

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Judiciary.
January 22, 1981	Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.  Second reading, pass consideration until 44th legislative day.
February 24, 1981	Second reading, do pass as amended.  On motion rules suspended and bill placed on third reading this day.
February 25, 1981	Correctly engrossed.  Third reading, passed. Ayes, 76; Noes, 22. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Highways and Transportation.
March 20, 1981	Committee recommend bill be not concurred in. Report not adopted.  On motion placed on second reading.

March 23, 1981 Second reading, concurred in.  
March 25, 1981 On motion taken from third reading and referred to second reading. Motion adopted.  
March 26, 1981 Second reading, concurred in as amended.  
March 28, 1981 Third reading, concurred in as amended. Ayes, 39; Noes, 10.

IN THE HOUSE

March 28, 1981 Returned from Senate with amendments.  
April 8, 1981 Second reading, amendments concurred in.  
April 9, 1981 Third reading, amendments concurred in. Ayes, 31; Noes, 15. Sent to enrolling.  
Reported correctly enrolled.

1 HOUSE BILL NO. 364  
2 INTRODUCED BY VINCENT COOM

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
5 PERSON WITH 0.10 PERCENT ALCOHOL IN HIS BLOOD IS GUILTY OF  
6 DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS  
7 STATE WHILE UNDER THE INFLUENCE OF ALCOHOL; TO INCREASE, AND  
8 ESTABLISH MINIMUM PENALTIES; TO LEVY A PENALTY ASSESSMENT TO  
9 BE USED TO FUND DRIVER SERVICES PROGRAMS AND A STATEWIDE  
10 ALCOHOL SAFETY ACTION PROGRAM; AMENDING SECTIONS 61-8-101,  
11 61-8-401, AND 61-8-714, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 61-8-101, MCA, is amended to read:

15 "61-8-101. Application -- exceptions. (1) The  
16 provisions of this chapter relating to the operation of  
17 vehicles refer exclusively to the operation of vehicles upon  
18 highways except:

19 (a) where a different place is specifically referred  
20 to in a given section;

21 (b) the provisions of 61-8-301 and 61-8-401, with  
22 regard to operating a vehicle while under the influence of  
23 alcohol or drugs, shall apply upon highways and elsewhere  
24 throughout anywhere within the state.

25 (2) The operation of motor vehicles directly across

1 the public roads and highways of this state, especially as  
2 required in the transportation of natural resource products,  
3 including agricultural products and livestock, shall not be  
4 considered to be the operation of such vehicles on the  
5 public roads and highways of this state provided that such  
6 crossings are adequately marked with warning signs or  
7 devices. Such crossings are subject to provisions relating  
8 to stopping before entry and to restoration of any damage as  
9 may reasonably be prescribed by the state or local agency in  
10 control of safety of operation of the public highway  
11 involved."

12 Section 2. Section 61-8-401, MCA, is amended to read:

13 "61-8-401. Persons under the influence of alcohol or  
14 drugs. (1) It is unlawful and punishable as provided in  
15 ~~61-8-714(1)~~ 61-8-714 for any person who is under the  
16 influence of:

17 ~~(a) alcohol to drive or be in actual physical control~~  
18 ~~of a motor vehicle upon the highways of this state;~~

19 ~~(b) a narcotic drug to drive or be in actual physical~~  
20 ~~control of a motor vehicle within this state; or~~

21 ~~(c) any other drug to a degree which renders him~~  
22 ~~incapable of safely driving a motor vehicle to drive or be~~  
23 ~~in actual physical control of a motor vehicle within this~~  
24 ~~state; alcohol or any drug or the combined influence of~~  
25 ~~alcohol or any drug to:~~

1 (a) drive a vehicle within this state; or  
 2 (b) be in actual physical control of a vehicle within  
 3 this state.  
 4 (2) A person is guilty of driving while under the  
 5 influence of alcohol or any drug if he drives a vehicle  
 6 within this state while:  
 7 (a) he has 0.10% or more by weight of alcohol in his  
 8 blood as shown by chemical analysis of his breath, blood, or  
 9 other bodily substance made under 61-8-402;  
 10 (b) he is under the influence of or affected by  
 11 alcohol or any drug; or  
 12 (c) he is under the combined influence of or affected  
 13 by alcohol and any drug.  
 14 (3) (a) A person is guilty of being in actual  
 15 physical control of a motor vehicle while under the  
 16 influence of alcohol or any drug if he has actual physical  
 17 control of a vehicle within this state while:  
 18 (i) he has 0.10% or more by weight of alcohol in his  
 19 blood as shown by chemical analysis of his breath, blood,  
 20 other bodily substance made under 61-8-402;  
 21 (ii) he is under the influence of or affected by  
 22 alcohol or any drug; or  
 23 (iii) he is under the combined influence of or affected  
 24 by alcohol and any drug.  
 25 (b) No person may be convicted under this subsection

1 if, prior to being pursued by a law enforcement officer, he  
 2 has moved the vehicle safely off the roadway.  
 3 ~~(2)(4)~~ The fact that any person charged with a  
 4 violation of subsection (1) is or has been entitled to use  
 5 such a drug under the laws of this state does not constitute  
 6 a defense against any charge of violating subsection (1).  
 7 ~~(3)(5)~~ In any criminal prosecution for a violation of  
 8 subsection (1) of this section relating to driving or being  
 9 in actual physical control of a vehicle while under the  
 10 influence of alcohol or any drug, if the amount of alcohol  
 11 in the defendant's blood at the time alleged, as shown by  
 12 chemical analysis of the defendant's blood, urine, breath,  
 13 or other bodily substance, shall give rise to the following  
 14 presumptions:  
 15 ~~(a) If there was at that time 0.05% or less by weight~~  
 16 ~~of alcohol in the defendant's blood, it shall be presumed~~  
 17 ~~that the defendant was not under the influence of alcohol;~~  
 18 ~~(b) If there was at that time in excess of 0.05% but~~  
 19 ~~is less than 0.10% by weight of alcohol in the defendant's~~  
 20 ~~blood, that fact shall not give rise to any presumption that~~  
 21 ~~the defendant was or was not under the influence of alcohol~~  
 22 ~~but such fact may be considered with other competent~~  
 23 ~~evidence in determining the guilt or innocence of the~~  
 24 ~~defendant.~~  
 25 ~~(c) If there was at that time 0.10% or more by weight~~

1 ~~of alcohol in the defendant's blood, it shall be presumed~~  
 2 ~~that the defendant was under the influence of alcohol.~~

3 ~~(4)(6)~~ Percent by weight of alcohol in the blood shall  
 4 be based upon grams of alcohol per 100 cubic centimeters of  
 5 blood.

6 ~~(5)(7)~~ Each municipality in this state is given  
 7 authority to enact 61-8-714 and subsections (1) through ~~(4)~~  
 8 ~~(6)~~ of this section, with the word "state" in subsection  
 9 ~~subsections (1), (2) and (3)~~ of this section changed to read  
 10 "municipality", as an ordinance and is given jurisdiction of  
 11 the enforcement of the ordinance and of the imposition of  
 12 the fines and penalties therein provided ~~in the ordinance if~~  
 13 ~~the ordinance is as or more stringent than the state's~~  
 14 ~~provisions."~~

15 Section 3. Section 61-8-714, MCA, is amended to read:

16 "61-8-714. Penalty for driving while intoxicated. (1)  
 17 Every A person who is convicted of a violation of 61-8-401  
 18 shall be punished ~~by imprisonment for not less than 1 day or~~  
 19 ~~more than 1 year, and~~ by a fine of not ~~less than \$100 or~~  
 20 more than \$500. ~~The person shall, in addition, be required~~  
 21 ~~to complete a course at an alcohol information school~~  
 22 ~~approved by the department of social and rehabilitation~~  
 23 ~~services. One day of the jail sentence may not be suspended~~  
 24 ~~or deferred unless the judge finds that the imposition of~~  
 25 ~~the jail sentence will pose a risk to the defendant's~~

1 ~~physical or mental well-being.~~

2 ~~(2)~~ On a second conviction, he shall be punished by a  
 3 fine of not ~~less than \$300 or more than \$500 to which may be~~  
 4 ~~added, in the discretion of the court, \$150 and by~~  
 5 imprisonment for a term not ~~less than 7 days or more than 30~~  
 6 days. ~~Three days of the jail sentence may not be suspended~~  
 7 ~~or deferred unless the judge finds that the imposition of~~  
 8 ~~the jail sentence will pose a risk to the defendant's~~  
 9 ~~physical or mental well-being.~~

10 ~~(3)~~ On the third or subsequent conviction, he shall be  
 11 punished by imprisonment for a term of not less than 30 days  
 12 or more than 1 year, to which may be added, in the  
 13 discretion of the court, a fine of not ~~less than \$500 or~~  
 14 more than \$1,000. Notwithstanding any provision to the  
 15 contrary providing for suspension of execution of a sentence  
 16 imposed under this subsection, the imposition or execution  
 17 of the first 10 days of the jail sentence imposed for a  
 18 third or subsequent offense that occurred within 5 years of  
 19 the first offense may not be deferred or suspended.

20 ~~(4)~~ ~~Whenever the mandatory jail sentence is suspended~~  
 21 ~~or deferred, the judge must state, in writing, the reason~~  
 22 ~~for granting the suspension or deferral and the facts upon~~  
 23 ~~which the suspension or deferral is based. If such person at~~  
 24 ~~the time of a second or subsequent conviction is without a~~  
 25 ~~license or permit because of a previous suspension or~~

1 ~~revocation, the minimum mandatory sentence shall be 90 days~~  
 2 ~~in jail and a \$200 fine. The penalty so imposed may not be~~  
 3 ~~suspended or deferred.~~

4 ~~(2)(5) Except as otherwise provided in this section,~~  
 5 ~~the court may in its discretion suspend the execution of~~  
 6 ~~any sentence imposed under subsection (1) on the condition~~  
 7 ~~that the defendant successfully complete a course in a~~  
 8 ~~driver improvement school approved by the court or an~~  
 9 ~~alcohol treatment program approved by the department of~~  
 10 ~~institutions. In addition to any nonsuspendable and~~  
 11 ~~nondeferrable jail sentence required by subsections (2) or~~  
 12 ~~(3), the court shall, on a second or subsequent conviction,~~  
 13 ~~sentence a person to a term of imprisonment not exceeding~~  
 14 ~~180 days and shall suspend but may not defer the sentence~~  
 15 ~~for a period not exceeding 2 years. The suspension of the~~  
 16 ~~sentence may be conditioned upon nonrepetition, alcohol or~~  
 17 ~~drug treatment, supervised probation, attendance of an~~  
 18 ~~educational program, or other conditions that may be~~  
 19 ~~appropriate. The sentence may be imposed in whole or in part~~  
 20 ~~upon violation of a condition of suspension during the~~  
 21 ~~suspension period. Each school or institution providing such~~  
 22 ~~education or treatment shall, at the commencement of the~~  
 23 ~~education or treatment, notify the court that the defendant~~  
 24 ~~has been accepted by the school or treatment program. If the~~  
 25 ~~defendant fails to attend the school or the treatment~~

1 program, the school or institution shall notify the court of  
 2 the failure.

3 ~~(6) There shall be levied and paid into a highway~~  
 4 ~~safety fund of the state treasury a penalty assessment in~~  
 5 ~~the minimum amount of 25% of, and which shall be in addition~~  
 6 ~~to, any fine, bail forfeiture, or costs on all offenses~~  
 7 ~~involving a violation of any state statute or city or county~~  
 8 ~~ordinance relating to driving a motor vehicle while under~~  
 9 ~~the influence of alcohol or any drug or being in actual~~  
 10 ~~physical control of a motor vehicle while under the~~  
 11 ~~influence of alcohol or any drug. All funds shall be for the~~  
 12 ~~exclusive use of the state for driver services programs and~~  
 13 ~~for a statewide alcohol safety action program or other~~  
 14 ~~similar programs designed primarily for the rehabilitation~~  
 15 ~~or control of traffic offenders. Such penalty assessment~~  
 16 ~~shall be included in any bail schedule and shall be included~~  
 17 ~~by the court in any pronouncement of sentence. The penalty~~  
 18 ~~assessment may not be suspended, waived, modified, or~~  
 19 ~~deferred in any respect.~~

20 ~~(3)(7) 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, or a forfeiture of bail~~  
 23 ~~or collateral deposited to secure the defendant's appearance~~  
 24 ~~in court, which forfeiture has not been vacated. An~~  
 25 ~~offender is considered to have been previously convicted for~~

LC 0773/01

1 the purposes of this section if less than 5 years have  
2 elapsed between the commission of the present offense and a  
3 previous conviction."

4 Section 4. Severability. If a part of this act is  
5 invalid, all valid parts that are severable from the invalid  
6 part remain in effect. If a part of this act is invalid in  
7 one or more of its applications, the part remains in effect  
8 in all valid applications that are severable from the  
9 invalid applications.

-End-

HB 364

Approved by Committee  
on Judiciary

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A PERSON WITH 0.10 PERCENT ALCOHOL IN HIS BLOOD IS GUILTY OF DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL; TO INCREASE, AND ESTABLISH MINIMUM PENALTIES; TO LEVY A PENALTY ASSESSMENT TO BE USED TO FUND DRIVER SERVICES PROGRAMS AND A STATEWIDE ALCOHOL SAFETY ACTION PROGRAM; AMENDING SECTIONS 61-8-101, 61-8-401, AND 61-8-714, MCA. MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 61-8-714, MCA."

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

Refer to Introduced Bill

{Strike everything after the enacting clause and insert:}

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

"61-8-714. Penalty for driving while intoxicated. (1) Every A person who is convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for 1 day, and 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 ~~to which may be added in the discretion of the court~~ and by imprisonment for a term not less than 7 days or more than 30 days. 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 or more than 1 year, to which may be added, in the discretion of the court, 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.

~~(2)(4)~~ Except ~~as otherwise~~ for nonsuspendable jail sentences provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under ~~subsection (1)~~ this section on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol



1 treatment program approved by the department of  
2 institutions. Each school or institution providing such  
3 education or treatment shall, at the commencement of the  
4 education or treatment, notify the court that the defendant  
5 has been accepted by the school or treatment program. If the  
6 defendant fails to attend the school or the treatment  
7 program, the school or institution shall notify the court of  
8 the failure.

9 ~~(3)~~(5) For the purpose of determining the number of  
10 convictions under this section, "conviction" means a final  
11 conviction, as defined in 45-2-101, or a forfeiture of bail  
12 or collateral deposited to secure the defendant's appearance  
13 in court, which forfeiture has not been vacated. An  
14 offender is considered to have been previously convicted for  
15 the purposes of this section if less than 5 years have  
16 elapsed between the commission of the present offense and a  
17 previous conviction."

-End-

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT--A  
 PERSON--WITH--0.10-PERCENT-ALCOHOL-IN-HIS-BLOOD-IS-GUILTY-OF  
 DRIVING-OR-BEING-IN-CONTROL-OF-A-MOTOR-VEHICLE--WITHIN--THIS  
 STATE-WHILE-UNDER-THE-INFLUENCE-OF-ALCOHOL,--TO-INCREASE,--AND  
 ESTABLISH-MINIMUM-PENALTIES,--TO-LEVY-A-PENALTY-ASSESSMENT-TO  
 BE--USED--TO--FUND--DRIVER-SERVICES-PROGRAMS-AND-A-STATEWIDE  
 ALCOHOL-SAFETY-ACTION-PROGRAM,--AMENDING--SECTIONS--61-8-101,  
 61-8-401,--AND-61-8-714,--MCA, MANDATORY SENTENCES FOR DRIVING  
 OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE  
 WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE  
 DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE,  
 INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY;  
 AMENDING SECTION 61-8-714, MCA."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

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

"61-8-714. Penalty for driving while intoxicated. (1)  
 Every A person who is convicted of a violation of 61-8-401  
 shall be punished by imprisonment in the county jail for 1  
 day, and 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 ~~to which may be  
 added, in the discretion of the court, and by imprisonment~~  
 for a term not less than 7 days or more than 30 days. 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  
 or more than 1 year, to which may be added, in the  
 discretion of the court, 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.

~~(2)(4) Except as otherwise for nonsuspendable jail  
 sentences provided in this section, the court may, in its  
 discretion, suspend the execution of any sentence imposed  
 under subsection (1) this section on the condition that the~~

1 ~~defendant successfully complete a course in a driver~~  
 2 ~~improvement school approved by the court or an alcohol~~  
 3 ~~treatment program approved by the department of~~  
 4 ~~institutions.~~ IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS  
 5 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL  
 6 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL  
 7 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS  
 8 WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT OR BOTH IF  
 9 CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE  
 10 PROGRAM. Each ~~school or institution~~ COUNSELOR providing such  
 11 education or treatment shall, at the commencement of the  
 12 education or treatment, notify the court that the defendant  
 13 has been ~~accepted by the school~~ ENROLLED IN A COURSE or  
 14 treatment program. If the defendant fails to attend the  
 15 ~~school~~ COURSE or the treatment program, the ~~school or~~  
 16 ~~institution~~ COUNSELOR shall notify the court of the failure.

17 ~~(3)(5)~~ For the purpose of determining the number of  
 18 convictions under this section, "conviction" means a final  
 19 conviction, as defined in 45-2-101, or a forfeiture of bail  
 20 or collateral deposited to secure the defendant's appearance  
 21 in court, which forfeiture has not been vacated. An  
 22 offender is considered to have been previously convicted for  
 23 the purposes of this section if less than 5 years have  
 24 elapsed between the commission of the present offense and a  
 25 previous conviction."

-End-

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT--A  
PERSON--WITH--8%--PERCENT--ALCOHOL--IN--HIS--BLOOD--IS--GUilty--OF  
DRIVING--OR--BEING--IN--CONTROL--OF--A--MOTOR--VEHICLE--WITHIN--THIS  
STATE--WHILE--UNDER--THE--INFLUENCE--OF--ALCOHOL--TO--INCREASE--AND  
ESTABLISH--MINIMUM--PENALTIES--TO--LEVY--A--PENALTY--ASSESSMENT--TO  
BE--USED--TO--FUND--DRIVER--SERVICES--PROGRAMS--AND--A--STATEWIDE  
ALCOHOL--SAFETY--ACTION--PROGRAM--AMENDING--SECTIONS--61-8-101,  
61-8-401--AND--61-8-714--MCA. MANDATORY SENTENCES FOR DRIVING  
OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE  
WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE  
DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE;  
INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY;  
AMENDING SECTION 61-8-714, MCA."

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

Refer to Introduced bill

(Strike everything after the enacting clause and insert:)

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

"61-8-714. Penalty for driving while intoxicated. (1)

Every A person who is convicted of a violation of 61-8-401  
shall be punished by imprisonment in the county jail for 1  
days and 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 to which may be  
added in the discretion of the court and by imprisonment  
for a term not less than 7 days or more than 30 days. 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  
or more than 1 year, to which may be added, in the  
discretion of the court, 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.

(2)(4) Except as otherwise for nonsuspendable jail  
sentences provided in this section, the court may, in its  
discretion, suspend the execution of any sentence imposed  
under subsection (1) this section on the condition that the

1 ~~defendant--successfully--complete--a--course--in--a--driver~~  
 2 ~~improvement--school--approved--by--the--court--or--an--alcohol~~  
 3 ~~treatment--program--approved--by--the--department--of~~  
 4 ~~institutions.~~ IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS  
 5 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL  
 6 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL  
 7 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS  
 8 WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT OR BOTH IF  
 9 CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE  
 10 PROGRAM. Each ~~school--or--institution~~ COUNSELOR providing such  
 11 education or treatment shall, at the commencement of the  
 12 education or treatment, notify the court that the defendant  
 13 has been ~~accepted--by--the--school~~ ENROLLED IN A COURSE or  
 14 treatment program. If the defendant fails to attend the  
 15 ~~school~~ COURSE or the treatment program, the ~~school--or~~  
 16 ~~institution~~ COUNSELOR shall notify the court of the failure.

17 (3)(5) For the purpose of determining the number of  
 18 convictions under this section, "conviction" means a final  
 19 conviction, as defined in 45-2-101, or a forfeiture of bail  
 20 or collateral deposited to secure the defendant's appearance  
 21 in court, which forfeiture has not been vacated. An  
 22 offender is considered to have been previously convicted for  
 23 the purposes of this section if less than 5 years have  
 24 elapsed between the commission of the present offense and a  
 25 previous conviction."

-End-

## 1 HOUSE BILL NO. 364

2 INTRODUCED BY VINCENT, CONN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT--A  
5 PERSON--WITH--0.10-PERCENT-ALCOHOL-IN-HIS-BLOOD-IS-GUILTY-OF  
6 DRIVING-OR-BEING-IN-CONTROL-OF-A-MOTOR-VEHICLE--WITHIN--THIS  
7 STATE--WHILE--UNDER--THE--INFLUENCE--OF--ALCOHOL;--TO--INCREASE--AND  
8 ESTABLISH--MINIMUM--PENALTIES;--TO--LEVY--A--PENALTY--ASSESSMENT--TO  
9 BE--USED--TO--FUND--DRIVER-SERVICES-PROGRAMS--AND--A--STATEWIDE  
10 ALCOHOL-SAFETY-ACTION-PROGRAM;--AMENDING--SECTIONS--61-8-101  
11 61-8-401,--AND--61-8-714,--MCA, MANDATORY SENTENCES FOR DRIVING  
12 OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE  
13 WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE  
14 DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE,  
15 INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY;  
16 TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S RECORD AFTER 5  
17 YEARS; AMENDING SECTION 61-8-714, MCA."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Refer to Introduced Bill

21 (Strike everything after the enacting clause and insert:)

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

23 "61-8-714. Penalty for driving while intoxicated. (1)

24 Every A person who is convicted of a violation of 61-8-401

25 shall MAY, IN THE DISCRETION OF THE COURT, be punished by

1 imprisonment in the county jail for 1-day UP TO 24 HOURS,  
2 and SHALL BE PUNISHED by a fine of not less than \$100 or  
3 more than \$500. The jail sentence may not be suspended  
4 unless the judge finds that the imposition of the jail  
5 sentence will pose a risk to the defendant's physical or  
6 mental well-being.

7 (2) On a second conviction, he shall be punished by a  
8 fine of not less than \$300 or more than \$500 ~~to which may be~~  
9 ~~added, in the discretion of the court, and by~~ imprisonment  
10 for a term not less than 7 days or more than 30 days. Three  
11 days of the jail sentence may not be suspended unless the  
12 judge finds that the imposition of the jail sentence will  
13 pose a risk to the defendant's physical or mental  
14 well-being.

15 (3) On the third or subsequent conviction, he shall be  
16 punished by imprisonment for a term of not less than 30 days  
17 or more than 1 year, to which may be added, in the  
18 discretion of the court, a fine of not less than \$500 or  
19 more than \$1,000. Notwithstanding any provision to the  
20 contrary providing for suspension of execution of a sentence  
21 imposed under this subsection, the imposition or execution  
22 of the first 10 days of the jail sentence imposed for a  
23 third or subsequent offense that occurred within 5 years of  
24 the first offense may not be deferred or suspended.

25 (4) ~~Except as otherwise for nonsuspendable part~~

-2- SECOND PRINTING HB 364

REFERENCE BILL

1 ~~sentences provided in this section, the court may in its~~  
 2 ~~discretion suspend the execution of any sentence imposed~~  
 3 ~~under subsection (1) this section on the condition that the~~  
 4 ~~defendant successfully complete a course in a driver~~  
 5 ~~improvement school approved by the court or an alcohol~~  
 6 ~~treatment program approved by the department of~~  
 7 ~~institutions.~~ IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS  
 8 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL  
 9 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL  
 10 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS  
 11 WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT OR BOTH IF  
 12 CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE  
 13 PROGRAM. Each school or institution COUNSELOR providing such  
 14 education or treatment shall, at the commencement of the  
 15 education or treatment, notify the court that the defendant  
 16 has been ~~accepted by the school~~ ENROLLED IN A COURSE or  
 17 treatment program. If the defendant fails to attend the  
 18 school COURSE or the treatment program, the school or  
 19 institution COUNSELOR shall notify the court of the failure.  
 20 ~~(3)(5)~~ (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, or a forfeiture of bail  
 23 or collateral deposited to secure the defendant's appearance  
 24 in court, which forfeiture has not been vacated. An  
 25 offender is considered to have been previously convicted for

1 the purposes of this section if less than 5 years have  
 2 elapsed between the commission of the present offense and a  
 3 previous conviction. IF THERE HAS BEEN NO ADDITIONAL  
 4 CONVICTION FOR AN OFFENSE UNDER THIS SECTION FOR A PERIOD OF  
 5 5 YEARS AFTER A PRIOR CONVICTION HEREUNDER, THEN SUCH PRIOR  
 6 OFFENSE SHALL BE EXPUNGED FROM THE DEFENDANT'S RECORD."

-End-

March 26, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 364, reference copy, as follows:

1. Title, line 15.  
Following: "NECESSARY;"  
Insert: "TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S  
RECORD AFTER 5 YEARS;"
2. Page 1, line 24.  
Following: line 23.  
Strike: "shall"  
Insert: "may, in the discretion of the court,"
3. Page 1, lines 24 and 25.  
Following: "for"  
Strike: "1 day"  
Insert: "up to 24 hours"
4. Page 1, line 25.  
Following: "and"  
Insert: "shall be punished"
5. Page 3.  
Following: line 25.  
Insert: "If there has been no additional conviction  
for an offense under this section for a period of  
5 years after a prior conviction hereunder, then  
such prior offense shall be expunged from the de-  
fendant's record."