

## HOUSE BILL NO. 702

INTRODUCED BY K. SEEKINS-CROWE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CRIMINAL ACTS; CREATING THE OFFENSE OF OPERATING AN UNAUTHORIZED, UNMANNED AERIAL VEHICLE OVER A CORRECTIONAL INSTITUTION; REVISING SENTENCING FOR ASSAULT WITH BODILY FLUID; REVISING LAWS RELATED TO POSSESSING AND TRANSFERRING ILLEGAL ARTICLES; PROVIDING A DEFINITION; REVISING THE DEFINITION OF "PERSISTENT FELONY OFFENDER"; AND AMENDING SECTIONS 45-5-214, 45-7-307, AND 46-1-202, MCA."

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

**NEW SECTION. Section 1. Operating unauthorized, unmanned aerial vehicle over correctional institution.** (1) A person commits the offense of operating an unauthorized, unmanned aerial vehicle in proximity to a correctional institution if the person purposely or knowingly operates or assists in the operation of an unmanned aerial vehicle over a correctional institution without the authorization of the correctional institution.

(2) A person convicted of the offense of operating an unauthorized, unmanned aerial vehicle in proximity to a correctional institution shall be imprisoned in a state prison for a term of not less than 1 year or more than 5 years.

**Section 2.** Section 45-5-214, MCA, is amended to read:

**"45-5-214. Assault with bodily fluid.** (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city,

1 or regional jail or detention facility, or a health care facility; or

2 (iii) if the person is a minor, while the youth is detained in or being transported to or from a county,  
3 city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention  
4 facility, short-term detention center, correctional facility as defined in 41-5-103, health care facility, or shelter  
5 care facility; or

6 (b) an emergency responder.

7 (2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to  
8 exceed \$1,000 or incarcerated in ~~a county jail or a state prison~~ for a term not to exceed ~~4-year~~ 3 years, or both.

9 (3) The youth court has jurisdiction of any violation of this section by a minor.

10 (4) As used in this section, the following definitions apply:

11 (a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and  
12 saliva.

13 (b) "Emergency responder" means a licensed medical services provider, law enforcement officer,  
14 firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency care provider,  
15 emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith  
16 renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

17  
18 **Section 3.** Section 45-7-307, MCA, is amended to read:

19 **"45-7-307. Transferring Possessing or transferring illegal articles -- unauthorized**  
20 **communication.** (1) (a) A person commits the offense of possessing or transferring illegal articles if the person  
21 knowingly or purposely possesses or transfers any illegal article or weapon to a person subject to official  
22 detention or is transferred any illegal article or weapon by a person subject to official detention.

23 (b) For the purposes of this section, "illegal article" means a cellphone, tobacco, a weapon, a  
24 dangerous drug as defined in 50-32-101, or other article prohibited by the correctional institution or the  
25 department of corrections.

26 (b)(c) A person convicted of possessing or transferring illegal articles or a weapon shall be:

27 (i) imprisoned in a state prison for a term not to exceed 20 years, if the item transferred is a  
28 weapon;

(ii) imprisoned in a state prison for a term not to exceed 10 years, if the illegal article is a dangerous drug, as defined in 50-32-101; or

(iii) imprisoned in a state prison for a term not to exceed 13 months or be fined an amount not more than \$1,500, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person incarcerated in a state prison, as defined in 53-30-101, or be fined an amount not more than \$100 or be imprisoned in the county jail for any term not to exceed 10 days, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person incarcerated in a place other than a state prison.

~~(e)(d)~~ Subsection ~~(1)(b)(iii)~~ (1)(c)(iii) does not apply unless the offender knew or was given sufficient notice so that the offender reasonably should have known that the article conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if the person knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of the official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined an amount not to exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

**Section 4.** 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           (18) "Persistent felony offender" means an offender who has previously been convicted of two  
10 separate felonies and who is presently being sentenced for a third felony committed on a different occasion  
11 than either of the first two felonies, except for an offender who was on conditional release, felony probation, or  
12 felony parole at the time the felony for which the offender is presently being sentenced was committed. At least  
13 one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502.  
14 An offender is considered to have previously been convicted of two separate felonies if:

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

17           (b) (i) the offender was an inmate, as defined in 45-2-101, at the time the crime for which the  
18 offender is being sentenced as a persistent felony offender was committed; or

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

20           ~~(i)(A)~~ the most recent of the two felony convictions; or

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

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

25           (19) (a) "Persistent felony offender under supervision" means an offender who:

26           (i) was on conditional release, felony probation, or felony parole at the time the offense for which  
27 the offender is presently being sentenced was committed;

28           (ii) has previously been convicted of two separate felonies; and

1 (iii) is presently being sentenced for a third felony, except as provided in subsection (19)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (25) "Search warrant" means an order that is:

- 1 (a) in writing;
- 2 (b) in the name of the state;
- 3 (c) signed by a judge;
- 4 (d) a particular description of the place, object, or person to be searched and the evidence,
- 5 contraband, or person to be seized; and
- 6 (e) directed to a peace officer and commands the peace officer to search for evidence,
- 7 contraband, or persons.

8 (26) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo

9 contendere or upon a verdict or finding of guilty.

10 (27) "Statement" means:

- 11 (a) a writing signed or otherwise adopted or approved by a person;
- 12 (b) a video or audio recording of a person's communications or a transcript of the communications;
- 13 and
- 14 (c) a writing containing a summary of a person's oral communications or admissions.

15 (28) "Summons" means a written order issued by the court that commands a person to appear

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

17 (29) "Superseded notes" means handwritten notes, including field notes, that have been

18 substantially incorporated into a statement. The notes may not be considered a statement and are not subject

19 to disclosure except as provided in 46-15-324.

20 (30) "Temporary road block" means any structure, device, or means used by a peace officer for the

21 purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

22 (31) "Witness" means a person whose testimony is desired in a proceeding or investigation by a

23 grand jury or in a criminal action, prosecution, or proceeding.

24 (32) "Work product" means legal research, records, correspondence, reports, and memoranda, both

25 written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor,

26 defense counsel, or their staff or investigators."

27

28 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 45, chapter 7, part 3, and the provisions of Title 45, chapter 7, part 3, apply to [section 1].

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