

HOUSE BILL NO. 101

INTRODUCED BY RUSSELL
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON ADULT AND JUVENILE DETENTION

IN THE HOUSE

JANUARY 5, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 7, 1991 FIRST READING.

JANUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 23, 1991 PRINTING REPORT.

JANUARY 25, 1991 SECOND READING, DO PASS AS AMENDED.

JANUARY 26, 1991 ENGROSSING REPORT.

JANUARY 28, 1991 THIRD READING, PASSED.
AYES, 89; NOES, 7.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 29, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 6, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 7, 1991 SECOND READING, CONCURRED IN.

MARCH 8, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 11, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 12, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 101
 2 INTRODUCED BY RUSSELL
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
 4 ON ADULT AND JUVENILE DETENTION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW SENTENCES OF
 7 IMPRISONMENT FOR DUI OFFENSES TO BE SERVED IN SECURE
 8 FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS
 9 61-8-714 AND 61-8-722, MCA."

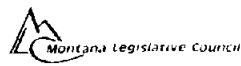
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 61-8-714, MCA, is amended to read:
 13 "61-8-714. Penalty for driving under the influence of
 14 alcohol or drugs. (1) A Except as provided in subsection
 15 (7), a person convicted of a violation of 61-8-401 shall be
 16 punished by imprisonment in the county jail for not less
 17 than 24 consecutive hours or more than 60 days and shall be
 18 punished by a fine of not less than \$100 or more than \$500.
 19 The jail sentence may not be suspended unless the judge
 20 finds that the imposition of the jail sentence will pose a
 21 risk to the defendant's physical or mental well-being.
 22 (2) On Except as provided in subsection (7), on a
 23 second conviction, he shall be punished by a fine of not
 24 less than \$300 or more than \$500 and by imprisonment for not
 25 less than 7 days, at least 48 hours of which must be served

1 consecutively, or more than 6 months. ~~Three~~ Except as
 2 provided in subsection (7), 3 days of the jail sentence may
 3 not be suspended unless the judge finds that the imposition
 4 of the jail sentence will pose a risk to the defendant's
 5 physical or mental well-being.

6 (3) On Except as provided in subsection (7), on the
 7 third or subsequent conviction, he shall be punished by
 8 imprisonment for a term of not less than 30 days, at least
 9 48 hours of which must be served consecutively, or more than
 10 1 year, and by a fine of not less than \$500 or more than
 11 \$1,000. Notwithstanding Except as provided in subsection
 12 (7), notwithstanding any provision to the contrary providing
 13 for suspension of execution of a sentence imposed under this
 14 subsection, the imposition or execution of the first 10 days
 15 of the jail sentence imposed for a third or subsequent
 16 offense that occurred within 5 years of the first offense
 17 may not be deferred or suspended.

18 (4) In addition to the punishment provided in this
 19 section, regardless of disposition, the defendant shall
 20 complete an alcohol information course at an alcohol
 21 treatment program approved by the department of
 22 institutions, which may, in the sentencing court's
 23 discretion and upon recommendation of a certified chemical
 24 dependency counselor, include alcohol or drug treatment, or
 25 both. On conviction of a second or subsequent offense under



-2- INTRODUCED BILL
 HB 101

1 this section, in addition to the punishment provided in this
 2 section, regardless of disposition, the defendant shall
 3 complete an alcohol information course at an alcohol
 4 treatment program approved by the department of
 5 institutions, which must include alcohol or drug treatment,
 6 or both. Each counselor providing education or treatment
 7 shall, at the commencement of the education or treatment,
 8 notify the court that the defendant has been enrolled in a
 9 course or treatment program. If the defendant fails to
 10 attend the course or the treatment program, the counselor
 11 shall notify the court of the failure. As long as the
 12 alcohol information course and treatment program are
 13 approved as provided in this subsection, the defendant may
 14 attend the information course and treatment program of his
 15 choice. The treatment provided to the defendant at a
 16 treatment program must be at a level appropriate to his
 17 alcohol problem, as determined by the judge based upon the
 18 recommendation from the certified chemical dependency
 19 counselor.

20 (5) For the purpose of determining the number of
 21 convictions under this section, "conviction" means a final
 22 conviction, as defined in 45-2-101, in this state,
 23 conviction for a violation of a similar statute in another
 24 state, or a forfeiture of bail or collateral deposited to
 25 secure the defendant's appearance in court in this state or

1 another state, which forfeiture has not been vacated. An
 2 offender is considered to have been previously convicted for
 3 the purposes of this section if less than 5 years have
 4 elapsed between the commission of the present offense and a
 5 previous conviction. If there has been no additional
 6 conviction for an offense under this section for a period of
 7 5 years after a prior conviction ~~hereunder~~ under this
 8 section, then all records and data relating to the prior
 9 conviction are confidential criminal justice information, as
 10 defined in 44-5-103, and public access to the information
 11 may only be obtained by district court order upon good cause
 12 shown.

13 (6) For the purpose of calculating subsequent
 14 convictions under this section, a conviction for a violation
 15 of 61-8-406 also constitutes a conviction for a violation of
 16 61-8-401.

17 (7) The court may order that a term of imprisonment
 18 imposed under this section be served in another secure
 19 facility made available by the county and approved by the
 20 sentencing court. The defendant, if financially able, shall
 21 bear the expense of the imprisonment in the facility. The
 22 court may impose restrictions on the defendant's ability to
 23 leave the premises of the facility and require that the
 24 defendant follow the rules of that facility. The facility
 25 may be, but is not required to be, a community-based

1 prerelease center as provided for in 53-1-203."

2 **Section 2.** Section 61-8-722, MCA, is amended to read:

3 "61-8-722. Penalty for driving with excessive blood
4 alcohol concentration. (1) A Except as provided in
5 subsection (7), a person convicted of a violation of
6 61-8-406 shall be punished by imprisonment for not more than
7 10 days and shall be punished by a fine of not less than
8 \$100 or more than \$500.

9 (2) ~~On~~ Except as provided in subsection (7), on a
10 second conviction of a violation of 61-8-406, he shall be
11 punished by imprisonment for not less than 48 consecutive
12 hours or more than 30 days and by a fine of not less than
13 \$300 or more than \$500.

14 (3) ~~On~~ Except as provided in subsection (7), on a third
15 or subsequent conviction of a violation of 61-8-406, he
16 shall be punished by imprisonment for not less than 48
17 consecutive hours or more than 6 months and by a fine of not
18 less than \$500 or more than \$1,000.

19 (4) The provisions of 61-5-205(2), 61-5-208(2), and
20 61-11-203(2)(d), relating to revocation and suspension of
21 driver's licenses, ~~shall~~ apply to any conviction under
22 61-8-406.

23 (5) In addition to the punishment provided in this
24 section, regardless of disposition, the defendant shall
25 complete an alcohol information course at an alcohol

1 treatment program approved by the department of
2 institutions, which may include alcohol or drug treatment,
3 or both, if considered necessary by the counselor conducting
4 the program. Each counselor providing such education or
5 treatment shall, at the commencement of the education or
6 treatment, notify the court that the defendant has been
7 enrolled in a course or treatment program. If the defendant
8 fails to attend the course or the treatment program, the
9 counselor shall notify the court of the failure.

10 (6) For the purpose of determining the number of
11 convictions under this section, "conviction" means a final
12 conviction, as defined in 45-2-101, in this state or a
13 similar statute in another state or a forfeiture of bail or
14 collateral deposited to secure the defendant's appearance in
15 court in this state or another state, which forfeiture has
16 not been vacated. An offender is considered to have been
17 previously convicted for the purposes of this section if
18 less than 5 years have elapsed between the commission of the
19 present offense and a previous conviction. If there has been
20 no additional conviction for an offense under this section
21 for a period of 5 years after a prior conviction hereunder
22 under this section, then such the prior offense shall be
23 expunged from the defendant's record.

24 (7) The court may order that a term of imprisonment
25 imposed under this section be served in another secure

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 101

INTRODUCED BY RUSSELL

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW SENTENCES OF
IMPRISONMENT FOR DUI OFFENSES TO BE SERVED IN SECURE
FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS
61-8-714 AND 61-8-722, MCA."

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

Section 1. Section 61-8-714, MCA, is amended to read:

*61-8-714. Penalty for driving under the influence of
alcohol or drugs. (1) Except as provided in subsection
(7), a person convicted of a violation of 61-8-401 shall be
punished by imprisonment in the county jail for not less
than 24 consecutive hours or more than 60 days and shall be
punished by a fine of not less than \$100 or more than \$500.
The jail sentence may not be suspended unless the judge
finds that the imposition of the jail sentence will pose a
risk to the defendant's physical or mental well-being.

(2) On Except as provided in subsection (7), on a
second conviction, he shall be punished by a fine of not
less than \$300 or more than \$500 and by imprisonment for not
less than 7 days, at least 48 hours of which must be served

consecutively, or more than 6 months. Three Except as
provided in subsection (7), 3 days of the jail sentence may
not be suspended unless the judge finds that the imposition
of the jail sentence will pose a risk to the defendant's
physical or mental well-being.

(3) On Except as provided in subsection (7), on the
third or subsequent conviction, he shall be punished by
imprisonment for a term of not less than 30 days, at least
48 hours of which must be served consecutively, or more than
1 year, and by a fine of not less than \$500 or more than
\$1,000. Notwithstanding Except as provided in subsection
(7), notwithstanding any provision to the contrary providing
for suspension of execution of a sentence imposed under this
subsection, the imposition or execution of the first 10 days
of the jail sentence imposed for a third or subsequent
offense that occurred within 5 years of the first offense
may not be deferred or suspended.

(4) In addition to the punishment provided in this
section, regardless of disposition, the defendant shall
complete an alcohol information course at an alcohol
treatment program approved by the department of
institutions, which may, in the sentencing court's
discretion and upon recommendation of a certified chemical
dependency counselor, include alcohol or drug treatment, or
both. On conviction of a second or subsequent offense under

SECOND READING

HB 101



1 this section, in addition to the punishment provided in this
 2 section, regardless of disposition, the defendant shall
 3 complete an alcohol information course at an alcohol
 4 treatment program approved by the department of
 5 institutions, which must include alcohol or drug treatment,
 6 or both. Each counselor providing education or treatment
 7 shall, at the commencement of the education or treatment,
 8 notify the court that the defendant has been enrolled in a
 9 course or treatment program. If the defendant fails to
 10 attend the course or the treatment program, the counselor
 11 shall notify the court of the failure. As long as the
 12 alcohol information course and treatment program are
 13 approved as provided in this subsection, the defendant may
 14 attend the information course and treatment program of his
 15 choice. The treatment provided to the defendant at a
 16 treatment program must be at a level appropriate to his
 17 alcohol problem, as determined by the judge based upon the
 18 recommendation from the certified chemical dependency
 19 counselor.

20 (5) For the purpose of determining the number of
 21 convictions under this section, "conviction" means a final
 22 conviction, as defined in 45-2-101, in this state,
 23 conviction for a violation of a similar statute in another
 24 state, or a forfeiture of bail or collateral deposited to
 25 secure the defendant's appearance in court in this state or

1 another state, which forfeiture has not been vacated. An
 2 offender is considered to have been previously convicted for
 3 the purposes of this section if less than 5 years have
 4 elapsed between the commission of the present offense and a
 5 previous conviction. If there has been no additional
 6 conviction for an offense under this section for a period of
 7 5 years after a prior conviction hereunder under this
 8 section, then all records and data relating to the prior
 9 conviction are confidential criminal justice information, as
 10 defined in 44-5-103, and public access to the information
 11 may only be obtained by district court order upon good cause
 12 shown.

13 (6) For the purpose of calculating subsequent
 14 convictions under this section, a conviction for a violation
 15 of 61-8-406 also constitutes a conviction for a violation of
 16 61-8-401.

17 (7) The court may order that a term of imprisonment
 18 imposed under this section be served in another secure
 19 facility made available by the county and approved by the
 20 sentencing court. The defendant, if financially able, shall
 21 bear the expense of the imprisonment in the facility. The
 22 court may impose restrictions on the defendant's ability to
 23 leave the premises of the facility and require that the
 24 defendant follow the rules of that facility. The facility
 25 may be, but is not required to be, a community-based

1 prerelease center as provided for in 53-1-203. THE
 2 PRERELEASE CENTER MAY ACCEPT OR REJECT A DEFENDANT REFERRED
 3 BY THE SENTENCING COURT."

4 **Section 2.** Section 61-8-722, MCA, is amended to read:

5 "61-8-722. Penalty for driving with excessive blood
 6 alcohol concentration. (1) A Except as provided in
 7 subsection (7), a person convicted of a violation of
 8 61-8-406 shall be punished by imprisonment for not more than
 9 10 days and shall be punished by a fine of not less than
 10 \$100 or more than \$500.

11 (2) On Except as provided in subsection (7), on a
 12 second conviction of a violation of 61-8-406, he shall be
 13 punished by imprisonment for not less than 48 consecutive
 14 hours or more than 30 days and by a fine of not less than
 15 \$300 or more than \$500.

16 (3) On Except as provided in subsection (7), on a third
 17 or subsequent conviction of a violation of 61-8-406, he
 18 shall be punished by imprisonment for not less than 48
 19 consecutive hours or more than 6 months and by a fine of not
 20 less than \$500 or more than \$1,000.

21 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 22 61-11-203(2)(d), relating to revocation and suspension of
 23 driver's licenses, shall apply to any conviction under
 24 61-8-406.

25 (5) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall
 2 complete an alcohol information course at an alcohol
 3 treatment program approved by the department of
 4 institutions, which may include alcohol or drug treatment,
 5 or both, if considered necessary by the counselor conducting
 6 the program. Each counselor providing such education or
 7 treatment shall, at the commencement of the education or
 8 treatment, notify the court that the defendant has been
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 11 counselor shall notify the court of the failure.

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 15 similar statute in another state or a forfeiture of bail or
 16 collateral deposited to secure the defendant's appearance in
 17 court in this state or another state, which forfeiture has
 18 not been vacated. An offender is considered to have been
 19 previously convicted for the purposes of this section if
 20 less than 5 years have elapsed between the commission of the
 21 present offense and a previous conviction. If there has been
 22 no additional conviction for an offense under this section
 23 for a period of 5 years after a prior conviction hereunder
 24 under this section, then such the prior offense shall be
 25 expunged from the defendant's record.

1 (7) The court may order that a term of imprisonment
2 imposed under this section be served in another secure
3 facility made available by the county and approved by the
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6 court may impose restrictions on the defendant's ability to
7 leave the premises of the facility and require that the
8 defendant follow the rules of that facility. The facility
9 may be, but is not required to be, a community-based
10 prerelease center as provided for in 53-1-203. THE
11 PRERELEASE CENTER MAY ACCEPT OR REJECT A DEFENDANT REFERRED
12 BY THE SENTENCING COURT."

-End-

1 HOUSE BILL NO. 101
 2 INTRODUCED BY RUSSELL
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
 4 ON ADULT AND JUVENILE DETENTION
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6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW SENTENCES OF
 7 IMPRISONMENT FOR DUI OFFENSES TO BE SERVED IN SECURE
 8 FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS
 9 61-8-714 AND 61-8-722, MCA."
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 61-8-714, MCA, is amended to read:

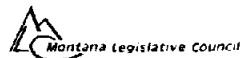
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 16 punished by imprisonment in the county jail for not less
 17 than 24 consecutive hours or more than 60 days and shall be
 18 punished by a fine of not less than \$100 or more than \$500.
 19 The jail sentence may not be suspended unless the judge
 20 finds that the imposition of the jail sentence will pose a
 21 risk to the defendant's physical or mental well-being.

22 (2) On Except as provided in subsection (7), on a
 23 second conviction, he shall be punished by a fine of not
 24 less than \$300 or more than \$500 and by imprisonment for not
 25 less than 7 days, at least 48 hours of which must be served

1 consecutively, or more than 6 months. Three Except as
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 3 not be suspended unless the judge finds that the imposition
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 5 physical or mental well-being.

6 (3) On Except as provided in subsection (7), on the
 7 third or subsequent conviction, he shall be punished by
 8 imprisonment for a term of not less than 30 days, at least
 9 48 hours of which must be served consecutively, or more than
 10 1 year, and by a fine of not less than \$500 or more than
 11 \$1,000. Notwithstanding Except as provided in subsection
 12 (7), notwithstanding any provision to the contrary providing
 13 for suspension of execution of a sentence imposed under this
 14 subsection, the imposition or execution of the first 10 days
 15 of the jail sentence imposed for a third or subsequent
 16 offense that occurred within 5 years of the first offense
 17 may not be deferred or suspended.

18 (4) In addition to the punishment provided in this
 19 section, regardless of disposition, the defendant shall
 20 complete an alcohol information course at an alcohol
 21 treatment program approved by the department of
 22 institutions, which may, in the sentencing court's
 23 discretion and upon recommendation of a certified chemical
 24 dependency counselor, include alcohol or drug treatment, or
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 12 alcohol information course and treatment program are
 13 approved as provided in this subsection, the defendant may
 14 attend the information course and treatment program of his
 15 choice. The treatment provided to the defendant at a
 16 treatment program must be at a level appropriate to his
 17 alcohol problem, as determined by the judge based upon the
 18 recommendation from the certified chemical dependency
 19 counselor.

20 (5) For the purpose of determining the number of
 21 convictions under this section, "conviction" means a final
 22 conviction, as defined in 45-2-101, in this state,
 23 conviction for a violation of a similar statute in another
 24 state, or a forfeiture of bail or collateral deposited to
 25 secure the defendant's appearance in court in this state or

1 another state, which forfeiture has not been vacated. An
 2 offender is considered to have been previously convicted for
 3 the purposes of this section if less than 5 years have
 4 elapsed between the commission of the present offense and a
 5 previous conviction. If there has been no additional
 6 conviction for an offense under this section for a period of
 7 5 years after a prior conviction hereunder under this
 8 section, then all records and data relating to the prior
 9 conviction are confidential criminal justice information, as
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 11 may only be obtained by district court order upon good cause
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13 (6) For the purpose of calculating subsequent
 14 convictions under this section, a conviction for a violation
 15 of 61-8-406 also constitutes a conviction for a violation of
 16 61-8-401.

17 (7) The court may, WITH THE DEFENDANT'S CONCURRENCE,
 18 order that a term of imprisonment imposed under this section
 19 be served in another secure facility made available by the
 20 county and approved by the sentencing court. The defendant,
 21 if financially able, shall bear the expense of the
 22 imprisonment in the facility. The court may impose
 23 restrictions on the defendant's ability to leave the
 24 premises of the facility and require that the defendant
 25 follow the rules of that facility. The facility may be, but

1 is not required to be, a community-based prerelease center
 2 as provided for in 53-1-203. THE PRERELEASE CENTER MAY
 3 ACCEPT OR REJECT A DEFENDANT REFERRED BY THE SENTENCING
 4 COURT."

5 **Section 2.** Section 61-8-722, MCA, is amended to read:

6 "61-8-722. Penalty for driving with excessive blood
 7 alcohol concentration. (1) A Except as provided in
 8 subsection (7), a person convicted of a violation of
 9 61-8-406 shall be punished by imprisonment for not more than
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 11 \$100 or more than \$500.

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 13 second conviction of a violation of 61-8-406, he shall be
 14 punished by imprisonment for not less than 48 consecutive
 15 hours or more than 30 days and by a fine of not less than
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22 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 23 61-11-203(2)(d), relating to revocation and suspension of
 24 driver's licenses, shall apply to any conviction under
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 23 no additional conviction for an offense under this section
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13 BY THE SENTENCING COURT."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 6, 1991

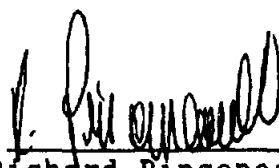
MR. PRESIDENT:.

We, your committee on Judiciary having had under consideration House Bill No. 101 (third reading copy -- blue), respectfully report that House Bill No. 101 be amended and as so amended be concurred in:

1. Page 4, line 17.

Following: "may"

Strike: ", WITH THE DEFENDANT'S CONCURRENCE,"

Signed: 

Richard Pinsoneault, Chairman

3-6-91
Amd. Coord.

SB 3-6 1:20
Sec. of Senate

SENATE
HB 101

1 HOUSE BILL NO. 101
 2 INTRODUCED BY RUSSELL
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
 4 ON ADULT AND JUVENILE DETENTION
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 8 FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS
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 4 of the jail sentence will pose a risk to the defendant's
 5 physical or mental well-being.

6 (3) On Except as provided in subsection (7), on the
 7 third or subsequent conviction, he shall be punished by
 8 imprisonment for a term of not less than 30 days, at least
 9 48 hours of which must be served consecutively, or more than
 10 1 year, and by a fine of not less than \$500 or more than
 11 \$1,000. Notwithstanding Except as provided in subsection
 12 (7), notwithstanding any provision to the contrary providing
 13 for suspension of execution of a sentence imposed under this
 14 subsection, the imposition or execution of the first 10 days
 15 of the jail sentence imposed for a third or subsequent
 16 offense that occurred within 5 years of the first offense
 17 may not be deferred or suspended.

18 (4) In addition to the punishment provided in this
 19 section, regardless of disposition, the defendant shall
 20 complete an alcohol information course at an alcohol
 21 treatment program approved by the department of
 22 institutions, which may, in the sentencing court's
 23 discretion and upon recommendation of a certified chemical
 24 dependency counselor, include alcohol or drug treatment, or
 25 both. On conviction of a second or subsequent offense under



1 this section, in addition to the punishment provided in this
 2 section, regardless of disposition, the defendant shall
 3 complete an alcohol information course at an alcohol
 4 treatment program approved by the department of
 5 institutions, which must include alcohol or drug treatment,
 6 or both. Each counselor providing education or treatment
 7 shall, at the commencement of the education or treatment,
 8 notify the court that the defendant has been enrolled in a
 9 course or treatment program. If the defendant fails to
 10 attend the course or the treatment program, the counselor
 11 shall notify the court of the failure. As long as the
 12 alcohol information course and treatment program are
 13 approved as provided in this subsection, the defendant may
 14 attend the information course and treatment program of his
 15 choice. The treatment provided to the defendant at a
 16 treatment program must be at a level appropriate to his
 17 alcohol problem, as determined by the judge based upon the
 18 recommendation from the certified chemical dependency
 19 counselor.

20 (5) For the purpose of determining the number of
 21 convictions under this section, "conviction" means a final
 22 conviction, as defined in 45-2-101, in this state,
 23 conviction for a violation of a similar statute in another
 24 state, or a forfeiture of bail or collateral deposited to
 25 secure the defendant's appearance in court in this state or

1 another state, which forfeiture has not been vacated. An
 2 offender is considered to have been previously convicted for
 3 the purposes of this section if less than 5 years have
 4 elapsed between the commission of the present offense and a
 5 previous conviction. If there has been no additional
 6 conviction for an offense under this section for a period of
 7 5 years after a prior conviction hereunder under this
 8 section, then all records and data relating to the prior
 9 conviction are confidential criminal justice information, as
 10 defined in 44-5-103, and public access to the information
 11 may only be obtained by district court order upon good cause
 12 shown.

13 (6) For the purpose of calculating subsequent
 14 convictions under this section, a conviction for a violation
 15 of 61-8-406 also constitutes a conviction for a violation of
 16 61-8-401.

17 (7) The court may, WITH--THE--DEFENDANT'S--CONCURRENCE,
 18 order that a term of imprisonment imposed under this section
 19 be served in another secure facility made available by the
 20 county and approved by the sentencing court. The defendant,
 21 if financially able, shall bear the expense of the
 22 imprisonment in the facility. The court may impose
 23 restrictions on the defendant's ability to leave the
 24 premises of the facility and require that the defendant
 25 follow the rules of that facility. The facility may be, but

1 is not required to be, a community-based prerelease center
 2 as provided for in 53-1-203. THE PRERELEASE CENTER MAY
 3 ACCEPT OR REJECT A DEFENDANT REFERRED BY THE SENTENCING
 4 COURT."

5 **Section 2.** Section 61-8-722, MCA, is amended to read:

6 "61-8-722. Penalty for driving with excessive blood
 7 alcohol concentration. (1) A Except as provided in
 8 subsection (7), a person convicted of a violation of
 9 61-8-406 shall be punished by imprisonment for not more than
 10 10 days and shall be punished by a fine of not less than
 11 \$100 or more than \$500.

12 (2) On Except as provided in subsection (7), on a
 13 second conviction of a violation of 61-8-406, he shall be
 14 punished by imprisonment for not less than 48 consecutive
 15 hours or more than 30 days and by a fine of not less than
 16 \$300 or more than \$500.

17 (3) On Except as provided in subsection (7), on a third
 18 or subsequent conviction of a violation of 61-8-406, he
 19 shall be punished by imprisonment for not less than 48
 20 consecutive hours or more than 6 months and by a fine of not
 21 less than \$500 or more than \$1,000.

22 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 23 61-11-203(2)(d), relating to revocation and suspension of
 24 driver's licenses, ~~shall~~ apply to any conviction under
 25 61-8-406.

1 (5) In addition to the punishment provided in this
 2 section, regardless of disposition, the defendant shall
 3 complete an alcohol information course at an alcohol
 4 treatment program approved by the department of
 5 institutions, which may include alcohol or drug treatment,
 6 or both, if considered necessary by the counselor conducting
 7 the program. Each counselor providing ~~such~~ education or
 8 treatment shall, at the commencement of the education or
 9 treatment, notify the court that the defendant has been
 10 enrolled in a course or treatment program. If the defendant
 11 fails to attend the course or the treatment program, the
 12 counselor shall notify the court of the failure.

13 (6) For the purpose of determining the number of
 14 convictions under this section, "conviction" means a final
 15 conviction, as defined in 45-2-101, in this state or a
 16 similar statute in another state or a forfeiture of bail or
 17 collateral deposited to secure the defendant's appearance in
 18 court in this state or another state, which forfeiture has
 19 not been vacated. An offender is considered to have been
 20 previously convicted for the purposes of this section if
 21 less than 5 years have elapsed between the commission of the
 22 present offense and a previous conviction. If there has been
 23 no additional conviction for an offense under this section
 24 for a period of 5 years after a prior conviction ~~hereunder~~
 25 under this section, then ~~such~~ the prior offense shall be

1 expunged from the defendant's record.
2 (7) The court may order that a term of imprisonment
3 imposed under this section be served in another secure
4 facility made available by the county and approved by the
5 sentencing court. The defendant, if financially able, shall
6 bear the expense of the imprisonment in the facility. The
7 court may impose restrictions on the defendant's ability to
8 leave the premises of the facility and require that the
9 defendant follow the rules of that facility. The facility
10 may be, but is not required to be, a community-based
11 prerelease center as provided for in 53-1-203. THE
12 PRERELEASE CENTER MAY ACCEPT OR REJECT A DEFENDANT REFERRED
13 BY THE SENTENCING COURT."

-End-