

HOUSE BILL 587

Introduced by Addy, et al.

2/06	Introduced
2/07	Referred to Judiciary
2/08	Fiscal Note Requested
2/14	Fiscal Note Received
2/16	Fiscal Note Printed
2/17	Hearing
2/17	Tabled in Committee

1
2 INTRODUCED BY*HOUSE* BILL NO. *587*
Adley Vincent

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4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY
5 FOR A THIRD CONVICTION OF DRIVING UNDER THE INFLUENCE OR
6 DRIVING WITH AN ALCOHOL CONCENTRATION BEYOND A CERTAIN
7 AMOUNT; LOWERING THE ALCOHOL CONCENTRATION LEVEL THAT IS
8 EVIDENCE OF AN OFFENSE; AND AMENDING SECTIONS 61-8-401,
9 61-8-406, 61-8-714, AND 61-8-722, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** 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 and 61-8-723 for any person who is under the
16 influence of:

17 (a) alcohol to drive or be in actual physical control
18 of a vehicle upon the ways of this state open to the public;

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

21 (c) any other drug to drive or be in actual physical
22 control of a vehicle within this state; or

23 (d) alcohol and any drug to drive or be in actual
24 physical control of a vehicle within this state.

25 (2) The fact that any person charged with a violation

1 of subsection (1) is or has been entitled to use alcohol or
2 such a drug under the laws of this state does not constitute
3 a defense against any charge of violating subsection (1).

4 (3) "Under the influence" means that as a result of
5 taking into the body alcohol, drugs, or any combination
6 thereof, a person's ability to safely operate a motor
7 vehicle has been diminished.

8 (4) Upon the trial of any civil or criminal action or
9 proceeding arising out of acts alleged to have been
10 committed by any person driving or in actual physical
11 control of a vehicle while under the influence of alcohol,
12 the concentration of alcohol in the person's blood at the
13 time alleged, as shown by chemical analysis of the person's
14 blood, urine, breath, or other bodily substance, shall give
15 rise to the following presumptions:

16 (a) If there was at that time an alcohol concentration
17 of 0.05 or less, it shall be presumed that the person was
18 not under the influence of alcohol.

19 (b) If there was at that time an alcohol concentration
20 in excess of 0.05 but less than ~~0.10~~ 0.08, that fact shall
21 not give rise to any presumption that the person was or was
22 not under the influence of alcohol but such fact may be
23 considered with other competent evidence in determining the
24 guilt or innocence of the person.

25 (c) If there was at that time an alcohol concentration

1 of ~~0.10~~ 0.08 or more, it shall be presumed that the person
2 was under the influence of alcohol. Such presumption is
3 rebuttable.

4 (5) The provisions of subsection (4) do not limit the
5 introduction of any other competent evidence bearing upon
6 the issue of whether the person was under the influence of
7 alcohol.

8 (6) Each municipality in this state is given authority
9 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and
10 subsections (1) through (5) of this section, with the word
11 "state" in 61-8-406 and subsection (1) of this section
12 changed to read "municipality", as an ordinance and is given
13 jurisdiction of the enforcement of the ordinance and of the
14 imposition of the fines and penalties therein provided.

15 (7) Absolute liability as provided in 45-2-104 will be
16 imposed for a violation of this section."

17 **Section 2.** Section 61-8-406, MCA, is amended to read:

18 "61-8-406. Operation of vehicle by a person with
19 alcohol concentration of ~~0.10~~ 0.08 or more. It is unlawful
20 and punishable as provided in 61-8-722 and 61-8-723 for any
21 person to drive or be in actual physical control of a
22 vehicle upon the ways of this state open to the public while
23 the alcohol concentration in his blood, breath, or urine is
24 ~~0.10~~ 0.08 or more. Absolute liability as provided in
25 45-2-104 will be imposed for a violation of this section."

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

2 "61-8-714. Penalty for driving under the influence of
3 alcohol or drugs. (1) A person convicted of a violation of
4 61-8-401 shall be punished by imprisonment in the county
5 jail for not less than 24 consecutive hours or more than 60
6 days, and shall be punished by a fine of not less than \$100
7 or more than \$500. The jail sentence may not be suspended
8 unless the judge finds that the imposition of the jail
9 sentence will pose a risk to the defendant's physical or
10 mental well-being.

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

19 (3) On the third or subsequent conviction, he shall be
20 punished by imprisonment for a term of not less than 30
21 days, ~~at least 48 hours of which must be served~~
22 ~~consecutively,~~ or more than ~~1 year,~~ to which may be added,
23 in the discretion of the court, 5 years, to be served in the
24 county jail if the sentence is less than 1 year and to be
25 served in the state prison if the sentence is 1 year or

1 more, and by a fine of not less than \$500 or more than
 2 \$1,000;---Notwithstanding any provision to the contrary
 3 providing for suspension of execution of a sentence imposed
 4 under this subsection, the imposition or execution of the
 5 first 10 days of the jail sentence imposed for a third or
 6 subsequent offense that occurred within 5 years of the first
 7 offense may not be deferred or suspended \$50,000.

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

20 (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, in this state or a
 23 similar statute in another state or a forfeiture of bail or
 24 collateral deposited to secure the defendant's appearance in
 25 court in this state or another state, which forfeiture has

1 not been vacated. An offender is considered to have been
 2 previously convicted for the purposes of this section if
 3 less than 5 years have elapsed between the commission of the
 4 present offense and a previous conviction. If there has been
 5 no additional conviction for an offense under this section
 6 for a period of 5 years after a prior conviction hereunder,
 7 then such prior offense shall be expunged from the
 8 defendant's record."

9 **Section 4.** Section 61-8-722, MCA, is amended to read:

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

15 (2) On a second conviction of a violation of 61-8-406,
 16 he shall be punished by imprisonment for not less than 48
 17 consecutive hours or more than 30 days and by a fine of not
 18 less than \$300 or more than \$500.

19 (3) On a third or subsequent conviction of a violation
 20 of 61-8-406, he shall be punished by imprisonment for not
 21 less than 48 consecutive hours 30 days or more than 6 months
 22 5 years, to be served in the county jail if the sentence is
 23 less than 1 year and to be served in the state prison if the
 24 sentence is 1 year or more, and by a fine of not less than
 25 \$500 or more than \$1,000 \$50,000.

1 (4) The provisions of 61-5-205(2), 61-5-208(2), and
2 61-11-203(2)(d) relating to revocation and suspension of
3 driver's licenses shall apply to any conviction under
4 61-8-406.

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

17 (6) 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, in this state or a
20 similar statute in another state or a forfeiture of bail or
21 collateral deposited to secure the defendant's appearance in
22 court in this state or another state, which forfeiture has
23 not been vacated. An offender is considered to have been
24 previously convicted for the purposes of this section if
25 less than 5 years have elapsed between the commission of the

1 present offense and a previous conviction. If there has been
2 no additional conviction for an offense under this section
3 for a period of 5 years after a prior conviction hereunder,
4 then such prior offense shall be expunged from the
5 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 HB587, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled : "An act increasing the penalty for a third conviction of driving under the influence or driving with an alcohol concentration beyond a certain amount; lowering the alcohol concentration level that is evidence of an offense; and amending Sections 61-8-401, 61-8-406, 61-8-714, and 61-8-722, MCA.

ASSUMPTIONS:

1. Lower blood alcohol content criterion for conviction of DUI from .10 to .08.
2. Impose a mandatory confinement and fines on those convicted of a third offense DUI.
3. Confinement sentence ranges from 30 days up to five years, with 1-5 year terms to be served in prison.

FISCAL IMPACT:

	<u>Proposed</u> <u>FY90</u>	<u>Proposed</u> <u>FY91</u>
<u>Expenditures:</u>	\$54,552	\$60,880
<u>Funding:</u>		
General Fund	\$54,552	\$60,880

EFFECTS ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

This bill will probably increase enrollment in ACT programs and increase admissions to both community programs and Galen.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If all proposed legislation is passed, Montana State Prison will need a new housing unit and security staff.



DATE 2/14/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/15/89

KELLY ADDY, PRIMARY SPONSOR

Fiscal Note for HB587, as introduced

HB 587