

HOUSE BILL NO. 463

INTRODUCED BY K. KELKER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING SUBSTANCE ABUSE; ALLOWING LOCAL GOVERNMENTS TO ADOPT ORDINANCES FOR THE CRIMINAL OFFENSE OF CHRONIC PUBLIC INCAPACITATION; PROVIDING PENALTIES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 53-24-102, 53-24-103, 53-24-106, 53-24-107, 53-24-207, AND 53-24-303, MCA."

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

NEW SECTION. Section 1. Chronic public incapacitation. (1) A local government may adopt an ordinance providing a penalty for chronic public incapacitation caused by substance abuse only if:

(a) the local government has an approved treatment facility located within the physical boundaries of the local government's jurisdiction;

(b) the ordinance specifies the following elements before a person may be charged with chronic public incapacitation:

(i) five separate documented instances within a 60-day period of a peace officer encountering in a public place a person who the officer reasonably determines is incapacitated; and

(ii) during each qualifying documented instance, the peace officer provides an opportunity for the person to voluntarily attend substance abuse treatment;

(c) a violation of the ordinance is a misdemeanor punishable by imprisonment in the county jail for a term of up to 1 year or by a fine of up to \$1,000 or both;

(d) the court has the discretion to defer the imposition of a sentence or suspend execution of a sentence and may require substance abuse treatment and aftercare at an approved facility as a condition of a deferred or suspended sentence;

(e) the court has the discretion to require probationary supervision during treatment and for up to 1 year following treatment at an approved facility; and

(f) the ordinance requires that an individual convicted of chronic public incapacitation who participated in substance abuse treatment pursuant to a court order as a result of conviction may be charged with a new offense each time a peace officer subsequently encounters the person in a public place and reasonably

determines the individual is incapacitated.

(2) For the purposes of this section, the following definitions apply:

(a) "Approved treatment facility" means a facility that has as its function the treatment, rehabilitation, and prevention of substance abuse, that meets the standards prescribed in 53-24-208(1), and that is approved under 53-24-208.

(b) "Public place" means a place to which the public has access, including an area in a building that serves the general population and anywhere outside of a building, except on property owned or leased by the incapacitated person.

(c) "Substance abuse treatment" has the meaning provided by 46-1-1103.

NEW SECTION. Section 2. Chronic public incapacitation. A governing body may adopt an ordinance prohibiting chronic public incapacitation only pursuant to [section 1].

Section 3. 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~~ incapacitation as a result of substance abuse as an illness and that ~~alcoholics and intoxicated~~ persons incapacitated as a result of substance abuse ~~may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather~~ should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Treatment should be prioritized as the best option for chronically incapacitated individuals, and criminal penalties should be resorted to only as a last resort."

Section 4. Section 53-24-103, MCA, is amended to read:

"53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency that has as its function the treatment, rehabilitation, and prevention of chemical dependency, that meets the standards prescribed in 53-24-208(1), and that is approved under 53-24-208.

(3) "Approved public treatment facility" means:

1 (a) a treatment agency operating under the direction and control of the department as a state agency
2 and approved under 53-24-208; or

3 (b) a treatment agency operating under the direction and control of a local government and approved
4 under 53-24-208.

5 (4) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates
6 behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug
7 dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual
8 or the public health, welfare, or safety.

9 (5) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized
10 by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a
11 rehabilitation facility that it finds meets its standards and requirements.

12 (6) "Department" means the department of public health and human services provided for in 2-15-2201.

13 (7) "Family member" is the spouse, mother, father, child, or member of the household of a chemically
14 dependent person whose life has been affected by the actions of the chemically dependent person and who may
15 require treatment.

16 ~~(8) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or~~
17 ~~has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with~~
18 ~~respect to a need for treatment.~~

19 (8) "Incapacitated" or "incapacitation" means that a person is impaired by reason of substance abuse
20 to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible
21 decisions and is incapable of realizing and making a rational decision with respect to the person's need for
22 treatment.

23 (9) "Incompetent person" means a person who has been adjudged incompetent by the district court.

24 (10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired
25 as a result of the use of alcohol.

26 (11) "Prevention" has meaning on four levels; these are:

27 (a) education to provide information to the school children and general public relating to chemical
28 dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired
29 by contact with a chemically dependent person;

30 (b) early detection and recovery from the illness before lasting emotional or physical damage, or both,

1 have occurred;

2 (c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full
3 disability has been reached;

4 (d) the provision of facility requirements to meet division program standards and improve public
5 accessibility for services.

6 (12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the
7 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological
8 and social services, or vocational evaluation and training or any combination of these services and in which the
9 major portion of the services is furnished within the facility.

10 (13) "Substance abuse" has the meaning provided in 46-1-1103.

11 ~~(13)~~(14) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient
12 services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care,
13 vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons,
14 intoxicated persons, and family members."

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16 **Section 5.** Section 53-24-106, MCA, is amended to read:

17 **"53-24-106. Criminal laws limitation -- exception.** (1) ~~A~~ Except as provided in [section 1], a county,
18 municipality, or other political subdivision may not adopt or enforce a local law, ordinance, resolution, or rule
19 having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated
20 condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

21 (2) This section does not affect any law, ordinance, resolution, or rule against drunken driving, driving
22 under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat,
23 machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic
24 beverages at stated times and places or by a particular class of persons.

25 (3) This section does not prevent the department from imposing a sanction on or denying eligibility to
26 applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program
27 requirements."

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29 **Section 6.** Section 53-24-107, MCA, is amended to read:

30 **"53-24-107. Public intoxication and incapacitation not criminal offense -- exception.** (1) ~~A~~ Except

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

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

7 (3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's
8 health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other
9 record may not be made to indicate that the person detained under this section has been arrested or charged
10 with a crime. However, this subsection may not be construed to prevent a peace officer from making an entry
11 regarding the officer's observations concerning a person's incapacitation for the purposes of the ordinance
12 passed pursuant to [section 1].

13 (4) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally
14 liable for the officer's actions."
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16 **Section 7.** Section 53-24-207, MCA, is amended to read:

17 **"53-24-207. Comprehensive program for treatment.** (1) The department shall establish a
18 comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons,
19 and family members.

20 (2) The program must include:

21 (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general
22 hospital;

23 (b) inpatient treatment;

24 (c) intermediate treatment;

25 (d) outpatient treatment; and

26 (e) followup services.

27 (3) The department shall provide for adequate and appropriate treatment for alcoholics, ~~and~~ intoxicated
28 persons, and incapacitated persons admitted under 53-24-301 through 53-24-303.

29 (4) All appropriate public and private resources must be coordinated with and used in the program if
30 possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities."

Section 8. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated or incapacitated persons. (1) A person who appears to be intoxicated or incapacitated 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.

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

NEW SECTION. Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 53, chapter 24, part 1, and the provisions of Title 53, chapter 24, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 32, part 23, and the provisions of Title 7, chapter 32, part 23, apply to [section 2].

(3) [Section 2] is intended to be codified as an integral part of Title 7, chapter 32, part 41, and the provisions of Title 7, chapter 32, part 41, apply to [section 2].

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