

HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,
CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

January 16, 1985	Introduced and referred to Committee on Judiciary.
January 17, 1985	Fiscal Note requested.
January 23, 1985	Fiscal Note returned.
January 25, 1985	New Fiscal Note requested.
January 30, 1985	New Fiscal Note returned.
February 18, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 19, 1985	Second reading, do pass as amended. Correctly engrossed.
February 20, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Judiciary.
March 6, 1985	Committee recommend bill be concurrent in. Report adopted.
March 7, 1985	Second reading, concurred in.
March 9, 1985	Third reading, concurred in. Ayes, 48; Noes, 0 Returned to House.

IN THE HOUSE

March 11, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 210

INTRODUCED BY Carrelly Richard M. Vincent
Richard M. Vincent J. Brown Bradley Long

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER THE INFLUENCE OF ALCOHOL; ESTABLISHING A PRELIMINARY BLOOD ALCOHOL CONTENT BREATH TEST; AND INCREASING THE PENALTY FOR THE SECOND AND THIRD CONVICTIONS FOR DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; AMENDING SECTIONS 61-8-402, 61-8-404, AND 61-8-722, MCA."

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

NEW SECTION. Section 1. Negligent vehicular assault -- penalty. (1) If a person operates a motor vehicle in a negligent manner because he is driving while under the influence of alcohol and his conduct is the proximate cause of serious bodily injury to another, he commits the offense of negligent vehicular assault.

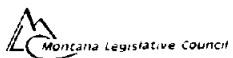
(2) A person convicted of the offense of negligent vehicular assault shall be imprisoned in the state prison for a term not to exceed 3 years or be fined an amount not to exceed \$20,000, or both.

NEW SECTION. Section 2. Preliminary screening test of breath. A peace officer who has a particularized suspicion that a person may have been driving or in actual physical

control of a motor vehicle upon the ways of this state open to the public while under the influence of alcohol may request that person to submit to a preliminary screening test of his breath to determine his blood alcohol content. The test must be administered with a device and in a manner approved by the department of justice. The results of the test may be used to help the officer to decide whether an arrest should be made. In addition, or upon refusal to submit to this test, the officer may require testing under 61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test under this section of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon ways of this state open to the public while under the influence of alcohol. The arresting officer may designate which one of the aforesaid



1 tests shall be administered.

2 (2) Any person who is unconscious or who is otherwise
3 in a condition rendering him incapable of refusal shall be
4 deemed not to have withdrawn the consent provided by
5 subsection (1) of this section.

6 (3) If a resident driver under arrest refuses upon the
7 request of a peace officer to submit to a chemical test
8 designated by the arresting officer as provided in
9 subsection (1) of this section, none shall be given, but the
10 officer shall, on behalf of the division, immediately seize
11 his driver's license. The peace officer shall forward the
12 license to the division, along with a sworn report that he
13 had reasonable grounds to believe the arrested person had
14 been driving or was in actual physical control of a motor
15 vehicle upon ways of this state open to the public, while
16 under the influence of alcohol and that the person had
17 refused to submit to the test upon the request of the peace
18 officer. Upon receipt of the report, the division shall
19 suspend the license for the period provided in subsection
20 (5).

21 (4) Upon seizure of a resident driver's license, the
22 peace officer shall issue, on behalf of the division, a
23 temporary driving permit, which is valid for 72 hours after
24 the time of issuance.

25 (5) The following suspension and revocation periods

1 are applicable upon refusal to submit to a chemical test
2 under this section:

3 (a) upon a first refusal, a suspension of 90 days with
4 no provision for a restricted probationary license;

5 (b) upon a second or subsequent refusal within 5 years
6 of a previous refusal, as determined from the records of the
7 division, a revocation of 1 year with no provision for a
8 restricted probationary license.

9 (6) Like refusal by a nonresident shall be subject to
10 suspension by the division in like manner, and the same
11 temporary driving permit shall be issued to nonresidents.

12 (7) All such suspensions are subject to review as
13 hereinafter provided."

14 Section 4. Section 61-8-404, MCA, is amended to read:

15 "61-8-404. Evidence admissible -- conditions of
16 admissibility. (1) Upon the trial of any criminal action or
17 other proceeding arising out of acts alleged to have been
18 committed by any person in violation of 61-8-401 or
19 61-8-406:

20 (a) evidence of the amount of alcohol in the person's
21 blood at the time of the act alleged, as shown by a chemical
22 analysis of his blood, breath, or urine administered under
23 61-8-402, is admissible; and

24 (b) a report of the facts and results of any chemical
25 test of a person's blood, breath, or urine administered

1 under 61-8-402 is admissible in evidence if:

2 (i) the breath analysis report was prepared and
3 verified by the person who performed the test or the blood
4 or urine test was a laboratory analysis and the analysis was
5 done in a laboratory operated by the department of justice
6 or by any other laboratory or facility certified or exempt
7 from certification under the rules of the department; and

8 (ii) the report was prepared in accordance with any
9 applicable rules of the department; and

10 (iii) if the test was on a blood sample, the person
11 withdrawing the blood must have been competent to do so
12 under 61-8-405(1).

13 (2) If the person under arrest refused to submit to
14 the test as hereinabove provided, proof of refusal shall be
15 admissible in any criminal action or proceeding arising out
16 of acts alleged to have been committed while the person was
17 driving or in actual physical control of a motor vehicle
18 upon the ways of this state open to the public, while under
19 the influence of alcohol.

20 (3) The provisions of this part do not limit the
21 introduction of any other competent evidence bearing on the
22 question of whether the person was under the influence of
23 alcohol."

24 Section 5. Section 61-8-722, MCA, is amended to read:
25 "61-8-722. Penalty for driving with excessive blood

1 alcohol concentration. (1) A person convicted of a violation
2 of 61-8-406 shall be punished by imprisonment for not more
3 than 10 days and shall be punished by a fine of not less
4 than \$100 or more than \$500.

5 (2) On a second conviction of a violation of 61-8-406,
6 he shall be punished by imprisonment for not less than ~~48~~
7 consecutive--hours 7 days or more than ~~30-days 6 months~~, at
8 least 48 hours of which must be served consecutively, and by
9 a fine of not less than \$300 or more than \$500. Three days
10 of the jail sentence may not be suspended unless the judge
11 finds that the jail sentence will pose a risk to the
12 defendant's physical or mental well-being.

13 (3) On a third or subsequent conviction of a violation
14 of 61-8-406, he shall be punished by imprisonment for not
15 less than ~~48-consecutive-hours 30 days~~ or more than ~~6-months~~
16 1 year, at least 48 hours of which must be served
17 consecutively, and may be punished, in the discretion of the
18 court, by a fine of not less than \$500 or more than \$1,000.
19 The first 10 days of the jail sentence imposed for a third
20 or subsequent offense that occurred within 5 years of the
21 first offense may not be deferred or suspended.

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

25 NEW SECTION. Section 6. Codification instruction. (1)

1 Section 1 is intended to be codified as an integral part of
 2 Title 45, and the provisions of Title 45 apply to section 1.
 3 (2) Section 2 is intended to be codified as an
 4 integral part of Title 61, and the provisions of Title 61
 5 apply to section 2.

-End-

FISCAL NOTE

In compliance with a written request received January 17 19 85, there is hereby submitted a Fiscal Note for H.B. 210 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 210 establishes the ~~criminal~~ offense of vehicular assault while under the influence of alcohol; establishes a preliminary blood alcohol content breath test; and increases the DUI per se penalties for the second and third convictions for driving with an alcohol concentration of 0.10 or more.

ASSUMPTIONS:

1. The three year sentence in the bill would mean an individual could be paroled in seven months.
2. Assume 20% reduction in offenses from FY 83 to FY 85; 20% from FY 85 to FY 86; and 20% from FY 86 to FY 87.
3. Suspended Sentences -

	<u>FY 86</u>	<u>FY 87</u>
Impact on Probation Officers (additional probationers on caseloads)	591	473
Montana State Prison (additional commitments to Prison)	49	39
4. Given an individual serves seven months of a three year sentence and then is paroled, the maximum increase in the prison population would be 29 inmates in FY 86 and 23 in FY 87.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 23, 1985

FISCAL IMPACT:

	<u>FY 86</u>	<u>FY 87</u>
Department of Institutions	\$85,844	\$68,083
General Fund Required	<u>\$85,844</u>	<u>\$68,083</u>

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURE:

The Department of Justice estimates the local governments would have a cost of:

<u>FY 1986</u>	<u>FY 1987</u>
\$55,800	\$54,000

STATE OF MONTANA
FISCAL NOTE

Amended
REQUEST NO. FNN 125-85

Form BD-15

In compliance with a written request received January 25, 19 85, there is hereby submitted a Fiscal Note for H.B. 210 Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Amended H.B. 210 establishes the criminal offense of negligent vehicular assault while under the influence of alcohol and establishes a preliminary blood alcohol content breath test.

ASSUMPTIONS:

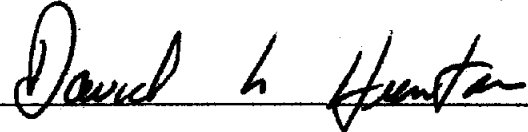
1. The language in the bill states that sentences are not to exceed one year. It is assumed that such offenses will be misdemeanors rather than felonies.
2. Assume 20% reduction in offenses from FY 83 to FY 85; 20% from FY 85 to FY 86; and 20% from FY 86 to FY 87.
3. It is assumed that the county jails will receive 98 committments in FY 86 and 78 committments in FY 87.
4. It is assumed that the average length of stay in the county jail will be 90 days.

FISCAL IMPACT:

Since the amended bill requires sentences to be served in county jails rather than the State Prison, there is no fiscal impact on state government.

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

	FY 86	FY 87
Jail Costs:	\$ 74,529	\$ 59,319
Supplies & Equipment	\$ 55,800	\$ 54,000
Total Estimated Cost	\$130,329	\$113,319


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 30, 1985

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,
CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER
THE INFLUENCE OF ALCOHOL, ESTABLISHING A PRELIMINARY BLOOD
ALCOHOL CONTENT BREATH TEST, AND INCREASING THE PENALTY FOR
THE SECOND AND THIRD CONVICTIONS FOR DRIVING WITH AN ALCOHOL
CONCENTRATION OF 0.10 OR MORE, AMENDING SECTIONS 61-8-402,
61-8-404, AND 61-8-722, MCA."

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

NEW SECTION. Section 1. Negligent vehicular assault
-- penalty. (1) If a person operates a motor vehicle in a
negligent manner because AND he is driving while under the
influence of alcohol and his conduct is the proximate cause
of serious bodily injury to another, he commits the offense
of negligent vehicular assault.

(2) A person convicted of the offense of negligent
vehicular assault shall be FINED AN AMOUNT NOT TO EXCEED
\$1,000 OR imprisoned in the state prison COUNTY JAIL for a
term not to exceed 3 years or be fined an amount not to
exceed \$20,000 1 YEAR, or both.

NEW SECTION. Section 2. Preliminary screening test of

breath. A peace officer who has a particularized suspicion
that a person may have been driving or in actual physical
control of a motor vehicle upon the ways of this state open
to the public while under the influence of alcohol may
request that person to submit to a preliminary screening
test of his breath to determine his blood alcohol content.
The test must be administered with a device and in a manner
approved by the department of justice. The results of the
test may be used to help the officer to decide whether an
arrest should be made. In addition, or upon refusal to
submit to this test, the officer may require testing under
61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:
"61-8-402. Chemical blood, breath, or urine tests.
(1) Any person who operates a motor vehicle upon ways of
this state open to the public shall be deemed to have given
consent, subject to the provisions of 61-8-401, to a
chemical test under this section of his blood, breath, or
urine for the purpose of determining the alcoholic content
of his blood if arrested by a peace officer for driving or
in actual physical control of a motor vehicle while under
the influence of alcohol. The test shall be administered at
the direction of a peace officer having reasonable grounds
to believe the person to have been driving or in actual
physical control of a motor vehicle upon ways of this state

1 open-to-the-public-while-under-the-influence-of-alcohol.-The
2 arresting-officer-may-designate-which-one-of-the-aforsaid
3 tests-shall-be-administered.

4 (2)--Any-person-who-is-unconscious-or-who-is-otherwise
5 in-a-condition-rendering-him-incapable-of-refusal--shall-be
6 deemed--not--to--have--withdrawn--the--consent--provided--by
7 subsection-(1)-of-this-section.

8 (3)--If-a-resident-driver-under-arrest-refuses-upon-the
9 request-of-a-peace-officer-to-submit--to--a--chemical--test
10 designated--by--the--arresting--officer--as--provided--in
11 subsection-(1)-of-this-section, none-shall-be-given, but-the
12 officer-shall, on-behalf-of-the-division, immediately-seize
13 his--driver's--license.-The-peace-officer-shall-forward-the
14 license-to-the-division, along-with-a-sworn-report--that--he
15 had--reasonable--grounds--to-believe-the-arrested-person-had
16 been-driving-or-was-in-actual-physical-control--of--a--motor
17 vehicle--upon--ways--of-this-state-open-to-the-public, while
18 under-the-influence-of--alcohol--and--that--the--person--had
19 refused--to-submit-to-the-test-upon-the-request-of-the-peace
20 officer.-Upon-receipt-of--the--report, the-division--shall
21 suspend--the--license--for-the-period-provided-in-subsection

22 (5):

23 (4)--Upon-seizure-of-a-resident-driver's--license, the
24 peace-officer--shall--issue, on-behalf-of-the-division, a
25 temporary-driving-permit, which-is-valid-for-72-hours--after

1 the-time-of-issuance.

2 (5)--The--following--suspension--and--revocation-periods
3 are-applicable-upon-refusal-to-submit--to--a--chemical--test
4 under-this-section:

5 (a)--upon-a-first-refusal, a-suspension-of-90-days-with
6 no-provision-for-a-restricted-probationary-license;

7 (b)--upon-a-second-or-subsequent-refusal-within-5-years
8 of-a-previous-refusal, as-determined-from-the-records-of-the
9 division, a--revocation--of--1-year-with-no-provision-for-a
10 restricted-probationary-license;

11 (6)--Bike-refusal-by-a-nonresident-shall-be-subject--to
12 suspension--by--the--division--in--like-manner, and-the-same
13 temporary-driving-permit-shall-be-issued-to-nonresidents.

14 (7)--All-such-suspensions--are--subject--to--review--as
15 hereinafter-provided."

16 Section-4--Section--61-8-404, MCA, is-amended-to-read:

17 "61-8-404--Evidence--admissible-----conditions--of
18 admissibility,--(1)-Upon-the-trial-of-any-criminal-action-or
19 other--proceeding--arising--out-of-acts--alleged-to-have-been
20 committed--by--any--person--in--violation--of--61-8-401--or
21 61-8-406:

22 (a)--evidence--of-the-amount-of-alcohol-in-the-person's
23 blood-at-the-time-of-the-act-alleged, as-shown-by-a-chemical
24 analysis-of-his-blood, breath, or-urine--administered--under
25 61-8-402, is-admissible, and

1 ~~(b) a report of the facts and results of any chemical~~
 2 ~~test of a person's blood, breath, or urine administered~~
 3 ~~under 61-8-402 is admissible in evidence if:~~

4 ~~(i) the breath analysis report was prepared and~~
 5 ~~verified by the person who performed the test or the blood~~
 6 ~~or urine test was a laboratory analysis and the analysis was~~
 7 ~~done in a laboratory operated by the department of justice~~
 8 ~~or by any other laboratory or facility certified or exempt~~
 9 ~~from certification under the rules of the department; and~~

10 ~~(ii) the report was prepared in accordance with any~~
 11 ~~applicable rules of the department; and~~

12 ~~(iii) if the test was on a blood sample, the person~~
 13 ~~withdrawing the blood must have been competent to do so~~
 14 ~~under 61-8-405(1);~~

15 ~~(2) if the person under arrest refused to submit to~~
 16 ~~the test as hereinabove provided, proof of refusal shall be~~
 17 ~~admissible in any criminal action or proceeding arising out~~
 18 ~~of acts alleged to have been committed while the person was~~
 19 ~~driving or in actual physical control of a motor vehicle~~
 20 ~~upon the ways of this state open to the public, while under~~
 21 ~~the influence of alcohol;~~

22 ~~(3) The provisions of this part do not limit the~~
 23 ~~introduction of any other competent evidence bearing on the~~
 24 ~~question of whether the person was under the influence of~~
 25 ~~alcohol."~~

1 ~~Section 5. Section 61-8-722, MCA, is amended to read:~~

2 ~~"61-8-722. Penalty for driving with excessive blood~~
 3 ~~alcohol concentration. (1) A person convicted of a~~
 4 ~~violation of 61-8-406 shall be punished by imprisonment for~~
 5 ~~not more than 10 days and shall be punished by a fine of not~~
 6 ~~less than \$100 or more than \$500;~~

7 ~~(2) On a second conviction of a violation of 61-8-406,~~
 8 ~~he shall be punished by imprisonment for not less than 40~~
 9 ~~consecutive hours, 7 days or more than 30 days, 6 months, at~~
 10 ~~least 48 hours of which must be served consecutively, and by~~
 11 ~~a fine of not less than \$300 or more than \$500. Three days~~
 12 ~~of the jail sentence may not be suspended unless the judge~~
 13 ~~finds that the jail sentence will pose a risk to the~~
 14 ~~defendant's physical or mental well-being;~~

15 ~~(3) On a third or subsequent conviction of a violation~~
 16 ~~of 61-8-406, he shall be punished by imprisonment for not~~
 17 ~~less than 48 consecutive hours, 30 days or more than 6 months~~
 18 ~~1 year, at least 48 hours of which must be served~~
 19 ~~consecutively, and may be punished, in the discretion of the~~
 20 ~~court, by a fine of not less than \$500 or more than \$1,000.~~
 21 ~~The first 10 days of the jail sentence imposed for a third~~
 22 ~~or subsequent offense that occurred within 5 years of the~~
 23 ~~first offense may not be deferred or suspended;~~

24 ~~(4) The provisions of 61-5-205(2), 61-5-208(2), and~~
 25 ~~61-11-203(2)(d) relating to revocation and suspension of~~

1 driver's licenses shall apply to any conviction under
2 61-8-406.

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

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

1 be expunged from the defendant's record."

2 NEW SECTION. Section 2. Codification instruction. {1}
3 Section 1 is intended to be codified as an integral part of
4 Title 45, and the provisions of Title 45 apply to section 1.
5 {2}--Section 2 is intended to be codified as an
6 integral part of Title 61 and the provisions of Title 61
7 apply to section 2.

-End-

HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,
CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER
THE INFLUENCE OF ALCOHOL OR OTHER DRUGS, ESTABLISHING A
PRELIMINARY BLOOD ALCOHOL CONTENT BREATH TEST, AND
INCREASING THE PENALTY FOR THE SECOND AND THIRD CONVICTIONS
FOR DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE,
AMENDING SECTIONS 61-8-402, 61-8-404, AND 61-8-722, MCA."

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

NEW SECTION. Section 1. Negligent vehicular assault
-- penalty. (1) If a person operates a motor vehicle in a
negligent manner because AND he is driving while under the
influence of alcohol OR DRUGS, AS PROVIDED FOR IN
61-8-401(1), and his conduct is the proximate cause of
serious bodily injury to another, he commits the offense of
negligent vehicular assault.

(2) A person convicted of the offense of negligent
vehicular assault shall be FINED AN AMOUNT NOT TO EXCEED
\$1,000 OR imprisoned in the state prison COUNTY JAIL for a
term not to exceed 3 years or be fined an amount not to
exceed \$20,000 1 YEAR, or both.

NEW SECTION. Section 2. Preliminary screening test of
breath. A peace officer who has a particularized suspicion
that a person may have been driving or in actual physical
control of a motor vehicle upon the ways of this state open
to the public while under the influence of alcohol may
request that person to submit to a preliminary screening
test of his breath to determine his blood alcohol content.
The test must be administered with a device and in a manner
approved by the department of justice. The results of the
test may be used to help the officer to decide whether an
arrest should be made. In addition, or upon refusal to
submit to this test, the officer may require testing under
61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:
"61-8-402. Chemical blood, breath, or urine tests.
(1) Any person who operates a motor vehicle upon ways of
this state open to the public shall be deemed to have given
consent, subject to the provisions of 61-8-401, to a
chemical test under this section of his blood, breath, or
urine for the purpose of determining the alcoholic content
of his blood if arrested by a peace officer for driving or
in actual physical control of a motor vehicle while under
the influence of alcohol. The test shall be administered at
the direction of a peace officer having reasonable grounds
to believe the person to have been driving or in actual

1 physical control of a motor vehicle upon ways of this state
2 open to the public while under the influence of alcohol. The
3 arresting officer may designate which one of the aforesaid
4 tests shall be administered.

5 (2) Any person who is unconscious or who is otherwise
6 in a condition rendering him incapable of refusal shall be
7 deemed not to have withdrawn the consent provided by
8 subsection (1) of this section.

9 (3) If a resident driver under arrest refuses upon the
10 request of a peace officer to submit to a chemical test
11 designated by the arresting officer as provided in
12 subsection (1) of this section, none shall be given, but the
13 officer shall, on behalf of the division, immediately seize
14 his driver's license. The peace officer shall forward the
15 license to the division, along with a sworn report that he
16 had reasonable grounds to believe the arrested person had
17 been driving or was in actual physical control of a motor
18 vehicle upon ways of this state open to the public, while
19 under the influence of alcohol and that the person had
20 refused to submit to the test upon the request of the peace
21 officer. Upon receipt of the report, the division shall
22 suspend the license for the period provided in subsection
23 (5):

24 (4) Upon seizure of a resident driver's license, the
25 peace officer shall issue, on behalf of the division, a

1 temporary driving permit, which is valid for 72 hours after
2 the time of issuance.

3 (5) The following suspension and revocation periods
4 are applicable upon refusal to submit to a chemical test
5 under this section:

6 (a) upon a first refusal, a suspension of 90 days with
7 no provision for a restricted probationary license;

8 (b) upon a second or subsequent refusal within 5 years
9 of a previous refusal, as determined from the records of the
10 division, a revocation of 1 year with no provision for a
11 restricted probationary license.

12 (6) Bike refusal by a nonresident shall be subject to
13 suspension by the division in like manner, and the same
14 temporary driving permit shall be issued to nonresidents.

15 (7) All such suspensions are subject to review as
16 hereinafter provided."

17 Section 4. Section 61-8-404, MCA, is amended to read:

18 "61-8-404. Evidence admissible-----conditions of
19 admissibility. (1) Upon the trial of any criminal action or
20 other proceeding arising out of acts alleged to have been
21 committed by any person in violation of 61-8-401 or
22 61-8-406:

23 (a) evidence of the amount of alcohol in the person's
24 blood at the time of the act alleged, as shown by a chemical
25 analysis of his blood, breath, or urine administered under

1 ~~61-8-402, is admissible, and~~

2 ~~(b) a report of the facts and results of any chemical~~
 3 ~~test of a person's blood, breath, or urine administered~~
 4 ~~under 61-8-402 is admissible in evidence if:~~

5 ~~(i) the breath analysis report was prepared and~~
 6 ~~verified by the person who performed the test or the blood~~
 7 ~~or urine test was a laboratory analysis and the analysis was~~
 8 ~~done in a laboratory operated by the department of justice~~
 9 ~~or by any other laboratory or facility certified or exempt~~
 10 ~~from certification under the rules of the department; and~~

11 ~~(ii) the report was prepared in accordance with any~~
 12 ~~applicable rules of the department; and~~

13 ~~(iii) if the test was on a blood sample, the person~~
 14 ~~withdrawing the blood must have been competent to do so~~
 15 ~~under 61-8-405(i);~~

16 ~~(2) If the person under arrest refused to submit to~~
 17 ~~the test as hereinabove provided, proof of refusal shall be~~
 18 ~~admissible in any criminal action or proceeding arising out~~
 19 ~~of acts alleged to have been committed while the person was~~
 20 ~~driving or in actual physical control of a motor vehicle~~
 21 ~~upon the ways of this state open to the public, while under~~
 22 ~~the influence of alcohol;~~

23 ~~(3) The provisions of this part do not limit the~~
 24 ~~introduction of any other competent evidence bearing on the~~
 25 ~~question of whether the person was under the influence of~~

1 alcohol;"

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

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

8 (2) On a second conviction of a violation of 61-8-406,
 9 he shall be punished by imprisonment for not less than 48
 10 consecutive hours, 7 days or more than 30 days, 6 months, at
 11 least 48 hours of which must be served consecutively, and by
 12 a fine of not less than \$300 or more than \$500. Three days
 13 of the jail sentence may not be suspended unless the judge
 14 finds that the jail sentence will pose a risk to the
 15 defendant's physical or mental well-being.

16 (3) On a third or subsequent conviction of a violation
 17 of 61-8-406, he shall be punished by imprisonment for not
 18 less than 48 consecutive hours, 30 days or more than 6 months
 19 1 year, at least 48 hours of which must be served
 20 consecutively, and may be punished, in the discretion of the
 21 court, by a fine of not less than \$500 or more than \$1,000.
 22 The first 10 days of the jail sentence imposed for a third
 23 or subsequent offense that occurred within 5 years of the
 24 first offense may not be deferred or suspended.

25 (4) The provisions of 61-5-205(2), 61-5-200(2), and

1 ~~61-11-203(2)(d) relating to revocation and suspension of~~
 2 ~~driver's licenses shall apply to any conviction under~~
 3 ~~61-8-406.~~

4 ~~(5) 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~~
 8 ~~institutions, which may include alcohol or drug treatment,~~
 9 ~~or both, if considered necessary by the counselor conducting~~
 10 ~~the program. Each counselor providing such education or~~
 11 ~~treatment shall, at the commencement of the education or~~
 12 ~~treatment, notify the court that the defendant has been~~
 13 ~~enrolled in a course or treatment program. If the defendant~~
 14 ~~fails to attend the course or the treatment program, the~~
 15 ~~counselor shall notify the court of the failure.~~

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

1 ~~a prior conviction hereunder, then such prior offense shall~~
 2 ~~be expunged from the defendant's record."~~

3 NEW SECTION. Section 2. Codification instruction. (1)
 4 Section 1 is intended to be codified as an integral part of
 5 Title 45, and the provisions of Title 45 apply to section 1.
 6 (2) Section 2 is intended to be codified as an
 7 integral part of Title 61, and the provisions of Title 61
 8 apply to section 2.

-End-

HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,
CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER
THE INFLUENCE OF ALCOHOL OR OTHER DRUGS; ESTABLISHING A
PRELIMINARY BLOOD ALCOHOL CONTENT BREATH TEST; AND
INCREASING THE PENALTY FOR THE SECOND AND THIRD CONVICTIONS
FOR DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE;
AMENDING SECTIONS 61-8-402, 61-8-404, AND 61-8-722, MCA."

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

NEW SECTION. Section 1. Negligent vehicular assault
-- penalty. (1) If a person operates a motor vehicle in a
negligent manner because AND he is driving while under the
influence of alcohol OR DRUGS, AS PROVIDED FOR IN
61-8-401(1), and his conduct is the proximate cause of
serious bodily injury to another, he commits the offense of
negligent vehicular assault.

(2) A person convicted of the offense of negligent
vehicular assault shall be FINED AN AMOUNT NOT TO EXCEED
\$1,000 OR imprisoned in the state prison COUNTY JAIL for a
term not to exceed 3 years or be fined an amount not to
exceed \$20,000 1 YEAR, or both.

NEW SECTION. Section 2. Preliminary screening test of
breath. A peace officer who has a particularized suspicion
that a person may have been driving or in actual physical
control of a motor vehicle upon the ways of this state open
to the public while under the influence of alcohol may
request that person to submit to a preliminary screening
test of his breath to determine his blood alcohol content.
The test must be administered with a device and in a manner
approved by the department of justice. The results of the
test may be used to help the officer to decide whether an
arrest should be made. In addition, or upon refusal to
submit to this test, the officer may require testing under
61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:
"61-8-402. Chemical blood, breath, or urine tests.
(1) Any person who operates a motor vehicle upon ways of
this state open to the public shall be deemed to have given
consent to the provisions of 61-8-401, to a
chemical test under this section of his blood, breath, or
urine for the purpose of determining the alcoholic content
of his blood if arrested by a peace officer for driving or
in actual physical control of a motor vehicle while under
the influence of alcohol. The test shall be administered at
the direction of a peace officer having reasonable grounds
to believe the person to have been driving or in actual

1 physical--control-of-a-motor-vehicle-upon-ways-of-this-state
2 open-to-the-public-while-under-the-influence-of-alcohol; The
3 arresting-officer-may-designate-which-one-of--the--aforesaid
4 tests-shall-be-administered;

5 (2)--Any--person-who-is-unconscious-or-who-is-otherwise
6 in-a-condition-rendering-him-incapable-of-refusal--shall--be
7 deemed--not--to--have--withdrawn--the--consent--provided--by
8 subsection-(1)-of-this-section;

9 (3)--If-a-resident-driver-under-arrest-refuses-upon-the
10 request-of-a-peace-officer-to-submit--to--a--chemical--test
11 designated---by---the---arresting--officer--as--provided--in
12 subsection-(1)-of-this-section, none-shall-be-given, but-the
13 officer-shall, on-behalf-of-the-division, immediately--seize
14 his--driver's--license;--The-peace-officer-shall-forward-the
15 license-to-the-division, along-with-a-sworn-report--that--he
16 had--reasonable--grounds--to-believe-the-arrested-person-had
17 been-driving-or-was-in-actual-physical-control--of--a--motor
18 vehicle--upon--ways--of-this-state-open-to-the-public, while
19 under-the-influence-of--alcohol--and--that--the--person--had
20 refused--to-submit-to-the-test-upon-the-request-of-the-peace
21 officer; Upon-receipt-of--the--report, the-division--shall
22 suspend--the--license--for-the-period-provided-in-subsection
23 (5);

24 (4)--Upon-seizure-of-a-resident-driver's--license,--the
25 peace--officer--shall--issue,--on--behalf-of-the-division,--a

1 temporary-driving-permit, which-is-valid-for-72-hours--after
2 the-time-of-issuance;

3 (5)--The--following--suspension--and--revocation-periods
4 are-applicable-upon-refusal-to-submit--to--a--chemical--test
5 under-this-section:

6 (a)--upon-a-first-refusal, a-suspension-of-90-days-with
7 no-provision-for-a-restricted-probationary-license;

8 (b)--upon-a-second-or-subsequent-refusal-within-5-years
9 of-a-previous-refusal, as-determined-from-the-records-of-the
10 division, a--revocation--of--1-year-with-no-provision-for-a
11 restricted-probationary-license;

12 (6)--Like-refusal-by-a-nonresident-shall-be-subject--to
13 suspension--by--the--division--in--like-manner, and-the-same
14 temporary-driving-permit-shall-be-issued-to-nonresidents;

15 (7)--All-such-suspensions--are--subject--to--review--as
16 hereinafter-provided;"

17 Section-4--Section--61-8-404, MCA, is-amended-to-read:

18 "61-8-404--Evidence--admissible-----conditions---of
19 admissibility.--(1) Upon-the-trial-of-any-criminal-action-or
20 other--proceeding--arising--out-of-acts-alleged-to-have-been
21 committed--by--any--person--in--violation--of--61-8-401---or
22 61-8-406;

23 (a)--evidence--of-the-amount-of-alcohol-in-the-person's
24 blood-at-the-time-of-the-act-alleged, as-shown-by-a-chemical
25 analysis-of-his-blood, breath, or-urine--administered--under

1 61-8-402, is admissible, and
 2 (b) a report of the facts and results of any chemical
 3 test of a person's blood, breath, or urine administered
 4 under 61-8-402 is admissible in evidence if:
 5 (i) the breath analysis report was prepared and
 6 verified by the person who performed the test or the blood
 7 or urine test was a laboratory analysis and the analysis was
 8 done in a laboratory operated by the department of justice
 9 or by any other laboratory or facility certified or exempt
 10 from certification under the rules of the department; and
 11 (ii) the report was prepared in accordance with any
 12 applicable rules of the department; and
 13 (iii) if the test was on a blood sample, the person
 14 withdrawing the blood must have been competent to do so
 15 under 61-8-405(1);
 16 (2) if the person under arrest refused to submit to
 17 the test as hereinabove provided, proof of refusal shall be
 18 admissible in any criminal action or proceeding arising out
 19 of acts alleged to have been committed while the person was
 20 driving or in actual physical control of a motor vehicle
 21 upon the ways of this state open to the public, while under
 22 the influence of alcohol;
 23 (3) The provisions of this part do not limit the
 24 introduction of any other competent evidence bearing on the
 25 question of whether the person was under the influence of

1 alcohol."
 2 Section 5, Section 61-8-722, MCA, is amended to read:
 3 "61-8-722. Penalty for driving with excessive blood
 4 alcohol concentration. (1) A person convicted of a
 5 violation of 61-8-406 shall be punished by imprisonment for
 6 not more than 10 days and shall be punished by a fine of not
 7 less than \$100 or more than \$500;
 8 (2) On a second conviction of a violation of 61-8-406,
 9 he shall be punished by imprisonment for not less than 48
 10 consecutive hours 7 days or more than 30 days 6 months, at
 11 least 48 hours of which must be served consecutively, and by
 12 a fine of not less than \$300 or more than \$500. Three days
 13 of the jail sentence may not be suspended unless the judge
 14 finds that the jail sentence will pose a risk to the
 15 defendant's physical or mental well-being.
 16 (3) On a third or subsequent conviction of a violation
 17 of 61-8-406, he shall be punished by imprisonment for not
 18 less than 48 consecutive hours 30 days or more than 6 months
 19 1 year, at least 48 hours of which must be served
 20 consecutively, and may be punished, in the discretion of the
 21 court, by a fine of not less than \$500 or more than \$1,000.
 22 The first 10 days of the jail sentence imposed for a third
 23 or subsequent offense that occurred within 5 years of the
 24 first offense may not be deferred or suspended.
 25 (4) The provisions of 61-5-205(2), 61-5-200(2), and

1 61-11-203(2)(d)-relating-to--revocation--and--suspension--of
 2 driver's--licenses--shall--apply--to--any--conviction--under
 3 61-8-406.

4 (5)--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
 8 institutions,--which--may--include--alcohol--or--drug--treatment,
 9 or--both,--if--considered--necessary--by--the--counselor--conducting
 10 the--program.--Each--counselor--providing--such--education--or
 11 treatment--shall,--at--the--commencement--of--the--education--or
 12 treatment,--notify--the--court--that--the--defendant--has--been
 13 enrolled--in--a--course--or--treatment--program.--If--the--defendant
 14 fails--to--attend--the--course--or--the--treatment--program,--the
 15 counselor--shall--notify--the--court--of--the--failure.

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

1 a--prior--conviction--hereunder,--then--such--prior--offense--shall
 2 be--expunged--from--the--defendant's--record."

3 NEW SECTION. Section 2. Codification instruction. (++)
 4 Section 1 is intended to be codified as an integral part of
 5 Title 45, and the provisions of Title 45 apply to section 1.
 6 (2)--Section--2--is--intended--to--be--codified--as--an
 7 integral--part--of--Title--61--and--the--provisions--of--Title--61
 8 apply--to--section--2.

-End-