

HOUSE BILL NO. 569

INTRODUCED BY S. KLAKKEN, S. KELLY, E. BYRNE, T. MILLETT, G. OBLANDER, B. MITCHELL, K.

SEEKINS-CROWE, J. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PERJURY AND FALSE SWEARING; REQUIRING THE INVESTIGATION OF CREDIBLE ALLEGATIONS OF PERJURY AND FALSE SWEARING; REVISING PENALTIES; PROVIDING MANDATORY MINIMUMS; AND AMENDING SECTIONS 45-7-201 AND 45-7-202, MCA."

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

Section 1. Section 45-7-201, MCA, is amended to read:

"45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the ~~state prison~~ county jail state prison for ~~any a term of not less than 6 months not to exceed or more than 10 years~~ 1 year 10 years or and may be additionally punished by a fine of not more than \$50,000, or both.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified must be considered to have been sworn or affirmed.

(5) A person may not be guilty of an offense under this section if the person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification

was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In that case, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) A person may not be convicted of an offense under this section when proof of falsity rests solely upon the testimony of a single person other than the defendant.

(8) Credible allegations of perjury committed by any person must be investigated by an agency other than the judiciary ~~or an officer of the court.~~

Section 2. Section 45-7-202, MCA, is amended to read:

"45-7-202. False swearing. (1) A person commits the offense of false swearing if the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the person does not believe the statement to be true and:

- (a) the falsification occurs in an official proceeding;
 - (b) the falsification is purposely made to mislead a public servant in performing an official function;
- or
- (c) the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) through ~~(7)~~ (8) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be punished by imprisonment in the county jail for a term of not less than 30 days or more than 90 days and may be additionally punished by a ~~fine~~ fine in an amount not to exceed \$500 of not less than \$500 or more than \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) Credible allegations of false swearing committed by any person must be investigated by an agency other than the judiciary ~~or an officer of the court.~~

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