

HOUSE BILL NO. 721
INTRODUCED BY J. PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT; RECOGNIZING A JURISDICTIONAL BASIS FOR STATE DISTRICT COURTS TO IMPLEMENT A VOLUNTARY DRUG OFFENDER ACCOUNTABILITY AND TREATMENT PROGRAM FOR QUALIFYING DRUG OFFENDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it; and

WHEREAS, requiring that accountability and rehabilitating treatment, in addition to or in place of conventional and expensive incarceration, will promote public safety and the welfare of individuals involved, reduce the burden on the general fund, and benefit the common welfare of this state; and

WHEREAS, state district courts already have the jurisdiction to implement drug treatment courts via the inherent power of each respective court; and

WHEREAS, the goals of this legislation include but are not limited to reducing recidivism, reducing substance abuse, increasing the personal, familial, and societal accountability of drug offenders to productive, law-abiding, and taxpaying citizens, and reducing the costs of incarceration.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Drug Offender Accountability and Treatment Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 10] is to recognize that state district courts have a jurisdictional basis to implement drug treatment courts to reduce recidivism and restore drug offenders to being productive, law-abiding, and taxpaying citizens.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under [sections 1 through 10] and would benefit from the provisions of [sections 1 through 10].

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) "Drug offender" means a person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a significant factor in the commission of an offense.

(5) "Drug treatment court" means a court established by a district court pursuant to [sections 1 through 10] implementing a program of incentives and sanctions intended to assist a participant to end the participant's addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) "Drug treatment court coordinator" means an individual who is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) "Drug treatment court team" means a group of individuals appointed by the drug treatment court that may consist of the following members:

(a) the judge, which may include a magistrate or other hearing officer;

(b) the prosecutor;

(c) the public defender or defense attorney;

(d) a law enforcement officer;

(e) the drug treatment court coordinator;

(f) a department of corrections probation and parole officer;

(g) substance abuse providers;

(h) a representative from the department of public health and human services; and

(i) any other person selected by the drug treatment court.

(8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(9) "Recidivism" means any arrest for a serious offense that results in the filing of a charge and can carry

a sentence of 1 or more years;

(10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

NEW SECTION. Section 4. Drug treatment court structure. (1) Each judicial district may establish a drug treatment court under which drug offenders may be processed to address an identified substance abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, defense attorney, and the court pursuant to a written agreement.

(3) A drug treatment court may grant reasonable incentives under a written agreement if the court finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement, including incarceration or rejection from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily in drug treatment court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include:

- (a) a short-term jail sentence;
- (b) fines;
- (c) extension of time in the program;
- (d) peer review;

- (e) geographical restrictions;
- (f) termination; or
- (g) contempt of court.

(5) Upon successful completion of drug treatment court, a drug offender's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A drug offender who successfully completes the program may be given credit for the time the offender served in the drug treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation of an existing drug treatment court shall establish a local drug treatment court team.

(7) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug treatment court session to discuss and provide updated information regarding drug offenders. After determining the offender's progress or lack of progress, the drug treatment court team shall agree on the appropriate incentive or sanction to be applied. If the drug treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting.

(8) The provisions of [sections 1 through 10] apply only to offenders who qualify for participation based on qualifications established by each drug treatment court. The provisions of [sections 1 through 10] do not apply to drug offenders who have been convicted of a sexual or violent offense, as defined in 46-23-502. [Sections 1 through 10] do not confer a right or expectation of a right to participate in a drug treatment court and do not obligate a drug treatment court to accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(9) Each drug offender shall contribute to the cost of substance abuse treatment in accordance with [section 7(2)].

(10) A drug treatment court coordinator is responsible for the general administration of a drug treatment court.

(11) The supervising agency shall timely forward information to the drug treatment court concerning the drug offender's progress and compliance with any court-imposed terms and conditions.

(12) A department of corrections probation and parole officer may participate in a drug treatment court

team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a drug treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a drug treatment court program who has not been convicted of a felony offense and committed to the supervision of the department.

NEW SECTION. Section 5. Treatment and support services. (1) As part of a diagnostic assessment, each jurisdiction shall establish a system to ensure that drug offenders are placed into a clinically approved substance abuse treatment program. To accomplish this, the program conducting the individual assessment shall make specific recommendations to the drug treatment court team regarding the type of treatment program and durations necessary so that a drug offender's individualized needs are addressed. The assessments and recommendations must be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to [sections 1 through 10] must be considered to be reasonable and necessary.

(2) An adequate continuum of care for drug offenders must be established in response to [sections 1 through 10].

(3) The drug treatment court shall, when practicable, ensure that one agency may not provide both assessment and treatment services for the drug treatment court to avoid potential conflicts of interest or the appearance that a diagnostic assessment agency might benefit by determining that an offender is in need of the particular form of treatment that the agency provides.

(4) A drug treatment court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(5) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court must be governed by a memorandum of understanding, which must include the timely reporting of the drug offender's progress or lack of progress to the drug treatment court.

(6) Offenders must be provided with adequate support services and aftercare.

(7) The length of stay in treatment must be determined by the drug treatment court team based on individual needs and accepted practices.

NEW SECTION. Section 6. Drug testing. (1) The drug treatment court team shall ensure fair,

accurate, and reliable drug testing procedures.

(2) A drug offender must be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(3) The results of all drug tests must be provided to the drug treatment court team as soon as practicable but, in the event of a positive drug test, not later than 7 days from the test.

(4) Anyone in receipt of drug test results shall maintain the information in confidentiality.

(5) A drug offender is responsible for costs, pursuant to [section 7(2)].

NEW SECTION. Section 7. Funding. (1) There is a drug treatment court federal resources account in the federal special revenue fund that is administered by the department of public health and human services. Any federal money received for funding drug treatment courts must be deposited in the drug treatment court federal resources account and may be used only for purposes of [sections 1 through 10]. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the drug treatment court federal resources account.

(2) A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a drug offender may not exceed \$300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender's ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs under this subsection (2). Any fees received by the court from an offender are not court costs, charges, or fines.

(3) Funding must be provided from the drug treatment court federal resources account or other available resources for a period of 5 years from [the effective date of this act] to research the impact of Montana drug treatment courts on recidivism and money saved as a result of implementing [sections 1 through 10].

(4) All federal funds received from grants for purposes of funding drug treatment courts must be exhausted before money is spent from other appropriations for that purpose.

(5) [Sections 1 through 10] do not prohibit drug treatment court teams from obtaining supplemental funds.

(6) [Sections 1 through 10] do not supplant funds currently utilized by drug treatment courts.

NEW SECTION. Section 8. Immunity from liability. (1) A person who, in good faith, provides services pursuant to [sections 1 through 10] is not liable in any civil action. The grant of immunity provided for in this subsection (1) extends to all employees and administrative personnel.

(2) A qualified person who obtains, in a medically accepted manner, a specimen of breath, blood, urine,

or other bodily fluid pursuant to any provision of [sections 1 through 10] is not liable in any civil action.

NEW SECTION. **Section 9. Statutory construction.** The provisions of [sections 1 through 10] must be construed to effectuate its remedial purposes.

NEW SECTION. **Section 10. Enforcement.** A violation of [sections 1 through 10] must be referred to the appropriate court or other responsible governing body for resolution.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46, chapter 1, apply to [sections 1 through 10].

NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14. Two-thirds vote required.** Because [section 8] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If the required two-thirds vote is not achieved, [section 8] is void.

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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