

HOUSE BILL 404

Introduced by Keller, et al.

1/24	Introduced
1/25	Referred to Judiciary
1/26	Fiscal Note Requested
1/31	Fiscal Note Received
2/01	Fiscal Note Printed
2/07	Hearing
2/13	Tabled in Committee

1 House BILL NO. 404  
2 INTRODUCED BY Ellen Hager Thomas  
3 Hager Hofman Thomas

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE PENALTY  
5 FOR A FIRST OFFENSE CONVICTION OF DRIVING UNDER THE  
6 INFLUENCE OF ALCOHOL OR DRUGS; ESTABLISHING THAT A FOURTH OR  
7 SUBSEQUENT CONVICTION FOR DRIVING UNDER THE INFLUENCE OF  
8 ALCOHOL OR DRUGS CONSTITUTES A FELONY; AND AMENDING SECTION  
9 61-8-714, MCA."

10

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

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

13 **"61-8-714.** Penalty for driving under the influence of  
14 alcohol or drugs. (1) A person convicted of a violation of  
15 61-8-401 shall be punished by imprisonment in the county  
16 jail for not less than 24 consecutive hours or more than 60  
17 days 6 months, and shall be punished by a fine of not less  
18 than \$100 or more than \$500. The jail sentence may not be  
19 suspended unless the judge finds that the imposition of the  
20 jail sentence will pose a risk to the defendant's physical  
21 or mental well-being.

22 (2) On a second conviction, he shall be punished by a  
23 fine of not less than \$300 or more than \$500 and by  
24 imprisonment for not less than 7 days, at least 48 hours of  
25 which must be served consecutively, or more than 6 months.

1 Three days of the jail sentence may not be suspended unless  
2 the judge finds that the imposition of the jail sentence  
3 will pose a risk to the defendant's physical or mental  
4 well-being.

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

16 (4) On the fourth or subsequent conviction, he shall  
17 be punished by imprisonment in the state prison for a term  
18 not to exceed 5 years or a fine not to exceed \$5,000, or  
19 both.

20 ~~(4)~~(5) In addition to the punishment provided in this  
21 section, regardless of disposition, the defendant shall  
22 complete an alcohol information course at an alcohol  
23 treatment program approved by the department of  
24 institutions, which may include alcohol or drug treatment,  
25 or both, if considered necessary by the counselor conducting

1 the program. Each counselor providing such education or  
2 treatment shall, at the commencement of the education or  
3 treatment, notify the court that the defendant has been  
4 enrolled in a course or treatment program. If the defendant  
5 fails to attend the course or the treatment program, the  
6 counselor shall notify the court of the failure.

7 ~~(5)~~(6) For the purpose of determining the number of  
8 convictions under this section, "conviction" means a final  
9 conviction, as defined in 45-2-101, in this state or a  
10 similar statute in another state or a forfeiture of bail or  
11 collateral deposited to secure the defendant's appearance in  
12 court in this state or another state, which forfeiture has  
13 not been vacated. An offender is considered to have been  
14 previously convicted for the purposes of this section if  
15 less than 5 years have elapsed between the commission of the  
16 present offense and a previous conviction. If there has been  
17 no additional conviction for an offense under this section  
18 for a period of 5 years after a prior conviction hereunder,  
19 then such prior offense shall be expunged from the  
20 defendant's record."

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB404, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act to increase the penalty for a first offense conviction of driving under the influence of alcohol or drugs; establishing that a fourth or subsequent conviction for driving under the influence of alcohol or drugs constitutes a felony; and amending Section 61-8-714, MCA.

ASSUMPTIONS:

1. Assume third convictions are to result in a mandatory jail term (county or city).
2. Assume fourth and subsequent convictions are to result in mandatory prison terms of five years or less, or a fine to exceed \$5,000 or both.
3. Approximately 90 people received their fourth or subsequent DUI convictions in calendar 1988. Assume the number will continue for each year of the biennium.
4. Assume all persons convicted pay their fine, and the average current fourth offense is \$500, and \$1,000 under proposed law.
5. Assume that an estimated 8-10 individuals will receive a mandatory prison term each year of the biennium.
6. There will be a 50/50 split between city courts and justice of the peace courts handling this type case.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY90</u>			<u>FY91</u>		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Operating Expenses	\$ -0-	\$ 18,184	\$ 18,184	\$ -0-	\$ 20,293	\$ 20,293
<u>Revenue:</u>						
General Fund	-0-	2,590	2,590	-0-	2,590	2,590
State Special	-0-	8,660	8,660	-0-	8,660	8,660
Total	\$ -0-	\$ 11,250	\$ 11,250	\$ -0-	\$ 11,250	\$ 11,250
<u>Net Effect:</u>						
General Fund	\$ -0-	(\$15,594)	(\$15,594)	\$ -0-	(\$17,703)	(\$17,703)
State Special	-0-	8,660	8,660	-0-	8,660	8,660

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Will effect city/county jail operating expenses.

*Ray Shackelford* 1/31/89  
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
 OFFICE OF BUDGET AND PROGRAM PLANNING

VERNON V. KELLER, PRIMARY SPONSOR DATE

Fiscal Note for HB404, as introduced

**HB 404**