

SENATE BILL NO. 362
INTRODUCED BY GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~MAKING IT A CRIME FOR A PERSON UNDER 21 YEARS OF AGE TO BE AT OR IN A PLACE WHERE A PERSON OR PERSONS UNDER 21 YEARS OF AGE ARE KNOWINGLY CONSUMING OR POSSESSING AN INTOXICATING SUBSTANCE; PROVIDING PENALTIES FOR THE OFFENSE; MAKING IT A CRIME FOR A PERSON UNDER 18 YEARS OF AGE TO PURPOSELY BE AT OR IN A PLACE, WHEN THE PERSON'S PARENT OR GUARDIAN IS NOT PRESENT, WHERE A PERSON OR PERSONS UNDER 21 YEARS OF AGE ARE KNOWINGLY CONSUMING OR POSSESSING AN INTOXICATING SUBSTANCE;~~ INCREASING THE PENALTIES FOR ILLEGAL POSSESSION OR CONSUMPTION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; REQUIRING CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT IN CERTAIN CASES; REQUIRING COURTS TO REPORT THE NAMES OF MINORS WHO ARE ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT CONVICTED OF THE OFFENSE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND REQUIRING THAT DEPARTMENT TO MAKE THE NAMES AVAILABLE UPON REQUEST TO PEACE OFFICERS AND COURTS; AND AMENDING SECTIONS 45-5-624 AND 61-2-302, 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 -- associating with persons illegally consuming intoxicating substance -- interference with sentence or court order. (1)

~~(a)~~(A) 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.

~~(b) A person under 21 years of age commits the offense of associating with persons illegally consuming an intoxicating substance if the person is at or in a place where a person or persons under 21 years of age are knowingly consuming or possessing an intoxicating substance.~~

~~(B) A PERSON UNDER 18 YEARS OF AGE COMMITS THE OFFENSE OF ASSOCIATING WITH PERSONS ILLEGALLY CONSUMING AN INTOXICATING SUBSTANCE IF, WHEN A PARENT OR GUARDIAN OF THE PERSON IS NOT PRESENT, THE PERSON PURPOSELY IS AT OR IN A PLACE WHERE A PERSON OR PERSONS UNDER 21 YEARS OF AGE ARE KNOWINGLY CONSUMING OR POSSESSING AN INTOXICATING SUBSTANCE.~~

(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 under this section:

(i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$150 ~~\$300~~ and:

(A) ~~may~~ shall be ordered to perform 20 hours of community service; ~~and~~ AND

(B) shall be ordered, and the person's parent or parents or guardian 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, approved by the department of public health and human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if one is available; ~~AND~~ AND

~~(C) if the person has a driver's license, must have the license ordered suspended by the court for 30 days~~ CONFISCATED ORDERED SUSPENDED BY THE COURT FOR 30 DAYS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B);

(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 \$150 ~~\$200~~ and not to exceed ~~\$200~~ \$250 ~~\$600~~ and:

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

(B) shall be ordered, and the person's parent or parents or guardian 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, approved by the department of public health and human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if one is available; ~~and~~ AND

~~(C) if the person has a driver's license, must have the license ordered suspended by the court for 45 days; CONFISCATED ORDERED SUSPENDED BY THE COURT FOR 6 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B);~~ AND

(C) IF THE PERSON HAS A DRIVER'S LICENSE, MUST HAVE THE LICENSE CONFISCATED BY THE COURT FOR 6 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B); AND

~~(D)(G)~~ (D) SHALL BE REQUIRED TO COMPLETE A CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT, IF RECOMMENDED, AS PROVIDED IN SUBSECTION (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$500

~~\$900, shall be ordered to perform 60 hours of community service, and shall be ordered, and the person's parent or parents or guardian 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, approved by the department of public health and human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if one is available, AND SHALL BE REQUIRED TO COMPLETE A CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT, IF RECOMMENDED, AS PROVIDED IN SUBSECTION (8), 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. If the convicted person has a driver's license, the court shall order the license suspended by the court for 60 days CONFISCATE THE LICENSE ORDER THE LICENSE SUSPENDED FOR 6 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B). IF THE PERSON HAS A DRIVER'S LICENSE, THE COURT SHALL CONFISCATE THE LICENSE FOR 6 MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (2)(B).~~

~~(b) In addition to the penalties provided in subsection (2)(a), 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. If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order CONFISCATE the license suspended ORDER THE LICENSE SUSPENDED for 3 months for a first offense, 6 9 months for a second offense, and 12 months for a third or subsequent offense.~~

~~(c) THE COURT SHALL RETAIN JURISDICTION FOR UP TO 1 YEAR TO CONFISCATE ORDER SUSPENSION OF A LICENSE UNDER SUBSECTION (2)(B).~~

~~(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance under this section OF THE OFFENSE OF POSSESSION OF AN INTOXICATING SUBSTANCE:~~

~~(a) for a first offense, shall be fined an amount not less than \$100 and not to exceed \$150 \$200, and AND may shall MAY be ordered to perform 40 hours of community service, and, if the person has a driver's license, must have the license suspended for 30 days;~~

~~(b) for a second offense, shall be fined an amount not to exceed \$200 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)(b)(C) for a third second THIRD or subsequent offense, shall be fined an amount not less than \$150 and not to exceed \$300 \$500 and:~~

(i) ~~may shall~~ MAY be ordered to perform 60 hours of community service ~~and, if the person has a driver's license, must have the license suspended for 60 days;~~

(ii) ~~shall be ordered to complete, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in~~ TO COMPLETE an alcohol information course at an alcohol treatment program ~~approved by the department of public health and human services~~ THAT MEETS THE REQUIREMENTS OF SUBSECTION (9), if available which may, in the ~~sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both~~ 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~~ 4 ~~6~~ months~~;~~.

~~(c) for a second or subsequent offense, who fails to complete the alcohol information course, and who has a driver's license, must have the license suspended by the court for 12 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~~ MUST 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)~~ PUBLIC HEALTH AND HUMAN SERVICES IF TREATMENT IS ORDERED UNDER SUBSECTION (8).

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

(b) The assessment must be completed at a treatment program approved by the department of public health and human services THAT MEETS THE REQUIREMENTS OF SUBSECTION (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program approved by the department of public health and human services- THAT MEETS THE REQUIREMENTS OF SUBSECTION (9).

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

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

(F) THE COURT SHALL REPORT TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES THE NAME OF ANY PERSON WHO IS ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT UNDER THIS SUBSECTION (8) CONVICTED UNDER THIS SECTION. THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL MAINTAIN A LIST OF THOSE PERSONS WHO HAVE BEEN ORDERED TO COMPLETE TREATMENT UNDER THIS SUBSECTION (8) CONVICTED UNDER THIS SECTION. THIS LIST MUST BE MADE AVAILABLE UPON REQUEST TO PEACE OFFICERS AND TO ANY COURT.

(9) (A) A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE REQUIRED UNDER SUBSECTION (2)(A)(I)(B), (2)(A)(II)(B), OR (2)(A)(III) MUST BE:

(I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

(II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES.

(B) AN ALCOHOL INFORMATION COURSE REQUIRED UNDER SUBSECTION (3)(C)(II) MUST BE PROVIDED AT AN

ALCOHOL TREATMENT PROGRAM:

(I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

(II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES.

(C) A CHEMICAL DEPENDENCY ASSESSMENT REQUIRED UNDER SUBSECTION (8) MUST BE COMPLETED AT A TREATMENT PROGRAM:

(I) APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER 53-24-208 OR BY A COURT OR PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; OR

(II) PROVIDED BY A HOSPITAL LICENSED UNDER TITLE 50, CHAPTER 5, PART 2, THAT PROVIDES CHEMICAL DEPENDENCY SERVICES AND THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS TO PROVIDE CHEMICAL DEPENDENCY SERVICES. (See compiler's comments for contingent termination of certain text.)"

Section 2. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- department to contract with private entities -- participation by offending drivers. (1) (a) The department shall establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state ~~or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b);~~

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license; or

(c) subject to suspension as provided in 61-11-204(3).

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(10) (a) Except as provided in (10)(b), the department may issue a restricted probationary license to any

person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

- (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or
- (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

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