

1 HOUSE BILL NO. 442

2 INTRODUCED BY J. READ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EVIDENCE LAWS; DEFINING THE TERM
5 "OBJECTIVE EVIDENCE"; REQUIRING THE TESTIMONY OF ONE WITNESS TO BE SUPPORTED BY
6 CORROBORATIVE AND OBJECTIVE EVIDENCE OR THE TESTIMONY OF TWO WITNESSES TO PROVE
7 A FACT; ESTABLISHING THE PRESUMPTION THAT A SINGLE WITNESS TO A FACT IS MISTAKEN;
8 ESTABLISHING A METHOD FOR OVERCOMING PRESUMPTION OF MISTAKE; AMENDING THE BURDEN
9 OF PROOF FOR SITUATIONS IN WHICH A FACT ASSERTED BY A SINGLE WITNESS IS DISPUTED;
10 REQUIRING THE TESTIMONY OF ONE WITNESS SUPPORTED BY CORROBORATIVE AND OBJECTIVE
11 EVIDENCE OR THE TESTIMONY OF TWO WITNESSES TO SUSTAIN A CONVICTION; AND AMENDING
12 SECTIONS 26-1-102, 26-1-301, 26-1-302, 26-1-401, 46-15-323, AND 46-16-202, MCA."

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

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16 **Section 1.** Section 26-1-102, MCA, is amended to read:

17 **"26-1-102. Definitions -- kinds of evidence.** (1) "Circumstantial evidence" is evidence that ~~which~~ tends
18 to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact
19 but affords an inference or presumption of its existence.

20 (2) (a) "Conclusive evidence" is evidence that ~~which~~ the law does not permit to be contradicted.

21 (b) No evidence is by law made conclusive unless so declared by statute.

22 (3) "Corroborative evidence" is additional evidence of a different character to the same point.

23 (4) "Cumulative evidence" is additional evidence of the same character to the same point.

24 (5) "Direct evidence" is evidence that ~~which~~ proves a fact without an inference or presumption and which
25 in itself, if true, establishes that fact.

26 (6) "Objective evidence" is documentary, electronic, or physical evidence that is capable of entry into
27 a court record as an exhibit, that is independent of an eyewitness or observer, and that corroborates the
28 testimony of the eyewitness or observer.

29 ~~(6)~~(7) "Prima facie evidence" is that which proves a particular fact until contradicted and overcome by
30 other evidence."

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Section 2. Section 26-1-301, MCA, is amended to read:

"26-1-301. One witness sufficient to ~~prove~~ assert a fact -- one witness supported by additional evidence, or two witnesses, sufficient to prove fact. (1) The direct evidence of one witness who is entitled to full credit is sufficient for ~~proof of~~ to assert any fact, except perjury and treason.

(2) The direct evidence of one witness who is entitled to full credit and that is supported by corroborative and objective evidence is sufficient for proof of any fact, except perjury or treason.

(3) The direct evidence of two witnesses who are entitled to full credit is sufficient for proof of any fact."

Section 3. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth -- how presumption rebutted -- single witness presumed to be mistaken -- how presumption rebutted. (1) A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of a witness's credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness's testimony. The matters include but are not limited to:

(1)(a) the demeanor or manner of the witness while testifying;

(2)(b) the character of the witness's testimony;

(3)(c) bias of the witness for or against any party involved in the case;

(4)(d) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5)(e) the witness's character for truth, honesty, or integrity;

(6)(f) the extent of the witness's capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which the witness testifies;

(7)(g) inconsistent statements of the witness;

(8)(h) an admission of untruthfulness by the witness;

(9)(i) other evidence contradicting the witness's testimony.

(2) A single witness asserting a fact is presumed to be mistaken. The presumption may be controverted and overcome with:

(a) testimony by an additional witness who is entitled to full credit asserting the fact; or

(b) corroborative and objective evidence."

1 **Section 4.** Section 26-1-401, MCA, is amended to read:

2 **"26-1-401. Who has burden of producing evidence.** (1) The initial burden of producing evidence as
3 to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter,
4 the burden of producing evidence is on the party who would suffer a finding against that party in the absence of
5 further evidence.

6 (2) If a fact asserted by a single witness is disputed by a fact asserted by another single witness who
7 is entitled to full credit, the party bearing the burden of proof must produce an additional witness who is entitled
8 to full credit or produce corroborative and objective evidence to meet the party's burden of proof as to the fact
9 asserted."

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11 **Section 5.** Section 46-15-323, MCA, is amended to read:

12 **"46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment
13 or information and after a finding by the court that the indictment or information is supported by the sworn
14 statement of one witness and by corroborative and objective evidence or the indictment or information is
15 supported by the sworn statements of two witnesses, the defendant, in connection with the particular crime
16 charged and upon written request of the prosecutor and approval of the court:

17 (a) shall appear in a lineup;

18 (b) shall speak for identification by witnesses;

19 (c) must be fingerprinted, palm printed, footprinted, or voiceprinted;

20 (d) shall pose for photographs not involving reenactment of an event;

21 (e) shall try on clothing;

22 (f) shall permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified
23 materials that do not involve unreasonable bodily intrusions;

24 (g) shall provide handwriting samples; or

25 (h) shall submit to a reasonable physical or medical inspection; however, the inspection does not include
26 psychiatric or psychological examination.

27 (2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the
28 defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at
29 trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken
30 identity.

1 (3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist,
2 psychologist, or advanced practice registered nurse or at a later time as the court may for good cause permit,
3 the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence
4 at trial of the defense that because of a mental disease or disorder, the defendant did not have a particular state
5 of mind that is an essential element of the offense charged.

6 (4) The notice must specify for each defense the names and addresses of the persons, other than the
7 defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports
8 or statements made by them, including all reports and statements concerning the results of physical
9 examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a
10 privileged report or statement unless the defendant intends to use the privileged report or statement, or the
11 witness who made it, at trial.

12 (5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses
13 the names of any additional witnesses and disclose their reports or statements as required by this section. After
14 the trial commences, no witness may be called by the defendant in support of these defenses unless the name
15 of the witness is included on the list and the witness's report or statement has been disclosed as required by this
16 section, except for good cause shown.

17 (6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the
18 defendant shall make available to the prosecutor for testing, examination, or reproduction:

19 (a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant
20 may call as witnesses in the defense case in chief, together with their statements;

21 (b) the names and addresses of experts whom the defendant may call at trial, together with the results
22 of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and
23 statements made by these experts in connection with the particular case; and

24 (c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

25 (7) The defendant's obligation under this section extends to material and information within the
26 possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

27 (8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation
28 of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without
29 undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or
30 information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person

1 to make the material or information available to the prosecutor. The court may, upon request of any person
2 affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The
3 defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

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5 **Section 6.** Section 46-16-202, MCA, is amended to read:

6 **"46-16-202. Evidence required in a criminal trial -- evidence on trial for treason.** (1) Except as
7 provided in subsection (2), a defendant in a criminal trial may not be convicted unless on the testimony of a
8 witness who is entitled to full credit and is supported by corroborative and objective evidence or on the testimony
9 of two witnesses who are entitled to full credit for each fact necessary to sustain a conviction.

10 (2) Upon a trial for treason, the defendant ~~cannot~~ may not be convicted unless ~~upon~~ on the testimony of
11 two witnesses to the same overt act or ~~upon~~ on confession in open court, ~~nor can evidence~~ Evidence may not
12 be admitted of an overt act not expressly charged in the indictment or information, ~~nor can~~ and the defendant may
13 not be convicted unless one or more overt acts ~~be~~ are expressly alleged ~~therein~~ in the indictment or information."

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