

Amendments to Senate Bill No. 360
3rd Reading Copy

Requested by Representative Margaret (Margie) MacDonald

For the House Judiciary Committee

Prepared by Helen Thigpen
March 20, 2015 (7:49am)

1. Title, page 1, line 5.

Strike: "PUBLIC INTOXICATION"

Following: "LAW"

Insert: "PROHIBITING BEING INCAPACITATED BY ALCOHOL IN A PUBLIC PLACE"

2. Title, page 1, line 6.

Strike: "INTOXICATED"

Insert: "INCAPACITATED BY ALCOHOL"

3. Title, page 1, line 7.

Following: "OFFICER"

Insert: "IN CERTAIN CASES"

4. Page 1, line 11 through page 2, line 22.

Strike: everything after the enacting clause

Insert: "**Section 1.** Section 53-24-102, MCA, is amended to read:

"**53-24-102. Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics ~~and intoxicated persons~~ may not be subjected to criminal prosecution solely because of their ~~consumption of alcoholic beverages~~ alcoholism but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society."

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

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

"**53-24-106. Criminal laws limitation.** (1) ~~A county, municipality, or other political subdivision~~ Except as provided in this subsection, a local government may not adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, ~~being a common drunkard,~~ or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction. For the purpose of providing treatment and services to a person incapacitated by alcohol in a public place and to protect the public health, safety, and welfare, a local government may adopt and enforce an ordinance or resolution that prohibits being incapacitated by alcohol in a public place for the person's own protection or for the protection of the public.

(2) This section does not affect any law, ordinance, or

~~resolution, or rule against drunken driving, that prohibits driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.~~

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

{Internal References to 53-24-106:

x7-32-4302 }"

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

"53-24-107. Public intoxication not -- criminal offense.

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

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

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

~~(3)(4)~~ (4) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. Am Except as provided in subsection (2), entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.

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

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

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

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

facility, or other health care facility by ~~the police~~ a peace officer.

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

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

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

x53-24-107 x53-24-107 x53-24-207 }"

- END -