

# Montana Criminal Statutes That Require Treatment or Programming as Part of a Sentence

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## Background

The Commission on Sentencing established a Statute Review Subcommittee to review certain policy options related to specific crimes and sentencing requirements. One specific task assigned to the subcommittee was a review of current statutes that require as part of a sentence some type of treatment, coursework, or programming.

At least 20 statutes were identified that contain a requirement for treatment, programming, or coursework related to violent or controlling behavior, chemical dependency, and sex offenses. Those statutes are listed in a table starting on page 3 of this report. The table includes each identified statute, the type of crime, and the treatment, programming, and coursework required.

## *Methodology and Report Structure*

Statutes included in this report were identified using searches of key terms that appear in Titles 45, 46, and 61, which are the main Montana Code Annotated (MCA) titles that set out the crimes and punishments that are the focus of the work of the Commission on Sentencing and the subcommittee. Key terms include “assessment,” “chemical dependency,” “counseling,” “course,” “program,” and “treatment.” The statutes are organized in a table by treatment type, including anger/violence, chemical dependency and/or substance abuse information, and sex offender.

The report does not include treatment required as part of a fitness determination under Title 46, chapter 14 (Mental Competency of Accused), as part of a pretrial diversion agreement under section 46-16-130, MCA, as part of release on bail pursuant to Title 46, chapter 9, or by a judge as a condition of probation supervision or by the parole board as a condition of parole release and supervision.

Although the table does not contain the full language of each statute cited, the electronic version of this report contains hyperlinks that direct the reader to the online version of the Montana Code Annotated, 2015.

Several statutes provide additional information on treatment format that the subcommittee might find relevant. The selected statutes listed below do not necessarily contain direct mandates for programming but do provide additional background about program requirements. Full text versions of these statutes are provided starting on page 10 of this report.

- Sections 45-5-231 through 45-5-234, MCA, govern offender intervention counseling. Because that type of counseling is referred to often in statute and incorporates defined terms, these statute sections are listed in full starting on page 10 of this report.
- Section 45-5-512, MCA, which begins on page 11 of this report, allows a judge to require offenders convicted of certain sexual offenses to undergo chemical treatment. The treatment is not mandatory, and the section is not included in the table.
- Section 45-5-624, MCA, governs the crime and sentence for possession of or unlawful attempt to purchase an intoxicating substance. That section is listed in the table, but due to the statute's length and repeated reference to treatment, it is listed in full at the end of the report rather than excerpted as part of the information provided in the table. The full section text can be found starting on page 12 of this report.
- Section 61-8-732, MCA, requires treatment for certain offenders convicted of certain drug and alcohol-related driving offenses. The table contains the sections of the related statutes that allow a sentence to be suspended pending the successful completion of certain treatment assessments and programs, and that also reference section 61-8-732, MCA, which makes treatment mandatory for certain offenses. To avoid listing the full text of section 61-8-732, MCA, in several table rows, the section is listed in full starting on page 16 of this report. Each table row related to the section also contains a hyperlink to the online version.

Statutes Requiring Treatment, Coursework, or Programming

Treatment Type	Crime	Statute	Relevant Excerpt
Anger/Violence	Partner/family member assault	<a href="#">45-5-206, MCA</a>	<p>(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.</p> <p>(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:</p> <ul style="list-style-type: none"> <li>(i) with a person licensed under Title 37, chapter 17, 22, or 23;</li> <li>(ii) with a professional person as defined in 53-21-102; or</li> <li>(iii) in a specialized domestic violence intervention program.</li> </ul> <p>(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.</p>
	Assault on a minor	<a href="#">45-5-212, MCA</a>	<p>(3) An offender convicted of an offense under subsection (2)(b) or (2)(c) shall pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency and complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court and be a person licensed under Title 37, chapter 17, 22, or 23, or a professional person as defined in 53-21-102. The offender shall complete a minimum of 40 hours of counseling.</p>

Treatment Type	Crime	Statute	Relevant Excerpt
Anger/Violence	Assault with a weapon	<a href="#">45-5-213, MCA</a>	(2) ... (b) In addition to any sentence imposed under subsection (2)(a), if the person convicted of assault with a weapon is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).
Chemical Dependency and/or Substance Abuse Information	Possession of or unlawful attempt to purchase intoxicating substance	<a href="#">45-5-624, MCA</a>	Due to its size and complexity, this statute is not excerpted in the table. Please view the full statute <a href="#">online</a> or starting on page 12 of this report.
	Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited	<a href="#">45-5-637, MCA</a>	(3) A person convicted of possession or consumption of a tobacco product, alternative nicotine product, or vapor product may also be required to perform community service or to attend a tobacco cessation program.
	Criminal possession of dangerous drugs	<a href="#">45-9-102, MCA</a>	<p>(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:</p> <ul style="list-style-type: none"> <li>(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or</li> <li>(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.</li> </ul> <p>.... (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:</p> <ul style="list-style-type: none"> <li>(i) the person to abide by the standard conditions of probation established by the department of corrections;</li> <li>(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;</li> <li>(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;</li> <li>(iv) that the person may not consume alcoholic beverages;</li> <li>(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and</li> <li>(vi) the person to submit to random or routine drug and alcohol testing.</li> </ul>

Treatment Type	Crime	Statute	Relevant Excerpt
Chemical Dependency and/or Substance Abuse Information	Misdemeanor dangerous drug offense	<a href="#">Title 45, chapter 9, MCA</a>	<b>45-9-208. Mandatory dangerous drug information course.</b> A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a licensed addiction counselor working with the person recommends treatment.
	Misdemeanor possession of drug paraphernalia offense	<a href="#">Title 45, chapter 10, MCA</a>	<b>45-10-108. Mandatory dangerous drug information course.</b> A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a licensed addiction counselor working with the person recommends treatment.
	Operation of vehicle, under age 21 with BAC of 0.02 or more	<a href="#">61-8-410, MCA</a>	(5) In addition to the punishment provided in this section, regardless of disposition: (a) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in 61-8-732 as ordered by the court; ...
	Aggravated DUI	<a href="#">61-8-465, MCA</a>  (sentencing discretion of judge)	(3) Except as provided in subsection (6), a person convicted of a second violation of the offense of aggravated driving under the influence shall be punished by: ... (b) Except for the minimum term of imprisonment provided in subsection (3)(a)(ii), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person. .... (4) (a) Except as provided in subsection (6), a person convicted of a third violation of the offense of aggravated driving under the influence shall be punished by: .... (b) Except for the minimum term of imprisonment provided in subsection (4)(a)(ii), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.  See also <a href="#">61-8-732, MCA</a> , for when chemical dependency assessments and/or treatment is required. The full text of the section starts on page 16 of this report.

Treatment Type	Crime	Statute	Relevant Excerpt
Chemical Dependency and/or Substance Abuse Information	DUI – 1 <sup>st</sup> through 3 <sup>rd</sup> offense	<a href="#">61-8-714, MCA</a>  (sentencing discretion of judge)	<p>1<sup>st</sup> offense: (1)(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.</p> <p>2<sup>nd</sup> through 3<sup>rd</sup> offense: (2)(c) and (3)(c): The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.</p> <p>See also <a href="#">61-8-732, MCA</a>, for when chemical dependency assessments and/or treatment is required. The full text of the section starts on page 16 of this report.</p>
	Excessive alcohol concentration or delta-9-THC level	<a href="#">61-8-722, MCA</a>	<p>2<sup>nd</sup> through 3<sup>rd</sup> offense: (2)(c) and (3)(c): The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.</p> <p>See also <a href="#">61-8-732, MCA</a>, for when chemical dependency assessments and/or treatment is required. The full text of the section starts on page 16 of this report.</p>
	Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense	<a href="#">61-8-731, MCA</a>  (residential treatment as part of sentence and aftercare treatment during probation)	<p>(1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:</p> <p>(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the sentence must be served on probation. The imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole.</p> <p>(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and</p> <p>(c) a fine in an amount of not less than \$5,000 or more than \$10,000.</p> <p>(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program approved by the department of corrections.</p>

Treatment Type	Crime	Statute	Relevant Excerpt
			<p>(4) The court shall, as a condition of probation, order: ...</p> <p>(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;</p> <p>See also <a href="#">61-8-732, MCA</a>, for when chemical dependency assessments and/or treatment is required. The full text of the section starts on page 16 of this report.</p>
Sex Offender	Sexual intercourse without consent	<a href="#">45-5-503, MCA</a>	<p>(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>
	Incest	<a href="#">45-5-507, MCA</a>	<p>(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>
	Prostitution	<a href="#">45-5-601, MCA</a>	<p>(3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections</p>

Treatment Type	Crime	Statute	Relevant Excerpt
Sex Offender	Promoting prostitution	<a href="#">45-5-602, MCA</a>	<p>(3) (a) If the person engaging in prostitution was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>
	Aggravated promotion of prostitution	<a href="#">45-5-603, MCA</a>	<p>(2) ... (b) (i) Except as provided in 46-18-219 and 46-18-222, if the person engaging in prostitution was a child and the patron was 18 years of age or older at the time of the offense, the patron offender:</p> <p>(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(b)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(B) may be fined an amount not to exceed \$50,000; and</p> <p>(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>
	Sexual abuse of children	<a href="#">45-5-625, MCA</a>	<p>(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>



Treatment Type	Crime	Statute	Relevant Excerpt
Sex Offender	Sexual offense, as defined in <a href="#">46-23-502, MCA</a>	<a href="#">46-18-207, MCA</a>	<p>(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:</p> <p>(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;</p> <p>(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and</p> <p>(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sexual offender treatment program for the remainder of the person's life.</p> <p>(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.</p> <p>(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.</p> <p>(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.</p> <p>(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.</p>

## Miscellaneous Statutes Related to Required Treatment and Programming

### *Offender Intervention Program*

[45-5-231. Definitions.](#) As used in 45-5-231 through 45-5-234, unless the context requires otherwise, the following definitions apply:

(1) "Assault on a partner or family member" has the meaning provided in 45-5-206 for partner or family member assault.

(2) "Chemical dependency treatment" means required counseling and treatment related to chemical dependency issues.

(3) "Counseling" means professional counseling as defined in 37-23-102 and includes group counseling for the purposes of 45-5-231 through 45-5-234.

(4) "Investigative criminal justice report" means the investigative report prepared by a law enforcement agency associated with an offender's arrest for an assault on a partner or family member, excluding any confidential information relating to the victim's location and confidential information not related to the offense.

(5) "Offender" means a person convicted of an assault on a partner or family member.

(6) "Offender intervention program" means the combination of counseling and other services that is organized in a judicial district to provide a preliminary assessment for counseling and other services that are required for an offender.

(7) "Preliminary assessment for counseling" means the counseling assessment completed by a counselor to determine an offender's need for counseling, attendance at psychoeducational groups, and referrals for other treatment. This assessment must be completed either before or within 4 weeks after counseling and psychoeducational groups are started.

(8) "Psychoeducational group" means a group discussion, with instructional content themes, that encourages sharing and feedback, increases self-awareness, and is aimed at facilitating change in group members' daily lives.

(9) "Recreational intoxicant" means a substance, drug, or other chemical that was taken for the purpose of causing a person to be in a different emotional or psychological state and was not taken for a medically recognized therapeutic purpose.

(10) "Victim" means a person against whom the offender committed an assault.

[45-5-232. Offender intervention counseling referral.](#) (1) The court shall notify the offender intervention program of the court's sentence and the court's judgment ordering the offender to complete a preliminary assessment and all recommended counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment.

(2) A copy of the investigative criminal justice report related to the offense charged must be sent to the offender intervention program to assist counselors in completing the offender's assessment, counseling, referrals, and psychoeducational group counseling. Before the report is sent, information in the report that relates to the victim's location or does not relate to the charged offense must be deleted.

(3) The referral of the offender's investigative report to the offender intervention program does not violate the confidentiality provisions under Title 44, chapter 5. The

court shall adopt and the offender intervention program must include confidentiality procedures to protect the privacy rights of the victim and offender.

[45-5-233. Report to court or probation officer.](#) (1) The head of the offender intervention program shall report to the court and the offender's probation officer. The report does not breach confidentiality.

(2) The head of the offender intervention program shall report to the court or the offender's probation officer, if the offender is assigned a probation officer, when:

(a) the offender has started the program;

(b) the offender has completed the assessment and the program has established recommendations for counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment;

(c) the offender has violated the offender intervention program rules related to attendance, the use of violence, and the use of recreational intoxicants; and

(d) the offender has completed the program.

[45-5-234. Offender intervention counseling confidentiality.](#) (1) Offender intervention programs must have policies and procedures to protect the confidentiality of the offender and the victim. The investigative criminal justice report may be used within the offender intervention counseling sessions and psychoeducational groups after precautions are taken to protect confidentiality.

(2) The counselor may contact the victim of the assault. The counselor may notify the victim that the offender intervention program is not a guarantee that the offender will not be violent. The victim may be asked to provide information about the most recent offense, the offender's history of violence, the offender's use of recreational intoxicants, the offender's use of power and control over the victim, and whether the offender has committed another offense. All precautions must be taken to prevent this contact from increasing the victim's danger.

(3) The counselor shall, when possible, warn the victim if the offender exhibits behavior or makes statements in a group meeting that indicate imminent danger to the victim. If the counselor is unable to tell the victim this information, information about these high-risk behaviors must be given to the local victim advocacy agency. This contact does not violate the offender's right to confidentiality.

### *Sex Offenders*

[45-5-512. Chemical treatment of sex offenders.](#) (1) A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be

sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section.

### *Possession of or Unlawful Use of an Intoxicating Substance*

[45-5-624. Possession of or unlawful attempt to purchase intoxicating substance -- interference with sentence or court order.](#) (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages. A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

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

(i) for a first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

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

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

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

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

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

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

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

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

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

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

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

(a) for a first offense:

(i) shall be fined an amount not less than \$100 or more than \$300;

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

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9);

(b) for a second offense:

(i) shall be fined an amount not less than \$200 or more than \$600;

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

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than \$300 or more than \$900;

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

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

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

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

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

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

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

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

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

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

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public

health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available on request to peace officers and to any court.

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

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

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

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

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

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

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

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

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

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

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

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

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

(b) For the purposes of this subsection (11), the following definitions apply:

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

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

*Section 61-8-732, MCA, with specifics about assessment, education, and treatment requirements*

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.

(1) In addition to the punishments provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

- (a) a chemical dependency assessment;
- (b) a chemical dependency education course; and
- (c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.



(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.