

SENATE BILL NO. 64

INTRODUCED BY

[Signature]

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO POSSESSES OR ATTEMPTS TO PURCHASE AN INTOXICATING SUBSTANCE; AND AMENDING SECTIONS 41-5-601, 41-5-602, 41-5-603, 41-5-604, 45-5-624, AND 61-2-302, MCA."

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

Section 1. Section 41-5-601, MCA, is amended to read:

"41-5-601. Confidentiality. (1) ~~No information shall~~ Information may not be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases, the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of any a youth who admits violating or is adjudicated as having violated 45-5-624 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(5) A conviction or youth court adjudication under 45-5-624 may be reported and used as provided in that section."

1 **Section 2.** Section 41-5-602, MCA, is amended to read:

2 **"41-5-602. Law enforcement records.** (1) ~~No~~ Except as provided in 45-5-624(6), law enforcement
3 records concerning a youth, except traffic records, may not be open to public inspection or their contents
4 disclosed to the public unless the records are directly related to an offense to which publicity must be
5 allowed under ~~subsection (2) of 41-5-601(2)~~ or unless inspection is ordered by the court.

6 (2) Inspection of law enforcement records concerning a youth, which records are not open to public
7 inspection under subsection (1), is permitted prior to the sealing of the records by:

8 (a) a youth court having the youth currently before it in any proceeding;

9 (b) the department if it is investigating, supervising, or providing services to the youth;

10 (c) the officers of agencies having legal custody of the youth and those responsible for ~~his~~ the
11 youth's supervision after release;

12 (d) any other person, by order of the court, having a legitimate interest in the case or in the work
13 of the law enforcement agency;

14 (e) law enforcement officers of Montana, when necessary for the discharge of their immediate
15 duties;

16 (f) a district court in which the youth is convicted of a criminal offense, for the purpose of a
17 presentence investigation;

18 (g) the county attorney;

19 (h) the youth, ~~he~~ and the youth's parent, guardian, or counsel;

20 (i) a member of a county interdisciplinary child information team formed under 52-2-211 who is
21 not listed in subsection (2); or

22 (j) members of a local interagency staffing group provided for in 52-2-203."
23

24 **Section 3.** Section 41-5-603, MCA, is amended to read:

25 **"41-5-603. Youth court and department records.** (1) Youth court and youth court-related
26 department records, including social, medical, and psychological records, reports of preliminary inquiries,
27 predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing
28 of the records only to the following:

29 (a) the youth court and its professional staff;

30 (b) representatives of any agency providing supervision and having legal custody of a youth;

1 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
2 of the court;

3 (d) any court and its probation and other professional staff or the attorney for a convicted party
4 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
5 ~~such~~ the party;

6 (e) the county attorney;

7 (f) the youth who is the subject of the report or record, after ~~he~~ the youth has been emancipated
8 or reaches the age of majority;

9 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
10 not listed in subsection (1); ~~and~~

11 (h) members of a local interagency staffing group provided for in 52-2-203; and

12 (i) persons allowed access to the records under 45-5-624(6).

13 (2) ~~All or any~~ Any part of records information secured from records listed in subsection (1) ~~of this~~
14 ~~section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ must also be
15 made available to the counsel for the parties to the proceedings.

16 (3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and
17 decrees, ~~shall~~ must be open to public inspection only when related to an offense for which access must
18 be allowed under 41-5-601.

19 (4) All information obtained in discharge of an official duty by any officer or other employee of the
20 youth court or the department ~~shall be~~ is privileged and ~~shall~~ may not be disclosed to anyone other than
21 the judge and others entitled under this chapter to receive ~~such~~ the information, unless otherwise ordered
22 by the judge.

23 (5) After youth court and department records, reports of preliminary inquiries, predispositional
24 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
25 order of the youth court, for good cause to:

26 (a) those persons and agencies listed in subsection (1); and

27 (b) adult probation professional staff preparing a presentence report on a youth who has reached
28 the age of majority."

29

30 **Section 4.** Section 41-5-604, MCA, is amended to read:

1 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except
 2 fingerprints and photographs pertaining to a youth coming under this chapter, ~~shall~~ must be physically
 3 sealed when the youth reaches the age of 18 years.

4 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
 5 18th birthday, the ~~above~~ records and files ~~shall~~ referred to in subsection (1) must be physically sealed upon
 6 termination of the extended jurisdiction.

7 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
 8 agency or department that has in its possession copies of the records ~~so~~ that have been sealed shall also
 9 seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~
 10 is subject to contempt of court.

11 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
 12 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

13 (5) The requirements for sealed records in this section ~~shall do~~ not apply to youth traffic records
 14 ~~or to~~ records directly related to an offense to which access must be allowed under 41-5-601, or records
 15 referred to in 45-5-624(6)."

16
 17 **Section 5.** Section 45-5-624, MCA, is amended to read:

18 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance -- interference**
 19 **with sentence or court order.** (1) ~~(a)~~ A person under the age of ~~18~~ 21 years commits the offense of
 20 possession of an intoxicating substance if the person knowingly consumes or has in the person's
 21 possession an intoxicating substance. The person need not be consuming or in possession of the
 22 intoxicating substance at the time of arrest to violate this subsection.

23 ~~(b) A person under the age of 21 commits the offense of possession of an intoxicating substance~~
 24 ~~if the person knowingly has in the person's possession an alcoholic beverage, except as provided in~~
 25 ~~16-6-305 and except that a person~~ does not commit the offense if the person consumes or gains
 26 possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the
 27 course of employment it is necessary to possess alcoholic beverages.

28 (2) A In addition to any disposition by the youth court under 41-5-523, a person convicted of the
 29 offense of possession of an intoxicating substance shall ~~if the person:~~

30 (a) ~~is less than 18 years of age for the first offense,~~ be fined an amount not to exceed ~~\$50~~ \$100

1 and:

2 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
3 more than 90 days and be ordered not to drive during that period if the person was driving or was
4 otherwise in actual physical control of a motor vehicle when the offense occurred;

5 (ii) be ordered to perform community service if a community service program is available; and

6 ~~(iii) have the person's driver's license suspended if convicted of a second or subsequent offense~~
7 ~~under this section; or~~

8 ~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through~~
9 ~~(2)(a)(iii); or~~

10 ~~(b) is 18 years of age or older, be fined an amount not to exceed \$50 for a first offense, \$100 for~~
11 ~~a second offense, and \$200 for a third offense or be fined an amount not to exceed \$300 or be imprisoned~~
12 ~~in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:~~

13 ~~(4) be ordered to complete and pay, either directly with money or indirectly through court-ordered~~
14 ~~community service, if any is available, all costs of participation in a community-based substance abuse~~
15 ~~information course, if one is available;~~

16 (b) for a second offense, be fined an amount not to exceed \$200 and:

17 ~~(iii) (i) have the person's driver's license ~~confiscated by the court~~ suspended for not less than 60
18 days and not more than ~~90~~ 120 days ~~and be ordered not to drive during that period if the person was~~
19 ~~driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~~~

20 ~~(iii) (ii) be ordered to perform community service if a community service program is available; or and~~

21 ~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through~~
22 ~~(2)(b)(iii)~~

23 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
24 community service, if any is available, all costs of participation in a community-based substance abuse
25 information course, if one is available;

26 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
27 and:

28 (i) have the person's driver's license suspended for not less than 120 days and not more than 1
29 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle
30 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches

1 the age of 21, whichever occurs last;

2 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 3 community service, if any is available, all costs of participation in a community-based substance abuse
 4 information course, if one is available, which may include alcohol or drug treatment, or both, approved by
 5 the department of corrections and human services, if determined by the court to be appropriate; and

6 (iii) in the discretion of the court, if the person was 18 years of age or older at the time that the
 7 offense was committed, be imprisoned in the county jail for a term not to exceed 6 months.

8 (3) A person under the age of 21 commits the offense of attempt to purchase an intoxicating
 9 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
 10 attempt to purchase an intoxicating substance shall be fined an amount not to exceed ~~\$50~~ \$100.

11 (4) A defendant who fails to comply with a sentence and is under 21 years of age and was under
 12 18 years of age when the defendant failed to comply must be transferred to the youth court. ~~If proceedings~~
 13 ~~for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If~~
 14 ~~proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth~~
 15 ~~court, the offender shall~~ must be treated as an alleged youth in need of supervision as defined in 41-5-103.
 16 The youth court may enter its judgment under 41-5-523.

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

21 (6) A conviction or youth court adjudication under this section must be reported by the court to
 22 the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses
 23 committed but may not be considered part of the person's driving record for insurance purposes unless a
 24 second or subsequent conviction or adjudication under this section occurs."

25

26 **Section 6.** Section 61-2-302, MCA, is amended to read:

27 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers.** (1)
 28 The department ~~of justice~~ may establish by administrative rules a driver rehabilitation and improvement
 29 program or programs ~~which~~ that may consist of classroom instruction in rules of the road, driving
 30 techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other

1 ~~such~~ subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

2 (2) Official participation in ~~such~~ the driver rehabilitation and improvement program is limited to
3 those persons whose license to operate a motor vehicle in the state of Montana is:

4 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
5 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

6 (b) revoked and they have:

7 (i) completed at least 3 months of a 1-year revocation; or

8 (ii) completed 1 year of a 3-year revocation; and

9 (iii) ~~have~~ met the requirements for reobtaining a Montana driver's license.

10 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
11 Montana, the enforcement of any suspension or revocation order ~~which~~ that constitutes the basis for any
12 person's participation in the driver rehabilitation and improvement program provided for ~~herein~~ in this
13 section may be stayed if that person complies with the requirements established for the driver improvement
14 program and meets the eligibility requirements of subsection (2).

15 (4) In the event that a person's driver's license has been surrendered prior to ~~his~~ the person's
16 selection for participation in the driver rehabilitation and improvement program, the license may be returned
17 upon receipt of ~~his~~ the person's agreement to participate in the program.

18 (5) The stay of enforcement of any suspension or revocation order ~~shall~~ must be terminated and
19 the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation
20 and improvement program or fails to meet the attendance or other requirements established for participation
21 in the program.

22 (6) Nothing in this part creates a right to be included in any program established under this part.

23 (7) The department ~~of justice~~ may establish a schedule of fees ~~which~~ that may be charged those
24 persons participating in the driver improvement and rehabilitation program, ~~which~~ The fees shall must
25 used to help defray costs of maintaining the program.

26 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice
27 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
28 department ~~of justice~~.

29 (9) The department ~~of justice~~ may issue a restricted probationary license to any person who enrolls
30 and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary

1 license under this section, the licensee is subject to the restrictions set forth ~~thereon~~ on the license.

2 (10) It is a misdemeanor for ~~any~~ a person to operate a motor vehicle in any manner in violation of
3 the restrictions imposed on a restricted license issued to ~~him~~ the person under this section."

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0064, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising the laws relating to a youth who possesses or attempts to purchase an intoxicating substance.

ASSUMPTIONS:

Crime Control Division:

1. There were 5,163 youths arrested for the offense of possession of an intoxicating substance during 1993.
2. Revenues generated by fines for the first offense of possession of an intoxicating substance may increase due to increasing the maximum fine from \$50 to \$100.
3. Revenues generated by fines for the second offense may increase due to increasing the maximum fine from \$100 to \$200.
4. Revenues generated by fines for the third offense may increase due to increasing the maximum fine from \$300 to \$500.
5. Revenues generated by fines for the offense of attempting to purchase an intoxicating substance may increase due to increasing the maximum fine from \$50 to \$100.
6. Under present law, the increased revenue from fines assessed in Justice of the Peace courts is allocated 50% to the state treasurer (22.4% to the general fund) and 50% to county general funds. Any additional revenue from fines assessed in city courts will remain with local government.
7. There is inadequate information upon which to base a reliable estimate of the amount of increase in revenue. This is due to the lack of historical data on convictions and court discretion in establishing the amount of the fine for each conviction.

Department of Justice:

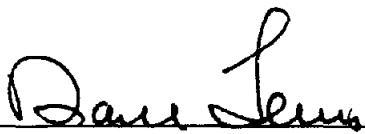
8. The Motor Vehicle Division will experience a workload increase for record keeping of suspension of driver licenses. The fiscal impact on expenditures is estimated to be minimal.
9. The Motor Vehicle Division does not keep records of the total number of possession offenses for each individual driver. Possession violations are recorded only upon notification from the courts. Notification also is received when a court suspends a driver license. The suspension is added to the individual's driving record. The division recorded 64 suspensions for possession in FY94.

FISCAL IMPACT:

Insufficient data for reasonable estimate.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Under present law, the increased revenue from fines assessed in Justice of the Peace courts is allocated 50% to county general funds. Any additional revenue from fines assessed in city courts will remain with local government. There is inadequate information upon which to base a reliable estimate of the amount of increase in revenue.

 1-11-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-12-95
DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0064, as introduced

1 SENATE BILL NO. 64

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO
6 POSSESSES OR ATTEMPTS TO PURCHASE AN INTOXICATING SUBSTANCE; AND AMENDING SECTIONS
7 41-5-601, 41-5-602, 41-5-603, 41-5-604, 45-5-624, AND 61-2-302, MCA."

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13 youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to
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16 formally charged with or proceeded against as or found to be a delinquent youth as a result of the
17 commission of any offense that would be punishable as a felony if the youth were an adult. All court
18 proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206
19 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair
20 trial.

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22 the youth.

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24 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which
25 the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement
26 of school disciplinary procedures that existed at the time of the admission or adjudication. The information
27 may not be further disclosed and may not be made part of the student's permanent records.

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5 allowed under ~~subsection (2) of~~ 41-5-601(2) or unless inspection is ordered by the court.

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7 inspection under subsection (1), is permitted prior to the sealing of the records by:

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11 youth's supervision after release;

12 (d) any other person, by order of the court, having a legitimate interest in the case or in the work
13 of the law enforcement agency;

14 (e) law enforcement officers of Montana, when necessary for the discharge of their immediate
15 duties;

16 (f) a district court in which the youth is convicted of a criminal offense, for the purpose of a
17 presentence investigation;

18 (g) the county attorney;

19 (h) the youth, ~~his~~ and the youth's parent, guardian, or counsel;

20 (i) a member of a county interdisciplinary child information team formed under 52-2-211 who is
21 not listed in subsection (2); or

22 (j) members of a local interagency staffing group provided for in 52-2-203."
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24 **Section 3.** Section 41-5-603, MCA, is amended to read:

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26 department records, including social, medical, and psychological records, reports of preliminary inquiries,
27 predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing
28 of the records only to the following:

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2 of the court;

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4 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
5 ~~such~~ the party;

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8 or reaches the age of majority;

9 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
10 not listed in subsection (1); ~~and~~

11 (h) members of a local interagency staffing group provided for in 52-2-203; and

12 (i) persons allowed access to the records under 45-5-624(6).

13 (2) ~~All or any~~ Any part of records information secured from records listed in subsection (1) ~~of this~~
14 ~~section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ must also be
15 made available to the counsel for the parties to the proceedings.

16 (3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and
17 decrees, ~~shall~~ must be open to public inspection only when related to an offense for which access must
18 be allowed under 41-5-601.

19 (4) All information obtained in discharge of an official duty by any officer or other employee of the
20 youth court or the department ~~shall be~~ is privileged and ~~shall~~ may not be disclosed to anyone other than
21 the judge and others entitled under this chapter to receive ~~such~~ the information, unless otherwise ordered
22 by the judge.

23 (5) After youth court and department records, reports of preliminary inquiries, predispositional
24 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
25 order of the youth court, for good cause to:

26 (a) those persons and agencies listed in subsection (1); and

27 (b) adult probation professional staff preparing a presentence report on a youth who has reached
28 the age of majority."

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1 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except
 2 fingerprints and photographs pertaining to a youth coming under this chapter, ~~shall~~ must be physically
 3 sealed when the youth reaches the age of 18 years.

4 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
 5 18th birthday, the ~~above~~ records and files ~~shall~~ referred to in subsection (1) must be physically sealed upon
 6 termination of the extended jurisdiction.

7 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
 8 agency or department that has in its possession copies of the records ~~se~~ that have been sealed shall also
 9 seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~
 10 is subject to contempt of court.

11 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
 12 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

13 (5) The requirements for sealed records in this section ~~shall do~~ not apply to youth traffic records
 14 ~~or to~~ records directly related to an offense to which access must be allowed under 41-5-601, or records
 15 referred to in 45-5-624(6)."

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

18 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance -- interference**
 19 **with sentence or court order.** (1) ~~(a)~~ A person under the age of ~~19~~ 21 years commits the offense of
 20 possession of an intoxicating substance if the person knowingly consumes or has in the person's
 21 possession an intoxicating substance. The person need not be consuming or in possession of the
 22 intoxicating substance at the time of arrest to violate this subsection.

23 ~~(b) A person under the age of 21 commits the offense of possession of an intoxicating substance~~
 24 ~~if the person knowingly has in the person's possession an alcoholic beverage, except as provided in~~
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 27 ~~course of employment it is necessary to possess alcoholic beverages.~~

28 (2) A In addition to any disposition by the youth court under 41-5-523, a person UNDER 18 YEARS
 29 OF AGE WHO IS convicted of the offense of possession of an intoxicating substance shall ~~if the person:~~

30 (a) ~~is less than 18 years of age for the first offense, be fined an amount~~ not to exceed \$50 \$100

1 and:

2 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
3 more than 90 days and be ordered not to drive during that period if the person was driving or was
4 otherwise in actual physical control of a motor vehicle when the offense occurred;

5 (ii) be ordered to perform community service if a community service program is available; and

6 ~~(iii) have the person's driver's license suspended if convicted of a second or subsequent offense~~
7 ~~under this section; or~~

8 ~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through~~
9 ~~(2)(a)(iii); or~~

10 ~~(b) is 18 years of age or older, be fined an amount not to exceed \$50 for a first offense, \$100 for~~
11 ~~a second offense, and \$200 for a third offense or be fined an amount not to exceed \$300 or be imprisoned~~
12 ~~in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:~~

13 ~~(+) be ordered to complete and pay, either directly with money or indirectly through court-ordered~~
14 ~~community service, if any is available, all costs of participation in a community-based substance abuse~~
15 ~~information course, if one is available;~~

16 (b) for a second offense, be fined an amount not to exceed \$200 and:

17 ~~(ii) (i) have the person's driver's license ~~confiscated by the court~~ suspended for not less than 60
18 days and not more than 90 120 days and be ordered not to drive during that period if the person was
19 driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

20 ~~(iii) (ii) be ordered to perform community service if a community service program is available; or and~~

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23 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
24 community service, if any is available, all costs of participation in a community-based substance abuse
25 information course, if one is available;

26 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
27 and:

28 (i) have the person's driver's license suspended for not less than 120 days and not more than 1
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30 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches

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2 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 3 community service, if any is available, all costs of participation in a community-based substance abuse
 4 information course, if one is available, which may include alcohol or drug treatment, or both, approved by
 5 the department of corrections and human services, if determined by the court to be appropriate; and.

6 (3) A PERSON 18 YEARS OF AGE OR OLDER WHO IS CONVICTED OF THE OFFENSE OF
 7 POSSESSION OF AN INTOXICATING SUBSTANCE SHALL:

8 (A) FOR A FIRST OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$50 AND BE
 9 ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS
 10 AVAILABLE;

11 (B) FOR A SECOND OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$100 AND:

12 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE
 13 PROGRAM IS AVAILABLE; AND

14 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 60
 15 DAYS IF THE PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A
 16 MOTOR VEHICLE WHEN THE OFFENSE OCCURRED;

17 (C) FOR A THIRD OR SUBSEQUENT OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED
 18 \$200 AND:

19 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE
 20 PROGRAM IS AVAILABLE;

21 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 120
 22 DAYS IF THE PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A
 23 MOTOR VEHICLE WHEN THE OFFENSE OCCURRED;

24 (III) BE ORDERED TO COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
 25 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN
 26 SERVICES, WHICH MAY, IN THE SENTENCING COURT'S DISCRETION AND UPON
 27 RECOMMENDATION OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR, INCLUDE ALCOHOL
 28 OR DRUG TREATMENT, OR BOTH; AND

29 ~~(iii)(IV) in the discretion of the court, if the person was 18 years of age or older at the time that~~
 30 ~~the offense was committed, be imprisoned in the county jail for a term not to exceed 6 months.~~

1 ~~(3)~~(4) A person under the age of 21 commits the offense of attempt to purchase an intoxicating
 2 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
 3 attempt to purchase an intoxicating substance shall be fined an amount not to exceed ~~\$50~~ \$50 IF THE
 4 PERSON WAS 18 YEARS OF AGE OR OLDER AT THE TIME THE OFFENSE WAS COMMITTED OR \$100
 5 IF THE PERSON WAS UNDER 18 YEARS OF AGE AT THE TIME THAT THE OFFENSE WAS COMMITTED.

6 ~~(4)~~(5) A defendant who fails to comply with a sentence and is under 21 years of age and was
 7 under 18 years of age when the defendant failed to comply must be transferred to the youth court. ~~If~~
 8 ~~proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do~~
 9 ~~not apply.~~ If proceedings for ~~violation of subsection (1) or for~~ failure to comply with a sentence are held
 10 in the youth court, the offender ~~shall~~ must be treated as an alleged youth in need of supervision as defined
 11 in 41-5-103. The youth court may enter its judgment under 41-5-523.

12 ~~(5)~~(6) A person commits the offense of interference with a sentence or court order if the person
 13 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section
 14 or a youth court disposition order for a youth found to have violated this section and upon conviction shall
 15 be fined \$100 or imprisoned in the county jail for 10 days, or both.

16 ~~(6)~~(7) A conviction or youth court adjudication under this section must be reported by the court
 17 to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses
 18 committed but may not be considered part of the person's driving record for insurance purposes unless a
 19 second or subsequent conviction or adjudication under this section occurs."

20
 21 **Section 6.** Section 61-2-302, MCA, is amended to read:

22 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers.** (1)
 23 The department ~~of justice~~ may establish by administrative rules a driver rehabilitation and improvement
 24 program or programs ~~which~~ that may consist of classroom instruction in rules of the road, driving
 25 techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
 26 ~~such~~ subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

27 (2) Official participation in ~~such~~ the driver rehabilitation and improvement program is limited to
 28 those persons whose license to operate a motor vehicle in the state of Montana is:

29 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
 30 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

1 (b) revoked and they have:

2 (i) completed at least 3 months of a 1-year revocation; or

3 (ii) completed 1 year of a 3-year revocation; and

4 (iii) ~~have~~ met the requirements for reobtaining a Montana driver's license.

5 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
6 Montana, the enforcement of any suspension or revocation order ~~which that~~ constitutes the basis for any
7 person's participation in the driver rehabilitation and improvement program provided for ~~herein~~ in this
8 section may be stayed if that person complies with the requirements established for the driver improvement
9 program and meets the eligibility requirements of subsection (2).

10 (4) In the event that a person's driver's license has been surrendered prior to ~~his~~ the person's
11 selection for participation in the driver rehabilitation and improvement program, the license may be returned
12 upon receipt of ~~his~~ the person's agreement to participate in the program.

13 (5) The stay of enforcement of any suspension or revocation order ~~shall~~ must be terminated and
14 the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation
15 and improvement program or fails to meet the attendance or other requirements established for participation
16 in the program.

17 (6) Nothing in this part creates a right to be included in any program established under this part.

18 (7) The department of justice may establish a schedule of fees ~~which that~~ may be charged those
19 persons participating in the driver improvement and rehabilitation program, ~~which~~ The fees shall must be
20 used to help defray costs of maintaining the program.

21 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice
22 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
23 department of justice.

24 (9) The department of justice may issue a restricted probationary license to any person who enrolls
25 and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary
26 license under this section, the licensee is subject to the restrictions set forth ~~thereon~~ on the license.

27 (10) It is a misdemeanor for ~~any~~ a person to operate a motor vehicle in any manner in violation of
28 the restrictions imposed on a restricted license issued to ~~him~~ the person under this section."

29 -END-

1 SENATE BILL NO. 64

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO
6 POSSESSES OR ATTEMPTS TO PURCHASE AN INTOXICATING SUBSTANCE; AND AMENDING SECTIONS
7 16-6-314, 41-5-601, 41-5-602, 41-5-603, 41-5-604, 45-5-624, AND 61-2-302, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **SECTION 1. SECTION 16-6-314, MCA, IS AMENDED TO READ:**

12 "16-6-314. **Penalty for violating code -- revocation of license -- penalty for violation by underage**
13 **person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as
14 provided in 46-18-212, except as ~~is herein~~ otherwise provided in this section.

15 (2) If a retail licensee is convicted of an offense under this code, ~~his~~ the licensee's license ~~shall~~
16 must be immediately revoked or, in the discretion of the department, such other sanction imposed as may
17 be authorized under 16-4-406.

18 (3) A person under 21 years of age who violates 16-3-301(4) or 16-6-305(3) is subject to the
19 penalty provided in 45-5-624(2) or (3)."

20
21 **Section 2.** Section 41-5-601, MCA, is amended to read:

22 "**41-5-601. Confidentiality.** (1) ~~No information shall~~ Information may not be given concerning a
23 youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to
24 be, a youth in need of supervision.

25 (2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth
26 formally charged with or proceeded against as or found to be a delinquent youth as a result of the
27 commission of any offense that would be punishable as a felony if the youth were an adult. All court
28 proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206
29 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair
30 trial.

1 (3) In all cases, the victim is entitled to all information concerning the identity and disposition of
2 the youth.

3 (4) The identity of ~~any~~ a youth who admits violating or is adjudicated as having violated 45-5-624
4 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which
5 the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement
6 of school disciplinary procedures that existed at the time of the admission or adjudication. The information
7 may not be further disclosed and may not be made part of the student's permanent records.

8 (5) A conviction or youth court adjudication under 45-5-624 may be reported and used as provided
9 in that section."

10

11 **Section 3.** Section 41-5-602, MCA, is amended to read:

12 **"41-5-602. Law enforcement records.** (1) ~~No~~ Except as provided in 45-5-624(6)(7), law
13 enforcement records concerning a youth, except traffic records, may not be open to public inspection or
14 their contents disclosed to the public unless the records are directly related to an offense to which publicity
15 must be allowed under ~~subsection (2) of 41-5-601(2)~~ or unless inspection is ordered by the court.

16 (2) Inspection of law enforcement records concerning a youth, which records are not open to public
17 inspection under subsection (1), is permitted prior to the sealing of the records by:

18 (a) a youth court having the youth currently before it in any proceeding;

19 (b) the department if it is investigating, supervising, or providing services to the youth;

20 (c) the officers of agencies having legal custody of the youth and those responsible for ~~his~~ the
21 youth's supervision after release;

22 (d) any other person, by order of the court, having a legitimate interest in the case or in the work
23 of the law enforcement agency;

24 (e) law enforcement officers of Montana, when necessary for the discharge of their immediate
25 duties;

26 (f) a district court in which the youth is convicted of a criminal offense, for the purpose of a
27 presentence investigation;

28 (g) the county attorney;

29 (h) the youth, ~~his~~ and the youth's parent, guardian, or counsel;

30 (i) a member of a county interdisciplinary child information team formed under 52-2-211 who is

1 not listed in subsection (2); or

2 (j) members of a local interagency staffing group provided for in 52-2-203."

3

4 **Section 4.** Section 41-5-603, MCA, is amended to read:

5 **"41-5-603. Youth court and department records.** (1) Youth court and youth court-related
6 department records, including social, medical, and psychological records, reports of preliminary inquiries,
7 predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing
8 of the records only to the following:

9 (a) the youth court and its professional staff;

10 (b) representatives of any agency providing supervision and having legal custody of a youth;

11 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
12 of the court;

13 (d) any court and its probation and other professional staff or the attorney for a convicted party
14 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
15 ~~such~~ the party;

16 (e) the county attorney;

17 (f) the youth who is the subject of the report or record, after ~~he~~ the youth has been emancipated
18 or reaches the age of majority;

19 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
20 not listed in subsection (1); ~~and~~

21 (h) members of a local interagency staffing group provided for in 52-2-203; and

22 (i) persons allowed access to the records under 45-5-624(6)(7).

23 (2) ~~All or any~~ Any part of records information secured from records listed in subsection (1) ~~of this~~
24 ~~section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ must also be
25 made available to the counsel for the parties to the proceedings.

26 (3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and
27 decrees, ~~shall~~ must be open to public inspection only when related to an offense for which access must
28 be allowed under 41-5-601.

29 (4) All information obtained in discharge of an official duty by any officer or other employee of the
30 youth court or the department ~~shall be~~ is privileged and ~~shall~~ may not be disclosed to anyone other than

1 the judge and others entitled under this chapter to receive ~~such~~ the information, unless otherwise ordered
2 by the judge.

3 (5) After youth court and department records, reports of preliminary inquiries, predispositional
4 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
5 order of the youth court, for good cause to:

6 (a) those persons and agencies listed in subsection (1); and

7 (b) adult probation professional staff preparing a presentence report on a youth who has reached
8 the age of majority."

9

10 **Section 5.** Section 41-5-604, MCA, is amended to read:

11 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except
12 fingerprints and photographs pertaining to a youth coming under this chapter, ~~shall~~ must be physically
13 sealed when the youth reaches the age of 18 years.

14 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
15 18th birthday, the ~~above~~ records and files ~~shall~~ referred to in subsection (1) must be physically sealed upon
16 termination of the extended jurisdiction.

17 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
18 agency or department that has in its possession copies of the records ~~se~~ that have been sealed shall also
19 seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~
20 is subject to contempt of court.

21 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
22 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

23 (5) The requirements for sealed records in this section ~~shall do~~ do not apply to youth traffic records
24 ~~or to~~ records directly related to an offense to which access must be allowed under 41-5-601, or records
25 referred to in 45-5-624(6)(7)."

26

27 **Section 6.** Section 45-5-624, MCA, is amended to read:

28 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance -- interference**
29 **with sentence or court order.** (1) ~~(a)~~ A person under the age of ~~19~~ 21 years commits the offense of
30 possession of an intoxicating substance if the person knowingly consumes or has in the person's

1 possession an intoxicating substance. The person need not be consuming or in possession of the
2 intoxicating substance at the time of arrest to violate this subsection.

3 ~~(b) A person under the age of 21 commits the offense of possession of an intoxicating substance~~
4 ~~if the person knowingly has in the person's possession an alcoholic beverage, except as provided in~~
5 ~~16-6-305 and except that a person does not commit the offense if the person consumes or gains~~
6 ~~possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the~~
7 ~~course of employment it is necessary to possess alcoholic beverages.~~

8 (2) A In addition to any disposition by the youth court under 41-5-523, a person UNDER 18 YEARS
9 OF AGE WHO IS convicted of the offense of possession of an intoxicating substance shall ~~if the person:~~

10 (a) ~~is less than 18 years of age for the first offense, be fined an amount not to exceed \$50 \$100~~
11 and:

12 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
13 more than 90 days and be ordered not to drive during that period if the person was driving or was
14 otherwise in actual physical control of a motor vehicle when the offense occurred;

15 (ii) be ordered to perform community service if a community service program is available; and

16 (iii) ~~have the person's driver's license suspended if convicted of a second or subsequent offense~~
17 ~~under this section; or~~

18 (iv) ~~be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through~~
19 ~~(2)(a)(iii); or~~

20 (b) ~~is 18 years of age or older, be fined an amount not to exceed \$50 for a first offense, \$100 for~~
21 ~~a second offense, and \$200 for a third offense or be fined an amount not to exceed \$300 or be imprisoned~~
22 ~~in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:~~

23 (i) be ordered to complete and pay, either directly with money or indirectly through court-ordered
24 community service, if any is available, all costs of participation in a community-based substance abuse
25 information course, if one is available;

26 (b) for a second offense, be fined an amount not to exceed \$200 and:

27 (iii) (i) have the person's driver's license ~~confiscated by the court~~ suspended for not less than 60
28 days and not more than 90 120 days ~~and be ordered not to drive during that period if the person was~~
29 ~~driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

30 (iii) (ii) be ordered to perform community service if a community service program is available; or and

1 ~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through~~
 2 ~~(2)(b)(iii)~~

3 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 4 community service, if any is available, all costs of participation in a community-based substance abuse
 5 information course, if one is available;

6 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
 7 and:

8 (i) have the person's driver's license suspended for not less than 120 days and not more than 1
 9 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle
 10 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches
 11 the age of 21 18, whichever occurs last;

12 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 13 community service, if any is available, all costs of participation in a community-based substance abuse
 14 information course, if one is available, which may include alcohol or drug treatment, or both, approved by
 15 the department of corrections and human services, if determined by the court to be appropriate; and.

16 (3) A PERSON 18 YEARS OF AGE OR OLDER WHO IS CONVICTED OF THE OFFENSE OF
 17 POSSESSION OF AN INTOXICATING SUBSTANCE SHALL:

18 (A) FOR A FIRST OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$50 AND BE ORDERED TO
 19 PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS AVAILABLE;

20 (B) FOR A SECOND OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$100 AND:

21 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS
 22 AVAILABLE; AND

23 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 60 DAYS IF THE
 24 PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHEN
 25 THE OFFENSE OCCURRED;

26 (C) FOR A THIRD OR SUBSEQUENT OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$200
 27 AND:

28 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS
 29 AVAILABLE;

30 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 120 DAYS IF

1 THE PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE
 2 WHEN THE OFFENSE OCCURRED;

3 (III) BE ORDERED TO COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
 4 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES,
 5 WHICH MAY, IN THE SENTENCING COURT'S DISCRETION AND UPON RECOMMENDATION OF A
 6 CERTIFIED CHEMICAL DEPENDENCY COUNSELOR, INCLUDE ALCOHOL OR DRUG TREATMENT, OR BOTH;
 7 AND

8 ~~###(IV) in the discretion of the court, if the person was 18 years of age or older at the time that~~
 9 ~~the offense was committed, be imprisoned in the county jail for a term not to exceed 6 months.~~

10 ~~(3)(4)~~ A person under the age of 21 commits the offense of attempt to purchase an intoxicating
 11 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
 12 attempt to purchase an intoxicating substance shall be fined an amount not to exceed ~~\$50~~ \$50 IF THE
 13 PERSON WAS 18 YEARS OF AGE OR OLDER AT THE TIME THE OFFENSE WAS COMMITTED OR \$100
 14 IF THE PERSON WAS UNDER 18 YEARS OF AGE AT THE TIME THAT THE OFFENSE WAS COMMITTED.

15 ~~(4)(5)~~ A defendant who fails to comply with a sentence and is under 21 years of age and was
 16 under 18 years of age when the defendant failed to comply must be transferred to the youth court. ~~If~~
 17 ~~proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do~~
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 22 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section
 23 or a youth court disposition order for a youth found to have violated this section and upon conviction shall
 24 be fined \$100 or imprisoned in the county jail for 10 days, or both.

25 ~~(6)(7)~~ A conviction or youth court adjudication under this section must be reported by the court
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 28 second or subsequent conviction or adjudication under this section occurs."

29
 30 **Section 7.** Section 61-2-302, MCA, is amended to read:

1 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers. (1)**

2 The department of ~~justice~~ may establish by administrative rules a driver rehabilitation and improvement
3 program or programs ~~which~~ that may consist of classroom instruction in rules of the road, driving
4 techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
5 ~~such~~ subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

6 (2) Official participation in ~~such~~ the driver rehabilitation and improvement program is limited to
7 those persons whose license to operate a motor vehicle in the state of Montana is:

8 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
9 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

10 (b) revoked and they have:

11 (i) completed at least 3 months of a 1-year revocation; or

12 (ii) completed 1 year of a 3-year revocation; and

13 (iii) ~~have~~ met the requirements for reobtaining a Montana driver's license.

14 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
15 Montana, the enforcement of any suspension or revocation order ~~which~~ that constitutes the basis for any
16 person's participation in the driver rehabilitation and improvement program provided for ~~herein~~ in this
17 section may be stayed if that person complies with the requirements established for the driver improvement
18 program and meets the eligibility requirements of subsection (2).

19 (4) In the event that a person's driver's license has been surrendered prior to ~~his~~ the person's
20 selection for participation in the driver rehabilitation and improvement program, the license may be returned
21 upon receipt of ~~his~~ the person's agreement to participate in the program.

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24 and improvement program or fails to meet the attendance or other requirements established for participation
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5 license under this section, the licensee is subject to the restrictions set forth ~~thereon~~ on the license.

6 (10) It is a misdemeanor for ~~any a~~ person to operate a motor vehicle in any manner in violation of
7 the restrictions imposed on a restricted license issued to ~~him~~ the person under this section."

8 -END-
9



HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 64 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Soft

And, that such amendments read:

1. Page 4, line 15.
Following: "~~shall~~"
Strike: "referred to in subsection (1) must"
Insert: "shall"
2. Page 4, line 18.
Following: "of the"
Insert: "sealed"
Following: "~~se~~"
Strike: "that have been sealed"

-END-

SB 64

Committee Vote:
Yes 19, No 0.

HOUSE

1 SENATE BILL NO. 64

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO
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9 in that section."

10

11 **Section 3.** Section 41-5-602, MCA, is amended to read:

12 **"41-5-602. Law enforcement records.** (1) ~~No~~ Except as provided in 45-5-624(6)(7), law
13 enforcement records concerning a youth, except traffic records, may not be open to public inspection or
14 their contents disclosed to the public unless the records are directly related to an offense to which publicity
15 must be allowed under ~~subsection (2) of 41-5-601~~ (2) or unless inspection is ordered by the court.

16 (2) Inspection of law enforcement records concerning a youth, which records are not open to public
17 inspection under subsection (1), is permitted prior to the sealing of the records by:

18 (a) a youth court having the youth currently before it in any proceeding;

19 (b) the department if it is investigating, supervising, or providing services to the youth;

20 (c) the officers of agencies having legal custody of the youth and those responsible for ~~his~~ the
21 youth's supervision after release;

22 (d) any other person, by order of the court, having a legitimate interest in the case or in the work
23 of the law enforcement agency;

24 (e) law enforcement officers of Montana, when necessary for the discharge of their immediate
25 duties;

26 (f) a district court in which the youth is convicted of a criminal offense, for the purpose of a
27 presentence investigation;

28 (g) the county attorney;

29 (h) the youth, ~~his~~ and the youth's parent, guardian, or counsel;

30 (i) a member of a county interdisciplinary child information team formed under 52-2-211 who is

1 not listed in subsection (2); or

2 (j) members of a local interagency staffing group provided for in 52-2-203."

3
4 **Section 4.** Section 41-5-603, MCA, is amended to read:

5 **"41-5-603. Youth court and department records.** (1) Youth court and youth court-related
6 department records, including social, medical, and psychological records, reports of preliminary inquiries,
7 predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing
8 of the records only to the following:

9 (a) the youth court and its professional staff;

10 (b) representatives of any agency providing supervision and having legal custody of a youth;

11 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
12 of the court;

13 (d) any court and its probation and other professional staff or the attorney for a convicted party
14 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
15 ~~such~~ the party;

16 (e) the county attorney;

17 (f) the youth who is the subject of the report or record, after ~~he~~ the youth has been emancipated
18 or reaches the age of majority;

19 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
20 not listed in subsection (1); ~~and~~

21 (h) members of a local interagency staffing group provided for in 52-2-203; and

22 (i) persons allowed access to the records under 45-5-624(6)(7).

23 (2) ~~All or any~~ Any part of records information secured from records listed in subsection (1) ~~of this~~
24 ~~section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ must also be
25 made available to the counsel for the parties to the proceedings.

26 (3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and
27 decrees, ~~shall~~ must be open to public inspection only when related to an offense for which access must
28 be allowed under 41-5-601.

29 (4) All information obtained in discharge of an official duty by any officer or other employee of the
30 youth court or the department ~~shall be~~ is privileged and ~~shall~~ may not be disclosed to anyone other than

1 the judge and others entitled under this chapter to receive ~~such~~ the information, unless otherwise ordered
2 by the judge.

3 (5) After youth court and department records, reports of preliminary inquiries, predispositional
4 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
5 order of the youth court, for good cause to:

6 (a) those persons and agencies listed in subsection (1); and

7 (b) adult probation professional staff preparing a presentence report on a youth who has reached
8 the age of majority."

9

10 **Section 5.** Section 41-5-604, MCA, is amended to read:

11 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records,
12 except fingerprints and photographs pertaining to a youth coming under this chapter, ~~shall~~ must be
13 physically sealed when the youth reaches the age of 18 years.

14 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
15 18th birthday, the ~~above~~ records and files ~~shall~~ referred to in subsection (1) must **SHALL** be physically
16 sealed upon termination of the extended jurisdiction.

17 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
18 agency or department that has in its possession copies of the **SEALED** records ~~so that have been sealed~~
19 shall also seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection
20 ~~shall be~~ is subject to contempt of court.

21 (4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records
22 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

23 (5) The requirements for sealed records in this section ~~shall do~~ not apply to youth traffic records
24 ~~or to~~ records directly related to an offense to which access must be allowed under 41-5-601, or records
25 referred to in 45-5-624(6)(7)."

26

27 **Section 6.** Section 45-5-624, MCA, is amended to read:

28 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance -- interference**
29 **with sentence or court order.** (1) ~~to~~ A person under the age of ~~19~~ 21 years commits the offense of
30 possession of an intoxicating substance if the person knowingly consumes or has in the person's

1 possession an intoxicating substance. The person need not be consuming or in possession of the
2 intoxicating substance at the time of arrest to violate this subsection.

3 ~~(b) A person under the age of 21 commits the offense of possession of an intoxicating substance~~
4 ~~if the person knowingly has in the person's possession an alcoholic beverage, except as provided in~~
5 ~~16-6-305 and except that a person does not commit the offense if the person consumes or gains~~
6 ~~possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the~~
7 ~~course of employment it is necessary to possess alcoholic beverages.~~

8 (2) A In addition to any disposition by the youth court under 41-5-523, a person UNDER 18 YEARS
9 OF AGE WHO IS convicted of the offense of possession of an intoxicating substance shall ~~if the person:~~

10 (a) ~~is less than 18 years of age for the first offense, be fined an amount not to exceed \$50 \$100~~
11 and:

12 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
13 more than 90 days and be ordered not to drive during that period if the person was driving or was
14 otherwise in actual physical control of a motor vehicle when the offense occurred;

15 (ii) be ordered to perform community service if a community service program is available; and

16 (iii) ~~have the person's driver's license suspended if convicted of a second or subsequent offense~~
17 ~~under this section; or~~

18 (iv) ~~be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through~~
19 ~~(2)(a)(iii); or~~

20 (b) ~~is 18 years of age or older, be fined an amount not to exceed \$50 for a first offense, \$100 for~~
21 ~~a second offense, and \$200 for a third offense or be fined an amount not to exceed \$300 or be imprisoned~~
22 ~~in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:~~

23 (i) be ordered to complete and pay, either directly with money or indirectly through court-ordered
24 community service, if any is available, all costs of participation in a community-based substance abuse
25 information course, if one is available;

26 (b) for a second offense, be fined an amount not to exceed \$200 and:

27 (ii)(i) have the person's driver's license ~~confiscated by the court~~ suspended for not less than 60
28 days and not more than 90 120 days and be ordered not to drive during that period if the person was
29 driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

30 (ii)(ii) be ordered to perform community service if a community service program is available; or and

1 ~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through~~
 2 ~~(2)(b)(iii)~~

3 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 4 community service, if any is available, all costs of participation in a community-based substance abuse
 5 information course, if one is available;

6 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
 7 and:

8 (i) have the person's driver's license suspended for not less than 120 days and not more than 1
 9 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle
 10 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches
 11 the age of 21 18, whichever occurs last;

12 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 13 community service, if any is available, all costs of participation in a community-based substance abuse
 14 information course, if one is available, which may include alcohol or drug treatment, or both, approved by
 15 the department of corrections and human services, if determined by the court to be appropriate; and.

16 (3) A PERSON 18 YEARS OF AGE OR OLDER WHO IS CONVICTED OF THE OFFENSE OF
 17 POSSESSION OF AN INTOXICATING SUBSTANCE SHALL:

18 (A) FOR A FIRST OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$50 AND BE ORDERED TO
 19 PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS AVAILABLE;

20 (B) FOR A SECOND OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$100 AND:

21 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS
 22 AVAILABLE; AND

23 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 60 DAYS IF THE
 24 PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHEN
 25 THE OFFENSE OCCURRED;

26 (C) FOR A THIRD OR SUBSEQUENT OFFENSE, BE FINED AN AMOUNT NOT TO EXCEED \$200
 27 AND:

28 (I) BE ORDERED TO PERFORM COMMUNITY SERVICE IF A COMMUNITY SERVICE PROGRAM IS
 29 AVAILABLE;

30 (II) HAVE THE PERSON'S DRIVER'S LICENSE SUSPENDED FOR NOT MORE THAN 120 DAYS IF

1 THE PERSON WAS DRIVING OR OTHERWISE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE
 2 WHEN THE OFFENSE OCCURRED;

3 (III) BE ORDERED TO COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
 4 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES,
 5 WHICH MAY, IN THE SENTENCING COURT'S DISCRETION AND UPON RECOMMENDATION OF A
 6 CERTIFIED CHEMICAL DEPENDENCY COUNSELOR, INCLUDE ALCOHOL OR DRUG TREATMENT, OR BOTH;
 7 AND

8 ~~(iii)(IV) in the discretion of the court, if the person was 18 years of age or older at the time that the~~
 9 ~~offense was committed, be imprisoned in the county jail for a term not to exceed 6 months.~~

10 ~~(3)(4)~~ A person under the age of 21 commits the offense of attempt to purchase an intoxicating
 11 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
 12 attempt to purchase an intoxicating substance shall be fined an amount not to exceed ~~\$50~~ \$50 IF THE
 13 PERSON WAS 18 YEARS OF AGE OR OLDER AT THE TIME THE OFFENSE WAS COMMITTED OR \$100
 14 IF THE PERSON WAS UNDER 18 YEARS OF AGE AT THE TIME THAT THE OFFENSE WAS COMMITTED.

15 ~~(4)(5)~~ A defendant who fails to comply with a sentence and is under 21 years of age and was
 16 under 18 years of age when the defendant failed to comply must be transferred to the youth court. If
 17 ~~proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do~~
 18 ~~not apply.~~ If proceedings for violation of subsection (1) or for failure to comply with a sentence are held
 19 in the youth court, the offender ~~shall~~ must be treated as an alleged youth in need of supervision as defined
 20 in 41-5-103. The youth court may enter its judgment under 41-5-523.

21 ~~(5)(6)~~ A person commits the offense of interference with a sentence or court order if the person
 22 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section
 23 or a youth court disposition order for a youth found to have violated this section and upon conviction shall
 24 be fined \$100 or imprisoned in the county jail for 10 days, or both.

25 ~~(6)(7)~~ A conviction or youth court adjudication under this section must be reported by the court
 26 to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses
 27 committed but may not be considered part of the person's driving record for insurance purposes unless a
 28 second or subsequent conviction or adjudication under this section occurs."

29
 30 **Section 7.** Section 61-2-302, MCA, is amended to read:

1 **"61-2-302. Establishment of driver improvement program -- participation by offending drivers. (1)**

2 The department of ~~justice~~ may establish by administrative rules a driver rehabilitation and improvement
3 program or programs ~~which~~ that may consist of classroom instruction in rules of the road, driving
4 techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other
5 ~~such~~ subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

6 (2) Official participation in ~~such~~ the driver rehabilitation and improvement program is limited to
7 those persons whose license to operate a motor vehicle in the state of Montana is:

8 (a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or,
9 unless otherwise provided by the sentencing court, a violation of 45-5-624; or

10 (b) revoked and they have:

11 (i) completed at least 3 months of a 1-year revocation; or

12 (ii) completed 1 year of a 3-year revocation; and

13 (iii) ~~have~~ met the requirements for reobtaining a Montana driver's license.

14 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of
15 Montana, the enforcement of any suspension or revocation order ~~which~~ that constitutes the basis for any
16 person's participation in the driver rehabilitation and improvement program provided for ~~herein~~ in this
17 section may be stayed if that person complies with the requirements established for the driver improvement
18 program and meets the eligibility requirements of subsection (2).

19 (4) In the event that a person's driver's license has been surrendered prior to ~~his~~ the person's
20 selection for participation in the driver rehabilitation and improvement program, the license may be returned
21 upon receipt of ~~his~~ the person's agreement to participate in the program.

22 (5) The stay of enforcement of any suspension or revocation order ~~shall~~ must be terminated and
23 the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation
24 and improvement program or fails to meet the attendance or other requirements established for participation
25 in the program.

26 (6) Nothing in this part creates a right to be included in any program established under this part.

27 (7) The department of ~~justice~~ may establish a schedule of fees ~~which~~ that may be charged those
28 persons participating in the driver improvement and rehabilitation program, ~~which~~ The fees ~~shall~~ must be
29 used to help defray costs of maintaining the program.

30 (8) A person may be referred to this program by a driver improvement analyst, city judge, justice

1 of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the
2 department ~~of justice~~.

3 (9) The department ~~of justice~~ may issue a restricted probationary license to any person who enrolls
4 and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary
5 license under this section, the licensee is subject to the restrictions set forth ~~thereon~~ on the license.

6 (10) It is a misdemeanor for ~~any~~ a person to operate a motor vehicle in any manner in violation of
7 the restrictions imposed on a restricted license issued to ~~him~~ the person under this section."

8 -END-
9