

SENATE BILL NO. 407

INTRODUCED BY GRIMES

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MINOR IN POSSESSION LAW; AND AMENDING SECTIONS SECTION 45-5-624 AND ~~61-5-205~~, MCA."

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

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

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

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

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

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

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months,

1 except as provided in subsection (2)(b); and

2 (D) shall be required to complete a chemical dependency assessment and treatment, if recommended,
3 as provided in subsection (8);

4 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
5 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents
6 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance
7 abuse information course that meets the requirements of subsection (9), if one is available, and shall be required
8 to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8).
9 If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in
10 subsection (2)(b).

11 (b) If the convicted person fails to complete the community-based substance abuse course and has a
12 driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a
13 second offense, and 12 months for a third or subsequent offense.

14 (c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection
15 (2)(b).

16 (3) ~~(a)~~ A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
17 substance:

18 ~~(a)(i)(A)~~ for a first offense;:

19 ~~(A)(i)~~ shall be fined an amount ~~not to exceed \$200, and may~~ not less than \$100 or more than \$300;

20 ~~(B)(ii)~~ shall be ordered to perform 20 hours of community service; AND

21 ~~(C)(iii)~~ shall be ordered to complete and pay all costs of participation in a community-based substance
22 abuse information course that meets the requirements of subsection (9); and

23 ~~(D) if the person has a driver's license, must have the license confiscated by the court for 30 days;~~

24 ~~(b)(ii)(B)~~ for a second offense;:

25 ~~(A)(i)~~ shall be fined an amount ~~not to exceed \$200 and may~~ not less than \$200 or more than \$600;

26 ~~(B)(ii)~~ shall be ordered to perform 40 hours of community service; AND

27 ~~(C)(iii)~~ shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
28 program that meets the requirements of subsection (9), which may, in the court's discretion and upon
29 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

30 ~~(D) if the person has a driver's license, must have the license confiscated by the court for 90 days or~~

1 ~~until satisfactory completion of the course or any ordered treatment;~~

2 ~~(c)(iii)(C)~~ for a third or subsequent offense;:

3 ~~(A)(i)~~ shall be fined an amount ~~not to exceed \$500 and:~~ not less than \$300 or more than \$900;

4 ~~(i)(B)(ii)~~ ~~may~~ shall be ordered to perform 60 hours of community service;

5 ~~(ii)(C)(iii)~~ shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
6 program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon
7 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; ~~and~~ AND

8 ~~(D) if the person has a driver's license, must have the license suspended for 6 months or until~~
9 ~~satisfactory completion of the course or any ordered treatment; and~~

10 ~~(iii)(E)(D)(IV)~~ in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed
11 6 months.

12 ~~(b) A previous conviction for a violation of this section committed when the offender was under the age~~
13 ~~of 18 may be counted for purposes of determining the number of a subsequent conviction for a violation of this~~
14 ~~section committed when the offender was 18 years of age or older.~~

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

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

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

27 (7) A conviction or youth court adjudication under this section must be reported by the court to the
28 department of public health and human services if treatment is ordered under subsection (8).

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

1 (b) The assessment must be completed at a treatment program that meets the requirements of
 2 subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of
 3 the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay
 4 the cost of the assessment and any resulting treatment.

5 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
 6 recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with
 7 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
 8 addiction counselor or program that meets the requirements of subsection (9).

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

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

17 (f) The court shall report to the department of public health and human services the name of any person
 18 who is convicted under this section. The department of public health and human services shall maintain a list
 19 of those persons who have been convicted under this section. This list must be made available upon request
 20 to peace officers and to any court.

21 (9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B),
 22 (2)(a)(ii)(B), or (2)(a)(iii), or ~~(3)(a)(i)(C)~~ (3)(A)(III) must be:

23 (i) approved by the department of public health and human services under 53-24-208 or by a court or
 24 provided under a contract with the department of corrections; or

25 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
 26 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
 27 chemical dependency services.

28 (b) An alcohol information course required under subsection ~~(3)(e)(ii)~~ ~~(3)(a)(ii)(C)~~ or ~~(3)(a)(iii)(C)~~
 29 (3)(B)(III) OR (3)(C)(III) must be provided at an alcohol treatment program:

30 (i) approved by the department of public health and human services under 53-24-208 or by a court or

1 provided under a contract with the department of corrections; or

2 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
3 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
4 chemical dependency services.

5 (c) A chemical dependency assessment required under subsection (8) must be completed at a
6 treatment program:

7 (i) approved by the department of public health and human services under 53-24-208 or by a court or
8 provided under a contract with the department of corrections; or

9 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
10 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
11 chemical dependency services. (See compiler's comments for contingent termination of certain text.)"

12

13 ~~Section 2.~~ Section 61-5-205, MCA, is amended to read:

14 ~~"61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration~~
15 ~~of action -- exceptions.~~ (1) The department shall revoke an individual's driver's license or driving privilege if
16 the department receives notice from a court or another licensing jurisdiction that the individual has been
17 convicted of any of the following offenses:

18 ~~(a) negligent homicide resulting from the operation of a motor vehicle;~~

19 ~~(b) any felony in the commission of which a motor vehicle is used;~~

20 ~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle~~
21 ~~accident resulting in the death or personal injury of another;~~

22 ~~(d) perjury or the making of a false affidavit or statement under oath to the department under this~~
23 ~~chapter or under any other law relating to the ownership or operation of motor vehicles;~~

24 ~~(e) fleeing from or eluding a peace officer; or~~

25 ~~(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.~~

26 ~~(2) The department shall suspend an individual's driver's license or driving privilege if the department~~
27 ~~receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the~~
28 ~~following offenses:~~

29 ~~(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol~~
30 ~~or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more;~~

- 1 ~~—— (b) three reckless driving offenses committed within a period of 12 months; or~~
2 ~~—— (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle~~
3 ~~was used in the commission of the offense; or~~
4 ~~—— (d) three or more offenses under 45-5-624(3) for illegal possession of an intoxicating substance.~~
5 ~~—— (3) A revocation under subsection (1) must be for a period of 1 year.~~
6 ~~—— (4) (a) Except as provided in subsections (4)(b) and (4)(c) through (4)(d), a suspension under~~
7 ~~subsection (2) must be for a period of 1 year.~~
8 ~~—— (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).~~
9 ~~—— (c) A suspension under subsection (2)(c) must be for one of the following periods:~~
10 ~~—— (i) 30 days for a first offense;~~
11 ~~—— (ii) 6 months for a second offense; and~~
12 ~~—— (iii) 1 year for a third or subsequent offense.~~
13 ~~—— (d) A suspension under subsection (2)(d) must be for 6 months."~~
14 ~~——~~ - END -