

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0418

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RYAN CLINTON BLOOMER,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable John W. Larson, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
STANDARD OF REVIEW	4
SUMMARY OF THE ARGUMENT	4
ARGUMENT.....	5
The district court legally sentenced Bloomer under Mont. Code Ann. § 61-8-1008(2)	5
A. The plain language of Mont. Code Ann. § 61-8-1008 provides the statutory authority for the district court’s sentence	5
B. The legislative intent behind Senate Bill 365 and House Bill 115 supports Bloomer’s nine-year sentence	13
1. Senate Bill 365 provided no substantive changes to DUI laws	16
2. House Bill 115 provided increasing prison penalties for the worst repeat offenders	18
CONCLUSION	24
CERTIFICATE OF COMPLIANCE.....	25

TABLE OF AUTHORITIES

Cases

<i>City of Missoula v. Fox</i> , 2019 MT 250, 397 Mont. 388, 450 P.3d 898	5
<i>Griffin’s Case</i> , 11 F. Cas. 7, 26, F. Cas. No. 5815 (CC Va. 1869)	6
<i>Hulse v. DOJ, Motor Vehicle Div.</i> , 1998 MT 108, 289 Mont. 1, 961 P.2d 75	12, 23
<i>In re Klune</i> , 74 Mont. 332, 240 P. 286 (1925)	6, 12
<i>Montana Sports Shooting Ass’n v. State</i> , 2008 MT 190, 344 Mont. 1, 185 P.3d 1003	6
<i>Skinner Enters. v. Lewis & Clark Cty. Bd. of Health</i> , 286 Mont. 256, 950 P.2d 733 (1997)	6, 14, 15, 23
<i>State ex rel. Irvin v. Anderson</i> , 164 Mont. 513, 525 P.2d 564 (1974)	14
<i>State ex rel. Jones v. Giles</i> , 168 Mont. 130, 541 P.2d 355 (1975)	14
<i>State v. Christensen</i> , 2020 MT 237, 401 Mont. 247, 472 P.3d 622	5
<i>State v. Coleman</i> , 2018 MT 290, 393 Mont. 375, 431 P.3d 26	4
<i>State v. Gibbons</i> , 2024 MT 63, 416 Mont. 1, 545 P.3d 686	4
<i>State v. Hayes</i> , 13 Mont. 116, 32 P. 415 (1893)	7
<i>State v. Hays</i> , 86 Mont. 58, 282 P. 32 (1929)	14
<i>State v. Heath</i> , 2004 MT 126, 321 Mont. 280, 90 P.3d 426	5

<i>State v. Kebble</i> , 2015 MT 195, 380 Mont. 69, 353 P.3d 1175	10
<i>State v. Marker</i> , 2000 MT 303, 302 Mont. 380, 15 P.3d 373	6
<i>State v. Quesnel</i> , 2009 MT 388, 353 Mont. 317, 220 P.3d 634	13
<i>State v. Spady</i> , 2015 MT 218, 380 Mont. 179, 354 P.3d 590	23
<i>State v. Triplett</i> , 2008 MT 360, 346 Mont. 383, 195 P.3d 819	6
<i>State v. Webb</i> , 2005 MT 5, 325 Mont. 317, 106 P.3d 521	4, 12

Other Authorities

Montana Code Annotated

§ 37-47-344	10
§ 45-4-103	1
§ 45-7-302(1)	1
§ 45-7-309	1
§ 46-18-101	11, 13
§ 46-18-101(1)	13
§ 46-18-113	11, 12, 13
§ 46-18-232	12
§ 50-2-116(1)(i)	14
Tit. 61, pts. 4 and 7 (2019)	16
Tit. 61, pt. 8, ch. 10	16
§ 61-8-731 (2019)	9, 10, 19
§ 61-8-731(1)(a) (2019)	2
§ 61-8-731(1)(a) and (b) (2019)	10
§ 61-8-1001 to -1033	7
§ 61-8-1002	1

§ 61-8-1007	7
§ 61-8-1007(5)	7
§ 61-8-1008	<i>passim</i>
§ 61-8-1008(1)	22
§ 61-8-1008(1)(a)	24
§ 61-8-1008(1)(a)(i)	8, 10, 13
§ 61-8-1008(1)(a)(ii)	8, 10
§ 61-8-1008(1)	22
§ 61-8-1008(2)	<i>passim</i>
§ 61-8-1008(2)-(4)	10, 22
§ 61-8-1008(3)-(4)	9
§ 61-8-1009	7
§ 61-8-1009(1), (8)	8
§ 61-8-1011	12

2021 Montana Laws/Session Laws

HB 115	<i>passim</i>
SB 365	<i>passim</i>

2021 Montana House Judiciary Committee Hearings

Hr’g on H.B. 115, 67th Sess. (Jan. 22, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210122/8/39674)	19
--	----

Hr’g on S.B. 365, 67th Leg. Sess. (Mar. 19, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210319/1/40536)	18
---	----

Senate Floor Hearings

Hr’g on S.B. 365, 67th Leg. Sess. (Mar. 1, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210301/1/42169)	17
--	----

Hr’g on H.B. 115, 67th Leg. Sess. (Mar. 25, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210325/1/41140)	22
---	----

2021 Montana Senate Judiciary Committee Hearings

Hr’g on S.B. 365, 67th Sess. (Feb. 27, 2021); Exec. Sess. Hr’g on S.B. 365, 67th Leg. Sess. (Feb. 27, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210227/9/42586)	15, 16, 17
---	------------

Hr’g on H.B. 115, 67th Sess. (Mar. 11, 2021) (available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210311/1/40704)	21
--	----

Books and Publications

<i>Black’s Law Dictionary</i> (7th ed., 1999)	14
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Black, Henry Campbell, <i>Handbook on the Construction and Interpretation of the Laws</i> , 356 (2d ed. 1911)	6
---	---

Justice Jim Rice, <i>The Role of the Courts: Interpretation and Constitutionality</i> , https://archive.legmt.gov/content/For-Legislators/orientation/law-school/2019LawSchoolForLegislatorsHandout-JRice.pdf (January 8, 2019) ..	23
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Sutherland, J.G., <i>Statutes and Statutory Construction</i> , 489 (2d ed. 1904)	6
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STATEMENT OF THE ISSUES

Whether the district court lawfully sentenced Appellant to a nine-year Department of Corrections (DOC) sentence for Appellant's fifth Driving Under the Influence conviction.

STATEMENT OF THE CASE

In March 2022, Ryan Clinton Bloomer (Bloomer) pleaded no contest to driving under the influence (DUI), fourth offense.¹ (Doc. 1.) Bloomer continued his sentencing several times and was prohibited from consuming alcohol or entering bars at the time of the instant offense. (*Id.*)

On April 3, 2023, the State charged Bloomer with DUI, fifth offense, in violation of Mont. Code Ann. § 61-8-1002 and punishable by Mont. Code Ann. § 61-8-1008(2); attempted obstruction of a peace officer, in violation of Mont. Code Ann. §§ 45-4-103 and 45-7-302(1); and criminal contempt, in violation of Mont. Code Ann. § 45-7-309. (Doc. 5.) On April 20, 2023, the State amended the DUI charge to Aggravated DUI based on Bloomer's .241 blood alcohol content (BAC). (Docs. 8, 10.)

¹ *State v. Bloomer*, Missoula County Cause No. DC-21-356. *See* Appellant's App. B.

On May 24, 2023, the State and Bloomer filed a joint plea agreement requiring Bloomer to plead to Aggravated DUI fifth offense and criminal contempt.² (Doc. 15.) The plea agreement represented the parties' differing positions as to which subsection of Mont. Code Ann. § 61-8-1008 applied. (*Id.*) On May 25, 2023, the Honorable Judge John Larson sentenced Bloomer on his outstanding DUI fourth offense to 13 months at the DOC with a recommendation for the Warm Springs Addiction, Treatment, & Change (WATCh) program, followed by an additional 5 years to the DOC suspended. (5/25/23 Tr. at 25; Appellant's App. B.) Having just sentenced Bloomer to a treatment program pursuant to Mont. Code Ann. § 61-8-731(1)(a) (2019), Judge Larson sentenced Bloomer to the DOC for 9 years, with 5 years suspended, under Mont. Code Ann. § 61-8-1008(2), to run concurrently to the previously imposed sentence in DC-21-356. (5/25/23 Tr. at 25-26; Doc. 18.)

STATEMENT OF THE FACTS

At approximately 2 p.m., on March 31, 2023, a concerned party reported that an intoxicated male had left the Reno Casino and Lounge near Missoula, Montana. (Doc. 1.) The male refused a cab ride and drove off in a white Chevrolet Traverse,

² Bloomer is only challenging the sentence for Aggravated DUI fifth offense. (Appellant's Br. at 3.)

headed westbound. (*Id.*) He was identified by his debit card as Ryan Clinton Bloomer. (*Id.*)

Montana Highway Patrol Troopers Matthew Cope and Judah Hartenstein responded to Bloomer's address near the Reno Casino. (*Id.*) The troopers observed a man matching Bloomer's description exiting a white Traverse. (*Id.*) Approximately 24 minutes after the original call, the troopers contacted Bloomer and immediately smelled the strong odor of an alcoholic beverage coming from him. (*Id.*) Bloomer identified himself as "Ryan" and repeatedly denied having been at the casino. (*Id.*)

Trooper Cope read Bloomer his *Miranda* rights and Bloomer admitted to having "2 or 3" drinks. (*Id.*) Bloomer stated he had been parked in his front yard for over an hour. (*Id.*) Bloomer did not cooperate with Trooper Cope's requests to complete the standardized field sobriety tests. (*Id.*) Trooper Cope arrested Bloomer and obtained a warrant for a blood draw. (*Id.*) A blood test showed Bloomer's BAC to be .241. (Doc. 8.) Prosecutors determined this was Bloomer's fifth offense DUI. (Doc. 1.) At the time of the offense, Bloomer had been released on conditions and pending sentencing on his fourth DUI in DC-21-356. (*Id.*)

STANDARD OF REVIEW

This Court reviews a criminal sentence for legality. *State v. Gibbons*, 2024 MT 63, ¶ 20, 416 Mont. 1, 545 P.3d 686. Specifically, the Court looks to whether the sentence is within the statutory parameters. *State v. Coleman*, 2018 MT 290, ¶ 3, 393 Mont. 375, 431 P.3d 26. A district court's statutory interpretation is a question of law, which is reviewed for correctness. *State v. Webb*, 2005 MT 5, ¶ 24, 325 Mont. 317, 106 P.3d 521.

SUMMARY OF THE ARGUMENT

The district court legally sentenced Bloomer to nine years, with five years suspended, to the DOC for his fifth DUI conviction. The plain meaning of Mont. Code Ann. § 61-8-1008(2) requires that a repeat DUI offender be sentenced to either WATCh or a treatment court placement prior to being sentenced to a heightened prison sentence. This interpretation fits within the overarching DUI sentencing scheme and Montana's correctional and sentencing policy. Bloomer's argument would lead to an absurd result, which should be avoided.

The Legislature's intent in enacting House Bill 115 supports the State's argument. Testimony from the bill sponsor and numerous proponents discussed the risk repeat DUI offenders pose to Montana's roadways, as well as the need for heightened punishments for the worst repeat offenders after those offenders have

been previously sentenced to a Montana-sanctioned treatment option. To find otherwise would require this Court to reach a nonsensical result clearly not intended by the Legislature.

ARGUMENT

The district court legally sentenced Bloomer under Mont. Code Ann. § 61-8-1008(2).

A. The plain language of Mont. Code Ann. § 61-8-1008 provides the statutory authority for the district court’s sentence.

Statutory construction requires a district court to simply “ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898. “The starting point for interpreting a statute is the language of the statute itself.” *State v. Christensen*, 2020 MT 237, ¶ 95, 401 Mont. 247, 472 P.3d 622. The plain meaning of the statute controls when the “intent of the Legislature can be determined from the plain meaning of the words used in the statute.” *Id.*

“Statutory construction is a ‘holistic endeavor’ and must account for the statute’s text, language, structure, and object.” *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426 (internal citation omitted). “We construe a statute by reading and interpreting the statute as a whole, ‘without isolating specific terms

from the context in which they are used by the Legislature’. . . . Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Montana Sports Shooting Ass’n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003 (internal citations omitted).

The duty of this Court is to “give effect to the purpose of the statute.” *State v. Triplett*, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819 (internal citations omitted). As this Court has explained:

Indeed[, s]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole. This Court will, if possible, construe statutes so as to give effect to all of them. When more than one statute applies to a given situation, such construction, if possible, is to be adopted as will give effect to all.

State v. Marker, 2000 MT 303, ¶ 25, 302 Mont. 380, 15 P.3d 373 (quoting *Skinner Enters. v. Lewis & Clark Cty. Bd. of Health*, 286 Mont. 256, 271-72, 950 P.2d 733, 742 (1997)). “The rule is that of two constructions, either of which is warranted by the words of the amendment of a public Act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the Act amended.” *In re Klune*, 74 Mont. 332, 336, 240 P. 286, 287 (1925) (citing *Griffin’s Case*, 11 F. Cas. 7, 26, F. Cas. No. 5815 (CC Va. 1869) (Chase, Circuit Justice); Black on *Interpretation of Laws*, 356; Sutherland on *Statutory Construction*, § 489).

As early as 1893, this Court recognized the role of the Legislature in defining a crime and establishing its penalty.

It is the legislature, not the court, which is to define a crime, and ordain its punishment. It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule, which subverts the old. *It is a modification of the ancient maxim, and amounts to this: that, though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend.* The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction.

State v. Hayes, 13 Mont. 116, 120, 32 P. 415, 416 (1893) (emphasis added).

Montana's current DUI statutes, codified at Mont. Code Ann. §§ 61-8-1001 to -1033, provide for increased punishment after each conviction. Beginning with misdemeanor offenses in Mont. Code Ann. § 61-8-1007, a person who drives or is in actual physical control of a vehicle upon the ways of the state open to the public while under the influence of alcohol, any drug, or combination of the two, shall be subject to the following sentences: for a first offense, not less than 24 consecutive hours or more than 6 months in jail; for a second offense, not less than 7 days or more than 1 year in jail; and for a third offense, no less than 30 days or more than 1 year in jail.

With each misdemeanor conviction, a defendant is required to engage in a chemical dependency assessment and either a chemical dependency education course or treatment program. Mont. Code Ann. §§ 61-8-1007(5), -1009. A first

time offender is required to complete an assessment and education course unless the offender is shown to have a blood or breath alcohol concentration greater than .16 or a licensed addiction counselor finds that the offender has a moderate or severe alcohol use disorder. Mont. Code Ann. § 61-8-1009(1), (8). If the alcohol level is greater than .16 or the offender has a moderate or severe alcohol use disorder, a first-time offender must engage in a chemical dependency treatment program. *Id.*

Each subsequent conviction requires a new chemical dependency evaluation and treatment program. *Id.* By the time an offender reaches a felony level conviction, the offender has had a chemical dependency treatment course and two or three alcohol treatment opportunities.

Montana Code Annotated § 61-8-1008 provides escalating penalties for each subsequent felony DUI conviction. A defendant convicted of a fourth offense DUI (i.e. a defendant's first felony conviction) will be sentenced to either a custodial DOC-based treatment program under Mont. Code Ann. § 61-8-1008(1)(a)(i) or a treatment court placement under Mont. Code Ann. § 61-8-1008(1)(a)(ii). An offender convicted of a fifth offense DUI will be subject to a sentence of up to 10 years in the Montana State Prison (MSP). Mont. Code Ann. § 61-8-1008(2). A conviction for a sixth offense carries a penalty of up to 25 years in MSP, and a conviction for a seventh or subsequent offense carries a sentence of not less than 5

years or more than 25 years in MSP. Mont. Code Ann. § 61-8-1008(3)-(4). The overarching statutory scheme is to provide enhanced penalties for repeat DUI offenders.

In this case, Montana’s felony DUI statute numbers changed during Senate Bill 365’s reorganization. To ascertain how the Legislature has “obviously used” the language at issue, the Court must turn to the original language found in Mont. Code Ann. § 61-8-731 (2019) and compare it to the existing language in Mont. Code Ann. § 61-8-1008.

The language providing the penalties for a fourth DUI in Mont. Code Ann. § 61-8-731 (2019) and in Mont. Code Ann. § 61-8-1008 (current) is effectively identical. Both require a commitment to the DOC for a period of 13 months to 2 years for placement in a residential treatment program, followed by a 5-year suspended term at the Montana State Prison, and a fine of between \$5,000 and \$10,000. As an alternative sentence, both statutes permit a 5-year sentence in a treatment court program. The only differences between the language in the fourth DUI penalty sections are references to the specific subsections. *See* Mont. Code Ann. § 61-8-731 (2019); *compare* Mont. Code Ann. § 61-8-1008 (2021). The language at issue in Mont. Code Ann. § 61-8-1008(2) (“previously sentenced under (1)(a)(i) or (1)(a)(ii)”) provides reference to the DOC commitment for WATCH and treatment court options listed in both the current statute in Mont. Code Ann.

§ 61-8-1008(1)(a)(i) and (ii) and the previous statute, Mont. Code Ann. § 61-8-731(1)(a) and (b) (2019). The only substantive differences between the old and new felony DUI statutes are House Bill 115’s penalty increases for fifth, sixth, and seventh or subsequent DUI penalties. *See* Mont. Code Ann. § 61-8-1008(2)-(4). The penalties for fifth and subsequent DUI convictions were codified in Mont. Code Ann. § 61-8-731 until the reorganization of the DUI code in 2021.

In *State v. Kebble*, the defendant argued that because the Legislature decreased the penalty for outfitting without a license in Mont. Code Ann. § 37-47-344 after he was charged, the lesser penalty should apply. *Kebble*, 2015 MT 195, ¶ 48, 380 Mont. 69, 353 P.3d 1175. This Court instead found that the applicable penalty section had been moved during a reorganization and recodification of the outfitting statutes and declined to provide the lesser penalty to *Kebble*. *Id.* ¶ 53. Moving the penalty section did not “ameliorate or repeal the . . . punishment.” *Id.*

Here, as in *Kebble*, the Legislature merely moved the penalties for a fifth offense DUI to another section due to the recodification and reorganization of the DUI bill. The move did not change the penalty the Legislature sought to provide. The only change was the reference to the specific subsections (1)(a)(i) and (ii) as compared to (1)(a) and (b).

The clear language of the statute provides that an offender must be sentenced to a treatment or rehabilitation-based program, either through DOC at

WATCh (subsection (1)(a)(i)) or a treatment court (subsection (1)(a)(ii)), before an offender can be sentenced to a prison sentence under subsection (2). This reading is consistent with Montana's correctional and sentencing policy in Mont. Code Ann. § 46-18-101, which states:

- (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.
- (2) The correctional and sentencing policy of the state of Montana is to:
 - (a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;
 - (b) *protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;*
 - (c) provide restitution, reparation, and restoration to the victim of the offense; and
 - (d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.
- (3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:
 - (a) Sentencing and punishment must be certain, timely, consistent, and understandable.
 - (b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.
 - (c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.
 - (d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.
 - (e) *Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.*
 - (f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.
 - (g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles.

(Emphasis added.)

This Court has long recognized that Montana has a compelling state interest in “remov[ing] drunk drivers from our roadways.” *Hulse v. DOJ, Motor Vehicle Div.*, 1998 MT 108, ¶ 34, 289 Mont. 1, 961 P.2d 75. This Court has found that the Legislature codified its intent to protect the public by discouraging repeat offenders through escalating criminal penalties. *Id.*; *Webb*, ¶ 24.

The State’s proffered statutory construction is reasonable and avoids the absurd result of wiping out prior valid DUI convictions for sentencing enhancement purposes, thereby leaving the most dangerous offenders in the community and on the roadways, jeopardizing community safety. Bloomer’s logic requires the stacking of felony DUI convictions for repeat offenders to restart under the new numbering system. Nothing in the DUI code contemplates restarting the outlined stacking procedures in Mont. Code Ann. § 61-8-1011.

Even if this Court were to believe Bloomer’s position is “warranted by the words of the amendment,” the State’s construction is better suited to the overall tenor and spirit of DUI penalties. *Klune*, 74 Mont. at 336, 240 P. at 287. As

demonstrated above, Montana’s sentencing policy related to DUIs shows an increase in severity with each subsequent conviction. Further, the proposition suggested by Bloomer would be contrary to the sentencing policy of the State of Montana. Montana Code Annotated § 46-18-101(1) specifically provides that “[l]aws for the punishment of crime are drawn to implement the policy established by this section.” The Legislature’s intent as demonstrated by its plain language is to follow that policy.

In both Mont. Code Ann. §§ 61-8-1008 and 46-18-101, the intent is to provide a rehabilitative option first, per the language in Mont. Code Ann. § 61-8-1008(2). Only then may a district court sentence a repeat DUI offender like Bloomer to an incarceration sentence. The district court sentenced Bloomer to the standard 13 months in DOC with a recommendation for the WATCH program, followed by 5 years suspended on his fourth offense DUI, as required by Mont. Code Ann. § 61-8-1008(1)(a)(i). His subsequent 9-year sentence for his fifth DUI conviction is legal and should remain.

B. The legislative intent behind Senate Bill 365 and House Bill 115 supports Bloomer’s nine-year sentence.

Although statutory interpretation begins with the text of a statute, “it does not necessarily end there.” *State v. Quesnel*, 2009 MT 388, ¶ 16, 353 Mont. 317, 220 P.3d 634. When this Court is unable to determine the Legislature’s intent from the text, it turns to the statute’s legislative history. *Id.* Legislative history is defined

as “[t]he background and events leading to the enactment of a statute, including hearings, committee reports, and floor debates.” Black’s Law Dictionary (7th ed., 1999). It is a longstanding rule of construction that the Legislature, in adopting an amendment, is presumed to intend some change in the existing law, and the Court will endeavor to give effect to that amendment. *State ex rel. Jones v. Giles*, 168 Mont. 130, 133, 541 P.2d 355, 357 (1975); *State ex rel. Irvin v. Anderson*, 164 Mont. 513, 523-24, 525 P.2d 564, 570 (1974); *State v. Hays*, 86 Mont. 58, 65, 282 P. 32, 35 (1929). Here, the intent of the change was to provide greater penalties for offenders with five or more DUI convictions.

In *Skinner*, the Court concluded the absence of specific language either granting or prohibiting local boards from regulating subdivisions with parcels containing fewer than 20 acres rendered Mont. Code Ann. § 50-2-116(1)(i) ambiguous and required the Court to investigate the legislative history to understand the precise intent of the Legislature. *Skinner*, 286 Mont. at 274, 950 P.2d at 743-44. There, a review of the legislative history indicated that to construe Mont. Code Ann. § 50-2-116(1)(i) to prohibit local boards of health from regulating those subdivisions with parcels containing fewer than 20 acres, would require the Court to reach a result clearly not intended by the Legislature. *Id.* at 275, 950 P.2d at 744. Instead, legislative history showed that it was the intent of the Legislature to expand, rather than diminish the authority held by local

governing bodies in this area. *Id.* This Court found that “[a]s a rule, the Legislature titles a bill to reflect what the bill does.” *Id.*

Here, as in *Skinner*, the statute is ambiguous as no specific language exists in Mont. Code Ann. § 61-8-1008 to guide the Court. Following *Skinner*, this Court must turn to the legislative history to determine the Legislature’s intent. In the 2021 legislative session, the Legislature passed two separate bills related to DUIs. However, as the State argues below, the intent of Senate Bill 365 when coordinated with House Bill 115 is clear. The articulated intent of Senate Bill 365 during the committee hearings and floor sessions was to merely reorganize and regroup the scattered DUI laws into one section of code. *See generally* Mont. S. Jud. Comm., Hr’g on S.B. 365, 67th Sess. (Feb. 27, 2021); Exec. Sess. of Mont. S. Jud. Comm., Hr’g on S.B. 365, 67th Leg. Sess. (Feb. 27, 2021) at 14:22:19.³ The bill provided no substantive changes to stacking, convictions or penalties.

As set forth below, the Legislature passed House Bill 115 to heighten penalties for repeat DUI offenders and to protect the motoring public. Nothing in House Bill 115 contemplated starting felony DUI convictions back at a fourth offense, as that would have been contrary to the stated goal of providing prison sentences for the most serious of DUI offenders.

³ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42663?agendaId=203029#agenda_

1. Senate Bill 365 provided no substantive changes to DUI laws.

Entitled “An act generally revising laws regarding driving under the influence[,]” and sponsored by Senator Keith Regier, Senate Bill 365 reorganized DUI offenses into a new section of code. Prior to Senate Bill 365, DUI related offenses and punishments were scattered across Tit. 61, pts. 4 and 7. At the Senate Judiciary hearing on Senate Bill 365, Senator Regier stated that the bill was merely “an effort to organize [DUI laws] better” and moved all DUI-related statutes into Tit. 61, pt. 8, ch. 10. Mont. S. Jud. Comm., Hr’g on S.B. 365, 67th Sess. (Feb. 27, 2021) at 13:06:54-13:07:10. Multiple proponents testified to the necessity of the reorganization but stressed to the Judiciary Committees that there would be no substantive changes in the DUI law. *See generally* Mont. S. Jud. Comm., Hr’g on S.B. 365, 67th Sess. (Feb. 27, 2021).

Cory Swanson, Broadwater County Attorney, testified on behalf of the Montana County Attorneys’ Association (MCAA) and stated that Senate Bill 365 contained

[n]o changes whatsoever to the law. No substantive changes, and I want to rephrase, not substantial, no substantive changes to the law No change in penalties to any of the DUI offenses, no change on when you can get a blood draw, no change on how long your license is suspended or what kind of alcohol education you have to do. No change. All we’re doing is reorganizing the statute because it’s a mess.

Id. at 13:10:00-28. County Attorney Swanson continued, stating, “I will assure you though, our intention is no substantive changes in DUI law, we just simply want to organize it so it is more usable.” *Id.* at 13:14:28-37.

Specifically, County Attorney Swanson stated that Senate Bill 365 was intended to have an identical application on the date of the testimony as compared to the effective date of the bill. *Id.* at 13:15:30-50. The proponents intended for the bill to have a delayed effective date of January 1, 2022, to ensure all interested parties could obtain a copy of the codified changes. *Id.* at 13:13:29-13:14:16.

During the executive session in the Senate Judiciary Committee, Senator Regier reiterated that the bill’s purpose was “getting DUI laws to where we can find them easily in the code.” Exec. Sess. of Mont. S. Jud. Comm., S.B. 365, 67th Leg. Sess. (Feb. 27, 2021) at 14:22:19.

During the senate floor session on March 1, 2021, Senator Regier told the senate body that Senate Bill 365 was a reorganization of existing DUI laws. S. Floor Sess., Hr’g on S.B. 365, 67th Leg. Sess. (Mar. 1, 2021) at 22:15:50-22:16:24.⁴ He reiterated that there would be no substantive changes made to the law. *Id.*

⁴ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42169?agendaId=221740#agenda_

During the House Judiciary Committee hearing on March 19, 2021, Senator Regier reiterated, almost verbatim, his statement on the senate floor. Mont. H. Jud. Comm., Hr'g on S.B. 365, 67th Leg. Sess. (Mar. 19, 2021) at 08:06:42-08:07:49.⁵ During the house hearing on Senate Bill 365, Representative Ed Stafman and Nanette Gilbertson, lobbyist for the MCAA and the Montana Sheriffs and Peace Officers Association, discussed whether House Bill 115 would be incorporated into Senate Bill 365. *Id.* at 8:18:23-8:20:10. Gilbertson informed the committee that House Bill 115 was waiting for executive action in the Senate Judiciary Committee. *Id.* She stated that changes referred to in House Bill 115 were not included in this bill, as there was an agreement that there would be no substantive changes to the law in Senate Bill 365. *Id.* House Bill 115 would need coordination amendments to fit within the new structure in Senate Bill 365. *Id.*

2. House Bill 115 provided increasing prison penalties for the worst repeat offenders.

During the 2021 session, the Legislature contemporaneously considered and passed House Bill 115, sponsored by Representative Bill Mercer. Entitled “An act increasing penalties for 5th and subsequent DUI offenses[,]” House Bill 115 did just that—provided increased penalties for repeat felony DUI offenders. House Bill 115 amended the existing DUI sentencing statute at the time in Mont. Code Ann.

⁵ Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/43020?agendaId=208280>.

§ 61-8-731. Representative Mercer opened by telling the committee that experts from around the state would explain the statutory structure and reasons House Bill 115 was being brought. Mont. H. Jud. Comm., Hr’g on H.B. 115, 67th Sess. (Jan. 22, 2021) at 10:07:40-10:10:55.⁶

Prosecutors from around the state supported the bill and testified to its need, detailing the abhorrent behavior and risk that repeat DUI offenders create in their respective communities. *See generally* Mont. H. Jud. Comm., Hr’g on H.B. 115, 67th Sess. (Jan. 22, 2021). Yellowstone County Attorney Scott Twito detailed a case that occurred the night before his testimony to the committee. *Id.* at 10:12:10-10:13:51. The suspect in that case was a repeat felony offender, who had two previous opportunities with the local treatment court. *Id.* County Attorney Twito described the offender as “hammered” as he detailed that the man had collided head-on with another vehicle. *Id.* The man had a .365 BAC. *Id.* County Attorney Twito relayed that because of this repeat DUI offender another person in his community was traumatized. *Id.* County Attorney Twito stressed that repeat offenders who are not amenable to treatment are “a public safety risk.” *Id.* at 10:15:35-46.

⁶ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-/39674?agendaId=225781#agenda_.

Prosecutors from Dawson County, Ravalli County, Lake County, and Missoula County all provided examples through County Attorney Twito of repeat offenders with high BACs, offenders with pending DUI cases committing new DUI offenses, and offenders who put numerous citizens at risk. *Id.* at 10:16:07-10:19:55. County Attorney Twito represented that everyone wanted treatment to be the first option and that the enhanced penalties for fifth and subsequent DUIs are for “the population that, despite all of our best efforts, don’t care.” *Id.* at 10:20:01-22.

Custer County Attorney Wyatt Glade provided information regarding the treatment opportunities repeat DUI offenders have been exposed to by the time they have committed a fifth offense. *Id.* at 10:27:08-10:28:14. County Attorney Glade stated that it is the offenders who commit second, third, fourth, and subsequent DUIs who are an extremely dangerous population, dangerous to everyone on the road. *Id.* He stressed that the enhanced punishments apply only to those who have been sentenced to the WATCH program or treatment court. *Id.* at 10:28:10-24.

During the hearing, the following exchange took place between Representative Kathy Kelker and County Attorney Twito:

Rep. Kelker: There is an assumption in the bill itself that the people we are talking about have received treatment. Have I missed something? It doesn’t actually spell it out that they’ve had treatment. I would like to see that in the bill if I missed it.

. . . .

Twito: It's a little bit convoluted, which is true of most of our DUI laws in Montana. If you look at the, uh, page 2 and you look at line 14, right after the crossed-out section, the underlined section—it says previously sentenced under subsection (1)(a) or (1)(b). (1)(a) is a reference to the WATCH program, (1)(b) is a reference to the treatment court. So it's either/or. So basically, it cannot trigger that sentencing provision until they've had a chance at our inpatient treatment or one of those innovative treatment courts. So it's saying that has to be triggered.

Id. at 11:05:10-11:06:32.

In response to a question from Representative Derek Skees regarding the stacking of out-of-state convictions and the enhanced penalties, County Attorney Twito stated that the triggering mechanism for the enhanced penalties would be going to WATCH or a treatment court. *Id.* at 11:11:40-11:13:57. Regarding convictions, County Attorney Twito stated that the first through fourth convictions would count under the bill, but an offender “[has] to have opportunity to go through WATCH or a treatment court before a fifth or subsequent penalty [can] be imposed by a court.” *Id.*

County Attorney Twito testified again in the Senate Judiciary Hearing. Mont. S. Jud. Comm., Hr'g on H.B. 115, 67th Sess. (Mar. 11, 2021) at 9:04:35-9:11:17.⁷ He reiterated that the sentences in House Bill 115 would only be

⁷ Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210311/-1/40704>.

triggered if an offender had had an opportunity at the WATCh program or a treatment court. *Id.*

Bloomer misconstrues the statements made by Senator John Esp during the senate floor session on March 25, 2021. (Appellant’s Br. at 15.) Senator Esp’s statements articulated the same position argued by the State—after a treatment-based sentence, a defendant would be subject to the heightened penalties for subsequent DUIs. S. Floor Sess., Hr’g on H.B. 115, 67th Leg. Sess. (Mar. 25, 2021) at 13:47:42-13:50:28.⁸

There was no discussion of DUI sentencing starting over at DUI fourth offense under Mont. Code Ann. § 61-8-1008(1) *unless* an offender has not been previously sentenced to WATCh or a treatment court. A repeat offender who has been previously sentenced to a Montana-sanctioned treatment program is subject to the prison sentences in Mont. Code Ann. § 61-8-1008(2)-(4). The Legislature’s intent to increase punishment for repeat DUI offenders while simultaneously reorganizing the DUI statutes makes clear that an offender only needs to be sentenced to treatment before a DUI fifth offense sentence is imposed.

This Court has recognized that “[d]runk driving presents a substantial and real risk to the public safety of Montanans,” and that public safety is equally

⁸ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-/41140?agendaId=209870#agenda_

threatened by someone driving under the influence of alcohol as someone concealing a gun. *State v. Spady*, 2015 MT 218, ¶ 29, 380 Mont. 179, 354 P.3d 590; *Hulse*, ¶ 38. The Legislature recognized the same in passing House Bill 115. To conclude otherwise would lead to an absurd result. In combining the reorganization in Senate Bill 365 and the increased penalties in House Bill 115, the Legislature did not intend for repeat DUI offenders to restart at a fourth offense DUI. Such an interpretation would completely disregard the legislative intent in enacting House Bill 115.

Just as instructed by Justice Rice during the Law School for Legislators event,⁹ the Legislature made the record clear on Senate Bill 365 and House Bill 115. Both sponsors provided titles clearly stating the purpose of the bills. *See Skinner*, 286 Mont. at 275, 950 P.2d at 744. Both sponsors provided statements regarding the intent of their respective pieces of legislation, and in each of the hearings there was extensive explanatory testimony regarding the purpose and intent of the bills. This Court should follow the clear record and find that the legislative history supports the district court's sentence of nine years to DOC, with five years suspended, on Bloomer's fifth DUI conviction, because Bloomer has

⁹ Justice Jim Rice, *The Role of the Courts: Interpretation and Constitutionality*, <https://archive.legmt.gov/content/For-Legislators/orientation/law-school/2019LawSchoolForLegislatorsHandout-JRice.pdf> (January 8, 2019).

already been afforded treatment opportunities. Notably, while Bloomer was awaiting sentencing for a felony DUI, he committed another DUI. Bloomer is the type of offender the Legislature was contemplating with House Bill 115.

In DC-21-356, Bloomer was sentenced to treatment for his fourth offense DUI under Mont. Code Ann. § 61-8-1008(1)(a). (5/25/23 Tr. at 25; *see* Appellant's App. B.) Subsequently, in the case he now appeals, after having received a sentence providing for treatment, he was sentenced to nine years with DOC, with five years suspended, under Mont. Code Ann. § 61-8-1008(2), to run concurrently to the previously imposed sentence in DC-21-356, in accordance with the Legislature's intent. (5/25/23 Tr. at 25-26; Doc. 18.)

CONCLUSION

The district court legally sentenced Bloomer under the heightened penalties found in Mont. Code Ann. § 61-8-1008(2). This Court should affirm Bloomer's sentence.

Respectfully submitted this 23rd day of January, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,561 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

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