

1 HOUSE BILL NO. 517

2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA PENALTIES FOR
5 PERSONS UNDER 21 YEARS OF AGE; REQUIRING THE POSSESSION, USE, AND DELIVERY OR
6 DISTRIBUTION WITHOUT CONSIDERATION OF MARIJUANA BY A PERSON UNDER 21 YEARS OF AGE
7 TO BE PUNISHED IN ACCORDANCE WITH 45-5-624, MCA; AMENDING SECTIONS 16-12-106 AND 45-5-
8 624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 **Section 1.** Section 16-12-106, MCA, is amended to read:

13 **"16-12-106. Personal use and cultivation of marijuana -- penalties.** (1) Subject to the limitations in
14 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local
15 government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain,
16 search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the
17 laws of any local government for a person who is 21 years of age or older:

18 (a) possessing, purchasing, obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of
19 marijuana, except that not more than 8 grams may be in a concentrated form;

20 (b) transferring, delivering, or distributing without consideration, to a person who is 21 years of age or
21 older, 1 ounce or less of marijuana, except that not more than 8 grams may be in a concentrated form;

22 (c) in or on the grounds of a private residence (c), possessing, planting, or cultivating up to four mature
23 marijuana plants and four seedlings and possessing, harvesting, drying, processing, or manufacturing the
24 marijuana, provided that:

25 (i) marijuana plants and any marijuana produced by the plants in excess of 1 ounce must be kept in a
26 locked space in or on the grounds of one private residence and may not be visible by normal, unaided vision
27 from a public place;

28 (ii) not more than twice the number of marijuana plants permitted under this subsection (1)(c) may be

1 cultivated in or on the grounds of a single private residence simultaneously;

2 (iii) a person growing or storing marijuana plants under this subsection (1)(c) must own the private
3 residence where the plants are cultivated and stored or obtain written permission to cultivate and store
4 marijuana from the owner of the private residence; and

5 (iv) no portion of a private residence used for cultivation of marijuana and manufacture of marijuana-
6 infused products for personal use may be shared with, rented, or leased to an adult-use provider or an adult-
7 use marijuana-infused products provider;

8 (d) assisting another person who is at least 21 years of age in any of the acts permitted by this
9 section, including allowing another person to use one's personal residence for any of the acts described in this
10 section; and

11 (e) possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling to
12 persons 18 years of age or older paraphernalia relating to marijuana.

13 (2) A person who cultivates marijuana plants that are visible by normal, unaided vision from a public
14 place in violation of subsection (1)(c)(i) is subject to a civil fine not exceeding \$250 and forfeiture of the
15 marijuana.

16 (3) A person who cultivates marijuana plants or stores marijuana outside of a locked space is subject
17 to a civil fine not exceeding \$250 and forfeiture of the marijuana.

18 (4) A person who smokes marijuana in a public place, other than in an area licensed for that activity
19 by the department, is subject to a civil fine not exceeding \$50.

20 (5) For a person who is under 21 years of age and is not a registered cardholder, possession, use,
21 ~~ingestion, inhalation, transportation,~~ delivery without consideration, or distribution without consideration of 4
22 ~~ounce or less of marijuana is punishable by forfeiture of the marijuana and the underage person's choice~~
23 ~~between:~~

24 ~~(a) a civil fine not to exceed \$100; or~~

25 ~~(b) up to 4 hours of drug education or counseling in lieu of the fine in accordance with 45-5-624.~~

26 (6) For a person who is under 18 years of age and is not a registered cardholder, possession, use,
27 transportation, delivery without consideration, or distribution without consideration of marijuana paraphernalia is
28 punishable by forfeiture of the marijuana paraphernalia and ~~the underage person's choice between:~~

1 ~~(a) a civil fine not to exceed \$100; or~~

2 ~~(b) up to 4 8 hours of drug education or counseling in lieu of the fine.~~

3 (7) Unless otherwise permitted under the provisions of Title 50, chapter 46, part 3, the possession,
4 production, delivery without consideration to a person 21 years of age or older, or possession with intent to
5 deliver more than 1 ounce but less than 2 ounces of marijuana or more than 8 grams but less than 16 grams of
6 marijuana in a concentrated form is punishable by forfeiture of the marijuana and:

7 (a) for a first violation, the person's choice between a civil fine not exceeding \$200 or completing up to
8 4 hours of community service in lieu of the fine;

9 (b) for a second violation, the person's choice between a civil fine not exceeding \$300 or completing
10 up to 6 hours of community service in lieu of the fine; and

11 (c) for a third or subsequent violation, the person's choice between a civil fine not exceeding \$500 or
12 completing up to 8 hours of community service in lieu of the fine; ~~and~~

13 ~~(d) for a person under 21 years of age, the person's choice between a civil fine not to exceed \$200 or~~
14 ~~attending up to 8 hours of drug education or counseling in lieu of the fine.~~

15 (8) A person may not be denied adoption, custody, or visitation rights relative to a minor solely for
16 conduct that is permitted by this chapter.

17 (9) A person may not be denied access to or priority for an organ transplant or denied access to
18 health care solely for conduct that is permitted by this chapter.

19 (10) A person currently under parole, probation, or other state supervision or released awaiting trial or
20 other hearing may not be punished or otherwise penalized solely for conduct that is permitted by this chapter.

21 (11) A holder of a professional or occupational license may not be subjected to professional discipline
22 for providing advice or services arising out of or related to conduct that is permitted by this chapter solely on the
23 basis that marijuana is prohibited by federal law.

24 (12) It is the public policy of the state of Montana that contracts related to the operation of licenses be
25 enforceable."
26

27 **Section 2.** Section 45-5-624, MCA, is amended to read:

28 **"45-5-624. Possession of or unlawful attempt to purchase intoxicating substance --**

1 **interference with sentence or court order.** (1) A person under 21 years of age commits the offense of
2 possession of an intoxicating substance if the person knowingly consumes ~~or~~ uses, has in the person's
3 possession, or delivers or distributes without consideration an intoxicating substance. A person may not be
4 arrested for or charged with the offense solely because the person was at a place where other persons were
5 possessing or consuming alcoholic beverages or marijuana. A person does not commit the offense if the
6 person consumes or gains possession of an alcoholic beverage because it was lawfully supplied to the person
7 under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages or
8 marijuana.

9 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of
10 age who is convicted under this section:

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

12 (A) shall be ordered to perform 20 hours of community service;

13 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
14 pay all costs of participation in a community-based substance abuse information course that meets the
15 requirements of subsection (8), if one is available; and

16 (C) if the person has a driver's license, must have the license confiscated by the court for 30 days,
17 except as provided in subsection (2)(b);

18 (ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

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

20 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
21 pay all costs of participation in a community-based substance abuse information course that meets the
22 requirements of subsection (8), if one is available;

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

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

27 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
28 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents

1 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance
2 abuse information course that meets the requirements of subsection (8), if one is available, and shall be
3 required to complete a chemical dependency assessment and treatment, if recommended, as provided in
4 subsection (7). If the person has a driver's license, the court shall confiscate the license for 6 months, except as
5 provided in subsection (2)(b).

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

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

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

13 (a) for a first offense:

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

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

16 (iii) shall be ordered to complete and pay all costs of participation in a community-based substance
17 abuse information course that meets the requirements of subsection (8);

18 (b) for a second offense:

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

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

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

24 (c) for a third or subsequent offense:

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

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

27 (iii) shall be ordered to complete and pay for an alcohol or drug information course at an alcohol or
28 drug treatment program that meets the requirements of subsection (8), which may, in the sentencing court's

1 discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;
2 and

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

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

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

14 (6) A person commits the offense of interference with a sentence or court order if the person
15 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a
16 youth court disposition order for a youth found to have violated this section and upon conviction shall be fined
17 \$100 or imprisoned in the county jail for 10 days, or both.

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

20 (b) The assessment must be completed at a treatment program that meets the requirements of
21 subsection (8) and must be conducted by a licensed addiction counselor. The person may attend a program of
22 the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall
23 pay the cost of the assessment and any resulting treatment.

24 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
25 recommendation as to the appropriate level of treatment, if treatment is indicated. A person who disagrees with
26 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
27 addiction counselor or program that meets the requirements of subsection (8).

28 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or

1 both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules
2 adopted by the department of public health and human services. Upon the determination, the court shall order
3 the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall
4 order an appropriate level of treatment based on the determination of one of the counselors.

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

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

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

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

15 (b) An alcohol and drug information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be
16 provided at an alcohol or drug treatment program:

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

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

22 (c) A chemical dependency assessment required under subsection (7) must be completed at a
23 treatment program:

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

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

1 (9) Information provided or statements made by a person under 21 years of age to a health care
2 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
3 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
4 extends to a person who helps the victim obtain medical or other assistance or report the offense to law
5 enforcement personnel.

6 (10) (a) A person under 21 years of age may not be charged or prosecuted under subsection (1) if:

7 (i) the person has consumed an intoxicating substance and seeks medical treatment at a health care
8 facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of
9 seeking medical treatment;

10 (ii) the person accompanies another person under 21 years of age who has consumed an intoxicating
11 substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an
12 emergency medical service provider for the purpose of seeking medical treatment for the other person; or

13 (iii) the person requires medical treatment as a result of consuming an intoxicating substance and
14 evidence of a violation of this section is obtained during the course of seeking or receiving medical treatment.

15 (b) For the purposes of this subsection (10), the following definitions apply:

16 (i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized by
17 law to administer medical treatment in this state.

18 (ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency
19 medical service. (See compiler's comments for contingent termination of certain text.)"

20

21 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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