

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;

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

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

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

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

13 (b) A person convicted of the offense of unauthorized communication shall be fined an amount not
14 to exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both."
15

16 **Section 4.** Section 46-1-202, MCA, is amended to read:

17 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following
18 definitions apply:

19 (1) "Advanced practice registered nurse" means an individual certified as an advanced practice
20 registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

21 (2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea
22 answering a charge.

23 (3) "Arrest" means taking a person into custody in the manner authorized by law.

24 (4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other
25 person specifically named commanding that officer or person to arrest another. The term includes the original
26 warrant of arrest and a copy certified by the issuing court.

27 (5) "Bail" means the security given for the primary purpose of ensuring the presence of the
28 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].

2 - END -