

2017 Montana League of Cities and Towns/City Attorney's CLE

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Legislative Changes to the Criminal Laws -- House Bill 133

In the final days of the 2017 Montana Legislative session, House Bill 133 was passed and was subsequently signed by the Governor. It became law on July 1, 2017 and applies to all relevant violations occurring on or after that date.

This bill was introduced at the request of the Commission on Sentencing and makes substantial changes to sentencing provisions in a number criminal code sections set forth in Titles 45 and 61. Highlighting a few of the changes from HB 133:

- Modifies sentencing for Theft and five other theft-related offenses and creates a “tiered” sentencing structure depending on the value of the theft (up to \$1,500; \$1,500 - \$5,000; and, over \$5,000);
- Removes jail time as an option for a number of first-time offenses, including DWS;
- Provides consistency in how felony common scheme will be applied by making all such offenses subject to the same \$1,500+ threshold;
- Removes the trial judge’s discretionary authority to order felony sex offenders to treatment as an alternative to incarceration; and,
- Eliminates mandatory minimum sentences for a number of drug-related felony offenses.

The following is a summary of the changes to the referenced criminal code sections. To caution you, this summary is not intended to serve as an exhaustive examination of changes effected by HB 133. Rather, it is intended only to highlight code sections that were revised.

- 44-5-202** Revises the law regarding the photographing and fingerprinting of accused persons and requires destruction of such records for individuals who are acquitted or have their convictions reversed or vacated.
- 45-5-207** A “high BAC alone” cannot form the basis for a charge of felony **Criminal Endangerment**. What constitutes a “high BAC” is not defined.
- 45-5-214** **Assault with a bodily fluid**, when committed by a minor, is to be referred to Youth Court.

Sexual Offenses

- 45-5-503** Sets mandatory minimum of 10 years in prison with no parole eligibility for **SIWOC** charge in which victim is 12 years or less and offender is 18 or older. Also, eliminates judicial discretion to reduce incarceration when evaluation makes suggested referral of offender to treatment.
- 45-5-507** Same as above for charge of **Incest**
- 45-5-625** Same as above for **Sexual Abuse of Children**

Theft and Related Property Offenses

- 45-2-101(8)** Increases the amount of victim's pecuniary loss required for **felony common scheme** to \$1,500.

- 45-5-301(8)** **Theft**

When value does not exceed \$1,500:

First offense, sentence is limited to a fine not to exceed \$500. No jail time.

Second offense, punishable by a fine not to exceed \$500 and/or jail time not to exceed six months.

Third or subsequent offense, fine not to exceed \$500 AND be imprisoned in county jail for a term of not less than 5 days or more than 1 year.

When value is in excess of \$1,500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value exceeds \$5,000, is part of a common scheme, or involves anhydrous ammonia for purpose of manufacturing drugs:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

When value of items stolen does not exceed \$100:

Person charged is PRESUMED to qualify for a deferred imposition of sentence IF that individual has not been convicted of another felony or misdemeanor theft within the past five years.

45-6-309 Failure to return rental property

When value is in excess of \$1,500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value exceeds \$5,000 or is part of a common scheme:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

45-6-316 Issuing a bad check

When value does not exceed \$500:

First offense, sentence is limited to a fine not to exceed \$500. No jail time.

Second offense, punishable by a fine not to exceed \$500 and/or jail time not to exceed six months.

Third or subsequent offense, fine not to exceed \$500 AND be imprisoned in county jail for a term of not less than 5 days or more than 1 year.

When value exceeds \$500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value exceeds \$5,000 or is part of a common scheme:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

45-6-317 Deceptive Practices

When value does not exceed \$1,500:

First offense, sentence is limited to a fine not to exceed \$500. No jail time.

Second offense, punishable by a fine not to exceed \$500 and/or jail time not to exceed six months.

Third or subsequent offense, fine not to exceed \$500 AND be imprisoned in county jail for a term of not less than 5 days or more than 1 year.

When value is in excess of \$1,500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value exceeds \$5,000 or is part of a common scheme:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

45-6-325 Forgery

When value does not exceed \$1,500:

First offense, sentence is limited to a fine not to exceed \$500. No jail time.

Second offense, punishable by a fine not to exceed \$500 and/or jail time not to exceed six months.

Third or subsequent offense, fine not to exceed \$500 AND be imprisoned in county jail for a term of not less than 5 days or more than 1 year.

When value is in excess of \$1,500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value exceeds \$5,000 or is part of a common scheme:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

45-6-332 Theft of Identity

When value gained or attempted to be gained does not exceed \$1,500:

First offense, sentence is limited to a fine not to exceed \$500. No jail time. The statute retains the higher possible fine of \$3,000 and possible jail time of up to one year when the victim of the ID theft is a minor.

Second offense, punishable by a fine not to exceed \$500 and/or jail time not to exceed six months.

Third or subsequent offense, fine not to exceed \$500 AND be imprisoned in county jail for a term of not less than 5 days or more than 1 year.

When value gained or attempted exceeds \$1,500 but does not exceed \$5,000:

First offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed three years. The statute retains the higher possible fine of \$20,000 and prison time of up to 20 years when the victim is a minor.

Second offense, fine not to exceed \$1,500, and/or imprisonment in state prison for term not to exceed five years.

Third or subsequent offense, imprisonment in state prison for term of not less than two years or more than five years and a fine not to exceed \$5,000.

When value gained or attempted exceeds \$5,000:

Fine not to exceed \$10,000 and/or imprisonment in state prison for term not to exceed 10 years.

NOTE:

Under section 15 of HB 133, when determining the number of convictions for penalty enhancement purposes for **Theft, Failure to Return Rental Property, Issuing a Bad Check, Deceptive Practices, Forgery, and Identity Theft**, the convictions must occur under the same section or a conviction in another state under a “similar statute.”

Interestingly, other theft-related statutes such as **Theft of Lost Property, Unauthorized Use of Motor Vehicle, Theft of Labor or Services, Theft of Nonferrous Metals, Medicaid Fraud**, etc., were not revised by this legislation.

Offenses against Public Order

45-8-101 Disorderly Conduct

For a first offense that does not involve the false transmission of the fire warning, creating a hazardous or physically offensive condition, or an explosion threat, the maximum punishment is a fine of \$100. No jail time.

For a second offense of routine disorderly conduct within one year, a fine not to exceed \$100 or be imprisoned in county jail not to exceed 10 days.

For a false fire report, creating a hazardous condition, or an explosion threat, a fine not to exceed \$1,000 and/or imprisonment in county jail for up to one year.

45-8-102 Failure of Disorderly Persons to Disperse carries a max fine of \$100 and/or one day in jail.

45-8-111 Public Nuisance has max fine of \$500 and no jail time.

Drug Offenses (penalties are substantially changed)

45-9-101 Criminal Distribution of Dangerous Drugs

For distribution (which includes giving away or sharing drugs illegally) of 60 grams or less of marijuana or 1 gram of hashish, imprisonment not to exceed five years and a possible fine not to exceed \$5,000. Mandatory min of two years eliminated.

For distribution of drugs other than marijuana or hashish, a term in the state prison not to exceed 25 years. (eliminated possible life sentence) Fine of up to \$50,000 was retained.

For an adult who sells illegal drugs to a minor:

For a first offense, imprisonment for a term not to exceed 40 years. Fine of up to \$50,000 was retained.

For a second or subsequent offense, imprisonment not to exceed life and may be fined not more than \$50,000. Mandatory minimum eliminated.

45-9-102 Criminal possession of dangerous drugs

First offense for possession of up to 60 grams of marijuana or 1 gram of hashish, a fine not to exceed \$500. No jail time.

Second offense for possession of up to 60 grams of marijuana or 1 gram of hashish, fine not to exceed \$500 and/or imprisonment in county jail for a term not to exceed 6 months.

Third or subsequent offense, fine not to exceed \$1,000 and/or imprisonment in county jail not to exceed one year.

For possession of drugs other than 60 gms of marijuana or 1 gm of hashish, imprisonment not to exceed 5 years and/or a fine not to exceed \$5,000.

45-9-103 Criminal possession with intent to distribute

For possession with intent to distribute with an aggregate weight of not more than 60 grams or less of marijuana or 1 gram of hashish, imprisonment not to exceed five years and a possible fine not to exceed \$5,000. Mandatory min of two years eliminated.

45-9-110 Criminal production or manufacture of dangerous drugs.

For any scheduled drug under MCA 50-32-101, imprisonment of not more than 25 years and may be fined not to exceed \$50,000. Mandatory minimum and possible life sentence were eliminated.

For a smaller-scale marijuana growing operation, imprisonment for a term not to exceed five years and may be fined in an amount not to exceed \$5,000.

If the total weight of the marijuana is more than one pound or there are more than 30 plants involved, the penalties are increased to imprisonment of not more than 25 years and may be fined in an amount not to exceed \$50,000. Again, the mandatory minimum is eliminated.

Revisions to Felony Sentencing Procedures

46-1-202(18) Alters and limits the definition of what will constitute a PFO. At least one of the felonies for PFO purposes must be classified as a sexual offense or a violent offense and the current felony offense must fall within five years of a prior designated event.

46-18-201 Allows for immediate placement into community supervision, prerelease center, chemical dependency treatment program, or other prerelease program following a DOC commitment. Credit for presentencing incarceration must be given for any prison time imposed.

46-18-222 Eliminates some judicial discretion to place defendant in community-based programs or treatment program as prison alternative.

Traffic offenses and licensing

- 61-5-102** For no valid DL, the maximum penalty is \$500. No jail time.
- 61-5-208** ACT education component no longer required for reinstatement following second DUI conviction.
- 61-5-212** Driving without statutory exemption no longer requires proof of suspended license. Upon conviction for DWS, fine is up to \$500 and/or six months in jail. Second offense driving without statutory exemption is punishable by not less than two days in jail or more than six months and/or fine not to exceed \$500.
- A person convicted of driving during a suspension or revocation period may be fined not to exceed \$500 and/or jailed for up to six months;
- UNLESS,**
- the suspension or revocation was for a conviction for a DUI, Per Se, commercial vehicle DUI, or a testing refusal,
- THEN,**
- Driving while under suspension for DUI or refusal carries jail time of not less than two days or more than six months and/or a fine of up to \$2,000 and up to 40 hours community service if ordered by the Judge.
- Also, the vehicle seizure option has been eliminated for DWS convictions..
- 61-6-304** Eliminates jail time for first or second offense No Insurance or Failure to Show Proof of Insurance violations. Jail time may be imposed for third and subsequent violations. The Court may no longer suspend the fine. Prohibition against deferred imposition of sentence was eliminated for No Insurance.

DUI Sentencing revisions

61-8-731 Upon conviction for felony DUI, court may sentence defendant to treatment court for a term of up to five years AND assess a fine of not less than \$5,000 or more than \$10,000.

In addition, a court may suspend a sentence but may not defer a sentence.

61-8-732 Clarifies that chemical dependency education course is required only for first offense DUI.

In addition, course must be “evidence based.” (i.e., be somewhat validated scientifically.)

Defendant may use health insurance benefits to pay for course.

The Judge has discretionary authority to require defendant to complete a chemical dependency assessment prior to sentencing. If not ordered or completed prior to sentencing, the court shall order the CD assessment as part of the sentence.

Directs the DPHHS to prepare ARM’s setting standards for authorized CD education and treatment programs.

Court may order treatment for first offense DUI if a LAC issues a finding that the defendant suffers from a “moderate or severe alcohol or drug use disorder.” If treatment is ordered, the CD education course is not required.