

HOUSE BILL NO. 541

INTRODUCED BY B. WISEMAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE POSSESSION OF 30 GRAMS OR LESS
5 OF MARIJUANA AND USE OR POSSESSION WITH INTENT TO USE DRUG PARAPHERNALIA IN
6 CONNECTION WITH THAT AMOUNT ARE CIVIL INFRACTIONS; AMENDING SECTIONS 45-9-102, 45-9-127,
7 45-9-130, 45-10-103, AND 46-6-102, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 45-9-102, MCA, is amended to read:
12 **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in [section 4] and Title
13 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses
14 any dangerous drug, as defined in 50-32-101.

15 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate
16 weight of which is more than 30 grams but does not exceed 60 grams of marijuana or 1 gram of hashish is, for
17 the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500
18 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a
19 condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this
20 subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to
21 exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

22 (3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first
23 offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by
24 imprisonment in the county jail for not more than 6 months, or both.

25 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be
26 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more
27 than \$50,000, except as provided in 46-18-222.

28 (5) (a) A person convicted of a second or subsequent offense of criminal possession of
29 methamphetamine shall be punished by:

30 (i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

1 (ii) commitment to the department of corrections for placement in an appropriate correctional facility or
2 program for a term of not less than 3 years or more than 5 years. If the person successfully completes a
3 residential methamphetamine treatment program operated or approved by the department of corrections during
4 the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not
5 to exceed \$50,000.

6 (b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place
7 the person in a residential methamphetamine treatment program operated or approved by the department of
8 corrections or in a correctional facility or program. The residential methamphetamine treatment program must
9 consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based
10 prerelease center.

11 (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

12 (i) the person to abide by the standard conditions of probation established by the department of
13 corrections;

14 (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person
15 if the person is financially able to pay those costs;

16 (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption
17 on the premises or where gambling takes place;

18 (iv) that the person may not consume alcoholic beverages;

19 (v) the person to enter and remain in an aftercare program as directed by the person's probation officer;

20 and

21 (vi) the person to submit to random or routine drug and alcohol testing.

22 (6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in
23 subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined
24 an amount not to exceed \$50,000, or both.

25 (7) A person convicted of a first violation under this section is presumed to be entitled to a deferred
26 imposition of sentence of imprisonment.

27 (8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting
28 in the course of a professional practice are exempt from this section."

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30 **Section 2.** Section 45-9-127, MCA, is amended to read:

1 **"45-9-127. Carrying dangerous drugs on train -- penalty.** (1) Except as provided in Title 50, chapter
 2 46, and [section 4], a person commits the offense of carrying dangerous drugs on a train in this state if ~~he~~ the
 3 person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

4 (2) ~~A~~ Except as provided in [section 4], a person convicted of carrying dangerous drugs on a train in this
 5 state is subject to the penalties provided in 45-9-102."

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7 **Section 3.** Section 45-9-130, MCA, is amended to read:

8 **"45-9-130. Mandatory fine for possession and storage of dangerous drugs -- disposition of**
 9 **proceeds.** (1) ~~In~~ Except as provided in [section 4], in addition to the punishments and fines set forth in this part,
 10 the court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value
 11 of the drugs as determined by the court.

12 (2) The fines collected pursuant to subsection (1) during each calendar year must be transmitted by the
 13 clerk of court to the department of revenue no later than 10 days following the end of the calendar year. The
 14 department shall deposit the fines in the state general fund."

15

16 NEW SECTION. **Section 4. Simple possession of marijuana as civil infraction -- civil penalty --**
 17 **arrest prohibited.** (1) A person commits the civil infraction of simple possession of marijuana if the person
 18 possesses not more than 30 grams of marijuana or any of its derivatives.

19 (2) A person found to be in violation of subsection (1) shall, in addition to any confiscation as provided
 20 by Title 44, chapter 12, pay a civil penalty of \$50.

21 (3) A person believed to be in violation of only 45-10-103(2), subsection (1) of this section, or both may
 22 be issued a citation by the jurisdiction in which the person is believed to be in violation of subsection (1) but may
 23 not be arrested or taken to or booked into a detention facility. Identifying information relating to the person may
 24 not be entered into any manual or electronic database or recordkeeping system other than that necessary for the
 25 enforcement of this section.

26 (4) Upon issuance of a citation, the person believed to be in violation of subsection (1) may pay the civil
 27 penalty by mail or may elect to contest the citation at a time and place provided in the citation.

28 (5) This section does not apply to a qualifying patient or caregiver, as defined in 50-46-102, who
 29 complies with the requirements of Title 50, chapter 46.

30 (6) A violation of subsection (1) is not a criminal offense within the meaning of 3-1-317, 3-1-318,

1 45-2-101, and 46-18-236. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed
2 for a violation of this section.

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4 **Section 5.** Section 45-10-103, MCA, is amended to read:

5 **"45-10-103. Criminal and civil possession of drug paraphernalia.** (1) It is unlawful for a person to
6 use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
7 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
8 inhale, or otherwise introduce into the human body a dangerous drug. A Except as provided in subsection (2),
9 a person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the
10 county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of
11 a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

12 (2) A person who violates this section because of the use or possession with intent to use drug
13 paraphernalia in connection with simple possession of marijuana as provided in [section 4] has committed a civil
14 infraction and upon conviction shall be punished by a civil penalty in the same amount as provided in [section 4]
15 for simple possession of marijuana."

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17 **Section 6.** Section 46-6-102, MCA, is amended to read:

18 **"46-6-102. Persons exempt from arrest.** (1) Electors shall in all cases except treason, felony, or breach
19 of the peace be privileged from arrest during their attendance at election and in going to and returning from the
20 same.

21 (2) Senators and representatives shall in all cases except felony or breach of the peace be privileged
22 from arrest during the sessions of the state legislature and in going to and returning from the ~~same~~ sessions.

23 (3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest
24 during their attendance at musters and election and in going to and returning from the ~~same~~ musters and election.

25 (4) Judges, attorneys, clerks, sheriffs, and other court officers ~~shall be~~ are privileged from arrest while
26 attending court and while going to and returning from court.

27 (5) A person violating only [section 4], 45-10-103(2), or both may not be arrested."

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29 **NEW SECTION. Section 7. Codification instruction.** [Section 4] is intended to be codified as an
30 integral part of Title 50, chapter 32, part 2, and the provisions of Title 50, chapter 32, part 2, apply to [section 4].

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