

HOUSE BILL NO. 102

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 HUMAN SERVICES & AGING.

JANUARY 7, 1991 FIRST READING.

JANUARY 17, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 18, 1991 PRINTING REPORT.

JANUARY 25, 1991 SECOND READING, DO PASS.

JANUARY 26, 1991 ENGROSSING REPORT.

JANUARY 28, 1991 THIRD READING, PASSED.
AYES, 88; NOES, 8.

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. REPORT ADOPTED.

MARCH 8, 1991 SECOND READING, CONCURRED IN.

MARCH 9, 1991 THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 11, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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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 ELIMINATING THE
7 REQUIREMENT THAT MANDATORY TREATMENT FOR DUI OFFENSES BE
8 PROVIDED ONLY THROUGH APPROVED TREATMENT PROGRAMS; ALLOWING
9 MANDATORY TREATMENT FOR DUI OFFENSES TO BE OBTAINED FROM ANY
10 CERTIFIED CHEMICAL DEPENDENCY COUNSELOR; AND AMENDING
11 SECTION 61-8-714, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 61-8-714, MCA, is amended to read:

15 "61-8-714. Penalty for driving under the influence of
16 alcohol or drugs. (1) A person convicted of a violation of
17 61-8-401 shall be punished by imprisonment in the county
18 jail for not less than 24 consecutive hours or more than 60
19 days and shall be punished by a fine of not less than \$100
20 or more than \$500. The jail sentence may not be suspended
21 unless the judge finds that the imposition of the jail
22 sentence will pose a risk to the defendant's physical or
23 mental well-being.

24 (2) On a second conviction, he shall be punished by a
25 fine of not less than \$300 or more than \$500 and by

1 imprisonment for not less than 7 days, at least 48 hours of
2 which must be served consecutively, or more than 6 months.
3 Three days of the jail sentence may not be suspended unless
4 the judge finds that the imposition of the jail sentence
5 will pose a risk to the defendant's physical or mental
6 well-being.

7 (3) On the third or subsequent conviction, he shall be
8 punished by imprisonment for a term of not less than 30
9 days, at least 48 hours of which must be served
10 consecutively, or more than 1 year, and by a fine of not
11 less than \$500 or more than \$1,000. Notwithstanding any
12 provision to the contrary providing for suspension of
13 execution of a sentence imposed under this subsection, the
14 imposition or execution of the first 10 days of the jail
15 sentence imposed for a third or subsequent offense that
16 occurred within 5 years of the first offense may not be
17 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~~ is
 13 approved as provided in this subsection, and the treatment
 14 program is provided by a certified chemical dependency
 15 counselor, the defendant may attend the information course
 16 and treatment program of his choice. The treatment provided
 17 to the defendant at a treatment program must be at a level
 18 appropriate to his alcohol problem, as determined by the
 19 judge based upon the recommendation from the certified
 20 chemical dependency counselor.

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

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

14 (6) For the purpose of calculating subsequent
 15 convictions under this section, a conviction for a violation
 16 of 61-8-406 also constitutes a conviction for a violation of
 17 61-8-401."

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

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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) 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 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 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 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 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

1 this section, in addition to the punishment provided in this
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THIRD READING

HB 102

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