under this section, "conviction"~~
19 ~~means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a~~
20 ~~forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or~~
21 ~~another state, which forfeiture has not been vacated. An offender is considered to have been previously~~
22 ~~convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the~~
23 ~~present offense and a previous conviction, unless the offense is the offender's fourth or subsequent~~
24 ~~offense, in which case all previous convictions must be used for sentencing purposes. If there has not been~~
25 ~~an additional conviction for an offense under this section for a period of 5 years after a prior conviction~~
26 ~~under this section, then all records and data relating to the prior conviction are confidential criminal justice~~
27 ~~information, as defined in 45-5-103, and public access to the information may only be obtained by district~~
28 ~~court order upon good cause shown.~~

29 ~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
30 ~~violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

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

8 ~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
 9 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
 10 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

11 ~~(11) A court may not defer imposition of sentence under this section."~~

12
 13 **Section 8.** Section 61-11-101, MCA, is amended to read:

14 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 15 **of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory
 16 the suspension or revocation of the driver's license of the person by the department, the court in which
 17 ~~such~~ the conviction is had shall require the surrender to it of all driver's licenses then held by the person
 18 ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the
 19 same time forward a record of ~~such~~ the conviction to the department, providing that if ~~such~~ the person
 20 does not possess a driver's license the court shall ~~so~~ indicate that fact in its report to the department.

21 (2) Every court having jurisdiction over offenses committed under any act of this state or municipal
 22 ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the
 23 department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a
 24 violation of any ~~such~~ motor vehicle laws, other than regulations governing standing or parking, and may
 25 recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also
 26 recommend that the department issue a restricted probationary license on the condition that the individual
 27 comply with the requirement that ~~he~~ the person attend and complete an alcohol information course as
 28 provided in ~~61-8-714 and 61-8-722~~ [section 9]. The department shall issue a restricted probationary license
 29 unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary
 30 license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation

1 of those restrictions.

2 (3) Any court or other agency of this state, or a subdivision ~~thereof~~ of the state, ~~which that~~ has
3 jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any~~
4 ~~such~~ the action and the adjudication upon which it is based to the department within 5 days on forms
5 furnished by the department.

6 ~~(4) A tribal court of a federally recognized Indian reservation may report convictions under tribal~~
7 ~~law or regulation regulating the operation of motor vehicles to the department for recording purposes under~~
8 ~~this chapter. Convictions under federal law or regulations governing the operation of motor vehicles on~~
9 ~~federal enclaves may also be reported to the department under this section."~~

10

11 **NEW SECTION. Section 9. Driving under influence of alcohol or drugs -- driving with excessive**
12 **alcohol concentration -- alcohol information course required.** (1) (a) In addition to the punishments provided
13 in 61-8-714 and 61-8-722 [AND SECTION 13], regardless of disposition, a defendant convicted of a
14 violation of 61-8-401 or 61-8-406 shall complete an alcohol information course at an alcohol treatment
15 program approved by the department of public health and human services, which may include alcohol or
16 drug treatment, or both.

17 (b) As long as the alcohol information course is approved as provided in this section and the
18 treatment is provided by a certified chemical dependency counselor, the defendant may attend the
19 information course and treatment program of the defendant's choice. The treatment provided to the
20 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
21 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
22 placement rules adopted by the department of public health and human services. Upon determination, the
23 court shall order the defendant's appropriate level of treatment. If more than one counselor makes a
24 determination as provided in this subsection, the court shall order an appropriate level of treatment based
25 upon the determination of one of the counselors.

26 (c) Each counselor providing education or treatment shall, at the commencement of the education
27 or treatment, notify the court that the defendant has been enrolled in an alcohol information course or
28 treatment program. If the defendant fails to attend the information course or treatment program, the
29 counselor shall notify the court of the failure.

30 (d) A court or counselor may not require attendance at a self-help program other than at an "open

1 meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in
2 self-help programs.

3 (2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a
4 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
5 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
6 public health and human services.

7 (3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation
8 of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of
9 disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
10 approved by the department of public health and human services, which must include alcohol or drug
11 treatment, or both.

12 (b) (i) On a second or subsequent conviction, the treatment program provided for in subsection
13 (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
14 the program.

15 (ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i),
16 the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence,
17 and may include additional monthly monitoring for up to an additional 6 months.

18

19 **NEW SECTION. Section 10. Driving under influence of alcohol or drugs -- driving with excessive**
20 **alcohol concentration -- forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of
21 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and
22 any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the
23 time of the offense to be seized and subjected to the procedure provided under 61-8-421.

24 (2) A vehicle used by a person as a common carrier in the transaction of business as a common
25 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
26 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
27 omission established by the owner to have been committed or omitted by a person other than the owner
28 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
29 criminal laws of this state or the United States.

30 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's

1 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
2 or other act on which the forfeiture is sought.

3

4 **NEW SECTION. Section 11. Driving under influence of alcohol or drugs -- driving with excessive**
5 **alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral**
6 **of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714
7 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in
8 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, ~~a federal~~
9 ~~enclave~~, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure
10 the defendant's appearance in court in this state, another state, ~~a federal enclave~~, or a federally recognized
11 Indian reservation, which forfeiture has not been vacated.

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

16 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may
17 be counted for purposes of determining the number of a subsequent conviction for violation of either
18 61-8-401 or 61-8-406.

19 (2) [EXCEPT AS PROVIDED IN SECTION 13] The court may order that a term of imprisonment
20 imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and
21 approved by the sentencing court. The defendant, if financially able, shall bear the expense of the
22 imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant follow the rules of that facility. The facility may be,
24 but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease
25 center may accept or reject a defendant referred by the sentencing court.

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

29 (4) A court may not defer imposition of sentence under 61-8-714 or 61-8-722 [OR SECTION 13].

30 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension

1 and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction
2 under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

3

4 NEW SECTION. Section 12. Codification instruction. (1) [Sections 9, 10, and 11] are intended
5 to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8,
6 part 7, apply to [sections 9, 10, and 11].

7 (2) IF [SECTIONS 13 AND 14] ARE EFFECTIVE, THEN THEY ARE INTENDED TO BE CODIFIED AS
8 AN INTEGRAL PART OF TITLE 61, CHAPTER 8, PART 7, AND THE PROVISIONS OF TITLE 61, CHAPTER
9 7, PART 8, APPLY TO [SECTIONS 13 AND 14].

10

11 NEW SECTION. SECTION 13. COORDINATION. (1) (A) IF HOUSE BILL NO. 100 AND [THIS ACT]
12 ARE BOTH PASSED AND APPROVED, THEN HOUSE BILL NO. 100 IS VOID, THE BRACKETED
13 REFERENCES TO "SECTION 13" IN [THIS ACT] ARE EFFECTIVE, THE BRACKETED PHRASE REFERRING
14 TO THE TERM OF IMPRISONMENT AND A FINE FOR A FOURTH CONVICTION IN 61-8-714 IS VOID, AND
15 A NEW SECTION 13 IS ADDED TO [THIS ACT] THAT READS:

16 "NEW SECTION. Section 13. Driving under influence of alcohol or drugs -- driving with excessive
17 alcohol concentration -- penalty for fourth or subsequent offense. (1) (a) On the fourth or subsequent
18 conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be
19 punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of
20 not less than \$1,000 [\$1,500] or more than \$10,000. The imposition or execution of the imprisonment
21 sentence imposed for a fourth or subsequent offense may not be suspended. ~~The person is not eligible for~~
22 ~~parole.~~

23 (b) The court shall:

24 (i) specify one of the following facilities as the place in which the initial term of imprisonment must
25 be served:

26 (A) a state prison;

27 (B) a regional correctional facility;

28 (C) a county jail;

29 (D) a boot camp, provided the prior approval of the department of corrections has been obtained;

30 (E) a prerelease center, provided the prior approval of the department of corrections has been

1 obtained; or

2 (F) a state-approved public or private treatment facility; or

3 (ii) sentence the person to the department of corrections for placement in an appropriate
4 correctional institution or program.

5 (c) Following initial placement of a defendant in the facility specified by the court in accordance
6 with subsection (1)(b)(i), the department of corrections may, at its discretion, place the offender in another
7 facility or program.

8 (2) (a) After serving the term of imprisonment imposed under subsection (1)(a), the person shall
9 serve a supervised release term of not less than 1 year or more than 2 years. The release must be
10 supervised by the department of corrections, which may order all or any portion of the supervised release
11 term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to
12 probation, apply to the supervised release.

13 (b) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions
14 during the period of supervised release. Reasonable restrictions or conditions may include:

15 (i) conditions for supervised release;

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

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

18 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

19 (v) community service;

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

22 (vii) any combination of the restrictions or conditions listed in subsections (2)(b)(i) through (2)(b)(vi).

23 (c) If a violation of the restrictions or conditions of the supervised release is established, the court
24 may continue the period of supervised release or may require the defendant to serve the remainder of the
25 supervised release sentence in one of the facilities set forth in subsection (1)(b). The court may credit the
26 remainder of the supervised release or the time to be served in a facility set forth in subsection (1)(b) with
27 all or part of the time already served on supervised release.

28 (3) The court shall order a person who is financially able to pay the costs of imprisonment and
29 supervised release under this section and of the information course and treatment under [section 9]."

30 (B) IF HOUSE BILL NO. 100 AND [THIS ACT] ARE NOT PASSED AND APPROVED, THEN THE

1 BRACKETED REFERENCES TO "SECTION 13" IN [THIS ACT] ARE VOID.

2 (2) IF HOUSE BILL NO. 208 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE
3 BRACKETED AMOUNT IN [SECTION 13] OF [THIS ACT] IS EFFECTIVE AND A NEW SECTION 14 IS ADDED
4 TO [THIS ACT] THAT READS:

5 "NEW SECTION. Section 14. Driving under influence of alcohol or drugs -- driving with excessive
6 alcohol concentration -- no suspension of fines -- community service as payment. (1) Except upon written
7 findings of extenuating and mitigating circumstances by the court, no fine imposed under 61-8-714,
8 61-8-722, or [section 13] against a defendant convicted of a violation of 61-8-401 or 61-8-406 may be
9 suspended.

10 (2) If the court determines that the person is unable to pay the fine, the court may sentence the
11 person to supervised community service."

12

13 NEW SECTION. Section 14. Applicability. [This act] applies to offenses committed on or after
14 October 1, 1997.

15

-END-