

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL CHILD ENDANGERMENT
5 LAWS; ELIMINATING PROSECUTION FOR THE FAILURE TO SEEK REASONABLE MEDICAL CARE WHEN
6 A CHILD IS SUFFERING FROM AN APPARENT ACUTE LIFE-THREATENING CONDITION; PROVIDING
7 THAT CHILD PROTECTION SPECIALISTS MAY BE PROSECUTED BASED ON CHILD PLACEMENT;
8 REQUIRING THE INVESTIGATING AGENCY TO REFER MATTERS TO THE DEPARTMENT OF JUSTICE IN
9 WHICH A CHILD PROTECTION SPECIALIST IS INVESTIGATED OR PROSECUTED; AND AMENDING
10 SECTIONS 45-5-628, 61-8-1008, AND 61-8-1011, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 45-5-628, MCA, is amended to read:

15 **"45-5-628. Criminal child endangerment.** (1) A person commits the offense of criminal child
16 endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious
17 bodily injury to a child under 14 years of age by:

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

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

22 (c)(b) placing a child in the physical custody of another ~~who~~person whom the person knows has
23 previously committed an offense against the child under 45-5-502 or 45-5-503;

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

25 (e)(d) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of 61-
26 8-1002 or committing aggravated driving under the influence as defined in 61-8-1001 with a child in the vehicle;

27 or

28 (f)(e) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of

1 nonorganic failure to thrive.

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

4 (3) A child protection specialist as defined in 41-3-102 commits the offense of criminal child
5 endangerment if the child protection specialist in an official capacity purposely, knowingly, or negligently causes
6 substantial risk of death or serious bodily injury to a child under 14 years of age by:

7 (a) placing a child in the physical custody of another person whom the child protection specialist
8 knows has previously purposely or knowingly caused bodily injury to a child; or

9 (b) placing a child in the physical custody of another person whom the child protection specialist
10 knows has previously committed an offense against the child under 45-5-502 or 45-5-503.

11 (4) The charging exception under subsection (2) may not apply to the investigation or prosecution
12 of a child protection specialist who violates subsection (3).

13 (5) If an investigation or prosecution of a crime under this section includes any allegation that
14 indicates a potential violation of subsection (3), the investigating agency shall immediately refer the matter to
15 the department of justice provided for in 2-15-2001 and take no further action. This subsection (5) does not
16 apply to investigations or prosecutions initiated by officials within the department of justice.

17 ~~(3)(6)~~ A person convicted of the offense of criminal child endangerment shall be fined an amount not
18 to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

19 ~~(4)(7)~~ For the purposes of this section, "nonorganic failure to thrive" means inadequate physical
20 growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

21

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

23 **"61-8-1008. Penalty for driving under influence -- fourth and subsequent offenses.** (1) (a) A
24 person convicted of a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d),
25 an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense
26 under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-
27 106 or any combination of three or more convictions under 45-5-104, 45-5-205, ~~45-5-628(1)(e)~~ 45-5-628(1)(d),
28 driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the

1 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
2 this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating
3 a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as
4 provided in 61-8-1002(1)(a), is guilty of a felony and shall be punished by:

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

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

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

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

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

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

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

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

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

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

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

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

2 (F) the person enter in and remain in an aftercare treatment program for the entirety of the
3 probationary period;

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

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

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

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

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

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

13 (D) community service;

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

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

18 (2) A person convicted of a violation of driving under the influence, including 61-8-1002(1)(a),
19 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
20 1001, or a similar offense under previous laws of this state or the laws of another state, and who has also been
21 convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,
22 ~~45-5-628(1)(e)~~ 45-5-628(1)(d), driving under the influence, including 61-8-1002(1)(a), (1)(b), (1)(c), or (1)(d), an
23 offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense
24 under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while
25 the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or
26 any combination of the three, as provided in 61-8-1002(1)(a), and the person was previously sentenced under
27 subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by a fine of not less than \$5,000 or more than
28 \$10,000, and by imprisonment in the state prison for a term of not more than 10 years. The person is not

1 eligible for a deferred imposition of sentence.

2 (3) If a person has previously been convicted and sentenced under subsection (2), the person
3 shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state
4 prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.

5 (4) If a person who is presently being sentenced has previously been convicted and sentenced
6 under subsection (3) on one or more occasions, the person shall be punished by a fine of not less than \$5,000
7 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or more than
8 25 years. The first 5 years of the sentence may not be suspended.

9 (5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-
10 1014, and 46-23-1031 apply to a person sentenced under this section.

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

13

14 **Section 3.** Section 61-8-1011, MCA, is amended to read:

15 **"61-8-1011. Driving under influence -- conviction defined -- place of imprisonment -- home**
16 **arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the number
17 of convictions for prior offenses referred to in 61-8-1001, 61-8-1002, 61-8-1007, and 61-8-1008, "conviction"
18 means:

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

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

24 (iii) a conviction for a violation of driving under the influence, including 61-8-1002(1)(a), (1)(b),
25 (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
26 similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or
27 regulation in another state or on a federally recognized Indian reservation.

28 (b) An offender is considered to have been previously convicted for the purposes of sentencing if

1 less than 10 years have elapsed between the commission of the present offense and a previous conviction
2 unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be
3 used for sentencing purposes.

4 (c) A previous conviction for a violation of driving under the influence, including 61-8-1002(1)(a),
5 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
6 1001, or a similar offense under previous laws of this state or the laws of another state, or a violation of a
7 similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise
8 defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent
9 conviction for a violation of driving under the influence under 61-8-1002.

10 (d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred
11 while the person was operating a vehicle in violation of driving under the influence, including 61-8-1002(1)(a),
12 (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in 61-8-
13 1001, or a similar offense under previous laws of this state or the laws of another state, and a previous
14 conviction for a violation of 45-5-205 or ~~45-5-628(1)(e)~~ 45-5-628(1)(d) may also be counted for the purposes of
15 determining the number of a subsequent conviction for a violation of driving under the influence under 61-8-
16 1002.

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

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

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

28 (5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's

1 licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-1007 for a violation of
2 61-8-1002."

3 - END -