

HOUSE BILL NO. 497

INTRODUCED BY B. BENNETT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON MAY NOT BE CHARGED OR PROSECUTED FOR CERTAIN CRIMINAL OFFENSES IF EVIDENCE FOR THE CHARGE OR PROSECUTION WAS OBTAINED AS A RESULT OF THE PERSON SEEKING MEDICAL TREATMENT FOR AN OVERDOSE; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 45-5-624 AND 45-9-102, 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 may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages. A person does not commit the offense if the person consumes or gains possession of an alcoholic 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:



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

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

5 (C) if the person has a driver's license, must have the license confiscated by the court for 6 months,  
6 except as provided in subsection (2)(b); and

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

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

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

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

21 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating  
22 substance:

23 (a) for a first offense:

24 (i) shall be fined an amount not less than \$100 or more than \$300;

25 (ii) shall be ordered to perform 20 hours of community service; and

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

28 (b) for a second offense:

29 (i) shall be fined an amount not less than \$200 or more than \$600;

30 (ii) shall be ordered to perform 40 hours of community service; and

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

4 (c) for a third or subsequent offense:

5 (i) shall be fined an amount not less than \$300 or more than \$900;

6 (ii) shall be ordered to perform 60 hours of community service;

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

10 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

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

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

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

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

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

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

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

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

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

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

17 (9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B),  
18 (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

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

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

24 (b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at  
25 an alcohol treatment program:

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

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

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

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

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

8 (10) Information provided or statements made by a person under 21 years of age to a health care  
9 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter  
10 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also  
11 extends to a person who helps the victim obtain medical or other assistance or report the offense to law  
12 enforcement personnel.

13 (11) (a) A person may not be charged or prosecuted under subsection (1) if the evidence for the charge  
14 was obtained as a result of the person seeking medical treatment for an overdose by the person or by another  
15 person.

16 (b) The protection provided in subsection (11)(a) may not be used to suppress evidence in other criminal  
17 charges.

18 (c) For the purposes of this subsection (11), "medical treatment" means medical treatment provided by  
19 an emergency medical service or health care facility licensed, certified, or otherwise authorized by law to  
20 administer medical treatment in this state. (See compiler's comments for contingent termination of certain text.)"

21

22 **Section 2.** Section 45-9-102, MCA, is amended to read:

23 **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in Title 50, chapter 46,  
24 a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous  
25 drug, as defined in 50-32-101.

26 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate  
27 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a  
28 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in  
29 the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended  
30 or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable

1 by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state  
2 prison for a term not to exceed 3 years or by both. This subsection does not apply to the possession of synthetic  
3 cannabinoids listed as dangerous drugs in 50-32-222.

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

7 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned  
8 in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than  
9 \$50,000, except as provided in 46-18-222.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (9) (a) A person may not be charged with or prosecuted for the offense of criminal possession of  
12 dangerous drugs if the evidence for the charge was obtained as a result of the person seeking medical treatment  
13 for an overdose by the person or by another person.

14 (b) The protection provided in subsection (9)(a) may not be used to suppress evidence in other criminal  
15 charges.

16 (c) For the purposes of this subsection (9), "medical treatment" means medical treatment provided by  
17 an emergency medical service or health care facility licensed, certified, or otherwise authorized by law to  
18 administer medical treatment in this state."

19 - END -