

Montana Code Annotated 2021

TITLE 61. MOTOR VEHICLES

CHAPTER 8. TRAFFIC REGULATION

Part 10. Driving Under Influence of Alcohol or Drugs

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Definitions

61-8-1001. (Effective January 1, 2022) **Definitions.** As used in this part, unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of **61-8-1002**(1)(a), (1)(b), (1)(c), or (1)(d) and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, 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, cancelled, or revoked as a result of a prior violation of driving under the influence, including a violation of **61-8-1002**(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in **61-8-1016** and the person's driver's license or privilege to drive was suspended, cancelled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in **16-6-305**, **23-2-535**, **45-5-207**, **67-1-211**, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in **61-1-101**.

(6) "Commercial motor vehicle" has the meaning provided in **61-1-101**.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in **50-32-101**(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under **61-8-1007** or **61-8-1008** and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to **61-8-1009** and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in **61-1-101**, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in **61-1-101**.

(11) "Motor vehicle" has the meaning provided in **61-1-101**.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

(14) "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.

(15) "Vehicle" has the meaning provided in **61-1-101**, except that the term does not include a bicycle.

History: En. Sec. 1, Ch. 498, L. 2021.

Driving Under Influence

61-8-1002. *(Effective January 1, 2022)* **Driving under influence.** (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) 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 other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) 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, breath, or other bodily substance 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; and

(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.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

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

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

History: En. Sec. 2, Ch. 498, L. 2021.

Penalty For Driving Under Influence -- First Through Third Offenses

61-8-1007. *(Effective January 1, 2022)* **Penalty for driving under influence -- first through third offenses.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of **61-8-1002**(1)(a) shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 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;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

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

(d) 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.

(e) 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 **61-8-1009**. During any suspended portion of sentence imposed by the court:

(i) 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;

(ii) 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

(iii) 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.

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

(i) for a first violation, 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;

(ii) for a second violation, 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; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

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

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

(d) 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.

(e) 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 **61-8-1009**. During any suspended portion of sentence imposed by the court:

(i) 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;

(ii) 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

(iii) 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.

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

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

(ii) 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.

(iii) 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.

(iv) 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 **61-8-1009** 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.

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

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

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of \$2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by 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, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of \$5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of \$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 **61-8-1009**. During any suspended portion of sentence imposed by the court:

(i) 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;

(ii) 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

(iii) 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.

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

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

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

History: En. Sec. 3, Ch. 498, L. 2021.

Penalty For Driving Under Influence -- Fourth And Subsequent Offenses

61-8-1008. (Effective January 1, 2022) **Penalty for driving under influence -- fourth and subsequent offenses.** (1) (a) A person convicted of a violation of driving under the influence, including **61-8-1002(1)(a)**, (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either **45-5-106** or any combination of three or more convictions under **45-5-104**, **45-5-205**, **45-5-628(1)(e)**, driving under the influence, including **61-8-1002(1)(a)**, (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, and the offense under **45-5-104** occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in **61-8-1002(1)(a)**, is guilty of a felony and shall be punished by:

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

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

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

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

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

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

(iv) 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 13-month to 2-year term must be served on probation with the conditions that:

(A) 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 does so;

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

(D) the person may not consume alcoholic beverages;

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

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

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

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

(v) the sentencing judge may impose on 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 (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including **61-8-1002(1)(a)**, (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under **45-5-104**, **45-5-205**, **45-5-628(1)(e)**, driving under the influence, including **61-8-1002(1)(a)**, (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, 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 **61-8-1002(1)(a)**, and the person was previously sentenced under 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 \$10,000, and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.

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

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

(5) 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 a person sentenced under this section.

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

History: En. Sec. 4, Ch. 498, L. 2021; amd. Sec. 2, Ch. 473, L. 2021.

Driving Under Influence -- Assessment, Education, And Treatment Required

61-8-1009. (*Effective January 1, 2022*) **Driving under influence -- assessment, education, and treatment required.** (1) In addition to the punishments provided in **61-8-1007** and **61-8-1008**, regardless of disposition, a defendant convicted of a violation of driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

(a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and

(b) for a second or subsequent conviction for a violation of driving under the influence, including **61-8-1002**(1)(a), (1)(b), (1)(c), or (1)(d), an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under **61-8-1008**(1)(a)(i), 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. Approved programs must be evidence-based programs. 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 and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. The assessment must conform to quality standards required by the department of public health and human services. 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. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. 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 on 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 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) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

(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 **61-8-1007** 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.

History: En. Sec. 5, Ch. 498, L. 2021.

Driving Under Influence -- Ignition Interlock Device -- 24/7 Sobriety And Drug Monitoring Program

61-8-1010. (Effective January 1, 2022) **Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under the laws of another state, in addition to the punishments listed in **61-8-1007**, the court may, regardless of disposition and if a probationary license is

recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under the laws of another state, 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 driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, or the suspension was under **61-8-1016** or a similar law of another 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, in addition to the punishments listed in **61-8-1002** and **61-8-1007**, the court shall require the person:

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

(b) 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; 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 **61-8-1033**. 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. 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.

History: En. Sec. 6, Ch. 498, L. 2021.

Driving Under Influence -- Conviction Defined -- Place Of Imprisonment -- Home Arrest -- Exceptions -- Deferral Of Sentence Not Allowed

61-8-1011. *(Effective January 1, 2022)* **Driving under influence -- 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 **61-8-1001**, **61-8-1002**, **61-8-1007**, and **61-8-1008**, "conviction" means:

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

(ii) a forfeiture, which has not been vacated, 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; or

(iii) a conviction for a violation of driving under the influence, including **61-8-1002(1)(a)**, **(1)(b)**, **(1)(c)**, or **(1)(d)**, an offense that meets the definition of aggravated

driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

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

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

(2) Except as provided in **61-8-1008**, the court may order that a term of imprisonment imposed under **61-8-1007** or **61-8-1008** 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 may require that the defendant follow the rules of the 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 **61-8-1007** concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under **61-8-1007** 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 **61-8-1007** or **61-8-1008**.

(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 **61-8-1007** for a violation of **61-8-1002**.

Implied Consent -- Blood Or Breath Tests For Alcohol, Drugs, Or Both -- Refusal To Submit To Test -- Administrative License Suspension

61-8-1016. *(Effective January 1, 2022)* **Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the 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.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of **61-8-1019(5)**.

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

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

(i) the peace officer has particularized suspicion 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 detained for a violation of driving under the influence as provided in **61-8-1002** or an offense that meets the definition of aggravated driving under the influence in **61-8-1001**;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of **61-8-1002(1)(e)**; or

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

(A) in violation of driving under the influence, as provided in **61-8-1002**, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in **61-8-1002**, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in **45-2-101**, or death; or

(D) in violation of driving under the influence as provided in **61-8-1002** and meets the definition of aggravated driving under the influence in **61-8-1001**.

(b) A peace officer may designate which test or tests are administered.

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

(d) A hearing as provided for in **61-8-1017** 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 in violation of **61-8-1002** or an offense meeting the definition of aggravated driving under the influence in **61-8-1001**, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(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 requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance 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**, or driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) 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.

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace 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 **61-8-1032**.

(ii) 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 as provided in **61-8-1017**.

(iii) 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.

(5) 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.

(6) 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 **61-8-1019**(6).

History: En. Sec. 8, Ch. 498, L. 2021.

History: En. Sec. 7, Ch. 498, L. 2021.

Right Of Appeal To Court

61-8-1017. (Effective January 1, 2022) **Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based on no other issues than:

(a) whether a peace officer had a basis for requesting a test or tests as set forth in **61-8-1016**, and

(b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

History: En. Sec. 9, Ch. 498, L. 2021.

Evidence Admissible -- Conditions Of Admissibility

61-8-1018. *(Effective January 1, 2022)* **Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including **61-8-1002**, an offense that meets the definition of aggravated driving under the influence in **61-8-1001**, a similar offense under previous laws of this state or the laws of another state, or **61-8-805**:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of **61-8-1002(1)(a)** based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under **61-8-1019(1)**; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under **61-8-1016**, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

History: En. Sec. 10, Ch. 498, L. 2021.

Administration Of Tests

61-8-1019. *(Effective January 1, 2022)* **Administration of tests.** (1) Only a licensed 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 peace 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 **61-8-1002**, meets the definition of aggravated driving under the influence as defined in **61-8-1001**, or has violated **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**.

History: En. Sec. 11, Ch. 498, L. 2021.

Ignition Interlock Device -- Assisting In Starting And Operating -- Circumventing -- Penalty

61-8-1024. *(Effective January 1, 2022)* **Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.** (1) It is unlawful for a person who is subject to a restriction under **61-8-1010** to operate a vehicle that is 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.

History: En. Sec. 12, Ch. 498, L. 2021.

Department Rules Regarding Ignition Interlock Devices -- Ignition Interlock Device Provider Requirements

61-8-1025. *(Effective January 1, 2022)* **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 on 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.

History: En. Sec. 13, Ch. 498, L. 2021.

Unlawful Possession Of Open Alcoholic Beverage Container In Motor Vehicle On Highway

61-8-1026. (Effective January 1, 2022) **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 or on 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 rack, 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 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.

History: En. Sec. 14, Ch. 498, L. 2021.

Unlawful Possession Of Marijuana, Marijuana Products, Or Marijuana Paraphernalia In Motor Vehicle On Highway

61-8-1027. (Effective January 1, 2022) **Unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in motor vehicle on highway.** (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle if the person knowingly possesses marijuana, marijuana products, or marijuana

paraphernalia, as those terms are defined in **16-12-102**, within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to marijuana, marijuana products, or marijuana paraphernalia:

(a) purchased from a dispensary and that remains in its unopened, original packaging;

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

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

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

(e) 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.

(3) (a) A person convicted of the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia 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**, or **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.

History: En. Sec. 8, Ch. 576, L. 2021.

Suspension Of Imprisonment Sentence For Dui Court Participation

61-8-1031. *(Effective January 1, 2022)* **Suspension of imprisonment sentence for DUI court participation.** (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 **61-8-1007**, 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.

History: En. Sec. 15, Ch. 498, L. 2021.

Mandatory Suspension Of License Following Certain Implied Consent Action

61-8-1032. *(Effective January 1, 2022)* **Mandatory suspension of license following certain implied consent action.** (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to **61-8-1016**, an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(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 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 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 1 year; 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.

(5) 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.

(6) 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 **61-8-1017**.

History: En. Sec. 16, Ch. 498, L. 2021; amd. Sec. 2, Ch. 373, L. 2021.

Forfeiture Procedure

61-8-1033. *(Effective January 1, 2022)* **Forfeiture procedure.** (1) A motor vehicle forfeited under **61-8-1010** must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under **44-12-207** through **44-12-211** must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of **44-12-213**, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

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

(4) Actions the court may take under **44-12-212**(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

History: En. Sec. 17, Ch. 498, L. 2021.