

Montana Impaired Driving Laws

Below outlines the primary laws relating to drug- and alcohol-impairment in Montana. There are increasing sanctions for subsequent offenses.

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61-8-401. Driving under influence of alcohol or drugs -- definitions. (1) It is unlawful and punishable, as provided in [61-8-442](#), [61-8-714](#), and [61-8-731](#) through [61-8-734](#), for a person who is under the influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

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

(3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(b) Subject to [61-8-440](#), as used in this part, "vehicle" has the meaning provided in [61-1-101](#), except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

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

(6) Each municipality in this state is given authority to enact [61-8-406](#), [61-8-408](#), [61-8-410](#), [61-8-411](#), [61-8-465](#), [61-8-714](#), [61-8-722](#), [61-8-731](#) through [61-8-734](#), and subsections (1) through (5) of this section, with the word "state" in [61-8-406](#), [61-8-411](#), [61-8-465](#), and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in [45-2-104](#) is imposed for a violation of this section.

61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a

violation of [61-8-401](#) or [61-8-465](#);

(ii) the person is under the age of 21 and has been placed under arrest for a violation of [61-8-410](#); or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of [61-8-401](#) and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in [45-2-101](#), or death; or

(C) in violation of [61-8-465](#).

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (8).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under [61-8-409](#) or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of [45-5-104](#), [45-5-106](#), [45-5-205](#), [61-8-401](#), [61-8-406](#), or [61-8-411](#) or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to [46-5-224](#) to collect a sample of the person's blood for testing.

(6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (6)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to [17-2-102](#)(1)(b). Money provided to the department of justice pursuant to this subsection (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(c) The department shall adopt rules establishing procedures for the collection, distribution, and strict accountability of any funds received pursuant to this section.

(7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in [61-8-403](#).

(8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving

privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and
(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in [61-8-802](#)(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (8)(b).

(9) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(10) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under [61-8-403](#).

(11) A suspension under this section is subject to review as provided in this part.

(12) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(13) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in [46-4-301](#) and [61-8-405](#)(6).

61-8-405. Administration of tests. (1) Only a physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [61-8-401](#), [61-8-406](#), [61-8-410](#), [61-8-411](#), [61-8-465](#), or [61-8-805](#) and a sample of blood, breath, urine, or other bodily substance is

taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in [46-4-301](#).

61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more. (1) It is unlawful and punishable as provided in [61-8-442](#), [61-8-722](#), [61-8-723](#), and [61-8-731](#) through [61-8-734](#) for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.08 or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) Absolute liability, as provided in [45-2-104](#), will be imposed for a violation of this section.

61-8-407. Definition of alcohol concentration. For purposes of [16-6-305](#), [23-2-535](#), [67-1-211](#), and this title, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [61-8-410](#) or [61-8-465](#).

(2) The person's obligation to submit to a test under [61-8-402](#) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in [61-8-402](#)(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in [61-8-402](#).

(5) A hearing as provided for in [61-8-403](#) must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [61-8-410](#) and whether the person refused to submit to the test.

(6) The provisions of [61-8-402](#)(3) through (10) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under [61-8-402](#) and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under [61-8-402](#).

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of [61-8-405](#)(5).

61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in [45-2-104](#), is imposed for a violation of this section.

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

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

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

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

(a) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [61-8-732](#) as ordered by the court; and

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

(6) A conviction under this section may not be counted as a prior conviction under [61-8-401](#) or [61-8-406](#).

61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol. (1) It is unlawful and punishable as provided in [61-8-442](#), [61-8-722](#), [61-8-723](#), and [61-8-731](#) through [61-8-734](#) for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more.

(2) Absolute liability, as provided in [45-2-104](#), is imposed for a violation of this section.

61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.

(1) It is unlawful for a person who is subject to a restriction under [61-8-442](#) to operate a motor vehicle not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than \$500 or

by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

- (a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and
- (b) the person subject to the restriction does not operate the vehicle.

61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.

(1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based upon federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

- (a) be designed so it does not impede safe operation of the vehicle;
- (b) correlate well with the level established for alcohol impairment;
- (c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;
- (d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;
- (e) resist tampering and show evidence of tampering if it is attempted;
- (f) be difficult to circumvent;
- (g) minimize inconvenience of a sober user;
- (h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and
- (i) be manufactured by a person who is adequately insured for product liability.

(4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration - ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle. (1) In addition to the punishments provided in [61-8-714](#), [61-8-722](#), and [61-8-465](#), regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#):

(a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program.

(2) If a person is convicted of a second or subsequent violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#), in addition to the punishments provided in [61-8-714](#), [61-8-722](#), and [61-8-465](#), regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary

period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in [44-4-1203](#) and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [61-8-421](#).

(3) Any restriction or requirement imposed under this section must be included in a report of the conviction made by the court to the department in accordance with [61-11-101](#) and placed upon the person's driving record maintained by the department in accordance with [61-11-102](#).

(4) The duration of a restriction imposed under this section must be monitored by the department.

61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.

(1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of [3-1-317](#), [3-1-318](#), [45-2-101](#), [46-18-236](#), [61-8-104](#), and [61-8-711](#) and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in [3-1-317](#), [3-1-318](#), and [46-18-236](#) may not be imposed for a violation of this section.

61-8-465. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of [61-8-401](#), [61-8-406](#), or [61-8-411](#) and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of [61-8-401](#), [61-8-402](#), [61-8-406](#), or [61-8-411](#);

(d) the person refuses to provide a breath or blood sample as required in [61-8-402](#) and the person's driver's license or privilege to drive was suspended, canceled, or revoked under [61-8-402](#) within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of [45-5-106](#), [45-5-205](#), [61-8-401](#), [61-8-406](#), [61-8-411](#), or this section within 10 years of the commission of the present offense or has two or more prior convictions or pending charges, or any combination thereof, for violations of [45-5-106](#), [45-5-205](#), [61-8-401](#), [61-8-406](#), or [61-8-411](#).

(2) Except as provided in subsection (6), a person convicted of a first violation of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$2,000; and

(b) a term of imprisonment for not less than 48 hours or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 72 consecutive hours.

(3) (a) Except as provided in subsection (6), a person convicted of a second violation of the offense of aggravated driving under the influence shall be punished by:

(i) a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$5,000; and

(ii) a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 45 days.

(b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

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

(4) (a) Except as provided in subsection (6), a person convicted of a third violation of the offense of aggravated driving under the influence shall be punished by:

(i) a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$10,000; and

(ii) a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 90 consecutive days.

(b) Except for the minimum term of imprisonment provided in subsection (4)(a)(ii), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

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

be suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(5) During the suspended sentence imposed by the court under subsection (3)(b) or (4)(b):

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

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

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

(6) If the person has a prior conviction under [45-5-106](#), the person shall be punished as provided in [61-8-731](#) for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive alcohol concentration, or under the influence of delta-9-tetrahydrocannabinol or aggravated driving under the influence.

(7) Absolute liability, as provided for in [45-2-104](#), is imposed for a violation of this section.

61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense. (1) (a)

Except as provided in subsection (4) or (5), a person convicted of a first violation of [61-8-401](#) shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.

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

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of [61-8-401](#) shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than \$2,400 or more than \$4,000 and by imprisonment for not less than 14 days or more than 1 year.

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

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [61-8-732](#).

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of [61-8-401](#) shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to

the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [61-8-732](#).

(4) If the person has a prior conviction under [45-5-106](#), the person shall be punished as provided in [61-8-731](#) for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration, driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under the influence.

(5) If the person has a prior conviction or pending charge for a violation of [61-8-465](#), the person shall be punished as provided in [61-8-465](#).

61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense. (1) Except as provided in subsection (4) or (5), a person convicted of a first violation of [61-8-406](#) or [61-8-411](#) shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of [61-8-406](#) or [61-8-411](#) shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000.

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

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [61-8-732](#).

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of [61-8-406](#) or [61-8-411](#) shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [61-8-732](#).

(4) If the person has a prior conviction under [45-5-106](#), the person shall be punished as provided in [61-8-731](#) for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) If the person has a prior conviction or pending charge for a violation of [61-8-465](#), the person shall be punished as provided in [61-8-465](#).

61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.

(1) Except as provided in subsection (3), if a person is convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#), the person has either a single conviction under [45-5-106](#) or any combination of three or more prior convictions under [45-5-104](#), [45-5-205](#), [45-5-628](#)(1)(e), [61-8-401](#), [61-8-406](#), or [61-8-465](#), and the offense under [45-5-104](#) occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [61-8-401](#)(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the sentence must be served on probation. The imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$5,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program approved by the department of corrections.

(3) If a person is convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#), the person has either a single conviction under [45-5-106](#) or any combination of four or more prior convictions under [45-5-104](#), [45-5-205](#), [45-5-628](#)(1)(e), [61-8-401](#), [61-8-406](#), or [61-8-465](#), and the offense under [45-5-104](#) occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [61-8-401](#)(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

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

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

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

(d) that the person may not consume alcoholic beverages;

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

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

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

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

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

- (a) payment of a fine as provided in [46-18-231](#);
 - (b) payment of costs as provided in [46-18-232](#) and [46-18-233](#);
 - (c) payment of costs of assigned counsel as provided in [46-8-113](#);
 - (d) community service;
 - (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
 - (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).
- (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.
- (7) The provisions of [46-18-203](#), [46-23-1001](#) through [46-23-1005](#), [46-23-1011](#) through [46-23-1014](#), and [46-23-1031](#) apply to persons sentenced under this section.

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in [61-8-465](#), [61-8-714](#), [61-8-722](#), and [61-8-731](#), regardless of disposition, a defendant convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) shall complete:

- (a) a chemical dependency assessment;
- (b) a chemical dependency education course; and
- (c) on a second or subsequent conviction for a violation of [61-8-401](#), [61-8-406](#), or [61-8-411](#), except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [61-8-731](#)(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

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

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding [46-18-201\(2\)](#), whenever a judge suspends a sentence imposed under [61-8-714](#) and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year

61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration - ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle. (1) On the second or subsequent conviction of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) or a second or subsequent conviction under [61-5-212](#) when the reason for the suspension or revocation was that the person was convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) or a similar offense under the laws of any other state or the suspension was under [61-8-402](#) or [61-8-409](#) or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in [61-5-212](#), [61-8-465](#), [61-8-714](#), and [61-8-722](#) and any other penalty imposed by law, shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in [44-4-1203](#) and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the procedure provided under [61-8-421](#).

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

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

61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not

allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [61-8-465](#), [61-8-714](#), [61-8-722](#), or [61-8-731](#), "conviction" means a final conviction, as defined in [45-2-101](#), in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

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

(c) A previous conviction under [61-8-714](#) or [61-8-722](#) for violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) and a previous conviction for a violation of [45-5-104](#), [45-5-205](#), or [45-5-628](#)(1)(e) when the offense under [45-5-104](#) occurred while the person was operating a vehicle in violation of [61-8-401](#)(1) may be counted for purposes of determining the number of a subsequent conviction for violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#).

(2) Except as provided in [61-8-731](#), the court may order that a term of imprisonment imposed under [61-8-465](#), [61-8-714](#), [61-8-722](#), or [61-8-731](#) be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in [53-1-203](#). The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in [61-8-465](#), [61-8-714](#), and [61-8-722](#) concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under those sections be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under [61-8-465](#), [61-8-714](#), [61-8-722](#), or [61-8-731](#).

(5) The provisions of [61-2-107](#), [61-5-205](#)(2), and [61-5-208](#)(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under [61-8-465](#), [61-8-714](#), or [61-8-722](#) for a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#).

61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined. (1)

If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [61-8-465](#), [61-8-714](#) or [61-8-722](#), except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [61-8-732](#) and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration.

61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more -- hearing. (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license

suspension and the right to a hearing under [61-8-808](#). Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of [61-8-401](#) or [61-8-406](#) while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1).

61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions.

(1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) any felony in the commission of which a motor vehicle is used;
- (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (e) fleeing from or eluding a peace officer; or
- (f) negligent vehicular assault as defined in [45-5-205](#) involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) a driving offense under [61-8-401](#), [61-8-406](#), or [61-8-411](#);
- (b) three reckless driving offenses committed within a period of 12 months; or
- (c) a theft offense under [45-6-301](#) if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under [61-7-103](#).

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be

for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in [61-5-208](#).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense.

61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in [44-4-1205](#) and [61-2-302](#) and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to [61-5-231](#) and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#), the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) within the time period specified in [61-8-734](#), the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of [61-8-442](#). If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under [61-8-732](#), the license suspension remains in effect until the course or treatment, or both, are completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) within the time period specified in [61-8-734](#), the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of [61-8-442](#). If the 1-year suspension period passes and the person has not completed a chemical dependency education course or treatment, or both, as required under [61-8-732](#), the license suspension remains in effect until the course or treatment, or both, are completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of [61-8-401](#), [61-8-406](#), [61-8-411](#), or [61-8-465](#) while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in [61-8-802](#).

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under [61-8-731](#), the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

- (i) operation is authorized by the person's probation officer; or
- (ii) a motor vehicle operated by the person is equipped with an ignition interlock device.

61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under [61-5-232](#);

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in [61-5-102](#), or without proof of a statutory exemption, as provided in [61-5-104](#).

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of [61-8-401](#), [61-8-406](#), or [61-8-411](#) or a similar offense under the laws of any other state or the suspension was under [61-8-402](#) or [61-8-409](#) or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with [61-8-802](#).

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of [61-8-401](#), [61-8-402](#), [61-8-406](#), [61-8-409](#), [61-8-410](#), or [61-8-411](#) must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on

a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section

44-4-1202. Purpose -- definitions.

(1) The legislature declares that driving in Montana upon a way of this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege shall accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of this part is:

(a) to protect the public health and welfare by reducing the number of people on Montana's highways who drive under the influence of alcohol or dangerous drugs;

(b) to protect the public health and welfare by reducing the number of repeat offenders for crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) to strengthen the pretrial and post-trial options available to prosecutors and judges in responding to repeat DUI offenders or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and

(d) to ensure timely and sober participation in judicial proceedings.

(3) As used in this part, the following definitions apply:

(a) "Core components" means those elements of a sobriety program that analysis demonstrates are most likely to account for positive program outcomes.

(b) "Dangerous drug" has the meaning provided in [50-32-101](#).

(c) "Department" means the department of justice provided for in [2-15-2001](#).

(d) "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.

(e) "Law enforcement agency" means the county sheriff's office or another law enforcement agency designated by the county sheriff's office that is charged with enforcing the sobriety program.

(f) "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established in [44-4-1203](#), which authorizes a court or an agency as defined in [2-15-102](#), as a condition of bond, sentence, probation, parole, or work permit, to:

(i) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime, including but not limited to a second or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or dangerous drugs for a period of time; and

(ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous drugs:

(A) twice a day at a central location where immediate sanctions may be applied;

(B) when testing twice a day is impractical, by continuous, remote sensing, or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or

(C) with the concurrence of the department, by an alternate method that is consistent with [44-4-1203](#).

(g) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration, and includes any combination of the use of breath testing, drug patch testing, urinalysis testing, saliva testing, continuous remote sensing, or transdermal alcohol monitoring. With the concurrence of the department and consistent with [44-4-1203](#), alternate body fluids may be approved for testing.

(h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant

test event.

44-4-1203. Sobriety and drug monitoring program created.

(1) There is a statewide 24/7 sobriety and drug monitoring program within the department to be administered by the attorney general.

(2) (a) The core components of the sobriety program must include use of a primary testing methodology for the presence of alcohol or dangerous drugs that:

- (i) best facilitates the ability to apply immediate sanctions for noncompliance; and
- (ii) is available at an affordable cost.

(b) In cases of hardship or when a sobriety program participant is subject to less-stringent testing requirements, testing methodologies with timely sanctions for noncompliance may be utilized.

(3) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of the following categories:

- (a) the program is included in the federal registry of evidence-based programs and practices;
- (b) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or
- (c) the program has been documented as effective by informed experts and other sources.

(4) If a law enforcement agency chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program in the manner provided in this part. The department shall also assist entities participating in the program in determining alternatives to incarceration.

(5) (a) If a law enforcement agency participates in the program, the law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law enforcement agency pursuant to this part, except that the law enforcement agency's designee may not determine whether to participate in the sobriety program.

(b) The law enforcement agency shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

(6) Any efforts by the department to alter or modify the core components of the statewide sobriety program must include a documented strategy for achieving and measuring the effectiveness of the proposed modifications. Before core components may be modified, a pilot program with defined objectives and timelines must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the core components are monitored. The data collected from the pilot program must be assessed by the department, and a determination must be made as to whether the stated goals were achieved and whether the modifications should be formally implemented in the sobriety program.

(7) All alcohol or drug testing ordered by a court must utilize the data management technology plan provided for in [44-4-1204](#)(4).

(8) Alcohol or drug testing required by the department of corrections pursuant to this part must utilize the data management technology plan provided for in [44-4-1204](#)(4).

44-4-1204. Rulemaking -- testing fee.

The attorney general shall adopt rules to implement this part. The rules must:

(1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(2) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and

(4) require and provide for the approval of a sobriety program data management technology plan that must be used by the department and participating law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports.

44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions.

(1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence in violation of [61-8-465](#), a second or subsequent offense of driving under the influence in violation of [61-8-401](#), or a second or subsequent offense of driving with excessive alcohol concentration in violation of [61-8-406](#) has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant to [61-6-301](#), notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to [61-2-302](#), notwithstanding the requirements of [61-5-208](#) that an individual is required to complete a certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in [61-5-208](#).

(2) Upon an offender's participation in the sobriety program and payment of the fees required by [44-4-1204](#):

(a) the court may condition any bond or pretrial release for an individual charged with a violation of [61-8-465](#), a second or subsequent violation of [61-8-401](#) or [61-8-406](#), or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of a violation of [61-8-465](#), a second or subsequent violation of [61-8-401](#) or [61-8-406](#), or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for a violation of [61-8-465](#), a second or subsequent violation of [61-8-401](#) or [61-8-406](#), or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of [61-8-465](#), a second or subsequent violation of [61-8-401](#) or [61-8-406](#), or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first,

second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with violating [61-8-465](#); or

(b) (i) is charged with or has been convicted of violating [61-8-401](#) or [61-8-406](#); and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of [61-8-401](#), [61-8-406](#), or [61-8-465](#);

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to [61-8-401](#), [61-8-406](#), or [61-8-465](#); or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating [61-8-401](#), [61-8-406](#), [61-8-465](#), or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in [45-2-101](#).

44-4-1206. Collection, distribution, and use of testing fees.

The law enforcement agency of a county in which a sobriety program exists shall collect the testing fee required by the rules of the department and deposit the fees into the local sobriety program account established pursuant to department rules. The fee must be distributed according to those rules to the proper entity for use by the law enforcement agency or the law enforcement agency's designee pursuant to the terms determined by the law enforcement agency in accordance with the provisions of this part and the rules implementing this part.

45-5-104. Negligent homicide.

(1) A person commits the offense of negligent homicide if the person negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in [45-5-102\(1\)\(b\)](#).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

45-5-106. Vehicular homicide while under influence.

(1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of [61-8-401](#) or [61-8-406](#).

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in [45-5-102\(1\)\(b\)](#).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a sentence may not be deferred.

45-5-205. Negligent vehicular assault -- penalty.

(1) A person who negligently operates a vehicle, other than a bicycle as defined in [61-8-102](#), while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in [61-8-401](#)(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in [46-18-241](#).

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in [46-18-241](#).

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed.

45-5-207. Criminal endangerment -- penalty.

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

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

45-5-628. Criminal child endangerment .

(1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under [45-5-502](#) or [45-5-503](#);

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of [61-8-401](#), [61-8-406](#), [61-8-410](#), or [61-8-465](#) with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

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

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that

is a result of insufficient nutrition and is not secondary to a diagnosed medical condition.

46-5-502. Authority to establish roadblocks.

Any law enforcement agency of this state is authorized to establish, within its jurisdiction, temporary roadblocks on the highways of this state for the purpose of apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state, identifying drivers, or checking for driver's licenses, vehicle registration, and insurance.