

SENATE BILL NO. 123  
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REVOCATION, UNTIL THE AGE OF 18, OF THE DRIVER'S LICENSE OF A MINOR CONVICTED FOR THE THIRD TIME OF POSSESSION OF ALCOHOL OR DRUGS; REQUIRING A FINE AND DRIVER'S LICENSE REVOCATION UNTIL 18 YEARS OF AGE IF A MINOR IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL ALCOHOL CONTENT; REQUIRING FORFEITURE OF THE VEHICLE THAT THE PERSON WAS DRIVING UPON A FIRST OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL ALCOHOL CONTENT IF PERSONAL INJURY TO OR DAMAGE IN EXCESS OF \$300 TO PROPERTY OF ANOTHER PERSON RESULTED FROM A MOTOR VEHICLE ACCIDENT FOR WHICH THE CONVICTED PERSON WAS PARTLY OR WHOLLY AT FAULT; AND AMENDING SECTIONS 45-5-624, 61-8-723, AND 61-8-733, 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 of the offense of possession of an intoxicating substance:

(i) for the first offense, shall be fined an amount not to exceed \$150 and:

(A) may be ordered to perform community service; and

(B) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of participation in a community-based substance abuse information course, if one is available;

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

(A) may be ordered to perform community service; and

(B) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of participation in a community-based substance abuse information course, if one is available;

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$500 and shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(b) In addition to the penalties provided in subsection (2)(a):

(i) upon a first or second conviction, the court may order suspension of the offender's driver's license. The duration of the suspension must be set forth by court order and may not be less than 60 days or more than 1 year. Upon recommendation from the court, a restricted probationary driver's license under 61-2-302 may be issued during the suspension period after the person has completed at least 30 days of the suspension period.

(ii) upon a third conviction, the court shall order the offender's driver's license revoked until the offender reaches 18 years of age and the offender may not be issued a new license after the offender reaches 18 years of age unless the offender presents to the driver's license examination office certification that the offender has taken at least 10 hours of instruction on the effects of driving under the influence of alcohol or drugs.

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

(a) for a first offense, shall be fined an amount not to exceed \$150 and may be ordered to perform community service;

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

(c) for a third or subsequent offense, shall be fined an amount not to exceed \$300 and:

(i) may be ordered to perform community service;

(ii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

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

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase

an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

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

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

(7) A conviction or youth court adjudication under this section may not be reported by the court to the department of justice under 61-11-101 unless suspension of the offender's driver's license is ordered by the court pursuant to subsection (2)(b). (See compiler's comments for contingent termination of certain text.)"

**Section 2.** Section 61-8-723, MCA, is amended to read:

**"61-8-723. Offenses committed by persons under the age of eighteen.** (1) A person under 18 years of age who is convicted of an offense under this title, except an offense under 61-8-401 or 61-8-406, shall not be punished by incarceration, but shall be punished by:

(1)(a) a fine not to exceed the fine that could be imposed on ~~him~~ the person if ~~he~~ the person were an adult, ~~provided~~ except that ~~such~~ the person may not be imprisoned for failure to pay ~~such~~ the fine;

(2)(b) revocation of ~~his~~ the person's driver's license by the court or suspension of the license for a period set by the court;

(3)(c) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds that ~~he~~ the person either owns the vehicle or is the only person who uses the vehicle; or

(4)(d) any combination of subsections (1)(a) through (3) (1)(c).

(2) A person under 18 years of age who is convicted of an offense under 61-8-401 or 61-8-406 shall not be punished by incarceration, but shall be punished by:

(a) a fine not to exceed the fine that could be imposed on the person if the person were an adult, except that the person may not be imprisoned for failure to pay the fine;

(b) revocation of the person's driver's license by the court until the person is 18 years of age, and the

person may not be issued a new license after the person reaches 18 years of age unless the person presents to the driver's license examination office certification that the person has taken at least 10 hours of instruction on the effects of driving under the influence of alcohol or drugs; and

(c) seizure and disposition under 61-8-421 of the motor vehicle operated by the person at the time of the offense if personal injury to or damage in excess of \$300 to property of another person resulted from a motor vehicle accident for which the person was partly or wholly at fault that occurred while the person was in violation of 61-8-401 or 61-8-406."

**Section 3.** Section 61-8-733, MCA, is amended to read:

**"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- forfeiture of vehicle.** (1) (a) On a first conviction of a violation of 61-8-401 or 61-8-406, if personal injury to or damage in excess of \$300 to property of another person resulted from a motor vehicle accident for which the convicted person was partly or wholly at fault that occurred while the convicted person was in violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order the motor vehicle operated by the convicted person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(b) On the ~~third~~ second or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order the motor vehicle ~~owned and~~ operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

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