

SENATE BILL NO. 362

INTRODUCED BY GRIMES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~MAKING IT A CRIME FOR A PERSON UNDER 21 YEARS OF AGE~~
5 ~~TO BE AT OR IN A PLACE WHERE A PERSON OR PERSONS UNDER 21 YEARS OF AGE ARE~~
6 ~~KNOWINGLY CONSUMING OR POSSESSING AN INTOXICATING SUBSTANCE; PROVIDING PENALTIES~~
7 ~~FOR THE OFFENSE; MAKING IT A CRIME FOR A PERSON UNDER 18 YEARS OF AGE TO PURPOSELY BE~~
8 ~~AT OR IN A PLACE, WHEN THE PERSON'S PARENT OR GUARDIAN IS NOT PRESENT, WHERE A PERSON~~
9 ~~OR PERSONS UNDER 21 YEARS OF AGE ARE KNOWINGLY CONSUMING OR POSSESSING AN~~
10 ~~INTOXICATING SUBSTANCE;~~ INCREASING THE PENALTIES FOR ILLEGAL POSSESSION OR
11 CONSUMPTION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE;
12 ~~REQUIRING CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT IN CERTAIN CASES; REQUIRING~~
13 ~~COURTS TO REPORT THE NAMES OF MINORS WHO ARE ORDERED TO COMPLETE CHEMICAL~~
14 ~~DEPENDENCY TREATMENT CONVICTED OF THE OFFENSE TO THE DEPARTMENT OF PUBLIC HEALTH~~
15 ~~AND HUMAN SERVICES AND REQUIRING THAT DEPARTMENT TO MAKE THE NAMES AVAILABLE UPON~~
16 ~~REQUEST TO PEACE OFFICERS AND COURTS;~~ AND AMENDING SECTIONS 45-5-624 AND 61-2-302,
17 MCA."

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

20
21 **Section 1.** Section 45-5-624, MCA, is amended to read:

22 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- associating**
23 **with persons illegally consuming intoxicating substance -- interference with sentence or court order. (1)**

24 ~~(a)(A)~~ A person under 21 years of age commits the offense of possession of an intoxicating substance if the
25 person knowingly consumes or has in the person's possession an intoxicating substance. A person does not
26 commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied
27 to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic
28 beverages.

29 ~~(b) A person under 21 years of age commits the offense of associating with persons illegally consuming~~
30 ~~an intoxicating substance if the person is at or in a place where a person or persons under 21 years of age are~~

1 ~~knowingly consuming or possessing an intoxicating substance.~~

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3 ~~———— (B) A PERSON UNDER 18 YEARS OF AGE COMMITS THE OFFENSE OF ASSOCIATING WITH PERSONS ILLEGALLY~~
4 ~~CONSUMING AN INTOXICATING SUBSTANCE IF, WHEN A PARENT OR GUARDIAN OF THE PERSON IS NOT PRESENT, THE~~
5 ~~PERSON PURPOSELY IS AT OR IN A PLACE WHERE A PERSON OR PERSONS UNDER 21 YEARS OF AGE ARE KNOWINGLY~~
6 ~~CONSUMING OR POSSESSING AN INTOXICATING SUBSTANCE.~~

7 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age
8 who is convicted of ~~the offense of possession of an intoxicating substance~~ under this section:

9 (i) for the first offense, shall be fined an amount not less than \$100 and not to exceed ~~\$150~~ \$300 and:

10 (A) ~~may~~ shall be ordered to perform 20 hours of community service; ~~and~~ AND

11 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
12 pay, ~~either directly with money or indirectly through court-ordered community service~~, all costs of participation
13 in a community-based substance abuse information course, approved by the department of public health and
14 human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if one is available; ~~and~~ AND

15 ~~———— (C) if the person has a driver's license, must have the license ordered suspended by the court for 30~~
16 ~~days~~ CONFISCATED ORDERED SUSPENDED BY THE COURT FOR 30 DAYS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B);

17 (C) IF THE PERSON HAS A DRIVER'S LICENSE, MUST HAVE THE LICENSE CONFISCATED BY THE COURT FOR 30
18 DAYS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B);

19 (ii) for a second offense, shall be fined an amount not less than \$150 \$200 and not to exceed ~~\$200~~ \$250
20 \$600 and:

21 (A) ~~may~~ shall be ordered to perform 40 hours of community service; ~~and~~

22 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
23 pay, ~~either directly with money or indirectly through court-ordered community service~~, all costs of participation
24 in a community-based substance abuse information course, approved by the department of public health and
25 human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if one is available; ~~and~~ AND

26 ~~———— (C) if the person has a driver's license, must have the license ordered suspended by the court for 45~~
27 ~~days~~; CONFISCATED ORDERED SUSPENDED BY THE COURT FOR 6 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B);

28 AND

29 (C) IF THE PERSON HAS A DRIVER'S LICENSE, MUST HAVE THE LICENSE CONFISCATED BY THE COURT FOR 6
30 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B); AND

1 ~~(D)(C)(D)~~ SHALL BE REQUIRED TO COMPLETE A CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT, IF
 2 RECOMMENDED, AS PROVIDED IN SUBSECTION (8):

3 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$500
 4 \$900, shall be ordered to perform 60 hours of community service, and shall be ordered, and the person's parent
 5 or parents or guardian shall be ordered, to complete and pay, either directly with money or indirectly through
 6 court-ordered community service, all costs of participation in a community-based substance abuse information
 7 course, approved by the department of public health and human services THAT MEETS THE REQUIREMENTS OF
 8 SUBSECTION (9), if one is available, AND SHALL BE REQUIRED TO COMPLETE A CHEMICAL DEPENDENCY ASSESSMENT
 9 AND TREATMENT, IF RECOMMENDED, AS PROVIDED IN SUBSECTION (8), which may include alcohol or drug treatment,
 10 or both, approved by the department of public health and human services, if determined by the court to be
 11 appropriate. If the convicted person has a driver's license, the court shall order the license suspended by the
 12 court for 60 days CONFISCATE THE LICENSE ORDER THE LICENSE SUSPENDED FOR 6 MONTHS, EXCEPT AS PROVIDED IN
 13 SUBSECTION (2)(B). IF THE PERSON HAS A DRIVER'S LICENSE, THE COURT SHALL CONFISCATE THE LICENSE FOR 6
 14 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B).

15 (b) In addition to the penalties provided in subsection (2)(a), the court may order suspension of the
 16 offender's driver's license. The duration of the suspension must be set forth by court order and may not be less
 17 than 60 days or more than 1 year. Upon recommendation from the court, a restricted probationary driver's
 18 license under 61-2-302 may be issued during the suspension period after the person has completed at least 30
 19 days of the suspension period. If the convicted person fails to complete the community-based substance abuse
 20 course and has a driver's license, the court shall order CONFISCATE the license suspended ORDER THE LICENSE
 21 SUSPENDED for 3 months for a first offense, 6 9 months for a second offense, and 12 months for a third or
 22 subsequent offense.

23 (C) THE COURT SHALL RETAIN JURISDICTION FOR UP TO 1 YEAR TO CONFISCATE ORDER SUSPENSION OF A
 24 LICENSE UNDER SUBSECTION (2)(B).

25 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
 26 substance under this section OF THE OFFENSE OF POSSESSION OF AN INTOXICATING SUBSTANCE:

27 (a) for a first offense, shall be fined an amount ~~not less than \$100 and~~ not to exceed \$150 \$200, and
 28 AND may shall MAY be ordered to perform ~~40 hours of~~ community service, and, if the person has a driver's
 29 license, must have the license suspended for 30 days;

30 (b) for a second offense, shall be fined an amount not to exceed \$200 and may be ordered to perform

1 ~~community service;~~

2 ~~(B) FOR A SECOND OFFENSE, SHALL BE FINED AN AMOUNT NOT TO EXCEED \$200 AND MAY BE ORDERED TO~~
 3 ~~PERFORM COMMUNITY SERVICE;~~

4 ~~————(c)(b)(C) for a third ~~second~~ THIRD or subsequent offense, shall be fined an amount ~~not less than \$150~~~~
 5 ~~and not to exceed \$300 \$500 and:~~

6 (i) ~~may shall~~ MAY be ordered to perform ~~60 hours of~~ community service ~~and, if the person has a driver's~~
 7 ~~license, must have the license suspended for 60 days;~~

8 (ii) shall be ordered to complete, ~~and the person's parent or parents or guardian shall be ordered, to~~
 9 ~~complete and pay all costs of participation in~~ TO COMPLETE an alcohol information course at an alcohol treatment
 10 program ~~approved by the department of public health and human services~~ THAT MEETS THE REQUIREMENTS OF
 11 ~~SUBSECTION (9), if available which may, in the sentencing court's discretion and upon recommendation of a~~
 12 ~~licensed addiction counselor, include alcohol or drug treatment, or both~~ WHICH MAY, IN THE SENTENCING COURT'S
 13 ~~DISCRETION AND UPON RECOMMENDATION OF A LICENSED ADDICTION COUNSELOR, INCLUDE ALCOHOL OR DRUG~~
 14 ~~TREATMENT, OR BOTH; and~~

15 (iii) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed ~~6~~ 4 ~~6~~
 16 ~~months;.~~

17 ~~(c) for a second or subsequent offense, who fails to complete the alcohol information course, and who~~
 18 ~~has a driver's license, must have the license suspended by the court for 12 months.~~

19 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating
 20 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt
 21 to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21
 22 years of age at the time that the offense was committed and may be ordered to perform community service.

23 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18
 24 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for
 25 failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth
 26 in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

27 (6) A person commits the offense of interference with a sentence or court order if the person purposely
 28 or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court
 29 disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or
 30 imprisoned in the county jail for 10 days, or both.

1 (7) A conviction or youth court adjudication under this section ~~may not~~ MUST be reported by the court
 2 to the department of justice under ~~61-11-101 unless suspension of the offender's driver's license is ordered by~~
 3 ~~the court pursuant to subsection (2)(b)~~ PUBLIC HEALTH AND HUMAN SERVICES IF TREATMENT IS ORDERED UNDER
 4 SUBSECTION (8).

5 (8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating
 6 substance shall be ordered to complete a chemical dependency assessment.

7 (b) The assessment must be completed at a treatment program approved by the department of public
 8 health and human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9) and must be conducted by a
 9 licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed
 10 addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any
 11 resulting treatment.

12 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
 13 recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with
 14 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
 15 addiction counselor or program approved by the department of public health and human services- THAT MEETS
 16 THE REQUIREMENTS OF SUBSECTION (9).

17 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or
 18 both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules
 19 adopted by the department of public health and human services. Upon the determination, the court shall order
 20 the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order
 21 an appropriate level of treatment based upon the determination of one of the counselors.

22 (e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify
 23 the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to
 24 attend the treatment program, the counselor shall notify the court of the failure.

25 (F) THE COURT SHALL REPORT TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES THE NAME OF ANY
 26 PERSON WHO IS ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT UNDER THIS SUBSECTION (8) CONVICTED
 27 UNDER THIS SECTION. THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL MAINTAIN A LIST OF THOSE
 28 PERSONS WHO HAVE BEEN ORDERED TO COMPLETE TREATMENT UNDER THIS SUBSECTION (8) CONVICTED UNDER THIS
 29 SECTION. THIS LIST MUST BE MADE AVAILABLE UPON REQUEST TO PEACE OFFICERS AND TO ANY COURT.

30 (9) (A) A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE REQUIRED UNDER SUBSECTION

1 (2)(A)(I)(B), (2)(A)(II)(B), OR (2)(A)(III) MUST BE:

2 (I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT
3 OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

4 (II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL
5 DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
6 ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES.

7 (B) AN ALCOHOL INFORMATION COURSE REQUIRED UNDER SUBSECTION (3)(C)(II) MUST BE PROVIDED AT AN
8 ALCOHOL TREATMENT PROGRAM:

9 (I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT
10 OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

11 (II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL
12 DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
13 ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES.

14 (C) A CHEMICAL DEPENDENCY ASSESSMENT REQUIRED UNDER SUBSECTION (8) MUST BE COMPLETED AT A
15 TREATMENT PROGRAM:

16 (I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT
17 OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

18 (II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL
19 DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
20 ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES. (See compiler's comments for contingent termination
21 of certain text.)"

22

23 **Section 2.** Section 61-2-302, MCA, is amended to read:

24 **"61-2-302. Establishment of driver rehabilitation and improvement program -- department to**
25 **contract with private entities -- participation by offending drivers.** (1) (a) The department shall establish by
26 administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom
27 instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual
28 on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits,
29 and techniques.

30 (b) The rules must:

- 1 (i) provide for the local program courses to be operated by private entities;
- 2 (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course
3 providers;
- 4 (iii) establish the criteria that private entities must meet in order to be certified by the department; and
- 5 (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in
6 areas where a course is not offered.
- 7 (2) Official participation in the driver rehabilitation and improvement program is limited to those persons
8 whose license to operate a motor vehicle in the state of Montana is:
- 9 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state ~~or, unless~~
10 ~~otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b);~~
- 11 (b) revoked and they have:
- 12 (i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent
13 violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition
14 interlock device restriction imposed under 61-5-208; or
- 15 (ii) completed 1 year of a 3-year revocation; and
- 16 (iii) met the requirements for reobtaining a Montana driver's license; or
- 17 (c) subject to suspension as provided in 61-11-204(3).
- 18 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana,
19 the enforcement of any suspension or revocation order that constitutes the basis for any person's participation
20 in the driver rehabilitation and improvement program provided for in this section may be stayed if that person
21 complies with the requirements established for the driver rehabilitation and improvement program and meets
22 the eligibility requirements of subsection (2).
- 23 (4) In the event that a person's driver's license has been surrendered before the person's selection for
24 participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of
25 the person's agreement to participate in the program.
- 26 (5) The stay of enforcement of any suspension or revocation order must be terminated and the order
27 of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and
28 improvement program or fails to meet the attendance or other requirements established for participation in the
29 program.
- 30 (6) This part does not create a right to be included in any program established under this part.

1 (7) The department and the entity with which the department contracts under subsection (1)(b) shall
2 establish separate fee schedules that may be charged to those persons participating in the driver improvement
3 and rehabilitation program. The fees must be collected separately by the department and by the entity with which
4 the department contracts under subsection (1)(b).

5 (8) The fees collected by the department under subsection (7) must be used to help defray costs
6 incurred by the department in administering the program and in contracting with private entities as provided in
7 subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

8 (9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the
9 peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

10 (10) (a) Except as provided in (10)(b), the department may issue a restricted probationary license to any
11 person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a
12 probationary license under this section, the licensee is subject to the restrictions set forth on the license.

13 (b) The department may not issue a restricted probationary license that would permit an individual to
14 drive a commercial motor vehicle during a period in which:

15 (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law;

16 or

17 (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

18 (11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
19 restrictions imposed on a restricted license issued to the person under this section."

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- END -