

SENATE BILL NO. 132

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING SEPARATE CRIMES FOR MINOR IN POSSESSION OR UNLAWFUL ATTEMPT TO PURCHASE ALCOHOL, MARIJUANA, OR OTHER INTOXICATING SUBSTANCES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 16-3-301, 16-3-323, 16-6-314, 16-12-106, AND 45-5-624, MCA."

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

NEW SECTION. Section 1. Possession of or unlawful attempt to purchase alcoholic beverage -- interference with court order. (1) A person under 21 years of age commits the offense of possession of an alcoholic beverage if the person knowingly consumes, uses, has in the person's possession, or delivers or distributes without consideration an alcoholic beverage. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages. A person does not commit the offense if the person consumes or gains possession of an alcoholic 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 a disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for a first offense:

(A) shall be fined an amount not less than \$100 and not to exceed \$300;

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

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

(D) 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);

1 (ii) for a second offense:

2 (A) shall be fined an amount not less than \$200 and not to exceed \$600;

3 (B) shall be ordered to perform 40 hours of community service;

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

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

9 (E) shall be required to complete a chemical dependency assessment and treatment, if
10 recommended, as provided in subsection (7); and

11 (iii) for a third or subsequent offense:

12 (A) shall be fined an amount not less than \$300 and not to exceed \$900;

13 (B) shall be ordered to perform 60 hours of community service;

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

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

19 (E) shall be required to complete a chemical dependency assessment and treatment, if
20 recommended, as provided in subsection (7).

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

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

26 (3) A person 18 years of age or older who is convicted of the offense of possession of an alcoholic
27 beverage:

28 (a) for a first offense:

- 1 (i) shall be fined an amount not less than \$100 and not to exceed \$300;
- 2 (ii) shall be ordered to perform 20 hours of community service; and
- 3 (iii) shall be ordered to complete and pay all costs of participation in a community-based substance
- 4 abuse information course that meets the requirements of subsection (8);
- 5 (b) for a second offense:
- 6 (i) shall be fined an amount not less than \$200 and not to exceed \$600;
- 7 (ii) shall be ordered to perform 40 hours of community service; and
- 8 (iii) shall be ordered to complete and pay for an alcohol or drug information course at an alcohol or
- 9 drug treatment program that meets the requirements of subsection (8) that may, in the sentencing court's
- 10 discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;
- 11 and
- 12 (c) for a third or subsequent offense:
- 13 (i) shall be fined an amount not less than \$300 and not to exceed \$900;
- 14 (ii) shall be ordered to perform 60 hours of community service;
- 15 (iii) shall be ordered to complete and pay for an alcohol or drug information course at an alcohol or
- 16 drug treatment program that meets the requirements of subsection (8) that may, in the sentencing court's
- 17 discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;
- 18 and
- 19 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6
- 20 months.
- 21 (4) A person under 21 years of age commits the offense of attempt to purchase an alcoholic
- 22 beverage if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to
- 23 purchase an alcoholic beverage shall be fined an amount not to exceed \$150 if the person was under 21 years
- 24 of age at the time that the offense was committed and may be ordered to perform community service.
- 25 (5) A defendant who is currently under 21 years of age and was under 18 years of age when the
- 26 defendant failed to comply with a sentence must be transferred to the youth court. If proceedings for failure to
- 27 comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of
- 28 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 on conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) (a) A person convicted of a second or subsequent offense of possession of an alcoholic beverage shall be ordered to complete a chemical dependency assessment.

(b) The chemical dependency assessment must be completed at a treatment program that meets the requirements of subsection (8) 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 chemical dependency 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 that meets the requirements of subsection (8).

(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. Following 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 on the determination of one of the counselors.

(e) Each licensed addiction 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.

(8) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(C), (2)(a)(ii)(C), (2)(a)(iii)(C), or (3)(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

1 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
2 and medicaid services to provide chemical dependency services.

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

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

7 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
8 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
9 and medicaid services to provide chemical dependency services.

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

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

14 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
15 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
16 and medicaid services to provide chemical dependency services.

17 (9) Information provided or statements made by a person under 21 years of age to a health care
18 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
19 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
20 extends to a person who helps the victim obtain medical or other assistance or report the offense to law
21 enforcement personnel.

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

23 (i) the person has consumed an alcoholic beverage and seeks medical treatment at a health care
24 facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of
25 seeking medical treatment;

26 (ii) the person accompanies another person under 21 years of age who has consumed an
27 alcoholic beverage and seeks medical treatment at a health care facility or contacts law enforcement personnel
28 or an emergency medical service provider for the purpose of seeking medical treatment for the other person; or

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

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

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

(ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency medical service.

NEW SECTION. Section 2. Possession of or unlawful attempt to purchase marijuana --

interference with court order. (1) A person under 21 years of age commits the offense of possession of marijuana if the person knowingly consumes, uses, has in the person's possession, or delivers or distributes without consideration marijuana. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming marijuana. A person does not commit the offense if the person consumes or gains possession of marijuana because it was lawfully supplied to the person or when in the course of employment it is necessary to possess marijuana.

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

(i) for a first offense:

(A) shall be fined an amount not less than \$100 and not to exceed \$300;

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

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

(D) 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:

(A) shall be fined an amount not less than \$200 and not to exceed \$600;

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

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

(D) 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

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

(iii) for a third or subsequent offense:

(A) shall be fined an amount not less than \$300 and not to exceed \$900;

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

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

(D) 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

(E) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (7).

(b) If the convicted person fails to complete the community-based substance abuse information course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 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 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 marijuana:

(a) for a first offense:

(i) shall be fined an amount not less than \$100 and not to exceed \$300;

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

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

1 (b) for a second offense:

2 (i) shall be fined an amount not less than \$200 and not to exceed \$600;

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

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

8 (c) for a third or subsequent offense:

9 (i) shall be fined an amount not less than \$300 and not to exceed \$900;

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

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

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

17 (4) A person under 21 years of age commits the offense of attempt to purchase marijuana if the
18 person knowingly attempts to purchase marijuana. A person convicted of attempt to purchase marijuana shall
19 be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was
20 committed and may be ordered to perform community service.

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

25 (6) A person commits the offense of interference with a sentence or court order if the person
26 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a
27 youth court disposition order for a youth found to have violated this section and on conviction shall be fined
28 \$100 or imprisoned in the county jail for 10 days, or both.

1 (7) (a) A person convicted of a second or subsequent offense of possession of marijuana shall be
2 ordered to complete a chemical dependency assessment.

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

7 (c) The chemical dependency assessment must describe the person's level of abuse or
8 dependency, if any, and contain a recommendation as to the appropriate level of treatment, if treatment is
9 indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second
10 assessment provided by a licensed addiction counselor or program that meets the requirements of subsection
11 (8).

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

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

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

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

24 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
25 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
26 and medicaid services to provide chemical dependency services.

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

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

3 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
4 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
5 and medicaid services to provide chemical dependency services.

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

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

10 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
11 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
12 and medicaid services to provide chemical dependency services.

13 (9) Information provided or statements made by a person under 21 years of age to a health care
14 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
15 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
16 extends to a person who helps the victim obtain medical or other assistance or report the offense to law
17 enforcement personnel.

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

19 (i) the person has consumed marijuana and seeks medical treatment at a health care facility or
20 contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking
21 medical treatment;

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

25 (iii) the person requires medical treatment as a result of consuming marijuana and evidence of a
26 violation of this section is obtained during the course of seeking or receiving medical treatment.

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

28 (i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized

1 by law to administer medical treatment in this state.

2 (ii) "Medical treatment" means medical treatment provided by a health care facility or an
3 emergency medical service."
4

5 **Section 3.** Section 16-3-301, MCA, is amended to read:

6 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1)**

7 Except as allowed in 16-4-213(8), it is unlawful for a licensed retailer to:

8 (a) purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler
9 licensed under the provisions of this code;

10 (b) purchase or acquire table wine from anyone except a liquor store agent or winery or table wine
11 distributor licensed under the provisions of this code;

12 (c) purchase or acquire wine from anyone except a liquor store agent or winery;

13 (d) transport alcoholic beverages from one licensed premises or other facility to any other licensed
14 premises owned by the licensee; or

15 (e) purchase or acquire liquor from anyone except an agency liquor store.

16 (2) It is unlawful for a licensed distributor or wholesaler to purchase beer, table wine, or wine from
17 anyone except a brewery, winery, or wholesaler licensed or registered under this code.

18 (3) It is unlawful for a liquor store agent to purchase table wine or sacramental wine from anyone
19 except a table wine distributor licensed under this code.

20 (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or
21 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

22 (a) any person under 21 years of age; or

23 (b) any person actually, apparently, or obviously intoxicated.

24 (5) Any person under 21 years of age or any other person who knowingly misrepresents the
25 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with
26 the licensee and, on conviction, is subject to the penalty provided in 45-5-624 and [sections 1 and 2]. However,
27 nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any
28 person in violation of any federal law.

(6) All licensees shall display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance on the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

(8) A licensed retailer may purchase beer and table wine from a licensed in-state retailer and transport the purchased beer and table wine to the licensed retailer's premises. The department may penalize retailers purchasing beer and table wine from out-of-state retailers subject to this code. Purchases under this subsection are limited to a maximum of 6 gallons a day. (See compiler's comments for contingent termination of certain text.)"

Section 4. Section 16-3-323, MCA, is amended to read:

"16-3-323. Enforcement. (1) A law enforcement officer may not request information on file about the original purchaser of a keg unless in connection with a violation of 16-6-305, 45-5-623, or 45-5-624(4) [section 1(4)]. The officer shall return any recovered keg to the licensee and verify the information on file about the original purchaser.

(2) The deposit on the keg and any related deposit to the licensee must be forfeited by the original purchaser."

Section 5. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by

1 **underage person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as
2 provided in 46-18-212, except as otherwise provided in this section.

3 (2) If a retail licensee is convicted of an offense under this code, the licensee's license must be
4 immediately revoked or, in the discretion of the department, another sanction must be imposed as provided
5 under 16-4-406.

6 (3) A person under 21 years of age who violates 16-3-301(4) or 16-6-305(3) is subject to the
7 penalty provided in 45-5-624(2) or (3), [section 1(3) or (4)], or [section 2(3) or (4)]. (See compiler's comments
8 for contingent termination of certain text.)"
9

10 **Section 6.** Section 16-12-106, MCA, is amended to read:

11 **"16-12-106. Personal use and cultivation of marijuana -- penalties.** (1) Subject to the limitations in
12 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local
13 government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain,
14 search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the
15 laws of any local government for a person who is 21 years of age or older or a registered cardholder:

16 (a) possessing, purchasing, obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of
17 usable marijuana, except that not more than 8 grams may be in a concentrated form and not more than 800
18 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

19 (b) transferring, delivering, or distributing without consideration, to a person who is 21 years of age
20 or older or a registered cardholder, 1 ounce or less of usable marijuana, except that not more than 8 grams
21 may be in a concentrated form and not more than 800 milligrams of THC may be in edible marijuana products
22 meant to be eaten or swallowed in solid form;

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

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

1 (ii) not more than twice the number of marijuana plants permitted under this subsection (1)(c) may
2 be cultivated in or on the grounds of a single private residence simultaneously;

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

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

8 (d) assisting another person who is at least 21 years of age or a registered cardholder, in any of
9 the acts permitted by this section, including allowing another person to use one's personal residence for any of
10 the acts described in this 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
14 public 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
17 subject 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
19 activity 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 delivery without consideration, or distribution without consideration of marijuana is punishable in accordance
22 with ~~45-5-624~~ [section 2].

23 (6) For a person who is under 18 years of age and is not a registered cardholder, possession, use,
24 transportation, delivery without consideration, or distribution without consideration of marijuana paraphernalia is
25 punishable by forfeiture of the marijuana paraphernalia and 8 hours of drug education or counseling.

26 (7) Unless otherwise permitted under the provisions of Title 16, chapter 12, part 5, the possession,
27 production, delivery without consideration to a person 21 years of age or older, or possession with intent to
28 deliver more than 1 ounce but less than 2 ounces of marijuana or more than 8 grams but less than 16 grams of

1 marijuana in a concentrated form is punishable by forfeiture of the marijuana and:

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

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

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

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

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

12

13 **Section 7.** Section 45-5-624, MCA, is amended to read:

14 **"45-5-624. Possession of or unlawful attempt to purchase intoxicating substance other than**

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

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

27 (i) for a first offense,;

28 (A) shall be fined an amount not less than \$100 and not to exceed \$300 and;:

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

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

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

7 (ii) for a second offense,;

8 (A) shall be fined an amount not less than \$200 and not to exceed \$600 and; ;

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

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

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

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

17 (iii) for a third or subsequent offense,;

18 (A) shall be fined an amount not less than \$300 ~~or more than and not to exceed~~ \$900,;

19 (B) shall be ordered to perform 60 hours of community service,;

20 (C) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete
21 and 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, and;

23 (D) if the person has a driver's license, the court shall confiscate the license for 6 months, except
24 as provided in subsection (2)(b); and

25 (E) shall be required to complete a chemical dependency assessment and treatment, if
26 recommended, as provided in subsection (7). ~~If the person has a driver's license, the court shall confiscate the~~
27 ~~license for 6 months, except as provided in subsection (2)(b).~~

28 (b) If the convicted person fails to complete the community-based substance abuse information

1 course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9
2 months for a second offense, and 12 months for a third or subsequent offense.

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

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

7 (a) for a first offense:

8 (i) shall be fined an amount not less than \$100 ~~or more than~~ and not to exceed \$300;

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

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

12 (b) for a second offense:

13 (i) shall be fined an amount not less than \$200 ~~or more than~~ and not to exceed \$600;

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

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

19 (c) for a third or subsequent offense:

20 (i) shall be fined an amount not less than \$300 ~~or more than~~ and not to exceed \$900;

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

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

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

28 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating

1 substance other than alcohol or marijuana if the person knowingly attempts to purchase an alcoholic beverage
2 ~~or marijuana~~ intoxicating substance other than alcohol or marijuana. A person convicted of attempt to purchase
3 an intoxicating substance other than alcohol or marijuana shall be fined an amount not to exceed \$150 if the
4 person was under 21 years of age at the time that the offense was committed and may be ordered to perform
5 community service.

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

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

15 (7) (a) A person convicted of a second or subsequent offense of possession of an intoxicating
16 substance other than alcohol or marijuana shall be ordered to complete a chemical dependency assessment.

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

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

26 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem,
27 or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement
28 rules adopted by the department of public health and human services. ~~Upon~~Following the determination, the

1 court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination,
2 the court shall order an appropriate level of treatment based on the determination of one of the counselors.

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

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

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

10 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
11 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
12 and medicaid services to provide chemical dependency services.

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

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

17 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
18 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
19 and medicaid services to provide chemical dependency services.

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

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

24 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical
25 dependency services and that is accredited by an accrediting entity approved by the U.S. centers for medicare
26 and medicaid services to provide chemical dependency services.

27 (9) Information provided or statements made by a person under 21 years of age to a health care
28 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter

5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel.

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

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

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

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

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

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

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

NEW SECTION. Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [sections 1 and 2].

- END -