

**Unofficial Draft Copy**

As of: March 31, 2016 (9:21AM)

LC1j99

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising public intoxication laws; authorizing a local government to adopt and enforce a law prohibiting being incapacitated by alcohol in a public place; authorizing a person who appears to be incapacitated by alcohol in a public place to be taken to a detention facility by a peace officer in certain cases; 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 solely 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."

{*Internal References to 53-24-102: None.*}

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

**"53-24-106. Criminal laws limitation.** (1) ~~A county,~~

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~~municipality, or other political subdivision~~ Except as provided in this subsection, a local government 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. For the purpose of providing treatment and services to a person incapacitated by alcohol in a public place and to protect the public health, safety, and welfare, a local government may adopt and enforce an ordinance or resolution that prohibits being incapacitated by alcohol in a public place for the person's own protection or for the protection of the public.

(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 sanction on or denying eligibility to applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program requirements."

{*Internal References to 53-24-106:*

7-32-4302x }

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

**"53-24-107. Public intoxication ~~not~~ -- criminal offense.** (1)

A person who appears to be intoxicated in public does not commit a criminal offense solely by reason of being in an intoxicated condition but may be detained by a peace officer for the person's own protection or for the protection of the public. A peace officer who detains a person who appears to be intoxicated in public shall proceed in the manner provided in 53-24-303(1) and subsection ~~(3)~~ (4) of this section.

(2) A local government that adopts an ordinance or resolution pursuant to 53-24-106 may charge and prosecute a person who is in a public place and appears to be incapacitated by alcohol of unlawfully being incapacitated by alcohol in public. A person incapacitated by alcohol in public may be detained by a peace officer for the person's own protection or the protection of the public. A peace officer who detains a person who appears to be incapacitated by alcohol in public shall proceed in the manner provided in 53-24-303(2) and subsection (4) of this section.

~~(2)~~(3) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in public until the person is no longer creating a risk to self or others.

~~(3)~~(4) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. ~~An~~ Except as provided in subsection (2), entry or other

record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.

~~(4)~~(5) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions."

{*Internal References to 53-24-107: None.*}

**Section 4.** Section 53-24-303 , MCA, is amended to read:

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

(2) A person who is incapacitated by alcohol in public may be assisted to the person's home, an approved private treatment facility, or other health care facility by a peace officer. If the person has been incapacitated by alcohol in public three or more times within a 60-day period, the person may be arrested and taken to a detention facility.

~~(2)~~(3) A peace officer acting within the scope of the officer's authority under this chapter is not personally liable for the officer's actions."

{*Internal References to 53-24-303:*

53-24-107 x 53-24-107x 53-24-207x }

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