# CHAPTER NO. 56

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# HOUSE BILL NO. 75

# INTRODUCED BY KANDUCH

# BY REQUEST OF THE ATTORNEY GENERAL

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion joint rule 6-6 suspended and sponsor's signature allowed to be added to Pre-Filed bill.
January 12, 1979	Committee recommend bill do pass as amended. Report adopted
January 13, 1979	Printed and placed on members' desks.
January 15, 1979	Second Reading, do pass.
January 16, 1979	Considered correctly engrossed.
January 17, 1979	Third Reading, passed. Transmitted to Second House.
IN THE SI	ENATE
January 18, 1979	Introduced and referred to Committee on Judiciary.
January 31, 1979	Committee recommend bill be concurred in as amended. Report adopted.
February 2, 1979	Second Reading, concurred in.
February 5, 1979	Third Reading, concurred in as amended.

# IN THE HOUSE

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February	6,	1979	Returned from Second House. Concurred in as amended.
February	7,	1979	Second Reading, pass consideration.
February	8,	1979	Second Reading, amendments rejected.
			On motion Joint Conference Committee requested.
February	9,	1979	Joint Conference Committee appointed.
February	15,	, 1979	Second Reading, adopted.
February	16,	, 1979	Third Reading, adopted.
February	20,	, 1979	Adopted by Senate. Sent to enrolling.
			Reported correctly enrolled.

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LC 0365/01

1 HOUSE BILL NO. 75 2 INTRODUCED BY \_\_\_\_\_ BY REQUEST OF THE ATTORNEY GENERAL 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 5 61-8-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT 6 SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR 7 COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE я WHICH FORFEITURE HAS NOT BEEN VACATED." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 61-8-714, MCA, is amended to read: 12 =61-8-714. Penalty for driving while intoxicated. (1) 13 Every person who is convicted of a violation of 61-8-401 14 shall be punished by a fine of not less than \$100 or more 15 than \$500. On a second conviction, he shall be purished by a 16 fine of not less than \$300 or more than \$500. On the third 17 or subsequent conviction, he shall be punished by 18 imprisonment for a term of not less than 30 days or more 19 than 1 year, to which may be added, in the discretion of the 20 court. a fine of not less than \$500 or more than \$1,000. 21 Notwithstanding any provision to the contrary providing for 22 suspension of execution of a sentence imposed under this 23 subsection, the imposition or execution of the first 10 days 24 of the jail sentence imposed for a third or subsequent 25

offense that occurred within 5 years of the first offense
 may not be deferred or suspended.

(2) Except as otherwise provided in this section, the 3 court may, in its discretion, suspend the execution of any 4 sentence imposed under subsection (1) on the condition that 5 the defendant successfully complete a course in a driver 6 improvement school approved by the court or an alcohol 7 8 treatment program approved by the department of institutions. Each school or institution providing such Q 10 education or treatment shall, at the commencement of the 11 education or treatment, notify the court that the defendant 12 has been accepted by the school or treatment program. If the 13 defendant fails to attend the school or the treatment 14 program, the school or institution shall notify the court of 15 the failure. 16 131 For the purposes of this section. "conviction" 17 means a final conviction, as defined in 45-2-101, or a 18 forfeiture of bail or collateral deposited to secure the

19 defendant's appearance in court, which forfeiture has not

20 been vacated.\*

-End-

-2-INTRODUCED BILL

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46th Legislature

#### HB 0075/02

#### Approved by Committee on Judiciary

L	HUUSE BILL NU. 75
z	INTRODUCED BY KANDUCH
3	BY REQUEST OF THE ATTORNEY GENERAL
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
6	61-8-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT
7	SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR
8	COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE
9	WHICH FORFEITURE HAS NOT BEEN VACATED."
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	<pre>#61-8-714. Penalty for driving while intoxicated. (1)</pre>
14	Every person who is convicted of a violation of 61-8-401
15	shall be punished by a fine of not less than \$100 or more
16	than \$500. On a second conviction, he shall be punished by a
17	fine of not less than \$300 or more than \$500. On the third
18	or subsequent conviction, he shall be punished by
19	imprisonment for a term of not less than 30 days or more
20	than 1 year, to which may be added, in the discretion of the
21	court, a fine of not less than \$500 or more than \$1,000.
22	Notwithstanding any provision to the contrary providing for
23	suspension of execution of a sentence imposed under this
24	subsection, the imposition or execution of the first 10 days
25	of the jail sentence imposed for a third or subsequent

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 may not be deferred or suspended.

3 (2) Except as otherwise provided in this section, the 4 court may, in its discretion, suspend the execution of any 5 sentence imposed under subsection (1) on the condition that 6 the defendant successfully complete a course in a driver 7 improvement school approved by the court or an alcohol 8 treatment program approved b٧ the department of 9 institutions. Each school or institution providing such 10 education or treatment shall, at the commencement of the 11 education or treatment, notify the court that the defendant 12 has been accepted by the school or treatment program. If the 13 defendant fails to attend the school or the treatment program, the school or institution shall notify the court of 14 15 the failure. 16 (3) For the purposes of PURPOSE OF DETERMINING THE 17 NUMBER\_DF\_CONVICTIONS\_UNDER this section. "conviction" means

18 a final conviction: as defined in 45-2-101; or a forfeiture

19 of bail or collateral deposited to secure the defendant's

20 appearance\_in\_courts\_which\_forfeiture\_has\_not\_been\_vacateds" -End-

#### SECOND READING

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HB 75

#### 46th Legislature

HB 0075/03

HOUSE BILL NO. 75 1 INTRODUCED BY KANDUCH 2 BY REQUEST OF THE ATTORNEY GENERAL 3 4 A BILL FUR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 5 61-8-714. MCA. BY DEFINING "CONVICTION". AS USED IN THAT 6 7 SECTION. AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE я 9 WHICH FORFEITURE HAS NOT BEEN VACATED." 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 61-8-714, HCA, is amended to read: 12 "61-8-714. Penalty for driving while intoxicated. (1) 13 Every person who is convicted of a violation of 61-8-401 14 shall be punished by a fine of not less than \$100 or more 15 than \$500. On a second conviction, he shall be punished by a 15 fine of not less than \$300 or more than \$500. On the third 17 or subsequent conviction, he shall be punished by 18 imprisonment for a term of not less than 30 days or more 19 than 1 year, to which may be added, in the discretion of the 20 courty a fine of not less than \$500 or more than \$1,000. 21 Notwithstanding any provision to the contrary providing for 22 suspension of execution of a sentence imposed under this 23 subsection, the imposition or execution of the first 10 days 24 of the jail sentence imposed for a third or subsequent 25

offense that occurred within 5 years of the first offense
 may not be deferred or suspended.

3 (2) Except as otherwise provided in this section. the 4 court may, in its discretion, suspend the execution of any sentance imposed under subsection (1) on the condition that 5 the defendant successfully complete a course in a driver 6 improvement school approved by the court or an alcohol 7 treatment program 8 approved bγ the department of 9 institutions. Each school or institution providing such 10 education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant 11 12 has been accepted by the school or treatment program. If the 13 defendant fails to attend the school or the treatment program, the school or institution shall notify the court of 14 15 the failure. (3) For the purposes of PURPOSE OF DETERMINING THE 15 17 NUMBER\_OF\_CONVICTIONS\_UNDER this\_sections\_"conviction" means

- 18 a. final convictions as defined in 45-2-101s or a forfeiture
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- 20 anyearance\_in\_courts\_which\_forfeiture\_bas\_not\_been\_vacateds" -Fod-

HB 75 THIRD READING

HOUSE BILL NO. 75 1 1 2 INTRODUCED BY KANDUCH 2 3 BY REQUEST OF THE ATTORNEY GENERAL ٦ 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 5 5 6 51-9-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT 6 7 SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BALL OR 7 8 COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE. 8 • а WHICH FORFEITURE HAS NOT REEN VACATED AND WHICH CONVICTION 10 OR\_EQREEITURE\_OCCUBRED\_WITHIN 5\_YEARS OF THE COMMISSION OF 10 11 11 THE PRESENT\_OFEENSE." 12 12 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 Section 1. Section 61-8-714, MCA, is amended to read: 14 14 %61-8-714. Penalty for driving while intoxicated. (1) 15 15 Every person who is convicted of a violation of 61-8-401 16 16 shall be punished by a fine of not less than \$100 or more 17 17 18 than \$500. On a second conviction, he shall be punished by a 18 fine of not less than \$300 or more than \$500. On the third 19 19 or subsequent conviction. he shall be punished by 20 20 imprisonment for a term of not less than 30 days or more 21 21 22 than 1 year, to which may be added, in the discretion of the 22 court, a fine of not less than \$500 or more than \$1,000. 23 23 Notwithstanding any provision to the contrary providing for 24 24 25 suspension of execution of a sentence imposed under this 25

HB 0075/04

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.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

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 (3)\_\_Eor\_the purposes of PURPOSE\_DE\_DETERMINING\_THE

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REFERENCE BILL

HB 75

## 1 PREVIOUS\_CONVICTION."

-End-

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1	HOUSE BILL NO. 75
2	INTRODUCED BY KANDUCH
3	BY REQUEST OF THE ATTORNEY GENERAL
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5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
6	61-8-714, MCA, BY DEFINING *CONVICTION*, AS USED IN THAT
7	SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR
8	COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE
9	WHICH FORFEITURE HAS NOT BEEN VACATED AND WHICH CONVICTION
10	OREOREEITUREOCCURRED_WITHIN_S_YEARS_OF_THE_COMMISSION_OF
11	THE_PRESENT_OFFENSE.*
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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 while intoxicated。(1)
16	Every person who is convicted of a violation of 61-8-401
17	shall be punished by a fine of not less than \$100 or more
18	than \$500. On a second conviction, he shall be punished by a
19	fine of not less than \$300 or more than \$500. On the third
20	or subsequent conviction, he shall be punished by
21	imprisonment for a term of not less than 30 days or more
22	than 1 years to which may be addeds in the discretion of the
23	court, a fine of not less than \$500 or more than \$1,000.
24	Notwithstanding any provision to the contrary providing for
25	suspension of execution of a sentence imposed under this

HB 0075/04

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.

5 {2} Except as otherwise provided in this section, the 6 court may, in its discretion, suspend the execution of any 7 sentence imposed under subsection (1) on the condition that я the defendant successfully complete a course in a driver 9 improvement school approved by the court or an alcohol 10 treatment program approved by the department of 11 institutions. Each school or institution providing such 12 education or treatment shall, at the commencement of the 13 education or treatment, notify the court that the defendant 14 has been accepted by the school or treatment program. If the 15 defendant fails to attend the school or the treatment program, the school or institution shall notify the court of 16 17 the failure.

18 131 For the purposes of PURPOSE OF DETERMINING THE 19 NUMBER OF CONVICTIONS UNDER this section. "conviction" means 20 a final conviction, as defined in 45-2-101, or a forfeiture 21 of bail or collateral deposited to secure the defendant's 22 appearance in courte which forfeiture has not been vacated. 23 AN DEFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED 24 FOR THE PURPOSES OF THIS SECTION IF LESS THAN 5 YEARS HAVE ELAPSED BETWEEN THE CONMISSION OF THE PRESENT OFFENSE AND A 25

-2- Corrected HB 75 REFERENCE BILL

## 1 PREVIOUS CONVICTION."

-End-

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HB 75

# SENATE STANDING COMMITTEE REPORT

That House Bill No. 75 be amended as follows:

 Title, line 9.
 Following: "VACATED"
 Insert: ", WHICH CONVICTION OR FORFEITURE OCCURRED WITHIN 5 YEARS OF THE COMMISSION OF THE PRESENT OFFENSE"
 Page 2.

Following: line 20

Insert: "An offender is considered to have been previously convicted for the purposes of this section if less than 5 years has elapsed between the commission of the present offense and a previous conviction."