

1 SENATE BILL NO. 96

2 INTRODUCED BY B. USHER

3 BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SEPARATE DEFINITION FOR A PERSISTENT
6 FELONY OFFENDER UNDER SUPERVISION; AND AMENDING SECTIONS 46-1-202, 46-13-108, AND 46-
7 18-502, MCA."
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
17 answering 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
23 defendant in a pending criminal proceeding.

24 (6) "Charge" means a written statement that accuses a person of the commission of an offense,
25 that is 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
27 upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction
28 authorized to try the case without a jury.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (18) "Persistent felony offender" means an offender who has previously been convicted of two
5 separate felonies and who is presently being sentenced for a third felony committed on a different occasion
6 than either of the first two felonies, except for an offender who WAS ~~is currently an inmate~~ or on conditional
7 release, felony probation, or felony parole AT THE TIME THE FELONY FOR WHICH THE OFFENDER IS PRESENTLY BEING
8 SENTENCED WAS COMMITTED. At least one of the three felonies must be a sexual offense or a violent offense as
9 those terms are defined in 46-23-502. An offender is considered to have previously been convicted of two
10 separate felonies if:

- 11 (a) the two previous felonies were for offenses that were committed in this state or any other
12 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;
- 13 (b) less than 5 years have elapsed between the commission of the present offense and either:
- 14 (i) the most recent of the two felony convictions; or
- 15 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a
16 result of a previous felony conviction; and
- 17 (c) the offender has not been pardoned on the ground of innocence and the conviction has not
18 been set aside at a postconviction hearing.

- 19 (19) (a) "Persistent felony offender under supervision" means an offender who:
- 20 (i) WAS ~~is currently an inmate~~ or on conditional release, felony probation, or felony parole AT THE
21 TIME THE OFFENSE FOR WHICH THE OFFENDER IS PRESENTLY BEING SENTENCED WAS COMMITTED;
- 22 (ii) has previously been convicted of two separate felonies; and
- 23 (iii) is presently being sentenced for a third felony, except as provided in subsection (19)(c).
- 24 (b) An offender is considered to have previously been convicted of two separate felonies if:
- 25 (i) the two previous felonies were for offenses that were committed in this state or any other
26 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;
- 27 (ii) less than 5 years have elapsed between the commission of the present offense and either:
- 28 (A) the most recent of the two felony convictions; or

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

3 (iii) the offender has not been pardoned on the ground of innocence and the conviction has not
4 been set aside at a postconviction hearing.

5 (c) A third felony may not include criminal possession of dangerous drugs pursuant to 45-9-102, a
6 fourth or subsequent offense of driving under the influence pursuant to 61-8-1002, or failure to register pursuant
7 to Title 46, chapter 23.

8 ~~(19)~~(20) "Place of trial" means the geographical location and political subdivision in which the court
9 that will hear the cause is situated.

10 ~~(20)~~(21) "Preliminary examination" means a hearing before a judge for the purpose of determining if
11 there is probable cause to believe a felony has been committed by the defendant.

12 ~~(21)~~(22) "Probation" means release by the court without imprisonment of a defendant found guilty of a
13 crime. The release is subject to the supervision of the department of corrections upon direction of the court.

14 ~~(22)~~(23) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to
15 initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

16 ~~(23)~~(24) "Same transaction" means conduct consisting of a series of acts or omissions that are
17 motivated by:

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

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

22 ~~(24)~~(25) "Search warrant" means an order that is:

23 (a) in writing;

24 (b) in the name of the state;

25 (c) signed by a judge;

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

28 (e) directed to a peace officer and commands the peace officer to search for evidence,

1 contraband, or persons.

2 ~~(25)~~(26) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or
3 nolo contendere or upon a verdict or finding of guilty.

4 ~~(26)~~(27) "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;

7 and

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

9 ~~(27)~~(28) "Summons" means a written order issued by the court that commands a person to appear
10 before a court at a stated time and place to answer a charge for the offense set forth in the order.

11 ~~(28)~~(29) "Superseded notes" means handwritten notes, including field notes, that have been
12 substantially incorporated into a statement. The notes may not be considered a statement and are not subject
13 to disclosure except as provided in 46-15-324.

14 ~~(29)~~(30) "Temporary road block" means any structure, device, or means used by a peace officer for the
15 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

16 ~~(30)~~(31) "Witness" means a person whose testimony is desired in a proceeding or investigation by a
17 grand jury or in a criminal action, prosecution, or proceeding.

18 ~~(31)~~(32) "Work product" means legal research, records, correspondence, reports, and memoranda,
19 both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor,
20 defense counsel, or their staff or investigators."

21

22 **Section 2.** Section 46-13-108, MCA, is amended to read:

23 **"46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good
24 cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender or a persistent
25 felony offender under supervision, notice of that fact must be given at or before the omnibus hearing pursuant
26 to 46-13-110.

27 (2) The notice must specify the alleged prior convictions and may not be made known to the jury
28 before the verdict is returned except as allowed by the Montana Rules of Evidence.

1 (3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a
2 hearing to determine if the allegations in the notice are true.

3 (4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior
4 convictions are true, the accused must be sentenced as provided by law.

5 (5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo
6 contendere is given by the defendant."

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8 **Section 3.** Section 46-18-502, MCA, is amended to read:

9 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and
10 subsection (2) of this section, a persistent felony offender or a persistent felony offender under supervision shall
11 be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an
12 amount not to exceed \$50,000, or both, if the offender was 21 years of age or older at the time of the
13 commission of the present offense.

14 (2) Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of
15 not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if:

16 (a) the offender was a persistent felony offender or a persistent felony offender under supervision,
17 as defined in 46-1-202, at the time of the offender's previous felony conviction;

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

19 (i) the previous felony conviction; or

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

22 (c) the offender was 21 years of age or older at the time of the commission of the present offense.

23 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence
24 imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of
25 this section may not be deferred or suspended.

26 (4) Any sentence imposed under subsection (2) must run consecutively to any other sentence
27 imposed."

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