

## PERSISTENT FELONY OFFENDERS

The purpose of a Persistent Felony Offender ("PFO") designation and the corresponding enhanced sentences is meant to impose punishment for recidivists who continuously fail to reform their criminal behavior. Significant Montana Cases, 82 Mont. L. Rev. 2, 25 (2021); State v. Running Wolf, 457 P.3d 218, 225. The "fundamental purpose" of enhanced sentencing statutes is to identify defendants who have not reformed their behavior after prior convictions and to incarcerate those defendants for a longer period of time than would otherwise be applicable in order to protect the community and deter others from similar behavior. Id.

### **History of Montana's Persistent Felony Offender Statute**

The Legislature enacted House Bill 133 ("HB 133") in 2017, which changed the criteria to meet PFO status. HB 133 provides that at least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in Section 46-23-502, Montana Code Annotated. In addition, HB 133 expressly preserved the application of the 2015 PFO statute to offenses committed before July 1, 2017, and would apply to offenses committed after June 30, 2017. 2017 Mont. Laws ch. 321, §§ 43-44, at 1013.

#### Pre-2017 Definition

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

- (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;
- (b) less than 5 years have elapsed between the commission of the present offense and either:
  - (i) the previous felony conviction; or
  - (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and
- (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

#### Post-2017 Definition

(18) "Persistent felony offender" means an offender who has previously been convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies. ***At least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502.*** An offender is considered to have previously been convicted of two separate felonies if:

- (a) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;
- (b) less than 5 years have elapsed between the commission of the present offense and either:
  - (i) the most recent of the two felony convictions; or



- (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and
- (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.



## Persistent Felony Offender Definitions in Other Jurisdictions

### California

PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] ( Part 1 enacted 1872. )

TITLE 16. GENERAL PROVISIONS [654 - 678] ( Title 16 enacted 1872. )

(a) (1) A person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction that includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

### Idaho

19-2514. PERSISTENT VIOLATOR — SENTENCE ON THIRD CONVICTION FOR FELONY. Any person convicted for the third time of the commission of a felony, whether the previous convictions were had within the state of Idaho or were had outside the state of Idaho, shall be considered a persistent violator of law, and on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.

### North Dakota

12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:

...

c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.

**Note:** CA definition is similar to MT's post-2017 definition; ID & ND's are similar to MT's pre-2017 definition



## **\*\*NOT A FINAL BILL\*\***

This draft legislation is subject to edits by the Criminal Justice Oversight Council. The presiding officer will announce opportunities for public comment on this draft.

A BILL AMENDING SECTION 46-1-202, MCA.

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

Section 1. Section 46-1-202 (18) MCA, is amended to read:

"(18) (a) "Persistent felony offender" means an offender who has previously been convicted of two separate felonies; and

(i) who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies; and

(A) At least one of the three felonies must be is a sexual offense or a violent offense as those terms are defined in 46-23-502; or

(B) is on felony probation or felony parole, unless the third offense is criminal possession of dangerous drugs under 45-9-102 or failure to register pursuant to Title 46, chapter 23.

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

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

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

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

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

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

