

## 1 HOUSE BILL NO. 522

2 INTRODUCED BY S. LAVIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO UNITED STATES BORDER  
5 PATROL AGENTS; PROVIDING QUALIFIED IMMUNITY FOR UNITED STATES BORDER PATROL AGENTS;  
6 PROVIDING THAT UNITED STATES BORDER PATROL AGENTS MAY MAKE ARRESTS UNDER CERTAIN  
7 CIRCUMSTANCES; PROVIDING A DEFINITION OF "UNITED STATES BORDER PATROL AGENT"; LIMITING  
8 GOVERNMENTAL LIABILITY; AND AMENDING SECTION 46-1-202, MCA."

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

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12 **NEW SECTION. Section 1. Liability of United States border patrol agents.** A United States border  
13 patrol agent, acting solely under the authority of 44-11-101, may not be considered, for liability purposes, as an  
14 employee or agent of this state or any Montana law enforcement agency for the agent's actions within Montana.  
15 The United States border patrol agent is considered under all circumstances to be an employee of United States  
16 customs and border protection. For the purposes of the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., a  
17 United States border patrol agent acts within the scope of the agent's office or employment while acting pursuant  
18 to 44-11-101. This section does not limit any authority to act that a United States border patrol agent has under  
19 federal law. For the purposes of 44-11-101, United States border patrol agents are considered peace officers as  
20 provided in 46-1-202.

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22 **NEW SECTION. Section 2. Arrest by United States border patrol agent.** A United States border  
23 patrol agent who is responding to a request for assistance from a peace officer or any law enforcement entity of  
24 any county or municipality or a state government law enforcement entity pursuant to 44-11-101 may make an  
25 arrest without a warrant if one or more of the following situations exist:

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(1) A person commits or attempts to commit an offense in the agent's presence.

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(2) The agent believes on reasonable grounds that the person is committing an offense or that the  
28 person committed an offense and the circumstances require the person's immediate arrest.

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(3) The agent believes on reasonable grounds that a warrant for the person's arrest has been issued  
30 in this state.

1 (4) The agent believes on reasonable grounds that a felony warrant for the person's arrest has been  
2 issued in another jurisdiction.

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4 **Section 3.** Section 46-1-202, MCA, is amended to read:

5 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following  
6 definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (18) "Persistent felony offender" means an offender who has previously been convicted of a felony and  
23 who is presently being sentenced for a second felony committed on a different occasion than the first. An offender  
24 is considered to have been previously convicted of a felony if:

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

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

28 (i) the previous felony conviction; or

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

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

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

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

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

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

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

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

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

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

17 (a) in writing;

18 (b) in the name of the state;

19 (c) signed by a judge;

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

22 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or  
23 persons.

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

26 (26) "Statement" means:

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

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

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

30 (27) "Summons" means a written order issued by the court that commands a person to appear before

1 a court at a stated time and place to answer a charge for the offense set forth in the order.

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

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

7 (30) "United States border patrol agent" means a person who is employed as a full-time law enforcement  
8 officer by United States customs and border protection within the 1896 series of the general schedule  
9 classification system, who is authorized to arrest, with or without a warrant, a person for violations of the United  
10 States code, and who is authorized to carry firearms while acting within the scope of the person's authority.

11 ~~(30)~~(31) "Witness" means a person whose testimony is desired in a proceeding or investigation by a  
12 grand jury or in a criminal action, prosecution, or proceeding.

13 ~~(31)~~(32) "Work product" means legal research, records, correspondence, reports, and memoranda, both  
14 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense  
15 counsel, or their staff or investigators."

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17 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an  
18 integral part of Title 44, chapter 11, part 1, and the provisions of Title 44, chapter 11, part 1, apply to [section 1].

19 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 6, part 4, and the  
20 provisions of Title 46, chapter 6, part 4, apply to [section 2].

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22 **NEW SECTION. Section 5. Two-thirds vote required.** Because [section 1] limits governmental liability,  
23 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for  
24 passage.

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