

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE PERSISTENT FELONY OFFENDER
5 DESIGNATION; AMENDING SECTIONS 46-1-202, 46-13-110, 46-18-115, 46-18-222, 46-18-303, AND
6 46-18-1001, MCA; REPEALING SECTIONS 46-13-108, 46-18-501, AND 46-18-502, MCA; AND PROVIDING
7 AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

10
11 **Section 1.** Section 46-1-202, MCA, is amended to read:

12 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following
13 definitions apply:

14 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice
15 registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

16 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering
17 a charge.

18 (3) "Arrest" means taking a person into custody in the manner authorized by law.

19 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other
20 person specifically named commanding that officer or person to arrest another. The term includes the original
21 warrant of arrest and a copy certified by the issuing court.

22 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant
23 in a pending criminal proceeding.

24 (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is
25 presented to a court, and that is contained in a complaint, information, or indictment.

26 (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon
27 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized
28 to try the case without a jury.

29 (8) "Court" means a place where justice is judicially administered and includes the judge of the court.

30 (9) "Included offense" means an offense that:



1 (a) is established by proof of the same or less than all the facts required to establish the commission of
2 the offense charged;

3 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in
4 the offense charged; or

5 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same
6 person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

7 (10) "Judge" means a person who is vested by law with the power to perform judicial functions.

8 (11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the
9 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

10 (12) "Make available for examination and reproduction" means to make material and information that is
11 subject to disclosure available upon request at a designated place during specified reasonable times and to
12 provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party
13 is required to make copies at its expense, to deliver the materials or information to the other party, or to supply
14 the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make
15 other or additional arrangements.

16 (13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict
17 or finding has been rendered.

18 (14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a
19 person to appear before a court at a stated time and place to answer a charge for the alleged commission of an
20 offense.

21 (15) "Offense" means a violation of any penal statute of this state or any ordinance of its political
22 subdivisions.

23 (16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and
24 parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and
25 parole and the supervision of the department of corrections.

26 (17) "Peace officer" means any person who by virtue of the person's office or public employment is vested
27 by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the
28 person's authority.

29 ~~(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and~~
30 ~~who is presently being sentenced for a second felony committed on a different occasion than the first. An offender~~

1 is considered to have been previously convicted of a felony if:

2 ~~—— (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for~~
3 ~~which a sentence of imprisonment in excess of 1 year could have been imposed;~~

4 ~~—— (b) less than 5 years have elapsed between the commission of the present offense and either:~~

5 ~~—— (i) the previous felony conviction; or~~

6 ~~—— (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result~~
7 ~~of a previous felony conviction; and~~

8 ~~(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set~~
9 ~~aside at the postconviction hearing.~~

10 ~~(19)(18)~~ "Place of trial" means the geographical location and political subdivision in which the court that
11 will hear the cause is situated.

12 ~~(20)(19)~~ "Preliminary examination" means a hearing before a judge for the purpose of determining if there
13 is probable cause to believe a felony has been committed by the defendant.

14 ~~(21)(20)~~ "Probation" means release by the court without imprisonment of a defendant found guilty of a
15 crime. The release is subject to the supervision of the department of corrections upon direction of the court.

16 ~~(22)(21)~~ "Prosecutor" means an elected or appointed attorney who is vested by law with the power to
17 initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

18 ~~(23)(22)~~ "Same transaction" means conduct consisting of a series of acts or omissions that are motivated
19 by:

20 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the
21 accomplishment of that objective; or

22 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon
23 the same person or the property of the same person.

24 ~~(24)(23)~~ "Search warrant" means an order that is:

25 (a) in writing;

26 (b) in the name of the state;

27 (c) signed by a judge;

28 (d) a particular description of the place, object, or person to be searched and the evidence, contraband,
29 or person to be seized; and

30 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or

1 persons.

2 ~~(25)~~(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo
3 contendere or upon a verdict or finding of guilty.

4 ~~(26)~~(25) "Statement" means:

5 (a) a writing signed or otherwise adopted or approved by a person;

6 (b) a video or audio recording of a person's communications or a transcript of the communications; and

7 (c) a writing containing a summary of a person's oral communications or admissions.

8 ~~(27)~~(26) "Summons" means a written order issued by the court that commands a person to appear before
9 a court at a stated time and place to answer a charge for the offense set forth in the order.

10 ~~(28)~~(27) "Superseded notes" means handwritten notes, including field notes, that have been substantially
11 incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure
12 except as provided in 46-15-324.

13 ~~(29)~~(28) "Temporary road block" means any structure, device, or means used by a peace officer for the
14 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

15 ~~(30)~~(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a
16 grand jury or in a criminal action, prosecution, or proceeding.

17 ~~(31)~~(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both
18 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense
19 counsel, or their staff or investigators."

20

21 **Section 2.** Section 46-13-110, MCA, is amended to read:

22 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but
23 not less than 30 days before trial, the court shall hold an omnibus hearing.

24 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

25 (3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the
26 defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to
27 the case, including but not limited to:

28 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

29 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

30 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

- 1 (d) notification of the existence of a plea agreement, 46-12-211;
 2 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;
 3 (f) notice of reliance on certain defenses, 46-15-323;
 4 ~~(g) notice of seeking persistent felony offender status, 46-13-108;~~
 5 ~~(h)~~(g) motion to suppress, 46-13-301 and 46-13-302;
 6 ~~(i)~~(h) motion to dismiss, 46-13-401 and 46-13-402;
 7 ~~(j)~~(i) motion for change of place of trial, 46-13-203 through 46-13-205;
 8 ~~(k)~~(j) reasonableness of bail, Title 46, chapter 9; and
 9 ~~(l)~~(k) stipulations.

10 (4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be
 11 signed by the court and counsel and filed with the court.

12 (5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time
 13 of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers
 14 necessary."
 15

16 **Section 3.** Section 46-18-115, MCA, is amended to read:

17 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.** Before
 18 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of
 19 guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

20 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition,
 21 including the imposition of a sentence enhancement penalty and the applicability of mandatory minimum
 22 sentences, ~~persistent felony offender status~~, or an exception to these matters.

23 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by
 24 46-18-301.

25 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the
 26 defendant personally to ascertain whether the defendant wishes to make a statement and to present any
 27 information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant
 28 wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes
 29 of this section, the requirement that the court address the defendant personally may be satisfied by the use of
 30 two-way electronic audio-video communication. Audio-video communication may be used if neither party objects

1 and the court agrees to its use and has informed the defendant that the defendant has the right to object to its
2 use. The audio-video communication must operate as provided in 46-12-201.

3 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the
4 victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
5 opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing
6 before the sentencing hearing or orally under oath at the sentencing hearing, or both.

7 (b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant
8 prior to imposing sentence.

9 (c) The court shall consider the victim's statement along with other factors. However, if the victim's
10 statement includes new material facts upon which the court intends to rely, the court shall allow the defendant
11 adequate opportunity to respond and may continue the sentencing hearing if necessary.

12 (5) The court shall impose sentence or make any other disposition authorized by law.

13 (6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions,
14 conditions, or enhancements imposed, in open court on the record and in the written judgment."
15

16 **Section 4.** Section 46-18-222, MCA, is amended to read:

17 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
18 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences
19 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
20 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
21 46-18-221(3), and 46-18-224, and ~~46-18-502(3)~~; and restrictions on parole eligibility prescribed by 45-5-503(4),
22 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

23 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the
24 offender is to be sentenced;

25 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender
26 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the
27 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
28 impairment for the purposes of this subsection.

29 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
30 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the

1 prosecution;

2 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of
3 another, and the offender's participation was relatively minor;

4 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element
5 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of
6 the offense; or

7 (6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
8 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings contained in a psychosexual
9 evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that
10 treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community
11 affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and
12 society, in which case the judge shall include in its judgment a statement of the reasons for its determination."
13

14 **Section 5.** Section 46-18-303, MCA, is amended to read:

15 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

16 (1) (a) The offense was deliberate homicide and was committed:

17 (i) by an offender while in official detention, as defined in 45-2-101;

18 (ii) by an offender who had been previously convicted of another deliberate homicide;

19 (iii) by means of torture;

20 (iv) by an offender lying in wait or ambush;

21 (v) as a part of a scheme or operation that, if completed, would result in the death of more than one
22 person; or

23 (vi) by an offender during the course of committing sexual assault, sexual intercourse without consent,
24 deviate sexual conduct, or incest, and the victim was less than 18 years of age.

25 (b) The offense was deliberate homicide, as defined in 45-5-102(1)(a), and the victim was a peace officer
26 killed while performing the officer's duty.

27 (2) The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct
28 action of the offender of a person who rescued or attempted to rescue the victim.

29 (3) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping
30 committed while in official detention, as defined in 45-2-101, by an offender who has been previously:

1 ~~———(a) convicted of the offense of deliberate homicide; or~~
 2 ~~———(b) found to be a persistent felony offender pursuant to part 5 of this chapter, and one of the convictions~~
 3 ~~was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not~~
 4 ~~less than 2 years.~~

5 (4) The offense was sexual intercourse without consent, the offender has a previous conviction of sexual
 6 intercourse without consent in this state or of an offense under the laws of another state or of the United States
 7 that if committed in this state would be the offense of sexual intercourse without consent, and the offender inflicted
 8 serious bodily injury upon a person in the course of committing each offense."

9

10 **Section 6.** Section 46-18-1001, MCA, is amended to read:

11 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

12 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living
 13 area approved by the supervising authority.

14 (b) When more than one residence or family are located on a single piece of property, the term does not
 15 include the residence of any other person who is not part of the social unit formed by the offender's immediate
 16 family.

17 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
 18 procedures and conditions imposed under this part. It does not include intensive supervision by the department
 19 of corrections.

20 (3) "Monitoring device" means an electronic device or apparatus capable of recording or transmitting
 21 information concerning the offender's presence in or absence from the home. The device may include an
 22 apparatus for testing the offender's breath for the presence of alcohol. A telephone alone is not a monitoring
 23 device.

24 (4) "Supervising authority" means:

25 (a) in the case of an adult felon, the department of corrections;

26 (b) in the case of an adult misdemeanor, a court-approved entity other than the department of
 27 corrections; or

28 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity
 29 appointed by the court.

30 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent

1 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual
2 intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt
3 to commit an enumerated offense, ~~or conviction as a persistent felony offender when the offender has a felony~~
4 ~~conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction."~~

5
6 **NEW SECTION. Section 7. Repealer.** The following sections of the Montana Code Annotated are
7 repealed:

8 46-13-108. Notice by prosecutor seeking persistent felony offender status.

9 46-18-501. Definition of persistent felony offender.

10 46-18-502. Sentencing of persistent felony offender.

11

12 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2017.

13

14 **NEW SECTION. Section 9. Applicability.** [This act] applies to offenses committed after June 30, 2017.

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- END -