

HOUSE BILL NO. 157

INTRODUCED BY VOGEL, TOWE, CLARK,
J. JOHNSON, YELLOWTAIL

IN THE HOUSE

JANUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 58; NOES, 41.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 39; NOES, 9.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 157
2 INTRODUCED BY Randy Vogel
3 Yellowtail
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES
5 FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;
6 AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR
7 THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE
8 INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTION
9 61-8-714, MCA."
10
11 WHEREAS, Officer Mark Cady, 29 years old, is a 3-year
12 veteran of the Billings Police Department; and
13 WHEREAS, Officer Cady is married and the father of two
14 young children; and
15 WHEREAS, in the early morning hours of September 19,
16 1992, Officer Cady was seriously injured in a traffic
17 accident while on duty; and
18 WHEREAS, the traffic accident occurred while an
19 intoxicated driver was fleeing the scene of a personal
20 injury accident; and
21 WHEREAS, Officer Cady's patrol car was hit at a high
22 rate of speed by the fleeing driver; and
23 WHEREAS, the driver of the fleeing vehicle was
24 intoxicated at the time of the accident and had a prior
25 conviction for driving under the influence of alcohol or

1 drugs; and

2 WHEREAS, Officer Cady and his family have suffered
3 terribly because of the actions of an irresponsible driver
4 involved in an alcohol-related traffic offense; and

5 WHEREAS, the community and the people of the state of
6 Montana have been deprived of the loyal and continuous
7 services of a dedicated public servant; and

8 WHEREAS, driving under the influence of alcohol or drugs
9 remains a serious problem in this state and current
10 penalties often do not deter multiple violations of the DUI
11 laws; and

12 WHEREAS, in Montana during 1991, 92 victims died and
13 2,000 individuals were injured in alcohol- or drug-related
14 accidents; and

15 WHEREAS, additional penalties for multiple offenders may
16 deter multiple violations and prevent the kind of tragedy
17 that Officer Cady and his family have suffered and may
18 prevent other families from suffering in the same way.

19 THEREFORE, the Legislature finds it fitting to enact the
20 following legislation.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

24 "61-8-714. Penalty for driving under influence of
25 alcohol or drugs. (1) Except as provided in subsections (7)

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

9 (2) Except as provided in subsection (7), on a second
 10 conviction, he the person shall be punished by a fine of not
 11 less than \$300 or more than \$500 and by imprisonment for not
 12 less than 7 days, at least 48 hours of which must be served
 13 consecutively, or more than 6 months. Except as provided in
 14 subsection (7), 3 days of the imprisonment sentence may not
 15 be suspended unless the judge finds that the imposition of
 16 the imprisonment sentence will pose a risk to the
 17 defendant's physical or mental well-being.

18 (3) (a) Except as provided in subsection (7), on the
 19 third or subsequent conviction, he the person 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 and by a fine of not less
 23 than \$500 or more than \$1,000. Except as provided in
 24 subsection (7), notwithstanding any provision to the
 25 contrary providing for suspension of execution of a sentence

1 imposed under this subsection, the imposition or execution
 2 of the first 10 days of the imprisonment sentence imposed
 3 for a third or subsequent offense that occurred within 5
 4 years of the first offense may not be deferred or suspended.

5 (b) (i) On the third or subsequent conviction, the
 6 court, in addition to any other penalty imposed by law,
 7 shall order the motor vehicle owned and operated by the
 8 person at the time of the offense to be forfeited as
 9 provided under [sections 2 through 9].

10 (ii) A vehicle used by a person as a common carrier in
 11 the transaction of business as a common carrier is not
 12 subject to forfeiture unless it appears that the owner or
 13 other person in charge of the vehicle consented to or was
 14 privity to the violation. A vehicle may not be forfeited under
 15 this section for any act or omission established by the
 16 owner to have been committed or omitted by a person other
 17 than the owner while the vehicle was unlawfully in the
 18 possession of a person other than the owner in violation of
 19 the criminal laws of this state or the United States.

20 (iii) Forfeiture of a vehicle encumbered by a security
 21 interest is subject to the secured person's interest if the
 22 person did not know and could not have reasonably known of
 23 the unlawful possession, use, or other act on which the
 24 forfeiture is sought.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall
2 complete an alcohol information course at an alcohol
3 treatment program approved by the department of corrections
4 and human services, which may, in the sentencing court's
5 discretion and upon recommendation of a certified chemical
6 dependency counselor, include alcohol or drug treatment, or
7 both. On conviction of a second or subsequent offense under
8 this section, 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 corrections
12 and human services, which must include alcohol or drug
13 treatment, or both. Each counselor providing education or
14 treatment shall, at the commencement of the education or
15 treatment, notify the court that the defendant has been
16 enrolled in a course or treatment program. If the defendant
17 fails to attend the course or the treatment program, the
18 counselor shall notify the court of the failure. As long as
19 the alcohol information course is approved as provided in
20 this subsection and the treatment is provided by a certified
21 chemical dependency counselor, the defendant may attend the
22 information course and treatment program of his the
23 defendant's choice. The treatment provided to the defendant
24 at a treatment program must be at a level appropriate to his
25 the defendant's alcohol problem, as determined by the judge

1 based upon the recommendation from the certified chemical
2 dependency counselor.

3 (5) For the purpose of determining the number of
4 convictions under this section, "conviction" means a final
5 conviction, as defined in 45-2-101, in this state,
6 conviction for a violation of a similar statute in another
7 state, or a forfeiture of bail or collateral deposited to
8 secure the defendant's appearance in court in this state or
9 another state, which forfeiture has not been vacated. An
10 offender is considered to have been previously convicted for
11 the purposes of sentencing if less than 5 years have elapsed
12 between the commission of the present offense and a previous
13 conviction. If there has been no additional conviction for
14 an offense under this section for a period of 5 years after
15 a prior conviction under this section, then all records and
16 data relating to the prior conviction are confidential
17 criminal justice information, as defined in 44-5-103, and
18 public access to the information may only be obtained by
19 district court order upon good cause shown.

20 (6) For the purpose of calculating subsequent
21 convictions under this section, a conviction for a violation
22 of 61-8-406 also constitutes a conviction for a violation of
23 61-8-401.

24 (7) The court may order that a term of imprisonment
25 imposed under this section be served in another facility

1 made available by the county and approved by the sentencing
 2 court. The defendant, if financially able, shall bear the
 3 expense of the imprisonment in the facility. The court may
 4 impose restrictions on the defendant's ability to leave the
 5 premises of the facility and require that the defendant
 6 follow the rules of that facility. The facility may be, but
 7 is not required to be, a community-based prerelease center
 8 as provided for in 53-1-203. The prerelease center may
 9 accept or reject a defendant referred by the sentencing
 10 court.

11 (8) Except for the initial 24 hours on a first offense
 12 or the initial 48 hours on a second or subsequent offense,
 13 the court may order that a term of imprisonment imposed
 14 under this section be served by imprisonment under home
 15 arrest as provided in Title 46, chapter 18, part 10."

16 NEW SECTION. Section 2. Seizure and forfeiture of
 17 vehicle -- notice -- release. (1) A motor vehicle subject to
 18 forfeiture under 61-8-714(3)(b) may be seized for forfeiture
 19 by a law enforcement officer on process, including a seizure
 20 warrant, issued by a court pursuant to law.

21 (2) If a motor vehicle is seized for forfeiture under
 22 this section, pending forfeiture and final disposition, the
 23 seizing officer's employing agency may do one of the
 24 following:

25 (a) remove the motor vehicle to a storage area for

1 safekeeping;

2 (b) remove the motor vehicle to a place designated by
 3 the court; or

4 (c) provide for another custodian or agency to take
 5 custody of the motor vehicle and remove it to an appropriate
 6 location within the jurisdiction of the court.

7 (3) As soon as practicable after a vehicle is seized
 8 for forfeiture under this section, the seizing officer's
 9 employing agency shall conduct an inventory and estimate the
 10 value of the vehicle. Within 20 days of seizure, the agency
 11 shall give notice of the seizure for forfeiture to the
 12 registered owner and any holder of a perfected security
 13 interest in the seized vehicle.

14 (4) The notice required by subsection (2) must contain
 15 the following:

16 (a) a description of the vehicle, including the year
 17 built and the vehicle identification number;

18 (b) the name of the registered owner;

19 (c) the date and nature of the violation that is the
 20 basis of possible forfeiture;

21 (d) the telephone number and address where additional
 22 information may be obtained; and

23 (e) a statement that the vehicle is subject to
 24 forfeiture.

25 NEW SECTION. Section 3. Commencement of proceedings.

(1) In the event of a seizure for forfeiture under [section 2], the seizing agency shall send to the city or county attorney a written request for forfeiture within 20 days of the seizure. The request must include a statement of facts and circumstances of the seizure including the names of witnesses then-known, the appraised or estimated value of the motor vehicle, and a summary of the facts relied on for forfeiture.

(2) The city or county attorney shall determine whether it is probable that the motor vehicle is subject to forfeiture and, if so, may cause the initiation of uncontested or judicial proceedings against the owner or claimant of the motor vehicle. If on inquiry and examination the attorney determines that the proceedings probably cannot be sustained or that justice does not require the institution of forfeiture proceedings, the attorney shall notify the seizing agency and immediately authorize the release of the seizure for forfeiture on the motor vehicle or on any specified interest in it.

(3) If the city or county attorney fails to initiate forfeiture proceedings against the owner or claimant of the motor vehicle seized for forfeiture by issuing a notice of pending forfeiture within 75 days after seizure, the motor vehicle must be released from its seizure for forfeiture on the request of an owner or claimant.

NEW SECTION. **Section 4.** Petition to institute forfeiture proceedings -- summons -- service. The city or county attorney shall, within 75 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party. The petitioner shall cause the summons to be served upon all owners or claimants of the motor vehicle by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure; or

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the motor vehicle, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the department of justice.

NEW SECTION. **Section 5.** Answer to allegations concerning use of motor vehicle. Within 20 days after the

service of the petition and summons or publication of the summons, as provided in [section 4], the owner or claimant of the seized motor vehicle shall file an answer to the allegations concerning the use of the motor vehicle described in the petition. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

NEW SECTION. Section 6. Presumption -- procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture for all motor vehicles ordered to be forfeited under 61-8-714, except motor vehicles exempted under 61-8-714(3)(b)(ii).

(2) If an answer to the petition is not filed within 20 days after the service of the petition and summons or publication of the summons, the court upon motion shall order the motor vehicle forfeited to the city or county.

(3) If an answer is filed within 20 days, the forfeiture proceedings must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

NEW SECTION. Section 7. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of a seized motor vehicle who has an

answer on file shall prove that the motor vehicle was not used in a third or subsequent violation of 61-8-401;

(2) an owner who has an answer on file shall prove that the vehicle is exempt under 61-8-714(3)(b)(ii); or

(3) a claimant of a security interest in the motor vehicle who has an answer on file shall prove that the claimant's security interest is bona fide and perfected under 61-3-103.

NEW SECTION. Section 8. Disposition of motor vehicle following hearing. (1) If the court finds that the motor vehicle was not operated in a third or subsequent violation of 61-8-401 or that the motor vehicle was exempt under 61-8-714(3)(b)(ii), it shall order the motor vehicle released to the owner of record as of the date of the seizure.

(2) The purpose of [sections 2 through 9] is to forfeit only the right, title, or interest of the owner. If the court finds that the motor vehicle was being operated in a third or subsequent violation of 61-8-401, that the motor vehicle was used with the knowledge or consent of the owner, and that proper proof of a claim was presented at the hearing by the holder of a security interest, the court shall order the motor vehicle released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the motor vehicle as of the

1 date of seizure. If the amount due the holder of the
2 security interest is less than the value of the motor
3 vehicle, the motor vehicle, if it is sold, must be sold at
4 public auction by the law enforcement agency that seized the
5 motor vehicle in the same manner provided by law for the
6 sale of property under execution or the law enforcement
7 agency may return the motor vehicle to the holder of the
8 security interest without proceeding with an auction. The
9 motor vehicle may not be sold to an officer or employee of
10 the law enforcement agency that seized the motor vehicle or
11 to a person related to an officer or employee by blood or
12 marriage.

13 (3) In making a disposition of a motor vehicle under
14 [sections 2 through 9], the court may take any action to
15 protect the rights of innocent persons.

16 **NEW SECTION. Section 9. Disposition of proceeds of**
17 **sale.** (1) Whenever a motor vehicle is seized, forfeited, and
18 sold under the provisions of [sections 2 through 9], the net
19 proceeds of the sale must be distributed as follows:

20 (a) to the holders of security interests who have
21 presented proper proof of their claims, if any, up to the
22 amount of their interests in the motor vehicle; and

23 (b) the remainder, if any, to the county treasurer of
24 the county in which the motor vehicle was seized, who shall
25 establish and maintain a motor vehicle forfeiture account

1 and deposit the remainder into the account, except as
2 provided in subsection (1)(e);

3 (c) if the motor vehicle was seized within the
4 corporate limits of a city or town by a law enforcement
5 agency of that city or town, the remainder, if any, to the
6 city or town treasurer, who shall establish and maintain a
7 motor vehicle forfeiture account and deposit the remainder
8 into the account, except as provided in subsection (1)(e);

9 (d) if the motor vehicle was seized by an employee of
10 the state, the remainder, if any, to an account in the state
11 special revenue fund to the credit of the department of
12 justice, except as provided in subsection (1)(e); or

13 (e) if the motor vehicle was seized as a result of the
14 efforts of more than one law enforcement agency, the
15 remainder, if any, to the accounts required by this
16 subsection (1), pro rata in the proportions represented by
17 the agencies' expenses of investigation.

18 (2) Money received under subsection (1) and deposited
19 in a county, city, or town motor vehicle forfeiture account
20 must in each fiscal year be appropriated to and may be
21 expended by the applicable agency for purposes of law
22 enforcement.

23 **NEW SECTION. Section 10. Codification instruction.**
24 [Sections 2 through 9] are intended to be codified as an
25 integral part of Title 61, chapter 8, part 4, and the

LC 0279/01

1 provisions of Title 61, chapter 8, part 4, apply to
2 [sections 2 through 9].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0157, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the penalties for driving under the influence of alcohol or drugs (DUI); authorizing seizure and forfeiture of motor vehicles for third or subsequent violations of driving under the influence of alcohol or drugs.

ASSUMPTIONS:

1. There is an average of 7,600 DUI convictions in the state annually.
2. 7.5% of these convictions are third or subsequent DUI convictions of persons who drive his or her own vehicle (7600 x 7.5%) which would result in 570 vehicles confiscated each year.
3. 10% of the vehicles confiscated would be "junk" vehicles, vehicles contested in court and returned, and lien-holder acquisitions for debts with no residual value. This assumption reduces the number of confiscated vehicles to 90% of the total in assumption 2 (570 x .90) to 513 annually. This estimate is then rounded to 500.
4. The average net sale proceeds of vehicles confiscated, after estimating the expenses of towing, storing, lien clearance and sale, will be \$500 per vehicle. The estimated average would generate \$250,000 in revenue annually (500 x \$500).
5. Distribution of convictions and net sale proceeds by agency would be 46% police, 23% county sheriffs, 26% Montana Highway Patrol, 2% Bureau of Indian Affairs (BIA) Police, and 3% other agencies including the Department of Fish, Wildlife and Parks, et al.
6. The revenue estimate is based upon estimated net sale proceeds. Estimates of increased expenditures necessary to seize and dispose of the vehicles by agency are not subject to reasonable determination.
7. Sale proceeds credited to the Highway Patrol, Dept. of Justice, will be deposited in a new state special revenue account.

FISCAL IMPACT:**Revenue:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
City/town vehicle forfeiture accounts	0	\$115,000	\$115,000	0	115,000	115,000
County vehicle forfeiture accounts	0	57,500	57,500	0	57,500	57,500
Highway Patrol state special rev (02)	0	65,000	65,000	0	65,000	65,000
Federal Bureau of Indian Affairs	0	5,000	5,000	0	5,000	5,000
Other state agencies state special (02)	0	7,500	7,500	0	7,500	7,500
Total	0	\$250,000	\$250,000	0	\$250,000	\$250,000
Net impact state special revenue			72,500			72,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Increased annual revenue of approximately \$172,500 for local law enforcement agencies as shown in the table above.

David Lewis 1-19-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Randy Vogel 1-19-93
 RANDY VOGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0157, as introduced.

HR 157

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 157
2 INTRODUCED BY VOGEL, TOWE, CLARK,
3 J. JOHNSON, YELLOWTAIL
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES
6 FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND FOR
7 DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE;
8 AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR
9 THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE
10 INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH A BLOOD
11 ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING SECTION
12 SECTIONS 61-8-714 AND 61-8-722, MCA."
13
14 WHEREAS, Officer Mark Cady, 29 years old, is a 3-year
15 veteran of the Billings Police Department; and
16 WHEREAS, Officer Cady is married and the father of two
17 young children; and
18 WHEREAS, in the early morning hours of September 19,
19 1992, Officer Cady was seriously injured in a traffic
20 accident while on duty; and
21 WHEREAS, the traffic accident occurred while an
22 intoxicated driver was fleeing the scene of a personal
23 injury accident; and
24 WHEREAS, Officer Cady's patrol car was hit at a high
25 rate of speed by the fleeing driver; and

1 WHEREAS, the driver of the fleeing vehicle was
2 intoxicated at the time of the accident and had a prior
3 conviction for driving under the influence of alcohol or
4 drugs; and
5 WHEREAS, Officer Cady and his family have suffered
6 terribly because of the actions of an irresponsible driver
7 involved in an alcohol-related traffic offense; and
8 WHEREAS, the community and the people of the state of
9 Montana have been deprived of the loyal and continuous
10 services of a dedicated public servant; and
11 WHEREAS, driving under the influence of alcohol or drugs
12 remains a serious problem in this state and current
13 penalties often do not deter multiple violations of the DUI
14 laws; and
15 WHEREAS, in Montana during 1991, 92 victims died and
16 2,000 individuals were injured in alcohol- or drug-related
17 accidents; and
18 WHEREAS, additional penalties for multiple offenders may
19 deter multiple violations and prevent the kind of tragedy
20 that Officer Cady and his family have suffered and may
21 prevent other families from suffering in the same way.
22 THEREFORE, the Legislature finds it fitting to enact the
23 following legislation.
24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

12 (2) Except as provided in subsection (7), on a second
13 conviction, he the person shall be punished by a fine of not
14 less than \$300 or more than \$500 and by imprisonment for not
15 less than 7 days, at least 48 hours of which must be served
16 consecutively, or more than 6 months. Except as provided in
17 subsection (7), 3 days of the imprisonment sentence may not
18 be suspended unless the judge finds that the imposition of
19 the imprisonment sentence will pose a risk to the
20 defendant's physical or mental well-being.

21 (3) (a) Except as provided in subsection (7), on the
22 third or subsequent conviction, he the person shall be
23 punished by imprisonment for a term of not less than 30
24 days, at least 48 hours of which must be served
25 consecutively, or more than 1 year and by a fine of not less

1 than \$500 or more than \$1,000. Except as provided in
2 subsection (7), notwithstanding any provision to the
3 contrary providing for suspension of execution of a sentence
4 imposed under this subsection, the imposition or execution
5 of the first 10 days of the imprisonment sentence imposed
6 for a third or subsequent offense that occurred within 5
7 years of the first offense may not be deferred or suspended.

8 (b) (i) On the third or subsequent conviction, the
9 court, in addition to any other penalty imposed by law,
10 shall order the motor vehicle owned and operated by the
11 person at the time of the offense to be forfeited as
12 provided under [sections-2-through-9 SECTION 3].

13 (ii) A vehicle used by a person as a common carrier in
14 the transaction of business as a common carrier is not
15 subject to forfeiture unless it appears that the owner or
16 other person in charge of the vehicle consented to or was
17 privity to the violation. A vehicle may not be forfeited under
18 this section for any act or omission established by the
19 owner to have been committed or omitted by a person other
20 than the owner while the vehicle was unlawfully in the
21 possession of a person other than the owner in violation of
22 the criminal laws of this state or the United States.

23 (iii) Forfeiture of a vehicle encumbered by a security
24 interest is subject to the secured person's interest if the
25 person did not know and could not have reasonably known of

1 the unlawful possession, use, or other act on which the
2 forfeiture is sought.

3 (4) 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 corrections
7 and human services, which may, in the sentencing court's
8 discretion and upon recommendation of a certified chemical
9 dependency counselor, include alcohol or drug treatment, or
10 both. On conviction of a second or subsequent offense under
11 this section, in addition to the punishment provided in this
12 section, regardless of disposition, the defendant shall
13 complete an alcohol information course at an alcohol
14 treatment program approved by the department of corrections
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16 treatment, or both. Each counselor providing education or
17 treatment shall, at the commencement of the education or
18 treatment, notify the court that the defendant has been
19 enrolled in a course or treatment program. If the defendant
20 fails to attend the course or the treatment program, the
21 counselor shall notify the court of the failure. As long as
22 the alcohol information course is approved as provided in
23 this subsection and the treatment is provided by a certified
24 chemical dependency counselor, the defendant may attend the
25 information course and treatment program of his the

1 defendant's choice. The treatment provided to the defendant
2 at a treatment program must be at a level appropriate to his
3 the defendant's alcohol problem, as determined by the judge
4 based upon the recommendation from the certified chemical
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7 convictions under this section, "conviction" means a final
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19 data relating to the prior conviction are confidential
20 criminal justice information, as defined in 44-5-103, and
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25 of 61-8-406 also constitutes a conviction for a violation of

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(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

NEW SECTION,--Section 2.--Seizure and--forfeiture--of--
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forfeiture under 61-8-714(3)(b) may be seized for forfeiture
by a law enforcement officer on process, including a seizure
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(2)--If a motor vehicle is seized for forfeiture under
this section, pending forfeiture and final disposition, the

seizing officer's--employing--agency--may--do--one--of--the
following:

(a)--remove--the--motor--vehicle--to--a--storage--area--for
safekeeping;

(b)--remove the motor vehicle to a place--designated--by
the court; or

(c)--provide--for--another--custodian--or--agency--to--take
custody of the motor vehicle and remove it to an appropriate
location within the jurisdiction of the court;

(3)--As soon as practicable after a vehicle is seized
for forfeiture under this section, the seizing officer's
employing agency shall conduct an inventory and estimate the
value of the vehicle. Within 20 days of seizure, the agency
shall give notice of the seizure for forfeiture to the
registered owner and any holder of a perfected security
interest in the seized vehicle.

(4)--The notice required by subsection (2) must contain
the following:

(a)--a description of the vehicle, including the year
built and the vehicle identification number;

(b)--the name of the registered owner;

(c)--the date and nature of the violation that is the
basis of possible forfeiture;

(d)--the telephone number and address where additional
information may be obtained; and

1 (e) a statement that the vehicle is subject to
2 forfeiture.

3 NEW SECTION. **Section 3.** Commencement of proceedings.

4 (1) In the event of a seizure for forfeiture under section
5 2, the seizing agency shall send to the city or county
6 attorney a written request for forfeiture within 20 days of
7 the seizure. The request must include a statement of facts
8 and circumstances of the seizure including the names of
9 witnesses then known, the appraised or estimated value of
10 the motor vehicle, and a summary of the facts relied on for
11 forfeiture.

12 (2) The city or county attorney shall determine whether
13 it is probable that the motor vehicle is subject to
14 forfeiture and, if so, may cause the initiation of
15 uncontested or judicial proceedings against the owner or
16 claimant of the motor vehicle. If on inquiry and examination
17 the attorney determines that the proceedings probably cannot
18 be sustained or that justice does not require the
19 institution of forfeiture proceedings, the attorney shall
20 notify the seizing agency and immediately authorize the
21 release of the seizure for forfeiture on the motor vehicle
22 or on any specified interest in it.

23 (3) If the city or county attorney fails to initiate
24 forfeiture proceedings against the owner or claimant of the
25 motor vehicle seized for forfeiture by issuing a notice of

1 pending forfeiture within 75 days after seizure, the motor
2 vehicle must be released from its seizure for forfeiture on
3 the request of an owner or claimant.

4 NEW SECTION. **Section 4.** Petition to institute

5 forfeiture proceedings summons service. The city or
6 county attorney shall, within 75 days of the seizure, file a
7 petition to institute forfeiture proceedings with the clerk
8 of the district court of the county in which the seizure
9 occurs. The clerk shall issue a summons at the request of
10 the petitioning party. The petitioner shall cause the
11 summons to be served upon all owners or claimants of the
12 motor vehicle by one of the following methods:

13 (1) upon an owner or claimant whose name and address
14 are known, by personal service of a copy of the petition and
15 summons as provided in the Montana Rules of Civil Procedure;
16 or

17 (2) upon an owner or claimant whose address is unknown
18 but who is believed to have an interest in the motor
19 vehicle, by publication of the summons in one issue of a
20 newspaper of general circulation in the county where the
21 seizure occurred or, if there is no such newspaper, by
22 publication in one issue of a newspaper of general
23 circulation in an adjoining county and by mailing a copy of
24 the petition and summons to the most recent address of the
25 owner or claimant, if any, shown in the records of the

1 department-of-justice;

2 NEW-SECTION:--Section 5.--Answer-----to-----allegations--
3 concerning--use--of--motor-vehicle--Within-20-days-after-the
4 service-of-the-petition-and-summons-or--publication--of--the
5 summons,--as--provided-in-{section-4}, the owner-or-claimant
6 of-the-seized-motor-vehicle-shall--file--an--answer--to--the
7 allegations---concerning---the--use--of--the--motor--vehicle
8 described-in-the-petition;--Failure-to-answer-within-20-days
9 bars-the-owner-or-claimant-from-presenting-evidence--at--any
10 subsequent---evidentiary---hearing---unless---extraordinary
11 circumstances-exist;

12 NEW-SECTION:--Section 6.--Presumption-----procedure--
13 following-answer-or-expiration-of-time--for--answering;--(1)
14 There--is--a--rebuttable--presumption--of--forfeiture--for--all
15 motor-vehicles--ordered--to--be--forfeited--under--61-8-714,
16 except-motor-vehicles-exempted-under-61-8-714(3)(b)(ii);

17 (2)--If-an-answer-to-the-petition-is-not-filed-within-20
18 days--after--the--service--of--the--petition--and-summons-or
19 publication-of-the-summons,--the--court-upon--motion--shall
20 order-the-motor-vehicle-forfeited-to-the-city-or-county;

21 (3)--If--an--answer--is--filed--within--20--days,--the
22 forfeiture-proceedings-must-be-set--for--hearing--without--a
23 jury--no--sooner--than--60--days--after--the-answer-is-filed.
24 Notice-of-the-hearing-must-be-given-in-the--manner--provided
25 for-service-of-the-petition-and-summons;

1 NEW-SECTION:--Section 7.--Proof-required-or-permitted-at--
2 hearing;--in-order-to-rebut-the-presumption-of-forfeiture;
3 (1)--an-owner--of--a--seized--motor--vehicle-who-has-an
4 answer-on-file-shall-prove-that-the-motor--vehicle--was--not
5 used-in-a-third-or-subsequent-violation-of-61-8-401;

6 (2)--an-owner-who-has-an-answer-on-file-shall-prove-that
7 the-vehicle-is-exempt-under-61-8-714(3)(b)(ii);--or

8 (3)--a--claimant--of--a--security--interest-in-the-motor
9 vehicle-who-has-an-answer--on--file--shall--prove--that--the
10 claimant's--security--interest--is--bona--fide-and-perfected
11 under-61-3-103;

12 NEW-SECTION:--Section 8.--Disposition-of--motor--vehicle--
13 following-hearing;--(1)--If--the-court-finds-that-the-motor
14 vehicle-was-not-operated-in-a-third-or-subsequent--violation
15 of--61-8-401--or--that--the--motor--vehicle-was-exempt-under
16 61-8-714(3)(b)(ii);--it--shall--order--the---motor---vehicle
17 released--to--the--owner--of--record--as--of--the--date--of--the
18 seizure;

19 (2)--The-purpose-of-{sections-2-through-9}-is-to-forfeit
20 only-the-right, title, or interest--of--the--owner;--if--the
21 court--finds--that-the-motor-vehicle-was-being-operated-in-a
22 third-or-subsequent-violation-of-61-8-401;--that--the--motor
23 vehicle-was-used-with-the-knowledge-or-consent-of-the-owner;
24 and--that--proper--proof--of--a--claim--was-presented-at-the
25 hearing-by-the-holder-of--a--security--interest;--the--court

1 shall order the motor vehicle released to the holder of the
 2 security interest if the amount due the holder is equal to
 3 or in excess of the value of the motor vehicle as of the
 4 date of seizure. If the amount due the holder of the
 5 security interest is less than the value of the motor
 6 vehicle, the motor vehicle, if it is sold, must be sold at
 7 public auction by the law enforcement agency that seized the
 8 motor vehicle in the same manner provided by law for the
 9 sale of property under execution or the law enforcement
 10 agency may return the motor vehicle to the holder of the
 11 security interest without proceeding with an auction. The
 12 motor vehicle may not be sold to an officer or employee of
 13 the law enforcement agency that seized the motor vehicle or
 14 to a person related to an officer or employee by blood or
 15 marriage.

16 {3} In making a disposition of a motor vehicle under
 17 {sections 2 through 9}, the court may take any action to
 18 protect the rights of innocent persons.

19 NEW SECTION. Section 9. Disposition of proceeds of
 20 sale. {1} Whenever a motor vehicle is seized, forfeited, and
 21 sold under the provisions of {sections 2 through 9}, the net
 22 proceeds of the sale must be distributed as follows:

23 {a} to the holders of security interests who have
 24 presented proper proof of their claims, if any, up to the
 25 amount of their interests in the motor vehicle; and

1 {b} the remainder, if any, to the county treasurer of
 2 the county in which the motor vehicle was seized, who shall
 3 establish and maintain a motor vehicle forfeiture account
 4 and deposit the remainder into the account, except as
 5 provided in subsection {1}(e);

6 {c} if the motor vehicle was seized within the
 7 corporate limits of a city or town by a law enforcement
 8 agency of that city or town, the remainder, if any, to the
 9 city or town treasurer, who shall establish and maintain a
 10 motor vehicle forfeiture account and deposit the remainder
 11 into the account, except as provided in subsection {1}(e);

12 {d} if the motor vehicle was seized by an employee of
 13 the state, the remainder, if any, to an account in the state
 14 special revenue fund to the credit of the department of
 15 justice, except as provided in subsection {1}(e); or

16 {e} if the motor vehicle was seized as a result of the
 17 efforts of more than one law enforcement agency, the
 18 remainder, if any, to the accounts required by this
 19 subsection {1}, pro rata in the proportions represented by
 20 the agencies' expenses of investigation.

21 {2} Money received under subsection {1} and deposited
 22 in a county, city, or town motor vehicle forfeiture account
 23 must in each fiscal year be appropriated to and may be
 24 expended by the applicable agency for purposes of law
 25 enforcement.

1 **SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:**

2 "61-8-722. Penalty for driving with excessive alcohol
3 concentration. (1) Except as provided in subsection (7), a
4 person convicted of a violation of 61-8-406 shall be
5 punished by imprisonment for not more than 10 days and shall
6 be punished by a fine of not less than \$100 or more than
7 \$500.

8 (2) Except as provided in subsection (7), on a second
9 conviction of a violation of 61-8-406, he shall be punished
10 by imprisonment for not less than 48 consecutive hours or
11 more than 30 days and by a fine of not less than \$300 or
12 more than \$500.

13 (3) (a) Except as provided in subsection (7), on a
14 third or subsequent conviction of a violation of 61-8-406,
15 he shall be punished by imprisonment for not less than 48
16 consecutive hours or more than 6 months and by a fine of not
17 less than \$500 or more than \$1,000.

18 (b) (i) On the third or subsequent conviction, the
19 court, in addition to any other penalty imposed by law,
20 shall order the motor vehicle owned and operated by the
21 person at the time of the offense to be forfeited as
22 provided under [section 3].

23 (ii) A vehicle used by a person as a common carrier in
24 the transaction of business as a common carrier is not
25 subject to forfeiture unless it appears that the owner or

1 other person in charge of the vehicle consented to or was
2 privy to the violation. A vehicle may not be forfeited under
3 this section for any act or omission established by the
4 owner to have been committed or omitted by a person other
5 than the owner while the vehicle was unlawfully in the
6 possession of a person other than the owner in violation of
7 the criminal laws of this state or the United States.

8 (iii) Forfeiture of a vehicle encumbered by a security
9 interest is subject to the secured person's interest if the
10 person did not know and could not have reasonably known of
11 the unlawful possession, use, or other act on which the
12 forfeiture is sought.

13 (4) The provisions of 61-5-205(2), 61-5-208(2), and
14 61-11-203(2)(d), relating to revocation and suspension of
15 driver's licenses, apply to any conviction under 61-8-406.

16 (5) In addition to the punishment provided in this
17 section, regardless of disposition, the defendant shall
18 complete an alcohol information course at an alcohol
19 treatment program approved by the department of corrections
20 and human services, which may include alcohol or drug
21 treatment, or both, if considered necessary by the counselor
22 conducting the program. Each counselor providing education
23 or treatment shall, at the commencement of the education or
24 treatment, notify the court that the defendant has been
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the
2 counselor shall notify the court of the failure.

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

17 (7) The court may order that a term of imprisonment
18 imposed under this section be served in another facility
19 made available by the county and approved by the sentencing
20 court. The defendant, if financially able, shall bear the
21 expense of the imprisonment in the facility. The court may
22 impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant
24 follow the rules of that facility. The facility may be, but
25 is not required to be, a community-based prerelease center

1 as provided for in 53-1-203. The prerelease center may
2 accept or reject a defendant referred by the sentencing
3 court.

4 (8) Except for the initial 24 hours on a first offense
5 or the initial 48 hours on a second or subsequent offense,
6 the court may order that a term of imprisonment imposed
7 under this section be served by imprisonment under home
8 arrest as provided in Title 46, chapter 18, part 10."

9 NEW SECTION. SECTION 3. FORFEITURE PROCEDURE. (1) A
10 MOTOR VEHICLE FORFEITED UNDER 61-8-714 OR 61-8-722 MUST BE
11 SEIZED BY THE COUNTY SHERIFF WITHIN 10 DAYS AFTER THE
12 CONVICTION AND DISPOSED OF AS PROVIDED IN TITLE 44, CHAPTER
13 12, PART 2. EXCEPT AS PROVIDED IN THIS SECTION, THE
14 PROVISIONS OF TITLE 44, CHAPTER 12, PART 2, APPLY TO THE
15 EXTENT APPLICABLE.

16 (2) FORFEITURE PROCEEDINGS UNDER 44-12-201(1) MUST BE
17 INSTITUTED BY THE COUNTY SHERIFF WITHIN 20 DAYS AFTER THE
18 SEIZURE OF THE MOTOR VEHICLE.

19 (3) FOR PURPOSES OF 44-12-203 AND 44-12-204, THERE IS A
20 REBUTTABLE PRESUMPTION OF FORFEITURE. THE OWNER OF THE MOTOR
21 VEHICLE MAY REBUT THE PRESUMPTION BY PROVING A DEFENSE UNDER
22 61-8-714(3)(B)(II) OR 61-8-722(3)(B)(II) OR BY PROVING THAT
23 THE OWNER WAS NOT CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE
24 UNDER 61-8-401 OR 61-8-406. IT IS NOT A DEFENSE THAT THE
25 CONVICTED PERSON OWNS THE MOTOR VEHICLE JOINTLY WITH ANOTHER

PERSON.

(4) FOR PURPOSES OF 44-12-206, THE PROCEEDS OF THE SALE OF THE MOTOR VEHICLE MUST BE DISTRIBUTED FIRST TO THE HOLDERS OF SECURITY INTERESTS WHO HAVE PRESENTED PROPER PROOF OF THEIR CLAIMS, UP TO THE AMOUNT OF THE INTERESTS, AND NEXT TO THE SHERIFF IN THE AMOUNT OF THE COSTS OF THE FORFEITURE PROCEEDINGS, AND THE REMAINDER TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO FUND ALCOHOL INFORMATION COURSES AND TREATMENT PROGRAMS REFERRED TO IN 61-8-714 AND 61-8-722.

(5) ACTIONS THE COURT MAY TAKE UNDER 44-12-205(3) TO PROTECT THE RIGHTS OF INNOCENT PERSONS INCLUDE RETURN OF THE MOTOR VEHICLE WITHOUT A SALE TO AN OWNER WHO IS UNABLE TO PRESENT AN ADEQUATE DEFENSE UNDER THIS SECTION BUT IS FOUND BY THE COURT TO BE WITHOUT FAULT.

NEW SECTION. Section 4. Codification instruction.
[Sections-2-through-9]-are SECTION 3] IS intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [sections-2-through-9 SECTION 3].

-End-

HOUSE BILL NO. 157

INTRODUCED BY VOGEL, TOWE, CLARK,

J. JOHNSON, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING ~~SECTION~~ SECTIONS 61-8-714 AND 61-8-722, MCA."

WHEREAS, Officer Mark Cady, 29 years old, is a 3-year veteran of the Billings Police Department; and

WHEREAS, Officer Cady is married and the father of two young children; and

WHEREAS, in the early morning hours of September 19, 1992, Officer Cady was seriously injured in a traffic accident while on duty; and

WHEREAS, the traffic accident occurred while an intoxicated driver was fleeing the scene of a personal injury accident; and

WHEREAS, Officer Cady's patrol car was hit at a high rate of speed by the fleeing driver; and

WHEREAS, the driver of the fleeing vehicle was intoxicated at the time of the accident and had a prior conviction for driving under the influence of alcohol or drugs; and

WHEREAS, Officer Cady and his family have suffered terribly because of the actions of an irresponsible driver involved in an alcohol-related traffic offense; and

WHEREAS, the community and the people of the state of Montana have been deprived of the loyal and continuous services of a dedicated public servant; and

WHEREAS, driving under the influence of alcohol or drugs remains a serious problem in this state and current penalties often do not deter multiple violations of the DUI laws; and

WHEREAS, in Montana during 1991, 92 victims died and 2,000 individuals were injured in alcohol- or drug-related accidents; and

WHEREAS, additional penalties for multiple offenders may deter multiple violations and prevent the kind of tragedy that Officer Cady and his family have suffered and may prevent other families from suffering in the same way.

THEREFORE, the Legislature finds it fitting to enact the following legislation.

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



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

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

(2) Except as provided in subsection (7), on a second conviction, he the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, he the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less

than \$500 or more than \$1,000. Except as provided in subsection (7), 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 imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [sections 2-through-9 SECTION 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of

1 the unlawful possession, use, or other act on which the
 2 forfeiture is sought.

3 (4) 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 corrections
 7 and human services, which may, in the sentencing court's
 8 discretion and upon recommendation of a certified chemical
 9 dependency counselor, include alcohol or drug treatment, or
 10 both. On conviction of a second or subsequent offense under
 11 this section, in addition to the punishment provided in this
 12 section, regardless of disposition, the defendant shall
 13 complete an alcohol information course at an alcohol
 14 treatment program approved by the department of corrections
 15 and human services, which must include alcohol or drug
 16 treatment, or both. Each counselor providing education or
 17 treatment shall, at the commencement of the education or
 18 treatment, notify the court that the defendant has been
 19 enrolled in a course or treatment program. If the defendant
 20 fails to attend the course or the treatment program, the
 21 counselor shall notify the court of the failure. As long as
 22 the alcohol information course is approved as provided in
 23 this subsection and the treatment is provided by a certified
 24 chemical dependency counselor, the defendant may attend the
 25 information course and treatment program of his the

1 defendant's choice. The treatment provided to the defendant
 2 at a treatment program must be at a level appropriate to his
 3 the defendant's alcohol problem, as determined by the judge
 4 based upon the recommendation from the certified chemical
 5 dependency counselor.

6 (5) For the purpose of determining the number of
 7 convictions under this section, "conviction" means a final
 8 conviction, as defined in 45-2-101, in this state,
 9 conviction for a violation of a similar statute in another
 10 state, or a forfeiture of bail or collateral deposited to
 11 secure the defendant's appearance in court in this state or
 12 another state, which forfeiture has not been vacated. An
 13 offender is considered to have been previously convicted for
 14 the purposes of sentencing if less than 5 years have elapsed
 15 between the commission of the present offense and a previous
 16 conviction. If there has been no additional conviction for
 17 an offense under this section for a period of 5 years after
 18 a prior conviction under this section, then all records and
 19 data relating to the prior conviction are confidential
 20 criminal justice information, as defined in 44-5-103, and
 21 public access to the information may only be obtained by
 22 district court order upon good cause shown.

23 (6) For the purpose of calculating subsequent
 24 convictions under this section, a conviction for a violation
 25 of 61-8-406 also constitutes a conviction for a violation of

61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

~~NEW SECTION--Section 2--Seizure--and--forfeiture--of--vehicle--notice--release--(1)--A motor vehicle subject to forfeiture under 61-8-714(3)(b) may be seized for forfeiture by a law enforcement officer on process, including a seizure warrant, issued by a court pursuant to law.~~

~~(2)--if--a--motor vehicle is seized for forfeiture under this section, pending forfeiture and final disposition, the~~

~~seizing officer's employing agency may do one of the following:~~

~~(a)--remove the motor vehicle to a storage area for safekeeping;~~

~~(b)--remove the motor vehicle to a place designated by the court; or~~

~~(c)--provide for another custodian or agency to take custody of the motor vehicle and remove it to an appropriate location within the jurisdiction of the court;~~

~~(3)--As soon as practicable after a vehicle is seized for forfeiture under this section, the seizing officer's employing agency shall conduct an inventory and estimate the value of the vehicle. Within 20 days of seizure, the agency shall give notice of the seizure for forfeiture to the registered owner and any holder of a perfected security interest in the seized vehicle.~~

~~(4)--The notice required by subsection (2) must contain the following:~~

~~(a)--a description of the vehicle, including the year built and the vehicle identification number;~~

~~(b)--the name of the registered owner;~~

~~(c)--the date and nature of the violation that is the basis of possible forfeiture;~~

~~(d)--the telephone number and address where additional information may be obtained; and~~

1 {e}--a---statement---that--the--vehicle--is--subject--to
2 forfeiture;

3 NEW-SECTION.--**Section 3.**--Commencement--of--proceedings--

4 {1}--In-the-event-of-a-seizure-for-forfeiture-under--{section
5 2}--the--seizing--agency--shall--send-to-the-city-or-county
6 attorney-a-written-request-for-forfeiture-within-20-days--of
7 the--seizure--The-request-must-include-a-statement-of-facts
8 and-circumstances-of-the--seizure--including--the--names--of
9 witnesses--then-known--the--appraised-or-estimated-value-of
10 the-motor-vehicle--and-a-summary-of-the-facts-relied-on--for
11 forfeiture;

12 {2}--The-city-or-county-attorney-shall-determine-whether
13 it--is--probable--that--the--motor--vehicle--is--subject--to
14 forfeiture---and--if--so--may--cause--the--initiation--of
15 uncontested-or-judicial-proceedings--against--the--owner--or
16 claimant-of-the-motor-vehicle--If-on-inquiry-and-examination
17 the-attorney-determines-that-the-proceedings-probably-cannot
18 be---sustained---or---that--justice--does--not--require--the
19 institution-of-forfeiture-proceedings--the--attorney--shall
20 notify--the--seizing--agency--and--immediately-authorize-the
21 release-of-the-seizure-for-forfeiture-on-the--motor--vehicle
22 or-on-any-specified-interest-in-it;

23 {3}--If--the--city--or-county-attorney-fails-to-initiate
24 forfeiture-proceedings-against-the-owner-or-claimant-of--the
25 motor--vehicle--seized-for-forfeiture-by-issuing-a-notice-of

1 pending-forfeiture-within-75-days-after-seizure--the--motor
2 vehicle--must-be-released-from-its-seizure-for-forfeiture-on
3 the-request-of-an-owner-or-claimant;

4 NEW-SECTION.--**Section 4.**--Petition---to-----institute--

5 forfeiture--proceedings-----summons---service--The-city-or
6 county-attorney-shall--within-75-days-of-the-seizure--file-a
7 petition-to-institute-forfeiture-proceedings-with-the--clerk
8 of--the--district--court--of-the-county-in-which-the-seizure
9 occurs--The-clerk-shall-issue-a-summons-at--the--request--of
10 the--petitioning--party--The--petitioner--shall--cause--the
11 summons--to--be--served--upon-all-owners-or-claimants-of-the
12 motor-vehicle-by-one-of-the-following-methods:

13 {1}--upon-an-owner-or-claimant-whose--name--and--address
14 are-known--by-personal-service-of-a-copy-of-the-petition-and
15 summons-as-provided-in-the-Montana-Rules-of-Civil-Procedure;
16 or

17 {2}--upon--an-owner-or-claimant-whose-address-is-unknown
18 but-who-is-believed--to--have--an--interest--in--the--motor
19 vehicle--by--publication--of--the-summons-in-one-issue-of-a
20 newspaper-of-general-circulation-in--the--county--where--the
21 seizure--occurred--or--if--there--is--no-such-newspaper--by
22 publication--in--one--issue--of--a-newspaper---of---general
23 circulation--in-an-adjointing-county-and-by-mailing-a-copy-of
24 the-petition-and-summons-to-the-most-recent-address--of--the
25 owner--or--claimant--if--any--shown--in-the-records-of-the

department-of-justice;

NEW-SECTION:--Section 5:-- Answer-----to-----allegations--
concerning--use--of--motor-vehicle. Within-20-days-after-the
service-of-the-petition-and-summons-or-publication--of--the
summons,--as--provided-in-(section-4)--the-owner-or-claimant
of-the-seized-motor-vehicle-shall--file--an--answer--to--the
allegations---concerning---the--use--of--the--motor--vehicle
described-in-the-petition:--Failure-to-answer-within-20-days
bars-the-owner-or-claimant-from-presenting-evidence--at--any
subsequent---evidentiary---hearing---unless---extraordinary
circumstances-exist;

NEW-SECTION:--Section 6:-- Presumption-----procedure--
following-answer-or-expiration-of-time--for--answering,--(1)
There--is--a--rebuttable--presumption--of--forfeiture--for--all
motor-vehicles--ordered--to--be--forfeited--under--61-8-714,
except-motor-vehicles-exempted-under-61-8-714(3)(b)(ii);

(2)--If-an-answer-to-the-petition-is-not-filed-within-20
days--after--the--service--of--the--petition--and-summons-or
publication-of-the-summons,--the--court--upon--motion--shall
order-the-motor-vehicle-forfeited-to-the-city-or-county;

(3)--If--an--answer--is--filed--within--20--days,--the
forfeiture-proceedings-must-be-set--for--hearing--without--a
jury--no--sooner--than--60--days--after-the-answer-is-filed.
Notice-of-the-hearing-must-be-given-in-the-manner--provided
for-service-of-the-petition-and-summons;

NEW-SECTION:--Section 7:-- Proof-required-or-permitted-at--
hearing--in-order-to-rebut-the-presumption-of-forfeiture:
(1)--an--owner--of--a--seized--motor--vehicle-who-has-an
answer-on-file-shall-prove-that-the-motor--vehicle--was--not
used-in-a-third-or-subsequent-violation-of-61-8-401;

(2)--an-owner-who-has-an-answer-on-file-shall-prove-that
the-vehicle-is-exempt-under-61-8-714(3)(b)(ii);-or

(3)--a--claimant--of--a--security--interest-in-the-motor
vehicle-who-has-an-answer-on--file--shall--prove--that--the
claimant's--security--interest--is--bona--fide-and-perfected
under-61-3-103;

NEW-SECTION:--Section 8:-- Disposition-of--motor--vehicle--
following--hearing,--(1)--If--the-court-finds-that-the-motor
vehicle-was-not-operated-in-a-third-or-subsequent--violation
of--61-8-401--or--that--the--motor--vehicle-was-exempt-under
61-8-714(3)(b)(ii);--it--shall--order--the--motor--vehicle
released--to--the--owner--of--record--as--of-the-date-of-the
seizure;

(2)--The-purpose-of-(sections-2-through-9)-is-to-forfeit
only-the-right, title, or interest--of--the--owner,--if--the
court--finds--that--the-motor-vehicle-was-being-operated-in-a
third-or-subsequent-violation-of-61-8-401;--that--the--motor
vehicle-was-used-with-the-knowledge-or-consent-of-the-owner,
and--that--proper--proof--of--a--claim--was-presented-at-the
hearing-by-the-holder-of--a--security--interest;--the--court

shall order the motor vehicle released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the motor vehicle as of the date of seizure. If the amount due the holder of the security interest is less than the value of the motor vehicle, the motor vehicle, if it is sold, must be sold at public auction by the law enforcement agency that seized the motor vehicle in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the motor vehicle to the holder of the security interest without proceeding with an auction. The motor vehicle may not be sold to an officer or employee of the law enforcement agency that seized the motor vehicle or to a person related to an officer or employee by blood or marriage.

(3) In making a disposition of a motor vehicle under {sections 2 through 9}, the court may take any action to protect the rights of innocent persons.

NEW SECTION. Section 9. Disposition of proceeds of sale. (1) Whenever a motor vehicle is seized, forfeited, and sold under the provisions of {sections 2 through 9}, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the motor vehicle; and

(b) the remainder, if any, to the county treasurer of the county in which the motor vehicle was seized, who shall establish and maintain a motor vehicle forfeiture account and deposit the remainder into the account, except as provided in subsection (1)(e);

(c) if the motor vehicle was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a motor vehicle forfeiture account and deposit the remainder into the account, except as provided in subsection (1)(e);

(d) if the motor vehicle was seized by an employee of the state, the remainder, if any, to an account in the state special revenue fund to the credit of the department of justice, except as provided in subsection (1)(e); or

(e) if the motor vehicle was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation.

(2) Money received under subsection (1) and deposited in a county, city, or town motor vehicle forfeiture account must in each fiscal year be appropriated to and may be expended by the applicable agency for purposes of law enforcement.

SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or

other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

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

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the
2 counselor shall notify the court of the failure.

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

17 (7) The court may order that a term of imprisonment
18 imposed under this section be served in another facility
19 made available by the county and approved by the sentencing
20 court. The defendant, if financially able, shall bear the
21 expense of the imprisonment in the facility. The court may
22 impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant
24 follow the rules of that facility. The facility may be, but
25 is not required to be, a community-based prerelease center

1 as provided for in 53-1-203. The prerelease center may
2 accept or reject a defendant referred by the sentencing
3 court.

4 (8) Except for the initial 24 hours on a first offense
5 or the initial 48 hours on a second or subsequent offense,
6 the court may order that a term of imprisonment imposed
7 under this section be served by imprisonment under home
8 arrest as provided in Title 46, chapter 18, part 10."

9 NEW SECTION. SECTION 3. FORFEITURE PROCEDURE. (1) A
10 MOTOR VEHICLE FORFEITED UNDER 61-8-714 OR 61-8-722 MUST BE
11 SEIZED BY THE COUNTY SHERIFF WITHIN 10 DAYS AFTER THE
12 CONVICTION AND DISPOSED OF AS PROVIDED IN TITLE 44, CHAPTER
13 12, PART 2. EXCEPT AS PROVIDED IN THIS SECTION, THE
14 PROVISIONS OF TITLE 44, CHAPTER 12, PART 2, APPLY TO THE
15 EXTENT APPLICABLE.

16 (2) FORFEITURE PROCEEDINGS UNDER 44-12-201(1) MUST BE
17 INSTITUTED BY THE COUNTY SHERIFF WITHIN 20 DAYS AFTER THE
18 SEIZURE OF THE MOTOR VEHICLE.

19 (3) FOR PURPOSES OF 44-12-203 AND 44-12-204, THERE IS A
20 REBUTTABLE PRESUMPTION OF FORFEITURE. THE OWNER OF THE MOTOR
21 VEHICLE MAY REBUT THE PRESUMPTION BY PROVING A DEFENSE UNDER
22 61-8-714(3)(B)(II) OR 61-8-722(3)(B)(II) OR BY PROVING THAT
23 THE OWNER WAS NOT CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE
24 UNDER 61-8-401 OR 61-8-406. IT IS NOT A DEFENSE THAT THE
25 CONVICTED PERSON OWNS THE MOTOR VEHICLE JOINTLY WITH ANOTHER

1 PERSON.

2 (4) FOR PURPOSES OF 44-12-206, THE PROCEEDS OF THE SALE
 3 OF THE MOTOR VEHICLE MUST BE DISTRIBUTED FIRST TO THE
 4 HOLDERS OF SECURITY INTERESTS WHO HAVE PRESENTED PROPER
 5 PROOF OF THEIR CLAIMS, UP TO THE AMOUNT OF THE INTERESTS,
 6 AND NEXT TO THE SHERIFF IN THE AMOUNT OF THE COSTS OF THE
 7 FORFEITURE PROCEEDINGS, AND THE REMAINDER TO THE DEPARTMENT
 8 OF---CORRECTIONS---AND---HUMAN---SERVICES---TO---FUND---ALCOHOL
 9 INFORMATION COURSES AND TREATMENT PROGRAMS--REFERRED--TO--IN
 10 61-8-714-AND-61-8-722 GENERAL FUND OF THE ARRESTING AGENCY.

11 (5) ACTIONS THE COURT MAY TAKE UNDER 44-12-205(3) TO
 12 PROTECT THE RIGHTS OF INNOCENT PERSONS INCLUDE RETURN OF THE
 13 MOTOR VEHICLE WITHOUT A SALE TO AN OWNER WHO IS UNABLE TO
 14 PRESENT AN ADEQUATE DEFENSE UNDER THIS SECTION BUT IS FOUND
 15 BY THE COURT TO BE WITHOUT FAULT.

16 NEW SECTION. Section 4. Codification instruction.
 17 [Sections-2-through-9]-are SECTION 3] IS intended to be
 18 codified as an integral part of Title 61, chapter 8, part 4,
 19 and the provisions of Title 61, chapter 8, part 4, apply to
 20 [sections-2-through-9 SECTION 3].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 28, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 157 (third reading copy -- blue), respectfully report that House Bill No. 157 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 4, line 11.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

2. Page 15, line 21.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

3. Page 18, lines 11 and 17.

Strike: "COUNTY SHERIFF"

Insert: "arresting agency"

4. Page 19, line 2.

Following: "(4)"

Insert: "(a)"

5. Page 19, line 5.

Following: "INTERESTS"

Insert: "or the amount received from the sale, whichever is less"

6. Page 19, lines 6 and 7.

Strike: "AND" on line 6 through "PROCEEDINGS," on line 7

7. Page 19, line 11.

Following: line 10

Insert: "(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle."

-END-

SENATE

M- Amd. Coord.
N Sec. of Senate

Tave
Senator Carrying Bill

HB 157
691653SC.Sma

HOUSE BILL NO. 157

INTRODUCED BY VOGEL, TOWE, CLARK,

J. JOHNSON, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING SECTION SECTIONS 61-8-714 AND 61-8-722, MCA."

WHEREAS, Officer Mark Cady, 29 years old, is a 3-year veteran of the Billings Police Department; and

WHEREAS, Officer Cady is married and the father of two young children; and

WHEREAS, in the early morning hours of September 19, 1992, Officer Cady was seriously injured in a traffic accident while on duty; and

WHEREAS, the traffic accident occurred while an intoxicated driver was fleeing the scene of a personal injury accident; and

WHEREAS, Officer Cady's patrol car was hit at a high rate of speed by the fleeing driver; and

WHEREAS, the driver of the fleeing vehicle was intoxicated at the time of the accident and had a prior conviction for driving under the influence of alcohol or drugs; and

WHEREAS, Officer Cady and his family have suffered terribly because of the actions of an irresponsible driver involved in an alcohol-related traffic offense; and

WHEREAS, the community and the people of the state of Montana have been deprived of the loyal and continuous services of a dedicated public servant; and

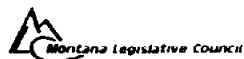
WHEREAS, driving under the influence of alcohol or drugs remains a serious problem in this state and current penalties often do not deter multiple violations of the DUI laws; and

WHEREAS, in Montana during 1991, 92 victims died and 2,000 individuals were injured in alcohol- or drug-related accidents; and

WHEREAS, additional penalties for multiple offenders may deter multiple violations and prevent the kind of tragedy that Officer Cady and his family have suffered and may prevent other families from suffering in the same way.

THEREFORE, the Legislature finds it fitting to enact the following legislation.

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



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

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

(2) Except as provided in subsection (7), on a second conviction, he the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, he the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less

than \$500 or more than \$1,000. Except as provided in subsection (7), 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 imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited-as SEIZED AND SUBJECTED TO THE PROCEDURE provided under [sections-2 through-9 SECTION 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the

person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the

information course and treatment program of his the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his the defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation

1 of 61-8-406 also constitutes a conviction for a violation of
2 61-8-401.

3 (7) The court may order that a term of imprisonment
4 imposed under this section be served in another facility
5 made available by the county and approved by the sentencing
6 court. The defendant, if financially able, shall bear the
7 expense of the imprisonment in the facility. The court may
8 impose restrictions on the defendant's ability to leave the
9 premises of the facility and require that the defendant
10 follow the rules of that facility. The facility may be, but
11 is not required to be, a community-based prerelease center
12 as provided for in 53-1-203. The prerelease center may
13 accept or reject a defendant referred by the sentencing
14 court.

15 (8) Except for the initial 24 hours on a first offense
16 or the initial 48 hours on a second or subsequent offense,
17 the court may order that a term of imprisonment imposed
18 under this section be served by imprisonment under home
19 arrest as provided in Title 46, chapter 18, part 10."

20 ~~NEW SECTION. Section 2. Seizure and forfeiture of~~
21 ~~vehicle. notice release. (1) A motor vehicle subject to~~
22 ~~forfeiture under 61-8-714(3)(b) may be seized for forfeiture~~
23 ~~by a law enforcement officer on process, including a seizure~~
24 ~~warrant issued by a court pursuant to law.~~
25 (2) If a motor vehicle is seized for forfeiture under

1 this section, pending forfeiture and final disposition, the
2 seizing officer's employing agency may do one of the
3 following:

4 (a) remove the motor vehicle to a storage area for
5 safekeeping;

6 (b) remove the motor vehicle to a place designated by
7 the court; or

8 (c) provide for another custodian or agency to take
9 custody of the motor vehicle and remove it to an appropriate
10 location within the jurisdiction of the court.

11 (3) As soon as practicable after a vehicle is seized
12 for forfeiture under this section, the seizing officer's
13 employing agency shall conduct an inventory and estimate the
14 value of the vehicle. Within 20 days of seizure, the agency
15 shall give notice of the seizure for forfeiture to the
16 registered owner and any holder of a perfected security
17 interest in the seized vehicle.

18 (4) The notice required by subsection (2) must contain
19 the following:

20 (a) a description of the vehicle, including the year
21 built and the vehicle identification number;

22 (b) the name of the registered owner;

23 (c) the date and nature of the violation that is the
24 basis of possible forfeiture;

25 (d) the telephone number and address where additional

information may be obtained; and

(c) a statement that the vehicle is subject to forfeiture.

NEW SECTION. Section 3. Commencement of proceedings.

(1) In the event of a seizure for forfeiture under section 2, the seizing agency shall send to the city or county attorney a written request for forfeiture within 20 days of the seizure. The request must include a statement of facts and circumstances of the seizure including the names of witnesses then known, the appraised or estimated value of the motor vehicle, and a summary of the facts relied on for forfeiture.

(2) The city or county attorney shall determine whether it is probable that the motor vehicle is subject to forfeiture and, if so, may cause the initiation of uncontested or judicial proceedings against the owner or claimant of the motor vehicle. If on inquiry and examination the attorney determines that the proceedings probably cannot be sustained or that justice does not require the institution of forfeiture proceedings, the attorney shall notify the seizing agency and immediately authorize the release of the seizure for forfeiture on the motor vehicle or on any specified interest in it.

(3) If the city or county attorney fails to initiate forfeiture proceedings against the owner or claimant of the

motor vehicle seized for forfeiture by issuing a notice of pending forfeiture within 75 days after seizure, the motor vehicle must be released from its seizure for forfeiture on the request of an owner or claimant.

NEW SECTION. Section 4. Petition to institute

forfeiture proceedings summons service. The city or county attorney shall, within 75 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party. The petitioner shall cause the summons to be served upon all owners or claimants of the motor vehicle by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure; or

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the motor vehicle, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the

owner or claimant, if any, shown in the records of the department of justice.

NEW SECTION: Section 5. Answer to allegations concerning use of motor vehicle. Within 20 days after the service of the petition and summons or publication of the summons, as provided in {section 4}, the owner or claimant of the seized motor vehicle shall file an answer to the allegations concerning the use of the motor vehicle described in the petition. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

NEW SECTION: Section 6. Presumption procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture for all motor vehicles ordered to be forfeited under 61-8-714, except motor vehicles exempted under 61-8-714(3)(b)(ii).

(2) If an answer to the petition is not filed within 20 days after the service of the petition and summons or publication of the summons, the court upon motion shall order the motor vehicle forfeited to the city or county.

(3) If an answer is filed within 20 days, the forfeiture proceedings must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided

for service of the petition and summons.

NEW SECTION: Section 7. Proof required or permitted at hearing in order to rebut the presumption of forfeiture.

(1) an owner of a seized motor vehicle who has an answer on file shall prove that the motor vehicle was not used in a third or subsequent violation of 61-8-401;

(2) an owner who has an answer on file shall prove that the vehicle is exempt under 61-8-714(3)(b)(ii); or

(3) a claimant of a security interest in the motor vehicle who has an answer on file shall prove that the claimant's security interest is bona fide and perfected under 61-3-103.

NEW SECTION: Section 8. Disposition of motor vehicle following hearing. (1) If the court finds that the motor vehicle was not operated in a third or subsequent violation of 61-8-401 or that the motor vehicle was exempt under 61-8-714(3)(b)(ii), it shall order the motor vehicle released to the owner of record as of the date of the seizure.

(2) The purpose of {sections 2 through 9} is to forfeit only the right, title, or interest of the owner. If the court finds that the motor vehicle was being operated in a third or subsequent violation of 61-8-401, that the motor vehicle was used with the knowledge or consent of the owner, and that proper proof of a claim was presented at the

1 hearing--by--the--holder--of--a--security--interest;--the--court
 2 shall--order--the--motor--vehicle--released--to--the--holder--of--the
 3 security--interest--if--the--amount--due--the--holder--is--equal--to
 4 or--in--excess--of--the--value--of--the--motor--vehicle--as--of--the
 5 date--of--seizure;--if--the--amount--due--the--holder--of--the
 6 security--interest--is--less--than--the--value--of--the--motor
 7 vehicle;--the--motor--vehicle;--if--it--is--sold;--must--be--sold--at
 8 public--auction--by--the--law--enforcement--agency--that--seized--the
 9 motor--vehicle--in--the--same--manner--provided--by--law--for--the
 10 sale--of--property--under--execution--or--the--law--enforcement
 11 agency--may--return--the--motor--vehicle--to--the--holder--of--the
 12 security--interest--without--proceeding--with--an--auction;--The
 13 motor--vehicle--may--not--be--sold--to--an--officer--or--employee--of
 14 the--law--enforcement--agency--that--seized--the--motor--vehicle--or
 15 to--a--person--related--to--an--officer--or--employee--by--blood--or
 16 marriage;

17 {3}--In--making--a--disposition--of--a--motor--vehicle--under
 18 {sections--2--through--9};--the--court--may--take--any--action--to
 19 protect--the--rights--of--innocent--persons;

20 NEW SECTION.--Section 9.--Disposition--of--proceeds--of--
 21 sale;--(1) Whenever a motor vehicle is seized, forfeited, and
 22 sold under the provisions of {sections 2 through 9}; the net
 23 proceeds of the sale must be distributed as follows:

24 (a)--to--the--holders--of--security--interests--who--have
 25 presented--proper--proof--of--their--claims;--if--any;--up--to--the

1 amount--of--their--interests--in--the--motor--vehicle;--and
 2 (b)--the--remainder;--if--any;--to--the--county--treasurer--of
 3 the--county--in--which--the--motor--vehicle--was--seized;--who--shall
 4 establish--and--maintain--a--motor--vehicle--forfeiture--account
 5 and--deposit--the--remainder--into--the--account;--except--as
 6 provided--in--subsection--(1)(c);

7 (c)--if--the--motor--vehicle--was--seized--within--the
 8 corporate--limits--of--a--city--or--town--by--a--law--enforcement
 9 agency--of--that--city--or--town;--the--remainder;--if--any;--to--the
 10 city--or--town--treasurer;--who--shall--establish--and--maintain--a
 11 motor--vehicle--forfeiture--account--and--deposit--the--remainder
 12 into--the--account;--except--as--provided--in--subsection--(1)(c);

13 (d)--if--the--motor--vehicle--was--seized--by--an--employee--of
 14 the--state;--the--remainder;--if--any;--to--an--account--in--the--state
 15 special--revenue--fund--to--the--credit--of--the--department--of
 16 justice;--except--as--provided--in--subsection--(1)(c);--or

17 (e)--if--the--motor--vehicle--was--seized--as--a--result--of--the
 18 efforts--of--more--than--one--law--enforcement--agency;--the
 19 remainder;--if--any;--to--the--accounts--required--by--this
 20 subsection--(1);--pro-rata--in--the--proportions--represented--by
 21 the--agencies'--expenses--of--investigation;

22 (2)--Money--received--under--subsection--(1)--and--deposited
 23 in--a--county;--city;--or--town--motor--vehicle--forfeiture--account
 24 must--in--each--fiscal--year--be--appropriated--to--and--may--be
 25 expended--by--the--applicable--agency--for--purposes--of--law

enforcement.

SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited-as SEIZED AND SUBJECTED TO THE PROCEDURE provided under (section 3).

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not

subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

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

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been

enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

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

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but

is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

NEW SECTION. SECTION 3. FORFEITURE PROCEDURE. (1) A MOTOR VEHICLE FORFEITED UNDER 61-8-714 OR 61-8-722 MUST BE SEIZED BY THE COUNTY-SHERIFF ARRESTING AGENCY WITHIN 10 DAYS AFTER THE CONVICTION AND DISPOSED OF AS PROVIDED IN TITLE 44, CHAPTER 12, PART 2. EXCEPT AS PROVIDED IN THIS SECTION, THE PROVISIONS OF TITLE 44, CHAPTER 12, PART 2, APPLY TO THE EXTENT APPLICABLE.

(2) FORFEITURE PROCEEDINGS UNDER 44-12-201(1) MUST BE INSTITUTED BY THE COUNTY-SHERIFF ARRESTING AGENCY WITHIN 20 DAYS AFTER THE SEIZURE OF THE MOTOR VEHICLE.

(3) FOR PURPOSES OF 44-12-203 AND 44-12-204, THERE IS A REBUTTABLE PRESUMPTION OF FORFEITURE. THE OWNER OF THE MOTOR VEHICLE MAY REBUT THE PRESUMPTION BY PROVING A DEFENSE UNDER 61-8-714(3)(B)(II) OR 61-8-722(3)(B)(II) OR BY PROVING THAT THE OWNER WAS NOT CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE UNDER 61-8-401 OR 61-8-406. IT IS NOT A DEFENSE THAT THE

1 CONVICTED PERSON OWNS THE MOTOR VEHICLE JOINTLY WITH ANOTHER
 2 PERSON.

3 (4) (A) FOR PURPOSES OF 44-12-206, THE PROCEEDS OF THE
 4 SALE OF THE MOTOR VEHICLE MUST BE DISTRIBUTED FIRST TO THE
 5 HOLDERS OF SECURITY INTERESTS WHO HAVE PRESENTED PROPER
 6 PROOF OF THEIR CLAIMS, UP TO THE AMOUNT OF THE INTERESTS OR
 7 THE AMOUNT RECEIVED FROM THE SALE, WHICHEVER IS LESS, AND
 8 NEXT--TO--THE--SHERIFF--IN--THE--AMOUNT--OF--THE--COSTS--OF--THE
 9 FORFEITURE--PROCEEDINGS, AND THE REMAINDER TO THE DEPARTMENT
 10 OF--CORRECTIONS--AND--HUMAN--SERVICES--TO--FUND--ALCOHOL
 11 INFORMATION--COURSES--AND--TREATMENT--PROGRAMS--REFERRED--TO--IN
 12 61-8-714-AND-61-8-722 GENERAL FUND OF THE ARRESTING AGENCY.

13 (B) A HOLDER OF A SECURITY INTEREST MAY PETITION THE
 14 SENTENCING COURT FOR TRANSFER OF TITLE TO THE MOTOR VEHICLE
 15 TO THE HOLDER OF THE SECURITY INTEREST IF THE SECURED
 16 INTEREST IS EQUAL TO OR GREATER THAN THE ESTIMATED VALUE OF
 17 THE MOTOR VEHICLE.

18 (5) ACTIONS THE COURT MAY TAKE UNDER 44-12-205(3) TO
 19 PROTECT THE RIGHTS OF INNOCENT PERSONS INCLUDE RETURN OF THE
 20 MOTOR VEHICLE WITHOUT A SALE TO AN OWNER WHO IS UNABLE TO
 21 PRESENT AN ADEQUATE DEFENSE UNDER THIS SECTION BUT IS FOUND
 22 BY THE COURT TO BE WITHOUT FAULT.

23 NEW SECTION. Section 4. Codification instruction.
 24 [Sections-2-through-9]-are SECTION 3] IS intended to be
 25 codified as an integral part of Title 61, chapter 8, part 4,

1 and the provisions of Title 61, chapter 8, part 4, apply to
 2 [sections-2-through-9 SECTION 3].

-End-