

## SENATE BILL NO. 360

INTRODUCED BY D. KARY, E. ARNTZEN, T. BROWN, N. SWANDAL, R. WEBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC INTOXICATION LAWS; AUTHORIZING A LOCAL GOVERNMENT TO ADOPT AND ENFORCE A PUBLIC INTOXICATION LAW; AUTHORIZING A PERSON WHO APPEARS TO BE INTOXICATED IN A PUBLIC PLACE TO BE TAKEN TO A DETENTION FACILITY BY A PEACE OFFICER; AND AMENDING SECTIONS 53-24-102, 53-24-106, 53-24-107, AND 53-24-303, MCA."

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

**Section 1.** Section 53-24-102, MCA, is amended to read:

**"53-24-102. Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics ~~and intoxicated persons~~ may not be subjected to criminal prosecution because of their ~~consumption of alcoholic beverages~~ alcoholism but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society."

**Section 2.** Section 53-24-106, MCA, is amended to read:

**"53-24-106. Criminal laws limitation.** (1) ~~A county, municipality, or other political subdivision may not adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction~~ A local government may adopt and enforce an ordinance or resolution that prohibits public intoxication.

(2) This section does not affect any law, ordinance, or resolution, ~~or rule against drunken driving~~; that prohibits driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(3) ~~This section does not prevent the department from imposing a~~ The department may sanction ~~on or denying~~ deny eligibility to applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program requirements."

1           **Section 3.** Section 53-24-107, MCA, is amended to read:

2           **"53-24-107. Public intoxication not -- criminal offense.** (1) A local government that adopts an  
3 ordinance or resolution pursuant to 53-24-106 may charge and prosecute a person who appears to be intoxicated  
4 in public ~~does not commit a criminal offense solely by reason of being in an intoxicated condition but~~ in public and  
5 the person may be detained by a peace officer for the person's own protection or the protection of the public. A  
6 peace officer who detains a person who appears to be intoxicated in public shall proceed in the manner provided  
7 in 53-24-303 and subsection (3) of this section.

8           (2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person  
9 who appears to be intoxicated until the person is no longer creating a risk to self or others.

10           (3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's  
11 health and safety. The peace officer may take reasonable steps for the officer's own protection. ~~An entry or other~~  
12 ~~record may not be made to indicate that the person detained under this section has been arrested or charged~~  
13 ~~with a crime.~~

14           (4) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally  
15 liable for the officer's actions."  
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17           **Section 4.** Section 53-24-303, MCA, is amended to read:

18           **"53-24-303. Treatment and services for intoxicated persons.** (1) A person who appears to be  
19 intoxicated in a public place and to be in need of help may be assisted to the person's home, a detention facility,  
20 an approved private treatment facility, or other health care facility by ~~the police~~ a peace officer.

21           (2) A peace officer acting within the scope of the officer's authority under this chapter is not personally  
22 liable for the officer's actions."  
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