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INTRODUCED BY Senate ^{House} BILL NO. 256
Barnett Levy

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY THAT MAY BE IMPOSED ON THE FOURTH OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE; REQUIRING NOTATION OF DUI CONVICTIONS ON A PERSON'S DRIVER'S LICENSE; PROVIDING A SURCHARGE ON A FINE FOR DRIVING UNDER THE INFLUENCE OR FOR DRIVING WITH AN EXCESSIVE ALCOHOL CONCENTRATION; PROVIDING FOR DISPOSITION OF THE SURCHARGE; AND AMENDING SECTIONS 3-10-601, 46-18-235, AND 61-8-714, MCA."

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)~~ (8) and ~~(8)~~ (9), 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)~~ (8), on a second conviction, 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)~~ (8), 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)~~ (8), on the third or subsequent conviction, 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)~~ (8), 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

1 5 years of the first offense may not be deferred or suspended.

2 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed
3 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be
4 seized and subjected to the procedure provided under 61-8-421.

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

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

14 (4) On the fourth or subsequent conviction, the person shall be punished by imprisonment for a
15 term of not less than 60 days or more than 10 years and by a fine of not less than \$1,000 or more than
16 \$50,000. Except as provided in subsection (8), notwithstanding any provision to the contrary, the
17 imposition or execution of the first 60 days of the imprisonment sentence imposed for a fourth or
18 subsequent offense that occurred within 5 years of the second offense may not be deferred or suspended.

19 ~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the
20 defendant shall complete an alcohol information course at an alcohol treatment program approved by the
21 department of corrections and human services, which may, in the sentencing court's discretion and upon
22 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both.
23 On conviction of a second or subsequent offense under this section, in addition to the punishment provided
24 in this section, regardless of disposition, the defendant shall complete an alcohol information course at an
25 alcohol treatment program approved by the department of corrections and human services, which must
26 include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the
27 commencement of the education or treatment, notify the court that the defendant has been enrolled in a
28 course or treatment program. If the defendant fails to attend the course or the treatment program, the
29 counselor shall notify the court of the failure. As long as the alcohol information course is approved as
30 provided in this subsection and the treatment is provided by a certified chemical dependency counselor,

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

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

15 ~~(6)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for
16 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

17 ~~(7)~~(8) The court may order that a term of imprisonment imposed under this section be served in
18 another facility made available by the county and approved by the sentencing court. The defendant, if
19 financially able, shall bear the expense of the imprisonment in the facility. The court may impose
20 restrictions on the defendant's ability to leave the premises of the facility and require that the defendant
21 follow the rules of that facility. The facility may be, but is not required to be, a community-based
22 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant
23 referred by the sentencing court.

24 ~~(8)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
25 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
26 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

27 (10) Upon a conviction under this section, the court shall take the person's driver's license from
28 the person and send it to the department, which, upon payment of the appropriate fee, shall issue a
29 duplicate license stating "DUI conviction (date)". If the person has more than one conviction, the date of
30 each must follow the "DUI conviction" notation. If 5 or more years have passed since the date of the last

1 conviction, the person may apply for and must be granted a new license that omits the DUI conviction
2 notation and date or dates."

3
4 **NEW SECTION. Section 2. Surcharge fine on fine for driving under the influence or for driving with**
5 **excessive alcohol concentration.** In addition to any penalty imposed under 61-8-714 or 61-8-722, if a fine
6 is imposed under either section, a surcharge fine equal to 10% of the imposed fine must also be imposed.

7
8 **Section 3.** Section 3-10-601, MCA, is amended to read:

9 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of
10 the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county
11 treasury of the county in which the justice of the peace holds office, on or before the 10th day of each
12 month, to be credited to the general fund of the county.

13 (2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in
14 a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of
15 the following month to the treasurer of the county in which the justice's court is situated, except that they
16 may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45,
17 chapter 9 or 10.

18 (3) ~~The~~ Except as provided in subsection (5), the county treasurer shall, in the manner provided
19 in 15-1-504, distribute money received under subsection (2) as follows:

20 (a) 50% to the state treasurer; and

21 (b) 50% to the county general fund.

22 (4) The state treasurer shall distribute money received under subsection (3) as follows:

23 (a) 44.81% to the state general fund;

24 (b) 9.09% to the fish and game account in the state special revenue fund;

25 (c) 11.76% to the state highway account in the state special revenue fund;

26 (d) 16.93% to the traffic education account in the state special revenue fund;

27 (e) 0.57% to the department of livestock account in the state special revenue fund;

28 (f) 15.9% to the crime victims compensation account in the state special revenue fund; and

29 (g) 0.94% to the department of family services special revenue account for the battered spouses
30 and domestic violence grant program.

1 (5) The county treasurer shall, in the manner provided in 15-1-504, distribute a surcharge fine
 2 imposed under [section 2] and received under subsection (2) of this section to the county sheriff, to be
 3 used by the sheriff to purchase spreaders, pullers, cutters, rams, and similar tools used to extricate persons
 4 and objects from wrecked motor vehicles. The sheriff may give tools purchased under this subsection to
 5 a fire department of the sheriff's choice."

6
 7 **Section 4.** Section 46-18-235, MCA, is amended to read:

8 **"46-18-235. Disposition of money collected as fines and costs.** (1) The money collected by a
 9 court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and
 10 46-18-232 ~~shall~~ must be paid:

11 ~~(1) (a)~~ (a) by a district court to the county general fund of the county in which the court is held,
 12 except that:

13 ~~(a) (i)~~ (i) if the costs assessed include any district court expense listed in 3-5-901, the money
 14 collected from assessment of these costs must be paid to the state for deposit into the state general fund
 15 to the extent the expenses were paid by the state;

16 ~~(b) (ii)~~ (ii) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the
 17 money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency
 18 ~~which that~~ that made the arrest from which the conviction and fine arose; and

19 ~~(c) (iii)~~ (iii) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be
 20 deposited in the state special revenue fund for use of the department of family services in the battered
 21 spouses and domestic violence grant program created by 52-6-101; and

22 ~~(2) (b)~~ (b) by a justice's court pursuant to 3-10-601.

23 (2) The county treasurer shall, in the manner provided in 15-1-504, distribute a surcharge fine
 24 imposed under [section 2] and paid into the county general fund under subsection (1)(a) of this section to
 25 the county sheriff, to be used by the sheriff to purchase spreaders, pullers, cutters, rams, and similar tools
 26 used to extricate persons and objects from wrecked motor vehicles. The sheriff may give tools purchased
 27 under this subsection to a fire department of the sheriff's choice."

28
 29 **NEW SECTION.** **Section 5. Codification instruction.** [Section 2] is intended to be codified as an
 30 integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to

1 [section 2].

2

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0256, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing the penalty that may be imposed on the fourth or subsequent conviction of driving under the influence; requiring notation of DUI convictions on a person's driver's license; providing a surcharge on a fine for driving under the influence or for driving with an excessive alcohol concentration.

ASSUMPTIONS:

1. In 1994, the Highway Patrol issued 2,255 DUI citations, 4% of which were 4th offense or subsequent, or 90 convictions.
2. Even though the maximum sentence for 4th offense is extended from 1 to 10 years, it would be rare if actual incarceration exceeded one year, but if it did occur, the time would be served in the state prison.
3. The average per day cost that the Highway Patrol reimburses county jails to house their prisoners is \$34.
4. The increase in the minimum jail sentence is 30 days (30 to 60) for 4th offense. Thus the increase in Highway Patrol expenses is \$92,000 per year (30 days x 90 convictions x \$34).
5. There were approximately 5,300 total statewide DUI convictions in 1994. Assume that 200 (4%) were 4th or subsequent.
6. The minimum fine for 4th or subsequent conviction increases \$500 (\$500 to \$1,000). Thus, estimated increased fine revenue is \$100,000 (200 x \$500). The state receives 50% of that amount and distributes 44.81% (\$22,400) to the general fund, with the remaining (\$27,600) distributed to six state special revenue accounts according to 3-10-601(3), MCA.
7. The Motor Vehicle Division (MVD) would experience increased costs of \$3,500 in FY96 for reprogramming the drivers' license layout to accept the DUI conviction data.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
Department of Justice:	<u>Difference</u>	<u>Difference</u>
Operating expenses	95,500	92,000
Funding:		
General fund (01)	3,500	0
Highway SSR (02)	<u>92,000</u>	<u>92,000</u>
Total	95,500	92,000

REVENUE:

Fines:		
General fund (01)	22,400	22,400
Various special revenue (02)	<u>27,600</u>	<u>27,600</u>
Total	50,000	50,000

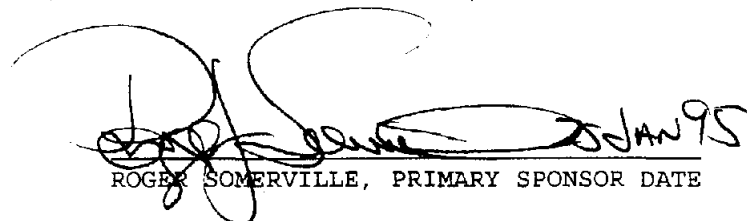
Net Impact:

General fund (01)	18,900	22,400
Highway SSR (02)	(92,000)	(92,000)
Various SSR (02)	<u>27,600</u>	<u>27,600</u>
Total	(45,500)	(42,000)

(continued)

 1-25-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 JAN 95

ROGER SOMERVILLE, PRIMARY SPONSOR DATE

Fiscal Note for HB0256, as introduced

HB 256

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties will share half the additional fines revenue, or \$50,000 per year. In addition, a new fines surcharge would add 10% of fines revenue to county revenue for purchase of tools to extricate persons and objects from wrecked motor vehicles. No data exists on average DUI/BAC fines, but if that amount was \$250, and a total of 6,300 convictions were made, that would calculate to \$157,000 additional revenue for all counties.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0256, 2nd reading

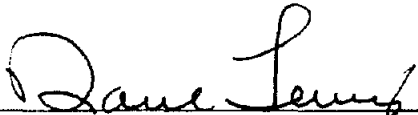
DESCRIPTION OF PROPOSED LEGISLATION:

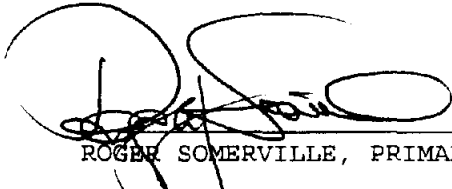
A bill increasing the penalties that may be imposed upon a conviction of driving under the influence (DUI); providing a surcharge on a fine for driving under the influence or for driving with an excessive alcohol concentration.

ASSUMPTIONS:

1. Approximately 7,000 driving under the influence (DUI) convictions are made annually. Approximately 50% of the convictions are attributable to city police departments, 25% to county sheriff departments, and 25% to the Montana Highway Patrol (MHP).
2. In FY94, the Montana Highway Patrol issued 2,255 citations for DUI. Based upon assumption #1, approximately 1,750 of these citations resulted in convictions (7,000 x 25% = 1,750).
3. An estimated 30% of the annual DUI convictions (2,100) are subsequent offenses. During the period 1987 through 1992, about 70% of the DUI convictions were first DUI offenses, 22% were 2nd DUI offenses, and about 8% were third or subsequent DUI offenses. The FY94 DUI citation data, and the assumed conviction distribution, for the MHP was similar: 71% first offense, 23% second offense, and 6% third or subsequent offense.
4. The average prisoner per diem cost that the MHP reimburses county jails to house highway patrol prisoners is \$34 per day. This amount includes fixed costs; it is assumed that the variable prisoner per diem cost to counties is about \$8 per day.
5. The minimum penalty for first offense DUI would increase from 24 to 48 consecutive hours; portions of a sentence may be served under home arrest, suspended, or deferred, and community service imposed, when the defendant voluntarily enrolls in and completes a chemical dependency treatment program. It is assumed that 50% of the first offense convictions will serve the increased minimum sentence (an additional 24 hours) and the other 50% will voluntarily enroll in and complete a chemical dependency program or serve the remainder of the minimum sentence under home arrest.
6. The minimum penalty for second offense DUI would increase from seven to 30 days, at least 72 hours of which must be served consecutively; portions of a sentence may be suspended or deferred when the defendant voluntarily enters and completes an inpatient chemical dependency treatment program and perform community service. It is assumed that 50% of the second offense convictions will serve the increased minimum sentence (23 days) and the other 50% will voluntarily enroll in and complete an inpatient chemical dependency treatment program.
7. The minimum penalty for third or subsequent offense DUI would increase from 30-day imprisonment to one year in the county jail or state prison. The minimum fine would increase from \$500 to \$1000. In most cases, the minimum sentence which must be served before deferral or suspension is increased from 10 to 60 days. The remainder of any sentence may be suspended or deferred only when the defendant voluntarily enters and completes an inpatient chemical dependency treatment program and performs community service. It is assumed that 50% of the third or subsequent offense convictions will serve the increased minimum sentence (335 days) in a county jail and the other 50%, after serving the minimum 60 days, will voluntarily enroll in and complete an inpatient chemical dependency treatment program.

(continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2 MARCH 1995
ROGER SOMERVILLE, PRIMARY SPONSOR DATE
Fiscal Note for HB0256, 2nd reading

HB 256-#2

8. The estimated additional annual expense to local governments is determined as follows: 1st offense: 75% police/sheriff convictions x 7,000 convictions x 70% first offense x 50% serving the minimum sentence x 1 additional day served X \$8 = \$14,700; 2nd offense: 75% police/sheriff convictions x 7,000 convictions x 22% second offense x 50% serving the minimum sentence x 23 additional days served X \$8 = \$106,260; 3rd and subsequent offense: (75% police/sheriff convictions x 7,000 convictions x 8% third and subsequent offense x 50 additional days for mandatory minimum sentence x \$8) + (75% x 7,000 x 8% x 50% serving the remaining minimum sentence x 305 (365-60) additional days served X \$8) = \$680,400. Total additional annual local government incarceration expenses = \$801,360.
9. The estimated total annual expense to the MHP under this bill is determined as follows: All citations: 2,255 x 1 day x \$34 = \$76,670; 1st offense convictions: 1,750 MHP convictions x 71% first offense citations x 50% serving the minimum sentence x 1 additional day served X \$34 = \$21,122; 2nd offense: 1,750 MHP convictions x 23% second offense citations x 50% serving the minimum sentence x 29 additional days served (30-1) X \$34 = \$198,433; 3rd and subsequent offense: (1,750 MHP convictions x 6% third and subsequent offense citations x 59 additional days for mandatory minimum sentence (60-1) x \$34) + (1,750 x 6% x 50% serving the remaining minimum sentence x 305 additional days served (365-60) X \$34) = \$755,055. The total annual MHP prisoner per diem expenses under this bill = \$1,051,280.
10. The Governor's Executive Budget contains \$980,000 in FY96 and \$1,156,500 in FY97 for MHP prisoner per diem. It is assumed that 90% of these amounts is applicable to DUI offenses; therefore, \$882,000 in FY96 and \$1,040,850 in FY97 is considered attributable to DUI incarcerations. The additional fiscal impact under this bill is estimated to be \$169,280 in FY96 (\$1,051,280 - \$882,000) and \$10,430 in FY97 (\$1,051,280 - \$1,040,850).
11. Counties will receive half of the additional fines revenue, or \$50,000 per year. A new fines surcharge would add 10% of fines revenue to county revenue for purchase of tools to extricate persons and objects from wrecked motor vehicles. No data exists on average DUI/blood alcohol concentration (BAC) fines, but if the average fine was \$250, and a total of 7,000 convictions were made, that would calculate to \$175,000 additional revenue for counties statewide.
12. There will be an increase of 10% on the fines collected by the state to reinstate a driver's license for persons convicted of DUI. It is assumed that this will generate an additional \$40,000 in revenue for the general fund.

FISCAL IMPACT:

Department of Justice, Highway Patrol Division:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	169,280	10,430
<u>Funding:</u>		
Highways Special Revenue (02)	169,280	10,430
<u>Revenues:</u>		
General Fund (01)	40,000	40,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

As estimated in assumption #8, local government incarceration expenses may increase by \$800,000 each year. Counties will receive half of the additional fines revenue, or \$50,000 per year. A new fines surcharge would add 10% of fines revenue to county revenue for purchase of tools to extricate persons and objects from wrecked motor vehicles. No data exists on average DUI/blood alcohol concentration (BAC) fines, but if the average fine was \$250, and a total of 7,000 convictions were made, that would calculate to \$175,000 additional revenue for counties statewide.

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 256

INTRODUCED BY SOMERVILLE, BARNETT, CAREY

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE ~~PENALTY~~ PENALTIES THAT MAY BE IMPOSED ~~ON THE FOURTH OR SUBSEQUENT~~ UPON A CONVICTION OF DRIVING UNDER THE INFLUENCE; REQUIRING NOTATION OF DUI CONVICTIONS ON A PERSON'S DRIVER'S LICENSE; PROVIDING A SURCHARGE ON A FINE FOR DRIVING UNDER THE INFLUENCE OR FOR DRIVING WITH AN EXCESSIVE ALCOHOL CONCENTRATION; PROVIDING FOR DISPOSITION OF THE SURCHARGE; AND AMENDING SECTIONS 3-10-601, 46-18-235, AND 61-8-714, MCA."

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) (8) (7)~~ and ~~(8) (9) (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~~ 48 consecutive hours or more than ~~60 days~~ 6 MONTHS 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 OR UNLESS THE DEFENDANT VOLUNTARILY ENROLLS IN AND SUCCESSFULLY COMPLETES A CHEMICAL DEPENDENCY TREATMENT PROGRAM APPROVED BY THE COURT AND CONDUCTED BY AN APPROVED PRIVATE TREATMENT FACILITY OR APPROVED PUBLIC TREATMENT FACILITY, AS DEFINED IN 53-24-103. A SUSPENDED OR DEFERRED SENTENCE MUST INCLUDE A CONDITION THAT THE DEFENDANT SHALL PERFORM COMMUNITY SERVICE.

(2) Except as provided in subsection ~~(7) (8) (7)~~, on a second conviction, 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~~ 30 days, at least ~~48~~ 72 hours of which must be served consecutively, or more than ~~6 months~~ 1 YEAR. Except as provided in subsection ~~(7) (8) (7)~~, ~~3~~ 30 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 OR UNLESS THE DEFENDANT VOLUNTARILY ENROLLS IN AND SUCCESSFULLY COMPLETES AN INPATIENT CHEMICAL DEPENDENCY TREATMENT PROGRAM APPROVED BY THE

1 COURT AND CONDUCTED BY AN APPROVED PRIVATE TREATMENT FACILITY OR APPROVED PUBLIC
 2 TREATMENT FACILITY, AS DEFINED IN 53-24-103. A SUSPENDED OR DEFERRED SENTENCE MUST
 3 INCLUDE A CONDITION THAT THE DEFENDANT SHALL PERFORM COMMUNITY SERVICE.

4 (3) (a) Except as provided in subsection ~~(7) (8)~~ (7), on the third ~~or subsequent~~ OR SUBSEQUENT
 5 conviction, the person shall be punished by ~~imprisonment~~ INCARCERATION IN THE COUNTY JAIL OR A
 6 STATE PRISON for a term of not less than ~~30 days, at least 48 hours of which must be served~~
 7 ~~consecutively,~~ 1 YEAR or more than ~~4 year~~ 10 YEARS and by a fine of not less than ~~\$500~~ \$1,000 or more
 8 than ~~\$1,000~~ \$50,000. Except as provided in subsection ~~(7) (8)~~ (7), notwithstanding any provision to the
 9 contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition
 10 or execution of the first ~~40~~ 60 days of the imprisonment sentence imposed for a third or subsequent
 11 offense that occurred within 5 years of the first offense may not be deferred or suspended. THE
 12 REMAINDER OF THE TERM OF INCARCERATION CONTAINED IN THE SENTENCE MAY BE SUSPENDED
 13 OR DEFERRED ONLY ON THE CONDITION THAT THE DEFENDANT SUCCESSFULLY COMPLETE AN
 14 INPATIENT CHEMICAL DEPENDENCY TREATMENT PROGRAM APPROVED BY THE COURT AND
 15 CONDUCTED BY AN APPROVED PRIVATE TREATMENT FACILITY OR APPROVED PUBLIC TREATMENT
 16 FACILITY, AS DEFINED IN 53-24-103. A SUSPENDED OR DEFERRED SENTENCE MUST INCLUDE A
 17 CONDITION THAT THE DEFENDANT SHALL PERFORM COMMUNITY SERVICE.

18 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed
 19 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be
 20 seized and subjected to the procedure provided under 61-8-421.

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

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

30 ~~(4) On the fourth or subsequent conviction, the person shall be punished by imprisonment for a~~

1 ~~term of not less than 60 days or more than 10 years and by a fine of not less than \$1,000 or more than~~
 2 ~~\$50,000. Except as provided in subsection (8), notwithstanding any provision to the contrary, the~~
 3 ~~imposition or execution of the first 60 days of the imprisonment sentence imposed for a fourth or~~
 4 ~~subsequent offense that occurred within 5 years of the second offense may not be deferred or suspended.~~

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

21 ~~(5)(6)~~ (5) For the purpose of determining the number of convictions under this section, "conviction"
 22 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute
 23 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
 24 in this state or another state, which forfeiture has not been vacated. An offender is considered to have
 25 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the
 26 commission of the present offense and a previous conviction. If there has been no additional conviction
 27 for an offense under this section for a period of 5 years after a prior conviction under this section, then all
 28 records and data relating to the prior conviction are confidential criminal justice information, as defined in
 29 44-5-103, and public access to the information may ~~only~~ be obtained only by district court order upon good
 30 cause shown.

1 ~~(6)(7)~~ (6) For the purpose of calculating subsequent convictions under this section, a conviction
2 for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

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

10 ~~(8)(9)~~ (8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
11 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
12 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

13 ~~(10) Upon a conviction under this section, the court shall take the person's driver's license from~~
14 ~~the person and send it to the department, which, upon payment of the appropriate fee, shall issue a~~
15 ~~duplicate license stating "DUI conviction (date)". If the person has more than one conviction, the date of~~
16 ~~each must follow the "DUI conviction" notation. If 5 or more years have passed since the date of the last~~
17 ~~conviction, the person may apply for and must be granted a new license that omits the DUI conviction~~
18 ~~notation and date or dates."~~

19
20 **NEW SECTION. Section 2. Surcharge fine on fine for driving under the influence or for driving with**
21 **excessive alcohol concentration.** In addition to any penalty imposed under 61-8-714 or 61-8-722, if a fine
22 is imposed under either section, a surcharge fine equal to 10% of the imposed fine must also be imposed.

23
24 **Section 3.** Section 3-10-601, MCA, is amended to read:

25 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of
26 the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county
27 treasury of the county in which the justice of the peace holds office, on or before the 10th day of each
28 month, to be credited to the general fund of the county.

29 (2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in
30 a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of

1 the following month to the treasurer of the county in which the justice's court is situated, except that they
 2 may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45,
 3 chapter 9 or 10.

4 (3) ~~The~~ Except as provided in subsection (5), the county treasurer shall, in the manner provided
 5 in 15-1-504, distribute money received under subsection (2) as follows:

6 (a) 50% to the state treasurer; and

7 (b) 50% to the county general fund.

8 (4) The state treasurer shall distribute money received under subsection (3) as follows:

9 (a) 44.81% to the state general fund;

10 (b) 9.09% to the fish and game account in the state special revenue fund;

11 (c) 11.76% to the state highway account in the state special revenue fund;

12 (d) 16.93% to the traffic education account in the state special revenue fund;

13 (e) 0.57% to the department of livestock account in the state special revenue fund;

14 (f) 15.9% to the crime victims compensation account in the state special revenue fund; and

15 (g) 0.94% to the department of family services special revenue account for the battered spouses
 16 and domestic violence grant program.

17 (5) The county treasurer shall, in the manner provided in 15-1-504, distribute a surcharge fine
 18 imposed under [section 2] and received under subsection (2) of this section to the county sheriff, to be
 19 used by the sheriff to purchase spreaders, pullers, cutters, rams, and similar tools used to extricate persons
 20 and objects from wrecked motor vehicles. ~~The sheriff may give tools purchased under this subsection to~~
 21 a fire department of the sheriff's choice."
 22

23 **Section 4.** Section 46-18-235, MCA, is amended to read:

24 **"46-18-235. Disposition of money collected as fines and costs.** (1) The money collected by a
 25 court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and
 26 46-18-232 ~~shall~~ must be paid:

27 ~~(a)~~ (a) by a district court to the county general fund of the county in which the court is held,
 28 except that:

29 ~~(a)~~ (i) if the costs assessed include any district court expense listed in 3-5-901, the money
 30 collected from assessment of these costs must be paid to the state for deposit into the state general fund

1 to the extent the expenses were paid by the state;

2 ~~(b)~~ (ii) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the
3 money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency
4 ~~which~~ that made the arrest from which the conviction and fine arose; and

5 ~~(e)~~ (iii) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be
6 deposited in the state special revenue fund for use of the department of family services in the battered
7 spouses and domestic violence grant program created by 52-6-101; and

8 ~~(2)~~ (b) by a justice's court pursuant to 3-10-601.

9 (2) The county treasurer shall, in the manner provided in 15-1-504, distribute a surcharge fine
10 imposed under [section 2] and paid into the county general fund under subsection (1)(a) of this section to
11 the county sheriff, to be used by the sheriff to purchase spreaders, pullers, cutters, rams, and similar tools
12 used to extricate persons and objects from wrecked motor vehicles. The sheriff may give tools purchased
13 under this subsection to a fire department of the sheriff's choice."

14

15 NEW SECTION. Section 5. Codification instruction. [Section 2] is intended to be codified as an
16 integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to
17 [section 2].

18

-END-

1 HOUSE BILL NO. 256

2 INTRODUCED BY SOMERVILLE, BARNETT, CAREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE ~~PENALTY~~ PENALTIES THAT MAY BE
5 ~~IMPOSED ON THE FOURTH OR SUBSEQUENT~~ UPON A CONVICTION OF DRIVING UNDER THE INFLUENCE;
6 ~~REQUIRING NOTATION OF DUI CONVICTIONS ON A PERSON'S DRIVER'S LICENSE;~~ PROVIDING A
7 SURCHARGE ON A FINE FOR DRIVING UNDER THE INFLUENCE OR FOR DRIVING WITH AN EXCESSIVE
8 ALCOHOL CONCENTRATION; PROVIDING FOR DISPOSITION OF THE SURCHARGE; AND AMENDING
9 SECTIONS 3-10-601, 46-18-235, AND 61-8-714, MCA."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.