

**Unofficial Draft Copy - CJOC 3**

For review by the Criminal Justice Oversight Council on 6/28/2022

67th Legislature

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CJOC 3

Drafter: Milly Allen, 406-444-9280

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\*\*\*\* BILL NO. \*\*\*\*

INTRODUCED BY \*\*\*\*

BY REQUEST OF THE \*\*\*\*

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SEPARATE DEFINITION FOR A PERSISTENT FELONY OFFENDER UNDER SUPERVISION; AND AMENDING SECTIONS 46-1-202, 46-13-108, AND 46-18-502, MCA; AMENDING SECTIONS 46-1-202, 46-13-108, AND 46-18-502, MCA; PROVIDING AN APPLICABILITY DATE."

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

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

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

- (1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.
- (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.
- (3) "Arrest" means taking a person into custody in the manner authorized by law.
- (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.
- (5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.
- (6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.
- (7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction

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1 authorized to try the case without a jury.

2 (8) "Court" means a place where justice is judicially administered and includes the judge of the 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 commission  
5 of the offense charged;

6 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included  
7 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 that is  
14 subject to disclosure available upon request at a designated place during specified reasonable times and to  
15 provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party  
16 is required to make copies at its expense, to deliver the materials or information to the other party, or to supply  
17 the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent  
18 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 a  
22 person to appear before a court at a stated time and place to answer a charge for the alleged commission of an  
23 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 pardons  
27 and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons  
28 and parole and the supervision of the department of corrections.

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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 currently on probation or parole. At least one of the  
7 three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502. An  
8 offender is considered to have previously been convicted of two separate felonies if:

9 (a) the two previous felonies were for offenses that were committed in this state or any other  
10 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

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

12 (i) the most recent of the two felony convictions; or

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

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

17 (19) (a) "Persistent felony offender under supervision" means an offender who is on felony probation or  
18 felony parole, has been convicted of two separate felonies, and who is presently being sentenced for a third  
19 felony committed while on felony probation or parole except as provided in subsection (c).

20 (b) An offender is considered to have previously been convicted of two separate felonies if:

21 (i) the two previous felonies were for offenses that were committed in this state or any other

22 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

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

24 (A) the most recent of the two felony convictions; or

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

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

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1 (c) A third felony may not include criminal possession of dangerous drugs under 45-9-102 or failure to  
2 register pursuant to Title 46, chapter 23.

3  
4 ~~(2049)~~ "Place of trial" means the geographical location and political subdivision in which the court that  
5 will hear the cause is situated.

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

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

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

12 ~~(243)~~ "Same transaction" means conduct consisting of a series of acts or omissions that are motivated  
13 by:

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

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

18 ~~(254)~~ "Search warrant" means an order that is:

19 (a) in writing;

20 (b) in the name of the state;

21 (c) signed by a judge;

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

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

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

28 ~~(276)~~ "Statement" means:

- 1 (a) a writing signed or otherwise adopted or approved by a person;
- 2 (b) a video or audio recording of a person's communications or a transcript of the communications;
- 3 and
- 4 (c) a writing containing a summary of a person's oral communications or admissions.

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

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

10 ~~(3029)~~ "Temporary road block" means any structure, device, or means used by a peace officer for the  
11 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

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

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

17

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

19 **"46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good  
20 cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender or persistent  
21 felony offender under supervision, notice of that fact must be given at or before the omnibus hearing pursuant  
22 to 46-13-110.

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

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

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

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1 (5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere  
2 is given by the defendant."  
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4 **Section 3.** Section 46-18-502, MCA, is amended to read:

5 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and  
6 subsection (2) of this section, a persistent felony offender or persistent felony offender under supervision, shall  
7 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  
8 amount not to exceed \$50,000, or both, if the offender was 21 years of age or older at the time of the  
9 commission of the present offense.

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

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

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

15 (i) the previous felony conviction; or

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

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

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

22 (4) Any sentence imposed under subsection (2) must run consecutively to any other sentence  
23 imposed."  
24

25 - END -