

## SENATE BILL NO. 374

INTRODUCED BY M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING CONTEMPT; PROVIDING THAT VIOLATION OF A GAG ORDER IS NOT CONTEMPT UNDER CERTAIN CIRCUMSTANCES; REQUIRING A JURY TRIAL IN CERTAIN SITUATIONS; PROVIDING THAT NONATTORNEY LAYPERSONS MAY NOT BE HELD IN CONTEMPT IN CERTAIN SITUATIONS; ALLOWING LAYPERSONS TO APPEAR WITH A PLAINTIFF OR DEFENDANT IN COURT AND ADVISE OR GIVE LEGAL INFORMATION TO THE PLAINTIFF OR DEFENDANT; REVISING FINES FOR CONTEMPT; AMENDING SECTIONS 3-1-501, 3-1-511, 3-1-520, 3-1-523, 3-10-402, 3-11-303, 37-61-210, AND 45-7-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Violation of gag order not contempt.** (1) Violating a gag order is not contempt of the authority of the court if the person has rightfully proclaimed the person's first amendment rights under the United States constitution and has not clearly and with purposeful intention violated another person's right to privacy.

(2) A gag order may not be construed to prevent prejudicing a potential jury or a judge who conducts a bench trial.

(3) Criticism of court proceedings or orders is not contempt of the authority of the court if the criticism asserts the court violated state or federal law or the United States or Montana constitution.

**Section 2.** Section 3-1-501, MCA, is amended to read:

**"3-1-501. What acts or omissions are contempts -- civil and criminal contempt.** (1) ~~The~~ Except as provided in subsection (8), following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending

1 to interrupt the due course of a trial or other judicial proceeding;

2 (b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due  
3 course of a trial or other judicial proceeding;

4 (c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk,  
5 sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

6 (d) deceit or abuse of the process or proceedings of the court by a party to an action or special  
7 proceeding;

8 (e) disobedience of any lawful judgment, order, or process of the court;

9 (f) assuming to be an officer, attorney, or counsel of a court and acting as that individual without  
10 authority;

11 (g) rescuing any person or property in the custody of an officer by virtue of an order or process of  
12 the court;

13 (h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning  
14 from the court where the action is on the calendar for trial;

15 (i) any other unlawful interference with the process or proceedings of a court;

16 (j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

17 (k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly  
18 conversing with a party to an action to be tried at the court or with any other person in relation to the merits of  
19 the action or receiving a communication from a party or other person in respect to it without immediately  
20 disclosing the communication to the court;

21 (l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process  
22 of a superior court or proceeding in an action or special proceeding contrary to law after the action or special  
23 proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

24 (2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the  
25 authority of the officer.

26 (3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to  
27 force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing  
28 the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty

1 imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or  
2 avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or  
3 avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to  
4 compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not  
5 impose a sanction under 45-7-309.

6 (4) A person may be found guilty of and penalized for criminal contempt by proof beyond a  
7 reasonable doubt. The Except as provided in subsections (5) through (9), the procedures provided in Title 46  
8 apply to criminal contempt prosecutions, except those under 3-1-511.

9 (5) Except as provided in subsection (6), a fine for civil or criminal contempt may not exceed \$50 a  
10 day and \$500 in total.

11 (6) If the contemnor shows by affidavit prejudice, bias, or misconduct by the court, a fine or  
12 incarceration must be immediately stopped until a hearing is conducted on the affidavit. Another judge shall  
13 conduct the hearing on the affidavit.

14 (7) A person charged with civil or criminal contempt under this section for whom incarceration is  
15 ordered may not be incarcerated for more than 3 days without the right to request a jury trial.

16 (8) A contemnor who challenges an order or judgment as being unlawful is not guilty of contempt  
17 until after a hearing to determine whether the order is lawful.

18 (9) A law enforcement officer who does not obey an unlawful order is not guilty of contempt.  
19 Contempt by a law enforcement officer is immediately subject to independent review of the contempt order by  
20 another judge. A law enforcement officer found to have disobeyed a lawful order may not be incarcerated but  
21 may be fined."

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23 **Section 3.** Section 3-1-511, MCA, is amended to read:

24 **"3-1-511. Procedure -- contempt committed in presence of court.** (1) When a contempt is  
25 committed in the immediate view and presence of the court or judge at chambers and the contemptuous  
26 conduct requires immediate action in order to restore order, maintain the dignity or authority of the court, or  
27 prevent delay, it may be punished summarily. An order must be made reciting the facts that occurred in the  
28 judge's immediate view and presence and adjudging that the person proceeded against is guilty of a contempt

1 and that the person must be punished as prescribed in the order. An order may not be issued unless the person  
2 proceeded against has been informed of the contempt and given an opportunity to defend or explain the  
3 person's conduct. A Except as provided in subsections (2) and (3), a person may be adjudged guilty of and  
4 penalized for criminal contempt under this section by a fine in an amount not to exceed \$50 a day or \$500 in  
5 total or by imprisonment for a term not to exceed 30 days, or both, and by any other reasonable conditions or  
6 restrictions that the court may consider appropriate under the circumstances.

7 (2) If the contemnor shows by affidavit prejudice, bias, or misconduct by the court, a fine or  
8 incarceration must be immediately stopped until a hearing is conducted on the affidavit. Another judge shall  
9 conduct the hearing on the affidavit.

10 (3) A person charged with civil or criminal contempt under this section for whom incarceration is  
11 ordered may not be incarcerated for more than 3 days without the right to request a jury trial."  
12

13 **Section 4.** Section 3-1-520, MCA, is amended to read:

14 **"3-1-520. Penalty to compel performance.** (1) When Except as provided in subsections (2) through  
15 (4), when the sanction imposed for a contempt seeks to compel the contemnor to perform an act that is in the  
16 power of the contemnor to perform, the contemnor may be incarcerated, subjected to a fine in an amount not to  
17 exceed \$50 a day or \$500 in total, or both, until the contemnor has performed the act. The act must be  
18 specified in the warrant of commitment.

19 (2) If the contemnor shows by affidavit prejudice, bias, or misconduct by the court, a fine or  
20 incarceration must be immediately stopped until a hearing is conducted on the affidavit. Another judge shall  
21 conduct the hearing on the affidavit.

22 (3) A person charged with civil or criminal contempt under this section for whom incarceration is  
23 ordered may not be incarcerated for more than 3 days without the right to request a jury trial.

24 (4) A gag order or injunction for which a violation is punishable by contempt is subject to strict  
25 scrutiny as to violation of the first amendment to the United States constitution. The state's interest as to privacy  
26 or the possible prejudice of a potential jury or the public may not supersede the interests of the person claiming  
27 free speech, particularly if the criticism is about the unlawfulness of the contempt order or prejudice, bias, or  
28 misconduct by the judge."

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2           **Section 5.** Section 3-1-523, MCA, is amended to read:

3           **"3-1-523. Judgment and orders in contempt cases final -- ~~family law exception~~ exceptions.** (1)

4       The Except as provided in subsection (3), the judgment and orders of the court or judge made in cases of  
5       contempt are final and conclusive. Except as provided in subsection (2), there is no appeal, but the action of a  
6       district court or judge can be reviewed on a writ of certiorari by the supreme court or a justice of the supreme  
7       court and the action of a justice of the peace or other court of limited jurisdiction can be reviewed by the district  
8       court or judge of the county in which the justice or judge of the court of limited jurisdiction resides.

9           (2)     A party may appeal a contempt judgment or order in a family law proceeding only when the  
10       judgment or order appealed from includes an ancillary order that affects the substantial rights of the parties  
11       involved.

12           (3)     (a) The judgment and orders of the court or judge, including by an administrative judge or as  
13       the result of a jury trial, holding a person in contempt are not final and conclusive if the contemnor shows the  
14       order violates the contemnor's rights under the first amendment to the United States constitution by affidavit of  
15       prejudice, bias, or misconduct by the court issuing the order. If incarcerated, the contemnor must be released  
16       after the affidavit is filed. Another judge shall review the contempt order and the affidavit within 3 days of the  
17       affidavit filing date. The contemnor may request a substitution of judges if the contemnor believes the second  
18       judge is guilty of prejudice, bias, or misconduct.

19           (b)     An order of contempt issued by an administrative judge or in a city court, municipal court, or  
20       justice court for which the contemnor files an affidavit under subsection (3)(a) may be appealed to district court  
21       for legal review.

22           (c)     An order of contempt issued in a district court for which the contemnor files an affidavit under  
23       subsection (3)(a) may be appealed to the supreme court.

24           (4)     A person may publicly protest or criticize a contempt order, including in the presence of the  
25       court, if the protest or criticism:

26           (a)     does not include statements that the contempt order is unlawful; and

27           (b)     is done without reckless disregard for the truth."

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1           **Section 6.** Section 3-10-402, MCA, is amended to read:

2           **"3-10-402. Proceedings.** When a contempt is committed, whether or not it is in the immediate view  
3 and presence of the justice, the procedures contained in 3-1-501~~(3)~~ and ~~(4)~~, 3-1-511 through 3-1-518, and 3-1-  
4 520 through 3-1-523 apply."  
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6           **Section 7.** Section 3-11-303, MCA, is amended to read:

7           **"3-11-303. Contempts city judge may punish for -- procedure.** (1) A city judge may punish for  
8 contempt persons guilty of only the following acts:

9           (a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending  
10 to interrupt the due course of a trial or other judicial proceeding;

11           (b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge  
12 or in the immediate vicinity of the court held by the judge tending to interrupt the due course of a trial or other  
13 judicial proceeding;

14           (c) disobedience or resistance to the execution of a lawful order or process made or issued by the  
15 judge;

16           (d) disobedience to a subpoena served or refusal to be sworn or to answer as a witness;

17           (e) rescuing any person or property in the custody of an officer by virtue of an order or process of  
18 the court.

19           (2) The procedures contained in 3-1-501~~(3)~~ and ~~(4)~~, 3-1-511 through 3-1-518, and 3-1-520 through  
20 3-1-523 apply."  
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22           **Section 8.** Section 37-61-210, MCA, is amended to read:

23           **"37-61-210. Penalty for practicing without license.** (1) If any person practices law in any court,  
24 except a justice's court or a city court, without having received a license as attorney, the person is guilty of a  
25 contempt of court.

26           (2) A person acting as an adviser and appearing with a plaintiff, defendant, objector, or petitioner  
27 who has not deceptively told the plaintiff, defendant, objector, or petitioner that the person is an attorney may  
28 advise or give legal information to a plaintiff, defendant, objector, or petitioner and is not guilty of practicing law

1 or of contempt. No civil or criminal contempt may be issued if the court, on investigation, is convinced that no  
2 deception has been done and the advisor is appearing with full permission by the plaintiff, defendant, objector,  
3 or petitioner."

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5 **Section 9.** Section 45-7-309, MCA, is amended to read:

6 **"45-7-309. Criminal contempt.** (1) A person commits the offense of criminal contempt when the  
7 person knowingly engages in any of the following conduct:

8 (a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its  
9 immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its  
10 authority;

11 (b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's  
12 proceeding;

13 (c) purposely disobeying or refusing any lawful process or other mandate of a court;

14 (d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn,  
15 refusing to answer any legal and proper interrogatory;

16 (e) purposely publishing a false or grossly inaccurate report of a court's proceeding;

17 (f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to  
18 Title 3, chapter 15; or

19 (g) purposely failing to comply with the requirements of the 24/7 sobriety and drug monitoring  
20 program provided for in Title 44, chapter 4, part 12, if ordered by a court to participate in the program.

21 (2) A Subject to subsection (3), a person convicted of the offense of criminal contempt shall be  
22 fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months 30 days, or both.

23 (3) A person may only be imprisoned for more than 3 days after a trial by jury resulting in a verdict  
24 of guilty beyond a reasonable doubt.

25 (4) A contemnor who challenges an order or judgment as being unlawful is not guilty of criminal  
26 contempt until after a hearing to determine whether the order is lawful.

27 (5) A law enforcement officer who does not obey an unlawful order is not guilty of criminal  
28 contempt. Criminal contempt by a law enforcement officer is immediately subject to independent review of the

1 contempt order by another judge. A law enforcement officer found to have disobeyed a lawful order may not be  
2 incarcerated but may be fined."

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4 NEW SECTION. Section 10. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 3, chapter 1, part 5, and the provisions of Title 3, chapter 1, part 5, apply to [section 1].

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7 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

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