

HOUSE BILL NO. 451

INTRODUCED BY BROOKE, YELLOWTAIL, HANSEN, COCCHIARELLA,
J. BROWN, JACOBSON, STRIZICH, WYATT, COHEN, DARKO, BARNHART,
REAM, FRITZ, O'KEEFE, DRISCOLL, BECKER, SCHYE, D. BROWN,
BRADLEY, WANZENRIED, TOOLE, CONNELLY

IN THE HOUSE

JANUARY 30, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 76; NOES, 24.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

APRIL 3, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

APRIL 5, 1991 SECOND READING, CONCURRED IN AS
 AMENDED.

APRIL 6, 1991 THIRD READING, CONCURRED IN.
 AYES, 49; NOES, 0.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 SECOND READING, AMENDMENTS NOT
 CONCURRED IN.

APRIL 11, 1991

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 19, 1991

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 20, 1991

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 22, 1991

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1991

FREE CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *451*
 2 INTRODUCED BY *Bradley Yellowtail, Steve Hansen, Cecilia J. Brown, Julie Johnson, Park Bauer, Dean*
 3 *Stewart, Mike Linnell, Baker, John Davidson, Bradley*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES *Cornally*
 6 OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL
 7 EXEMPTIONS; INCREASING PENALTIES; REPEALING THE CRIME OF
 8 DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 27-2-216,
 9 45-1-205, 45-2-101, 45-2-103, 45-2-104, 45-5-501, 45-5-502,
 10 45-5-503, 45-5-504, 45-5-507, 45-5-511, 46-15-401,
 11 46-18-111, 46-18-201, 46-23-502, 50-20-109, AND 61-5-405,
 12 MCA; REPEALING SECTION 45-5-505, MCA; AND PROVIDING AN
 13 IMMEDIATE EFFECTIVE DATE."

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

15 Section 1. Section 45-5-501, MCA, is amended to read:

16 "45-5-501. Definition. (1) As used in 45-5-503 and
17 45-5-505, the term "without consent" means:

18 (1)(a) the victim is compelled to submit by force or by
19 threat of imminent death, bodily injury, or kidnapping to be
20 inflicted on anyone; or

21 (2)(b) the victim is incapable of consent because he
22 is:

23 (a)(i) mentally defective or incapacitated;

24 (b)(ii) physically helpless; or

1 (c)(iii) less than 16 years old.
 2 (2) As used in subsection (1), "force" means:
 3 (a) the infliction, attempted infliction, or threatened
 4 infliction by the offender of bodily injury or commission or
 5 threat of any other crime by the offender against the victim
 6 or another that causes the victim to reasonably believe that
 7 the offender has the present ability to execute the threat;
 8 or
 9 (b) the threat of retaliatory action by the offender
 10 against the victim or another that causes the victim to
 11 reasonably believe that the offender has the ability to
 12 execute the threat."

13 Section 2. Section 45-5-502, MCA, is amended to read:

14 "45-5-502. Sexual assault. (1) A person who knowingly
15 subjects another ~~not--his--spouse~~ to any sexual contact
16 without consent commits the offense of sexual assault.

17 (2) A person convicted of sexual assault shall be fined
18 not to exceed \$500 or be imprisoned in the county jail for
19 any term not to exceed 6 months, or both.

20 (3) If the victim is less than 16 years old and the
21 offender is 3 or more years older than the victim or if the
22 offender inflicts bodily injury upon anyone in the course of
23 committing sexual assault, he shall be imprisoned in the
24 state prison for any term not to exceed 20 years and may be
25 fined not more than \$50,000.

1 (4) An act "in the course of committing sexual assault"
2 shall include an attempt to commit the offense or flight
3 after the attempt or commission.

4 (5) Consent is ineffective under this section if the
5 victim is less than 14 years old and the offender is 3 or
6 more years older than the victim."

7 **Section 3.** Section 45-5-503, MCA, is amended to read:

8 "45-5-503. Sexual intercourse without consent. (1) A
9 person who knowingly has sexual intercourse without consent
10 with ~~a person of the opposite sex~~ another commits the
11 offense of sexual intercourse without consent. A person may
12 not be convicted under this section based on the age of his
13 spouse as provided in 45-5-501~~(2)(c)~~ (1)(b)(iii).

14 (2) A person convicted of sexual intercourse without
15 consent shall be imprisoned in the state prison for a term
16 of not less than 2 years or more than 20 years and may be
17 fined not more than \$50,000, except as provided in
18 46-18-222.

19 (3) (a) If the victim is less than 16 years old and the
20 offender is 3 or more years older than the victim or if the
21 offender inflicts bodily injury upon anyone in the course of
22 committing sexual intercourse without consent, he shall be
23 imprisoned in the state prison for any term of not less than
24 2 years or more than 40 years and may be fined not more than
25 \$50,000, except as provided in 46-18-222.

1 (b) An act "in the course of committing sexual
2 intercourse without consent" shall include an attempt to
3 commit the offense or flight after the attempt or
4 commission.

5 (4) In addition to any sentence imposed under
6 subsection (2) or (3), after determining the financial
7 resources and future ability of the offender to pay
8 restitution as required by 46-18-242, the court shall
9 require the offender, if able, to pay the victim's
10 reasonable costs of counseling that result from the offense.
11 The amount, method, and time of payment must be determined
12 in the same manner as provided for in 46-18-244."

13 **Section 4.** Section 45-5-504, MCA, is amended to read:

14 "45-5-504. Indecent exposure. (1) A person who, for the
15 purpose of arousing or gratifying sexual desire of himself
16 or of any person ~~other than his spouse~~, exposes his genitals
17 under circumstances in which he knows his conduct is likely
18 to cause affront or alarm commits the offense of indecent
19 exposure.

20 (2) A person convicted of the offense of indecent
21 exposure shall be fined not to exceed \$500 or be imprisoned
22 in the county jail for any term not to exceed 6 months, or
23 both."

24 **Section 5.** Section 45-5-507, MCA, is amended to read:

25 "45-5-507. Incest. (1) A person commits the offense of

1 incest if he knowingly marries, cohabits with, has sexual
2 intercourse with, or has sexual contact as defined in
3 45-2-101 with an ancestor, a descendant, a brother or sister
4 of the whole or half blood, or any stepson or stepdaughter.
5 The relationships referred to herein include blood
6 relationships without regard to legitimacy, relationships of
7 parent and child by adoption, and relationships involving a
8 stepson or stepdaughter.

9 (2) Consent is a defense under this section to incest
10 with or upon a stepson or stepdaughter, but consent is
11 ineffective if the victim is less than 18 years old.

12 (3) A person convicted of incest shall be imprisoned in
13 the state prison for any term not to exceed ~~10~~ 20 years or
14 be fined an amount not to exceed \$50,000, or both.

15 (4) If the victim is under 16 years of age and the
16 offender is 3 or more years older than the victim or if the
17 offender inflicts bodily injury upon anyone in the course of
18 committing incest, he shall be imprisoned in the state
19 prison for any term not to exceed ~~20~~ 40 years and may be
20 fined not more than \$50,000.

21 (5) In addition to any sentence imposed under
22 subsection (3) or (4), after determining the financial
23 resources and future ability of the offender to pay
24 restitution as required by 46-18-242, the court shall
25 require the offender, if able, to pay the victim's

1 reasonable costs of counseling that result from the offense.
2 The amount, method, and time of payment must be determined
3 in the same manner as provided for in 46-18-244."

4 **Section 6.** Section 45-5-511, MCA, is amended to read:

5 "45-5-511. Provisions generally applicable to sexual
6 crimes. (1) When criminality depends on the victim being
7 less than 16 years old, it is a defense for the offender to
8 prove that he reasonably believed the child to be above that
9 age. Such belief shall not be deemed reasonable if the child
10 is less than 14 years old.

11 ~~(2) Whenever the definition of an offense excludes~~
12 ~~conduct with a spouse, the exclusion shall be deemed to~~
13 ~~extend to persons living as husband and wife regardless of~~
14 ~~the legal status of their relationship. The exclusion shall~~
15 ~~be inoperative as respects spouses living apart whether~~
16 ~~under a decree of judicial separation or otherwise. Where~~
17 ~~the definition of an offense excludes conduct with a spouse,~~
18 ~~this shall not preclude conviction of a spouse in a sexual~~
19 ~~act which he or she causes another person, not within the~~
20 ~~exclusion, to perform.~~

21 ~~(3) In a prosecution under the preceding sections on~~
22 ~~sexual crimes (45-5-502 through 45-5-504) in which the~~
23 ~~victim's lack of consent is based solely upon his incapacity~~
24 ~~to consent because he was mentally incapacitated, it is a~~
25 ~~defense to such prosecution that the victim was a voluntary~~

1 ~~social companion--of--the--defendant--and--the--intoxicating~~
2 ~~substance--was--voluntarily--and--knowingly--taken;~~

3 ~~(4)(2)~~ No evidence concerning the sexual conduct of the
4 victim is admissible in prosecutions under this part except:

5 ~~(a)--evidence--of--the--victim's--past--sexual--conduct--with~~
6 ~~the--offender;~~

7 ~~(b)~~ evidence of specific instances of the victim's
8 sexual activity to show the origin of semen, pregnancy, or
9 disease which is at issue in the prosecution.

10 ~~(5)(3)~~ If the defendant proposes for any purpose to
11 offer evidence described in subsection ~~(4)(a)~~ or ~~(4)(b)(2)~~,
12 the trial judge shall order a hearing out of the presence of
13 the jury to determine whether the proposed evidence is
14 admissible under subsection ~~(4)(2)~~.

15 ~~(6)(4)~~ Evidence of failure to make a timely complaint
16 or immediate outcry does not raise any presumption as to the
17 credibility of the victim.

18 ~~(7)(5)~~ Resistance by the victim is not required to show
19 lack of consent. Force, fear, or threat is sufficient alone
20 to show lack of consent."

21 **Section 7.** Section 45-2-101, MCA, is amended to read:

22 "45-2-101. **General definitions.** Unless otherwise
23 specified in the statute, all words will be taken in the
24 objective standard rather than in the subjective, and unless
25 a different meaning plainly is required, the following

1 definitions apply in this title:

2 (1) "Acts" has its usual and ordinary meaning and
3 includes any bodily movement, any form of communication, and
4 where relevant, a failure or omission to take action.

5 (2) "Administrative proceeding" means any proceeding
6 the outcome of which is required to be based on a record or
7 documentation prescribed by law or in which a law or a
8 regulation is particularized in its application to an
9 individual.

10 (3) "Another" means a person or persons, as defined in
11 this code, other than the offender.

12 (4) "Benefit" means gain or advantage or anything
13 regarded by the beneficiary as gain or advantage, including
14 benefit to any other person or entity in whose welfare he is
15 interested, but not an advantage promised generally to a
16 group or class of voters as a consequence of public measures
17 which a candidate engages to support or oppose.

18 (5) "Bodily injury" means physical pain, illness, or
19 any impairment of physical condition and includes mental
20 illness or impairment.

21 (6) "Cohabit" means to live together under the
22 representation of being married.

23 (7) "Common scheme" means a series of acts or omissions
24 motivated by a purpose to accomplish a single criminal
25 objective or by a common purpose or plan which results in

1 the repeated commission of the same offense or affects the
2 same person or the same persons or the property thereof.

3 (8) "Computer" means an electronic device that performs
4 logical, arithmetic, and memory functions by the
5 manipulation of electronic or magnetic impulses and includes
6 all input, output, processing, storage, software, or
7 communication facilities that are connected or related to
8 such a device in a system or network.

9 (9) "Computer network" means the interconnection of
10 communication systems between computers or computers and
11 remote terminals.

12 (10) "Computer program" means an instruction or
13 statement or a series of instructions or statements, in a
14 form acceptable to a computer, that in actual or modified
15 form permits the functioning of a computer or computer
16 system and causes it to perform specified functions.

17 (11) "Computer services" include but are not limited to
18 computer time, data processing, and storage functions.

19 (12) "Computer software" means a set of computer
20 programs, procedures, and associated documentation concerned
21 with the operation of a computer system.

22 (13) "Computer system" means a set of related,
23 connected, or unconnected devices, computer software, or
24 other related computer equipment.

25 (14) "Conduct" means an act or series of acts and the

1 accompanying mental state.

2 (15) "Conviction" means a judgment of conviction or
3 sentence entered upon a plea of guilty or upon a verdict or
4 finding of guilty of an offense rendered by a legally
5 constituted jury or by a court of competent jurisdiction
6 authorized to try the case without a jury.

7 (16) "Correctional institution" means the state prison,
8 county or city jail, or other institution for the
9 incarceration or custody of persons under sentence for
10 offenses or awaiting trial or sentence for offenses.

11 (17) "Deception" means knowingly to:

12 (a) create or confirm in another an impression which is
13 false and which the offender does not believe to be true;

14 (b) fail to correct a false impression which the
15 offender previously has created or confirmed;

16 (c) prevent another from acquiring information
17 pertinent to the disposition of the property involved;

18 (d) sell or otherwise transfer or encumber property,
19 failing to disclose a lien, adverse claim, or other legal
20 impediment to the enjoyment of the property, whether such
21 impediment is or is not of value or is or is not a matter of
22 official record; or

23 (e) promise performance which the offender does not
24 intend to perform or knows will not be performed. Failure to
25 perform standing alone is not evidence that the offender did

1 not intend to perform.

2 (18) "Defamatory matter" means anything which exposes a
3 person or a group, class, or association to hatred,
4 contempt, ridicule, degradation, or disgrace in society or
5 to injury to his or its business or occupation.

6 (19) "Deprive" means to withhold property of another:

7 (a) permanently;

8 (b) for such a period as to appropriate a portion of
9 its value;

10 (c) with the purpose to restore it only upon payment of
11 reward or other compensation; or

12 (d) to dispose of the property and use or deal with the
13 property so as to make it unlikely that the owner will
14 recover it.

15 ~~{20}-"Deviate--sexual-relations"--means--sexual-contact--or~~
16 ~~sexual-intercourse-between-two-persons-of-the--same--sex--or~~
17 ~~any-form-of-sexual-intercourse-with-an-animal-~~

18 {21}{20} "Felony" means an offense in which the sentence
19 imposed upon conviction is death or imprisonment in the
20 state prison for any term exceeding 1 year.

21 {22}{21} "Forcible felony" means any felony which
22 involves the use or threat of physical force or violence
23 against any individual.

24 {23}{22} A "frisk" is a search by an external patting of
25 a person's clothing.

1 ~~{24}{23}~~ "Government" includes any branch, subdivision,
2 or agency of the government of the state or any locality
3 within it.

4 ~~{25}{24}~~ "Harm" means loss, disadvantage, or injury or
5 anything so regarded by the person affected, including loss,
6 disadvantage, or injury to any person or entity in whose
7 welfare he is interested.

8 ~~{26}{25}~~ A "house of prostitution" means any place where
9 prostitution or promotion of prostitution is regularly
10 carried on by one or more persons under the control,
11 management, or supervision of another.

12 ~~{27}{26}~~ "Human being" means a person who has been born
13 and is alive.

14 ~~{28}{27}~~ An "illegal article" is an article or thing
15 which is prohibited by statute, rule, or order from being in
16 the possession of a person subject to official detention.

17 ~~{29}{28}~~ "Inmate" means a person who engages in
18 prostitution in or through the agency of a house of
19 prostitution.

20 ~~{30}{29}~~ "Intoxicating substance" means any controlled
21 substance as defined in Title 50, chapter 32, and any
22 alcoholic beverage, including but not limited to any
23 beverage containing 1/2 of 1% or more of alcohol by volume.
24 The foregoing definition does not extend to dealcoholized
25 wine or to any beverage or liquid produced by the process by

1 which beer, ale, port, or wine is produced if it contains
2 less than 1/2 of 1% of alcohol by volume.

3 ~~§31~~(30) An "involuntary act" means any act which is:

4 (a) a reflex or convulsion;

5 (b) a bodily movement during unconsciousness or sleep;

6 (c) conduct during hypnosis or resulting from hypnotic
7 suggestion; or

8 (d) a bodily movement that otherwise is not a product
9 of the effort or determination of the actor, either
10 conscious or habitual.

11 ~~§32~~(31) "Juror" means any person who is a member of any
12 jury, including a grand jury, impaneled by any court in this
13 state in any action or proceeding or by any officer
14 authorized by law to impanel a jury in any action or
15 proceeding. The term "juror" also includes a person who has
16 been drawn or summoned to attend as a prospective juror.

17 ~~§33~~(32) "Knowingly"--a person acts knowingly with
18 respect to conduct or to a circumstance described by a
19 statute defining an offense when he is aware of his conduct
20 or that the circumstance exists. A person acts knowingly
21 with respect to the result of conduct described by a statute
22 defining an offense when he is aware that it is highly
23 probable that such result will be caused by his conduct.
24 When knowledge of the existence of a particular fact is an
25 element of an offense, such knowledge is established if a

1 person is aware of a high probability of its existence.
2 Equivalent terms such as "knowing" or "with knowledge" have
3 the same meaning.

4 ~~§34~~(33) "Mentally defective" means that a person
5 suffers from a mental disease or defect which renders him
6 incapable of appreciating the nature of his conduct.

7 ~~§35~~(34) "Mentally incapacitated" means that a person is
8 rendered temporarily incapable of appreciating or
9 controlling his conduct as a result of the influence of an
10 intoxicating substance.

11 ~~§36~~(35) "Misdemeanor" means an offense in which the
12 sentence imposed upon conviction is imprisonment in the
13 county jail for any term or a fine, or both, or the sentence
14 imposed is imprisonment in the state prison for any term of
15 1 year or less.

16 ~~§37~~(36) "Negligently"--a person acts negligently with
17 respect to a result or to a circumstance described by a
18 statute defining an offense when he consciously disregards a
19 risk that the result will occur or that the circumstance
20 exists or when he disregards a risk of which he should be
21 aware that the result will occur or that the circumstance
22 exists. The risk must be of such a nature and degree that to
23 disregard it involves a gross deviation from the standard of
24 conduct that a reasonable person would observe in the
25 actor's situation. "Gross deviation" means a deviation that

1 is considerably greater than lack of ordinary care. Relevant
2 terms such as "negligent" and "with negligence" have the
3 same meaning.

4 ~~†38†~~(37) "Obtain" means:

5 (a) in relation to property, to bring about a transfer
6 of interest or possession, whether to the offender or to
7 another; and

8 (b) in relation to labor or services, to secure the
9 performance thereof.

10 ~~†39†~~(38) "Obtains or exerts control" includes but is not
11 limited to the taking, carrying away, or sale, conveyance,
12 or transfer of title to, interest in, or possession of
13 property.

14 ~~†40†~~(39) "Occupied structure" means any building,
15 vehicle, or other place suitable for human occupancy or
16 night lodging of persons or for carrying on business,
17 whether or not a person is actually present. Each unit of a
18 building consisting of two or more units separately secured
19 or occupied is a separate occupied structure.

20 ~~†41†~~(40) "Offender" means a person who has been or is
21 liable to be arrested, charged, convicted, or punished for a
22 public offense.

23 ~~†42†~~(41) "Offense" means a crime for which a sentence of
24 death or of imprisonment or a fine is authorized. Offenses
25 are classified as felonies or misdemeanors.

1 ~~†43†~~(42) "Official detention" means imprisonment
2 resulting from a conviction for an offense, confinement for
3 an offense, confinement of a person charged with an offense,
4 detention by a peace officer pursuant to arrest, detention
5 for extradition or deportation, or any lawful detention for
6 the purpose of the protection of the welfare of the person
7 detained or for the protection of society. Official
8 detention does not include supervision of probation or
9 parole, constraint incidental to release on bail, or an
10 unlawful arrest unless the person arrested employed physical
11 force, a threat of physical force, or a weapon to escape.

12 ~~†44†~~(43) "Official proceeding" means a proceeding heard
13 or which may be heard before any legislative, judicial,
14 administrative, or other governmental agency or official
15 authorized to take evidence under oath, including any
16 referee, hearing examiner, commissioner, notary, or other
17 person taking testimony or deposition in connection with
18 such proceeding.

19 ~~†45†~~(44) "Other state" means any state or territory of
20 the United States, the District of Columbia, and the
21 Commonwealth of Puerto Rico.

22 ~~†46†~~(45) "Owner" means a person other than the offender
23 who has possession of or any other interest in the property
24 involved, even though such interest or possession is
25 unlawful, and without whose consent the offender has no

1 authority to exert control over the property.

2 ~~(47)~~(46) "Party official" means a person who holds an
3 elective or appointive post in a political party in the
4 United States by virtue of which he directs or conducts or
5 participates in directing or conducting party affairs at any
6 level of responsibility.

7 ~~(48)~~(47) "Peace officer" means any person who by virtue
8 of his office or public employment is vested by law with a
9 duty to maintain public order or to make arrests for
10 offenses while acting within the scope of his authority.

11 ~~(49)~~(48) "Pecuniary benefit" is benefit in the form of
12 money, property, commercial interests, or anything else the
13 primary significance of which is economic gain.

14 ~~(50)~~(49) "Person" includes an individual, business
15 association, partnership, corporation, government, or other
16 legal entity and an individual acting or purporting to act
17 for or on behalf of any government or subdivision thereof.

18 ~~(51)~~(50) "Physically helpless" means that a person is
19 unconscious or is otherwise physically unable to communicate
20 unwillingness to act.

21 ~~(52)~~(51) "Possession" is the knowing control of anything
22 for a sufficient time to be able to terminate control.

23 ~~(53)~~(52) "Premises" includes any type of structure or
24 building and any real property.

25 ~~(54)~~(53) "Property" means any tangible or intangible

1 thing of value. Property includes but is not limited to:

2 (a) real estate;

3 (b) money;

4 (c) commercial instruments;

5 (d) admission or transportation tickets;

6 (e) written instruments which represent or embody
7 rights concerning anything of value, including labor or
8 services, or which are otherwise of value to the owner;

9 (f) things growing on, affixed to, or found on land and
10 things which are part of or affixed to any building;

11 (g) electricity, gas, and water;

12 (h) birds, animals, and fish which ordinarily are kept
13 in a state of confinement;

14 (i) food and drink, samples, cultures, microorganisms,
15 specimens, records, recordings, documents, blueprints,
16 drawings, maps, and whole or partial copies, descriptions,
17 photographs, prototypes, or models thereof;

18 (j) any other articles, materials, devices, substances,
19 and whole or partial copies, descriptions, photographs,
20 prototypes, or models thereof which constitute, represent,
21 evidence, reflect, or record secret scientific, technical,
22 merchandising, production, or management information or a
23 secret designed process, procedure, formula, invention, or
24 improvement; and

25 (k) electronic impulses, electronically processed or

1 produced data or information, commercial instruments,
2 computer software or computer programs, in either machine-
3 or human-readable form, computer services, any other
4 tangible or intangible item of value relating to a computer,
5 computer system, or computer network, and any copies
6 thereof.

7 ~~(55)~~(54) "Property of another" means real or personal
8 property in which a person other than the offender has an
9 interest which the offender has no authority to defeat or
10 impair, even though the offender himself may have an
11 interest in the property.

12 ~~(56)~~(55) "Public place" means any place to which the
13 public or any substantial group thereof has access.

14 ~~(57)~~(56) "Public servant" means any officer or employee
15 of government, including but not limited to legislators,
16 judges, and firefighters, and any person participating as a
17 juror, advisor, consultant, administrator, executor,
18 guardian, or court-appointed fiduciary. The term does not
19 include witnesses. The term "public servant" includes one
20 who has been elected or designated to become a public
21 servant.

22 ~~(58)~~(57) "Purposely"--a person acts purposely with
23 respect to a result or to conduct described by a statute
24 defining an offense if it is his conscious object to engage
25 in that conduct or to cause that result. When a particular

1 purpose is an element of an offense, the element is
2 established although such purpose is conditional, unless the
3 condition negatives the harm or evil sought to be prevented
4 by the law defining the offense. Equivalent terms such as
5 "purpose" and "with the purpose" have the same meaning.

6 ~~(59)~~(58) "Serious bodily injury" means bodily injury
7 which creates a substantial risk of death or which causes
8 serious permanent disfigurement or protracted loss or
9 impairment of the function or process of any bodily member
10 or organ. It includes serious mental illness or impairment.

11 ~~(60)~~(59) "Sexual contact" means any touching of the
12 sexual or other intimate parts of the person of another for
13 the purpose of arousing or gratifying the sexual desire of
14 either party.

15 ~~(61)~~(60) "Sexual intercourse" means penetration of the
16 vulva, anus, or mouth of one person by the penis of another
17 person, penetration of the vulva or anus of one person by
18 any body member of another person, or penetration of the
19 vulva or anus of one person by any foreign instrument or
20 object manipulated by another person for the purpose of
21 arousing or gratifying the sexual desire of either party.
22 Any penetration, however slight, is sufficient.

23 ~~(62)~~(61) "Solicit" or "solicitation" means to command,
24 authorize, urge, incite, request, or advise another to
25 commit an offense.

1 ~~63~~62 "State" or "this state" means the state of
 2 Montana, all the land and water in respect to which the
 3 state of Montana has either exclusive or concurrent
 4 jurisdiction, and the air space above such land and water.

5 ~~64~~63 "Statute" means any act of the legislature of
 6 this state.

7 ~~65~~64 "Stolen property" means property over which
 8 control has been obtained by theft.

9 ~~66~~65 A "stop" is the temporary detention of a person
 10 that results when a peace officer orders the person to
 11 remain in his presence.

12 ~~67~~66 "Tamper" means to interfere with something
 13 improperly, meddle with it, make unwarranted alterations in
 14 its existing condition, or deposit refuse upon it.

15 ~~68~~67 "Threat" means a menace, however communicated,
 16 to:

17 (a) inflict physical harm on the person threatened or
 18 any other person or on property;

19 (b) subject any person to physical confinement or
 20 restraint;

21 (c) commit any criminal offense;

22 (d) accuse any person of a criminal offense;

23 (e) expose any person to hatred, contempt, or ridicule;

24 (f) harm the credit or business repute of any person;

25 (g) reveal any information sought to be concealed by

1 the person threatened;

2 (h) take action as an official against anyone or
 3 anything, withhold official action, or cause such action or
 4 withholding;

5 (i) bring about or continue a strike, boycott, or other
 6 similar collective action if the property is not demanded or
 7 received for the benefit of the groups which he purports to
 8 represent; or

9 (j) testify or provide information or withhold
 10 testimony or information with respect to another's legal
 11 claim or defense.

12 ~~69~~68 (a) "Value" means the market value of the
 13 property at the time and place of the crime or, if such
 14 cannot be satisfactorily ascertained, the cost of the
 15 replacement of the property within a reasonable time after
 16 the crime. If the offender appropriates a portion of the
 17 value of the property, the value shall be determined as
 18 follows:

19 (i) The value of an instrument constituting an evidence
 20 of debt, such as a check, draft, or promissory note, shall
 21 be considered the amount due or collectible thereon or
 22 thereby, such figure ordinarily being the face amount of the
 23 indebtedness less any portion thereof which has been
 24 satisfied.

25 (ii) The value of any other instrument which creates,

1 releases, discharges, or otherwise affects any valuable
2 legal right, privilege, or obligation shall be considered
3 the amount of economic loss which the owner of the
4 instrument might reasonably suffer by virtue of the loss of
5 the instrument.

6 (iii) The value of electronic impulses, electronically
7 produced data or information, computer software or programs,
8 or any other tangible or intangible item relating to a
9 computer, computer system, or computer network shall be
10 considered to be the amount of economic loss that the owner
11 of the item might reasonably suffer by virtue of the loss of
12 the item. The determination of the amount of such economic
13 loss includes but is not limited to consideration of the
14 value of the owner's right to exclusive use or disposition
15 of the item.

16 (b) When it cannot be determined if the value of the
17 property is more or less than \$300 by the standards set
18 forth in subsection ~~(69)(a)~~ above (68)(a), its value shall
19 be considered to be an amount less than \$300.

20 (c) Amounts involved in thefts committed pursuant to a
21 common scheme or the same transaction, whether from the same
22 person or several persons, may be aggregated in determining
23 the value of the property.

24 ~~(70)(69)~~ "Vehicle" means any device for transportation
25 by land, water, or air or mobile equipment with provision

1 for transport of an operator.

2 ~~(71)(70)~~ "Weapon" means any instrument, article, or
3 substance which, regardless of its primary function, is
4 readily capable of being used to produce death or serious
5 bodily injury.

6 ~~(72)(71)~~ "Witness" means a person whose testimony is
7 desired in any official proceeding, in any investigation by
8 a grand jury, or in a criminal action, prosecution, or
9 proceeding."

10 **Section 8.** Section 27-2-216, MCA, is amended to read:

11 "27-2-216. Tort actions -- childhood sexual abuse. (1)
12 An action based on intentional conduct brought by a person
13 for recovery of damages for injury suffered as a result of
14 childhood sexual abuse must be commenced not later than:

15 (a) 3 years after the act of childhood sexual abuse
16 that is alleged to have caused the injury; or

17 (b) 3 years after the plaintiff discovers or reasonably
18 should have discovered that the injury was caused by the act
19 of childhood sexual abuse.

20 (2) It is not necessary for a plaintiff to establish
21 which act, in a series of acts of childhood sexual abuse,
22 caused the injury that is the subject of the suit. The
23 plaintiff may compute the period referred to in subsection
24 (1)(a) from the date of the last act by the same
25 perpetrator.

1 (3) As used in this section, "childhood sexual abuse"
 2 means any act committed against a plaintiff who was less
 3 than 18 years of age at the time the act occurred and that
 4 would have been a violation of 45-5-502, 45-5-503, 45-5-504,
 5 45-5-505, 45-5-507, 45-5-625, or prior similar laws in
 6 effect at the time the act occurred.

7 (4) The provisions of 27-2-401 apply to this section."

8 **Section 9.** Section 45-1-205, MCA, is amended to read:

9 "45-1-205. General time limitations. (1) (a) A
 10 prosecution for deliberate, mitigated, or negligent homicide
 11 may be commenced at any time.

12 (b) A prosecution under 45-5-502 through 45-5-505
 13 45-5-504, 45-5-507, or 45-5-625 may be commenced within 5
 14 years after the victim reaches the age of 18 if the victim
 15 was less than 18 years old at the time the offense occurred.

16 (2) Except as otherwise provided by law, prosecutions
 17 for other offenses are subject to the following periods of
 18 limitation:

19 (a) A prosecution for a felony must be commenced within
 20 5 years after it is committed.

21 (b) A prosecution for a misdemeanor must be commenced
 22 within 1 year after it is committed.

23 (3) The period prescribed in subsection (2) is extended
 24 in a prosecution for theft involving a breach of fiduciary
 25 obligation to an aggrieved person as follows:

1 (a) if the aggrieved person is a minor or incompetent,
 2 during the minority or incompetency or within 1 year after
 3 the termination thereof;

4 (b) in any other instance, within 1 year after the
 5 discovery of the offense by the aggrieved person or by a
 6 person who has legal capacity to represent an aggrieved
 7 person or has a legal duty to report the offense and is not
 8 himself a party to the offense or, in the absence of such
 9 discovery, within 1 year after the prosecuting officer
 10 becomes aware of the offense.

11 (4) The period prescribed in subsection (2) shall be
 12 extended in a prosecution for unlawful use of a computer,
 13 and prosecution shall be brought within 1 year after the
 14 discovery of the offense by the aggrieved person or by a
 15 person who has legal capacity to represent an aggrieved
 16 person or has a legal duty to report the offense and is not
 17 himself a party to the offense or, in the absence of such
 18 discovery, within 1 year after the prosecuting officer
 19 becomes aware of the offense.

20 (5) An offense is committed either when every element
 21 occurs or, when the offense is based upon a continuing
 22 course of conduct, at the time when the course of conduct is
 23 terminated. Time starts to run on the day after the offense
 24 is committed.

25 (6) A prosecution is commenced either when an

1 indictment is found or an information or complaint is
2 filed."

3 **Section 10.** Section 45-2-103, MCA, is amended to read:

4 "45-2-103. General requirements of criminal act and
5 mental state. (1) Except for deliberate homicide as defined
6 in 45-5-102(1)(b) or an offense which involves absolute
7 liability, a person is not guilty of an offense unless, with
8 respect to each element described by the statute defining
9 the offense, he acts while having one of the mental states
10 described in subsections ~~{33}~~{32}, ~~{37}~~{36}, and ~~{58}~~{57} of
11 45-2-101.

12 (2) In deliberate homicide under 45-5-102(1)(b), the
13 offender must act while having the mental state of purposely
14 or knowingly only as to the underlying felony referred to in
15 45-5-102(1)(b).

16 (3) The existence of a mental state may be inferred
17 from the acts of the accused and the facts and circumstances
18 connected with the offense.

19 (4) If the statute defining an offense prescribes a
20 particular mental state with respect to the offense as a
21 whole without distinguishing among the elements thereof, the
22 prescribed mental state applies to each such element.

23 (5) Knowledge that certain conduct constitutes an
24 offense or knowledge of the existence, meaning, or
25 application of the statute defining an offense is not an

1 element of the offense unless the statute clearly defines it
2 as such.

3 (6) A person's reasonable belief that his conduct does
4 not constitute an offense is a defense if:

5 (a) the offense is defined by an administrative
6 regulation or order which is not known to him and has not
7 been published or otherwise made reasonably available to him
8 and he could not have acquired such knowledge by the
9 exercise of due diligence pursuant to facts known to him;

10 (b) he acts in reliance upon a statute which later is
11 determined to be invalid;

12 (c) he acts in reliance upon an order or opinion of the
13 Montana supreme court or a United States appellate court
14 later overruled or reversed; or

15 (d) he acts in reliance upon an official interpretation
16 of the statute, regulation, or order defining the offense
17 made by a public officer or agency legally authorized to
18 interpret such statute.

19 (7) If a person's reasonable belief is a defense under
20 subsection (6), nevertheless he may be convicted of an
21 included offense of which he would be guilty if the law were
22 as he believed it to be.

23 (8) Any defense based upon this section is an
24 affirmative defense."

25 **Section 11.** Section 45-2-104, MCA, is amended to read:

1 **"45-2-104. Absolute liability.** A person may be guilty
 2 of an offense without having, as to each element thereof,
 3 one of the mental states described in subsections ~~(33)~~(32),
 4 ~~(37)~~(36), and ~~(58)~~(57) of 45-2-101 only if the offense is
 5 punishable by a fine not exceeding \$500 or the statute
 6 defining the offense clearly indicates a legislative purpose
 7 to impose absolute liability for the conduct described."

8 **Section 12.** Section 46-15-401, MCA, is amended to read:

9 **"46-15-401. When videotaped testimony admissible.** For
 10 any prosecution commenced under 45-5-502(3), 45-5-503,
 11 ~~45-5-505~~, or 45-5-507 and for the prosecution of any offense
 12 arising from the same transaction, as defined in 46-11-501,
 13 the testimony of the victim, at the request of such victim
 14 and with the concurrence of the prosecuting attorney, may be
 15 recorded by means of videotape for presentation at trial.
 16 The testimony so recorded may be presented at trial and
 17 shall be received into evidence. The victim need not be
 18 physically present in the courtroom when the videotape is
 19 admitted into evidence."

20 **Section 13.** Section 46-18-111, MCA, is amended to read:

21 **"46-18-111. Presentence investigation.** No defendant
 22 convicted of an offense under 45-5-502 through ~~45-5-505~~
 23 45-5-504, 45-5-507, or 45-5-625 against a victim who was
 24 less than 16 years old when the offense was committed may be
 25 sentenced or otherwise disposed of before a written report

1 of investigation by a probation officer is presented to and
 2 considered by the court. The investigation must include an
 3 evaluation of the defendant and a recommendation as to
 4 treatment by a person qualified by professional experience.
 5 No defendant convicted of any other offense that may result
 6 in commitment for 1 year or more in the state prison may be
 7 sentenced or otherwise disposed of before a written report
 8 of investigation by a probation officer is presented to and
 9 considered by the court unless the court deems such report
 10 unnecessary. The court may, in its discretion, order a
 11 presentence investigation for a defendant convicted of any
 12 lesser crime or offense."

13 **Section 14.** Section 46-18-201, MCA, is amended to read:

14 **"46-18-201. Sentences that may be imposed.** (1) Whenever
 15 a person has been found guilty of an offense upon a verdict
 16 or a plea of guilty, the court may:

17 (a) defer imposition of sentence, excepting sentences
 18 for driving under the influence of alcohol or drugs, for a
 19 period, except as otherwise provided, not exceeding 1 year
 20 for any misdemeanor or for a period not exceeding 3 years
 21 for any felony. The sentencing judge may impose upon the
 22 defendant any reasonable restrictions or conditions during
 23 the period of the deferred imposition. Reasonable
 24 restrictions or conditions may include:

25 (i) jail base release;

1 (ii) jail time not exceeding 180 days;
 2 (iii) conditions for probation;
 3 (iv) restitution;
 4 (v) payment of the costs of confinement;
 5 (vi) payment of a fine as provided in 46-18-231;
 6 (vii) payment of costs as provided in 46-18-232 and
 7 46-18-233;
 8 (viii) payment of costs of court appointed counsel as
 9 provided in 46-8-113;
 10 (ix) community service;
 11 (x) any other reasonable conditions considered
 12 necessary for rehabilitation or for the protection of
 13 society; or
 14 (xi) any combination of the above.
 15 (b) suspend execution of sentence up to the maximum
 16 sentence allowed for each particular offense. The sentencing
 17 judge may impose on the defendant any reasonable
 18 restrictions or conditions during the period of suspended
 19 sentence. Reasonable restrictions or conditions may include
 20 any of those listed in subsections (1)(a)(i) through
 21 (1)(a)(xi).
 22 (c) impose a fine as provided by law for the offense;
 23 (d) require payment of costs as provided in 46-18-232
 24 or payment of costs of court-appointed counsel as provided
 25 in 46-8-113;

1 (e) commit the defendant to a correctional institution,
 2 with or without a fine as provided by law for the offense;
 3 (f) impose any combination of subsections (1)(b)
 4 through (1)(e).
 5 (2) If any financial obligation is imposed as a
 6 condition under subsection (1)(a), sentence may be deferred
 7 for a period not exceeding 2 years for any misdemeanor or
 8 for a period not exceeding 6 years for any felony,
 9 regardless of whether any other conditions are imposed.
 10 (3) If any restrictions or conditions imposed under
 11 subsection (1)(a) or (1)(b) are violated, the court shall
 12 consider any elapsed time and either expressly allow part or
 13 all of it as a credit against the sentence or reject all or
 14 part as a credit and state its reasons in the order. Credit,
 15 however, must be allowed for jail time already served.
 16 (4) Except as provided in 46-18-222, the imposition or
 17 execution of the first 2 years of a sentence of imprisonment
 18 imposed under the following sections may not be deferred or
 19 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 20 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 21 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
 22 45-9-103(2).
 23 (5) Except as provided in 46-18-222, the imposition or
 24 execution of the first 10 years of a sentence of
 25 imprisonment imposed under 45-5-102 may not be deferred or

1 suspended.

2 (6) Except as provided in 46-18-222, imposition of
3 sentence in a felony case may not be deferred in the case of
4 a defendant who has been convicted of a felony on a prior
5 occasion, whether or not the sentence was imposed,
6 imposition of the sentence was deferred, or execution of the
7 sentence was suspended.

8 (7) If the victim was less than 16 years old, the
9 imposition or execution of the first 30 days of a sentence
10 of imprisonment imposed under 45-5-502(3), 45-5-503,
11 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
12 suspended. Section 46-18-222 does not apply to the first 30
13 days of such imprisonment.

14 (8) In imposing a sentence on a defendant convicted of
15 a sexual offense as defined in 46-23-502, the court may not
16 waive the registration requirement provided in 46-18-254,
17 46-18-255, and Title 46, chapter 23, part 5.

18 (9) A person convicted of a sexual offense, as defined
19 in 46-23-502, and sentenced to imprisonment in the state
20 prison shall enroll in the educational phase of the prison's
21 sexual offender program."

22 **Section 15.** Section 46-23-502, MCA, is amended to read:
23 "46-23-502. Definitions. As used in 46-18-254,
24 46-18-255, and this part, the following definitions apply:

25 (1) "Department" means the department of institutions

1 provided for in Title 2, chapter 15, part 23.

2 (2) "Sexual offender" means a person who has been
3 convicted of a sexual offense.

4 (3) "Sexual offense" means:

5 (a) any violation of 45-5-502(3), 45-5-503, 45-5-505,
6 45-5-507 (unless the act occurred between two consenting
7 persons 16 years of age or older), or 45-5-625; or

8 (b) any violation of a law of another state or the
9 federal government reasonably equivalent to a violation
10 listed in subsection (3)(a)."

11 **Section 16.** Section 50-20-109, MCA, is amended to read:

12 "50-20-109. Control of practice of abortion. (1) No
13 abortion may be performed within the state of Montana:

14 (a) except by a licensed physician;

15 (b) after the first 3 months of pregnancy, except in a
16 hospital licensed by the department;

17 (c) after viability of the fetus, unless in appropriate
18 medical judgment the abortion is necessary to preserve the
19 life or health of the mother.

20 (2) An abortion under subsection (1)(c) may only be
21 performed if:

22 (a) the foregoing judgment of the physician who is to
23 perform the abortion is first certified in writing by him
24 setting forth in detail the facts upon which he relies in
25 making such judgment; and

1 (b) two other licensed physicians have first examined
2 the patient and concurred in writing with such judgment. The
3 foregoing certification and concurrence is not required if a
4 licensed physician certifies the abortion is necessary to
5 preserve the life of the mother.

6 (3) The timing and procedure used in performing an
7 abortion under subsection (1)(c) of this section must be
8 such that the viability of the fetus is not intentionally or
9 negligently endangered, as the term "negligently" is defined
10 in 45-2-101~~(37)~~. The fetus may be intentionally endangered
11 or destroyed only if necessary to preserve the life or
12 health of the mother.

13 (4) No physician, facility, or other person or agency
14 shall engage in solicitation, advertising, or other form of
15 communication having the purpose of inviting, inducing, or
16 attracting any person to come to such physician, facility,
17 or other person or agency to have an abortion or to purchase
18 abortifacients.

19 (5) Violation of subsections (1), (2), and (3) of this
20 section is a felony. Violation of subsection (4) of this
21 section is a misdemeanor."

22 **Section 17.** Section 61-5-405, MCA, is amended to read:

23 **"61-5-405. Offenses furnishing ground for suspension or**
24 **revocation of license.** (1) Items enumerated in Article
25 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer

1 specifically to 45-5-103, 45-5-104, 61-8-401,
2 45-2-101~~(21)~~(20), and 61-7-103, respectively.

3 (2) In addition to convictions mentioned above the
4 department, for the purpose of suspension, revocation, or
5 limitation of the license to operate a motor vehicle, shall
6 give the same effect to the conduct reported as it would if
7 such conduct had occurred in this state for:

8 (a) convictions of perjury or the making of a false
9 affidavit relating to the ownership or operation of a motor
10 vehicle (61-5-303); and

11 (b) three convictions of reckless driving committed
12 within a period of 12 months (61-8-301)."

13 NEW SECTION. **Section 18.** Repealer. Section 45-5-505,
14 MCA, is repealed.

15 NEW SECTION. **Section 19.** Effective date. [This act] is
16 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 451

INTRODUCED BY BROOKE, YELLOWTAIL, HANSEN, COCCHIARELLA,
J. BROWN, JACOBSON, STRIZICH, WYATT, COHEN, DARKO, BARNHART,
REAM, FRITZ, O'KEEFE, DRISCOLL, BECKER, SCHYE, D. BROWN,
BRADLEY, WANZENRIED, TOOLE, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES
OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL
EXEMPTIONS; INCREASING PENALTIES; ~~REPEALING~~ AMENDING THE
CRIME OF DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 27-2-216,
~~45-1-205,~~ 45-2-101, 45-2-103, 45-2-104, 45-5-501, 45-5-502,
45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-511, ~~46-15-401,~~
~~46-18-1117-46-18-2017-46-23-502,~~ 50-20-109, AND 61-5-405,
MCA; ~~REPEALING--SECTION--45-5-505,--MCA;~~ AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503 and
45-5-505, the term "without consent" means:

(a) the victim is compelled to submit by force or by
threat of imminent death, bodily injury, or kidnapping to be
inflicted on anyone; or

(b) the victim is incapable of consent because he

is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), "force" means:

(a) the infliction, attempted infliction, or threatened
infliction by the offender of bodily injury or commission or
threat of any other crime by the offender against the victim
or another that causes the victim to reasonably believe that
the offender has the present ability to execute the threat;

or

(b) the threat of retaliatory action by the offender
against the victim or another that causes the victim to
reasonably believe that the offender has the ability to
execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly
subjects another ~~not-his-spouse~~ PERSON to any sexual contact
without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined
not to exceed \$500 or be imprisoned in the county jail for
any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the
offender is 3 or more years older than the victim or if the
offender inflicts bodily injury upon anyone in the course of

SECOND READING

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1 committing sexual assault, he shall be imprisoned in the
2 state prison for any term not to exceed 20 years and may be
3 fined not more than \$50,000.

4 (4) An act "in the course of committing sexual assault"
5 shall include an attempt to commit the offense or flight
6 after the attempt or commission.

7 (5) Consent is ineffective under this section if the
8 victim is less than 14 years old and the offender is 3 or
9 more years older than the victim."

10 **Section 3.** Section 45-5-503, MCA, is amended to read:

11 "45-5-503. Sexual intercourse without consent. (1) A
12 person who knowingly has sexual intercourse without consent
13 with ~~a person of the opposite sex~~ another PERSON commits the
14 offense of sexual intercourse without consent. A person may
15 not be convicted under this section based on the age of his
16 spouse as provided in 45-5-501~~(2)(e)~~ (1)(b)(iii).

17 (2) A person convicted of sexual intercourse without
18 consent shall be imprisoned in the state prison for a term
19 of not less than 2 years or more than 20 years and may be
20 fined not more than \$50,000, except as provided in
21 46-18-222.

22 (3) (a) If the victim is less than 16 years old and the
23 offender is 3 or more years older than the victim or if the
24 offender inflicts bodily injury upon anyone in the course of
25 committing sexual intercourse without consent, he shall be

1 imprisoned in the state prison for any term of not less than
2 2 years or more than 40 years and may be fined not more than
3 \$50,000, except as provided in 46-18-222.

4 (b) An act "in the course of committing sexual
5 intercourse without consent" shall include an attempt to
6 commit the offense or flight after the attempt or
7 commission.

8 (4) In addition to any sentence imposed under
9 subsection (2) or (3), after determining the financial
10 resources and future ability of the offender to pay
11 restitution as required by 46-18-242, the court shall
12 require the offender, if able, to pay the victim's
13 reasonable costs of counseling that result from the offense.
14 The amount, method, and time of payment must be determined
15 in the same manner as provided for in 46-18-244."

16 **Section 4.** Section 45-5-504, MCA, is amended to read:

17 "45-5-504. Indecent exposure. (1) A person who, for the
18 purpose of arousing or gratifying sexual desire of himself
19 or of any person ~~other than his spouse~~, exposes his genitals
20 under circumstances in which he knows his conduct is likely
21 to cause affront or alarm commits the offense of indecent
22 exposure.

23 (2) A person convicted of the offense of indecent
24 exposure shall be fined not to exceed \$500 or be imprisoned
25 in the county jail for any term not to exceed 6 months, or

1 both."

2 **Section 5.** Section 45-5-507, MCA, is amended to read:

3 **"45-5-507. Incest.** (1) A person commits the offense of
4 incest if he knowingly marries, cohabits with, has sexual
5 intercourse with, or has sexual contact as defined in
6 45-2-101 with an ancestor, a descendant, a brother or sister
7 of the whole or half blood, or any stepson or stepdaughter.
8 The relationships referred to herein include blood
9 relationships without regard to legitimacy, relationships of
10 parent and child by adoption, and relationships involving a
11 stepson or stepdaughter.

12 (2) Consent is a defense under this section to incest
13 with or upon a stepson or stepdaughter, but consent is
14 ineffective if the victim is less than 18 years old.

15 (3) A person convicted of incest shall be imprisoned in
16 the state prison for any term not to exceed ~~10~~ 20 years or
17 be fined an amount not to exceed \$50,000, or both.

18 (4) If the victim is under 16 years of age and the
19 offender is 3 or more years older than the victim or if the
20 offender inflicts bodily injury upon anyone in the course of
21 committing incest, he shall be imprisoned in the state
22 prison for any term not to exceed ~~20~~ 40 20 years and may be
23 fined not more than \$50,000.

24 (5) In addition to any sentence imposed under
25 subsection (3) or (4), after determining the financial

1 resources and future ability of the offender to pay
2 restitution as required by 46-18-242, the court shall
3 require the offender, if able, to pay the victim's
4 reasonable costs of counseling that result from the offense.
5 The amount, method, and time of payment must be determined
6 in the same manner as provided for in 46-18-244."

7 **Section 6.** Section 45-5-511, MCA, is amended to read:

8 **"45-5-511. Provisions generally applicable to sexual**
9 **crimes.** (1) When criminality depends on the victim being
10 less than 16 years old, it is a defense for the offender to
11 prove that he reasonably believed the child to be above that
12 age. Such belief shall not be deemed reasonable if the child
13 is less than 14 years old.

14 ~~(2) Whenever the definition of an offense excludes~~
15 ~~conduct with a spouse, the exclusion shall be deemed to~~
16 ~~extend to persons living as husband and wife regardless of~~
17 ~~the legal status of their relationship. The exclusion shall~~
18 ~~be inoperative as respects spouses living apart whether~~
19 ~~under a decree of judicial separation or otherwise. Where~~
20 ~~the definition of an offense excludes conduct with a spouse,~~
21 ~~this shall not preclude conviction of a spouse in a sexual~~
22 ~~act which he or she causes another person, not within the~~
23 ~~exclusion, to perform.~~

24 ~~(3) In a prosecution under the preceding sections on~~
25 ~~sexual crimes (45-5-502 through 45-5-504) in which the~~

~~victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated,--it--is--a defense--to--such--prosecution--that--the--victim--was--a--voluntary social companion--of--the--defendant--and--the--intoxicating substance--was--voluntarily--and--knowingly--taken.~~

~~†4) (2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except:~~

~~†a) --evidence--of--the--victim's--past--sexual--conduct--with--the--offender;~~

~~†b) EVIDENCE OF THE VICTIM'S PAST SEXUAL CONDUCT WITH THE OFFENDER OR evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.~~

~~†5) (3) If the defendant proposes for any purpose to offer evidence described in subsection †4)†a) or --†4)†b) (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection †4) (2).~~

~~†6) (4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.~~

~~†7) (5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent."~~

Section 7. Section 45-2-101, MCA, is amended to read:

"45-2-101. **General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the

1 representation of being married.

2 (7) "Common scheme" means a series of acts or omissions
3 motivated by a purpose to accomplish a single criminal
4 objective or by a common purpose or plan which results in
5 the repeated commission of the same offense or affects the
6 same person or the same persons or the property thereof.

7 (8) "Computer" means an electronic device that performs
8 logical, arithmetic, and memory functions by the
9 manipulation of electronic or magnetic impulses and includes
10 all input, output, processing, storage, software, or
11 communication facilities that are connected or related to
12 such a device in a system or network.

13 (9) "Computer network" means the interconnection of
14 communication systems between computers or computers and
15 remote terminals.

16 (10) "Computer program" means an instruction or
17 statement or a series of instructions or statements, in a
18 form acceptable to a computer, that in actual or modified
19 form permits the functioning of a computer or computer
20 system and causes it to perform specified functions.

21 (11) "Computer services" include but are not limited to
22 computer time, data processing, and storage functions.

23 (12) "Computer software" means a set of computer
24 programs, procedures, and associated documentation concerned
25 with the operation of a computer system.

1 (13) "Computer system" means a set of related,
2 connected, or unconnected devices, computer software, or
3 other related computer equipment.

4 (14) "Conduct" means an act or series of acts and the
5 accompanying mental state.

6 (15) "Conviction" means a judgment of conviction or
7 sentence entered upon a plea of guilty or upon a verdict or
8 finding of guilty of an offense rendered by a legally
9 constituted jury or by a court of competent jurisdiction
10 authorized to try the case without a jury.

11 (16) "Correctional institution" means the state prison,
12 county or city jail, or other institution for the
13 incarceration or custody of persons under sentence for
14 offenses or awaiting trial or sentence for offenses.

15 (17) "Deception" means knowingly to:

16 (a) create or confirm in another an impression which is
17 false and which the offender does not believe to be true;

18 (b) fail to correct a false impression which the
19 offender previously has created or confirmed;

20 (c) prevent another from acquiring information
21 pertinent to the disposition of the property involved;

22 (d) sell or otherwise transfer or encumber property,
23 failing to disclose a lien, adverse claim, or other legal
24 impediment to the enjoyment of the property, whether such
25 impediment is or is not of value or is or is not a matter of

1 official record; or

2 (e) promise performance which the offender does not
3 intend to perform or knows will not be performed. Failure to
4 perform standing alone is not evidence that the offender did
5 not intend to perform.

6 (18) "Defamatory matter" means anything which exposes a
7 person or a group, class, or association to hatred,
8 contempt, ridicule, degradation, or disgrace in society or
9 to injury to his or its business or occupation.

10 (19) "Deprive" means to withhold property of another:

11 (a) permanently;

12 (b) for such a period as to appropriate a portion of
13 its value;

14 (c) with the purpose to restore it only upon payment of
15 reward or other compensation; or

16 (d) to dispose of the property and use or deal with the
17 property so as to make it unlikely that the owner will
18 recover it.

19 ~~{20}-"Deviate-sexual-relations"-means-sexual-contact--or~~
20 ~~sexual--intercourse--between--two-persons-of-the-same-sex-or~~
21 ~~any-form-of-sexual-intercourse-with-an-animal-~~

22 {21}{20} "Felony" means an offense in which the sentence
23 imposed upon conviction is death or imprisonment in the
24 state prison for any term exceeding 1 year.

25 {22}{21} "Forcible felony" means any felony which

1 involves the use or threat of physical force or violence
2 against any individual.

3 {23}{22} A "frisk" is a search by an external patting of
4 a person's clothing.

5 {24}{23} "Government" includes any branch, subdivision,
6 or agency of the government of the state or any locality
7 within it.

8 {25}{24} "Harm" means loss, disadvantage, or injury or
9 anything so regarded by the person affected, including loss,
10 disadvantage, or injury to any person or entity in whose
11 welfare he is interested.

12 {26}{25} A "house of prostitution" means any place where
13 prostitution or promotion of prostitution is regularly
14 carried on by one or more persons under the control,
15 management, or supervision of another.

16 {27}{26} "Human being" means a person who has been born
17 and is alive.

18 {28}{27} An "illegal article" is an article or thing
19 which is prohibited by statute, rule, or order from being in
20 the possession of a person subject to official detention.

21 {29}{28} "Inmate" means a person who engages in
22 prostitution in or through the agency of a house of
23 prostitution.

24 {30}{29} "Intoxicating substance" means any controlled
25 substance as defined in Title 50, chapter 32, and any

1 alcoholic beverage, including but not limited to any
 2 beverage containing 1/2 of 1% or more of alcohol by volume.
 3 The foregoing definition does not extend to dealcoholized
 4 wine or to any beverage or liquid produced by the process by
 5 which beer, ale, port, or wine is produced if it contains
 6 less than 1/2 of 1% of alcohol by volume.

7 ~~{31}~~(30) An "involuntary act" means any act which is:

8 (a) a reflex or convulsion;

9 (b) a bodily movement during unconsciousness or sleep;

10 (c) conduct during hypnosis or resulting from hypnotic
 11 suggestion; or

12 (d) a bodily movement that otherwise is not a product
 13 of the effort or determination of the actor, either
 14 conscious or habitual.

15 ~~{32}~~(31) "Juror" means any person who is a member of any
 16 jury, including a grand jury, impaneled by any court in this
 17 state in any action or proceeding or by any officer
 18 authorized by law to impanel a jury in any action or
 19 proceeding. The term "juror" also includes a person who has
 20 been drawn or summoned to attend as a prospective juror.

21 ~~{33}~~(32) "Knowingly"--a person acts knowingly with
 22 respect to conduct or to a circumstance described by a
 23 statute defining an offense when he is aware of his conduct
 24 or that the circumstance exists. A person acts knowingly
 25 with respect to the result of conduct described by a statute

1 defining an offense when he is aware that it is highly
 2 probable that such result will be caused by his conduct.
 3 When knowledge of the existence of a particular fact is an
 4 element of an offense, such knowledge is established if a
 5 person is aware of a high probability of its existence.
 6 Equivalent terms such as "knowing" or "with knowledge" have
 7 the same meaning.

8 ~~{34}~~(33) "Mentally defective" means that a person
 9 suffers from a mental disease or defect which renders him
 10 incapable of appreciating the nature of his conduct.

11 ~~{35}~~(34) "Mentally incapacitated" means that a person is
 12 rendered temporarily incapable of appreciating or
 13 controlling his conduct as a result of the influence of an
 14 intoxicating substance.

15 ~~{36}~~(35) "Misdemeanor" means an offense in which the
 16 sentence imposed upon conviction is imprisonment in the
 17 county jail for any term or a fine, or both, or the sentence
 18 imposed is imprisonment in the state prison for any term of
 19 1 year or less.

20 ~~{37}~~(36) "Negligently"--a person acts negligently with
 21 respect to a result or to a circumstance described by a
 22 statute defining an offense when he consciously disregards a
 23 risk that the result will occur or that the circumstance
 24 exists or when he disregards a risk of which he should be
 25 aware that the result will occur or that the circumstance

1 exists. The risk must be of such a nature and degree that to
 2 disregard it involves a gross deviation from the standard of
 3 conduct that a reasonable person would observe in the
 4 actor's situation. "Gross deviation" means a deviation that
 5 is considerably greater than lack of ordinary care. Relevant
 6 terms such as "negligent" and "with negligence" have the
 7 same meaning.

8 ~~(30)~~(37) "Obtain" means:

9 (a) in relation to property, to bring about a transfer
 10 of interest or possession, whether to the offender or to
 11 another; and

12 (b) in relation to labor or services, to secure the
 13 performance thereof.

14 ~~(39)~~(38) "Obtains or exerts control" includes but is not
 15 limited to the taking, carrying away, or sale, conveyance,
 16 or transfer of title to, interest in, or possession of
 17 property.

18 ~~(40)~~(39) "Occupied structure" means any building,
 19 vehicle, or other place suitable for human occupancy or
 20 night lodging of persons or for carrying on business,
 21 whether or not a person is actually present. Each unit of a
 22 building consisting of two or more units separately secured
 23 or occupied is a separate occupied structure.

24 ~~(41)~~(40) "Offender" means a person who has been or is
 25 liable to be arrested, charged, convicted, or punished for a

1 public offense.

2 ~~(42)~~(41) "Offense" means a crime for which a sentence of
 3 death or of imprisonment or a fine is authorized. Offenses
 4 are classified as felonies or misdemeanors.

5 ~~(43)~~(42) "Official detention" means imprisonment
 6 resulting from a conviction for an offense, confinement for
 7 an offense, confinement of a person charged with an offense,
 8 detention by a peace officer pursuant to arrest, detention
 9 for extradition or deportation, or any lawful detention for
 10 the purpose of the protection of the welfare of the person
 11 detained or for the protection of society. Official
 12 detention does not include supervision of probation or
 13 parole, constraint incidental to release on bail, or an
 14 unlawful arrest unless the person arrested employed physical
 15 force, a threat of physical force, or a weapon to escape.

16 ~~(44)~~(43) "Official proceeding" means a proceeding heard
 17 or which may be heard before any legislative, judicial,
 18 administrative, or other governmental agency or official
 19 authorized to take evidence under oath, including any
 20 referee, hearing examiner, commissioner, notary, or other
 21 person taking testimony or deposition in connection with
 22 such proceeding.

23 ~~(45)~~(44) "Other state" means any state or territory of
 24 the United States, the District of Columbia, and the
 25 Commonwealth of Puerto Rico.

1 †46†(45) "Owner" means a person other than the offender
2 who has possession of or any other interest in the property
3 involved, even though such interest or possession is
4 unlawful, and without whose consent the offender has no
5 authority to exert control over the property.

6 †47†(46) "Party official" means a person who holds an
7 elective or appointive post in a political party in the
8 United States by virtue of which he directs or conducts or
9 participates in directing or conducting party affairs at any
10 level of responsibility.

11 †48†(47) "Peace officer" means any person who by virtue
12 of his office or public employment is vested by law with a
13 duty to maintain public order or to make arrests for
14 offenses while acting within the scope of his authority.

15 †49†(48) "Pecuniary benefit" is benefit in the form of
16 money, property, commercial interests, or anything else the
17 primary significance of which is economic gain.

18 †50†(49) "Person" includes an individual, business
19 association, partnership, corporation, government, or other
20 legal entity and an individual acting or purporting to act
21 for or on behalf of any government or subdivision thereof.

22 †51†(50) "Physically helpless" means that a person is
23 unconscious or is otherwise physically unable to communicate
24 unwillingness to act.

25 †52†(51) "Possession" is the knowing control of anything

1 for a sufficient time to be able to terminate control.

2 †53†(52) "Premises" includes any type of structure or
3 building and any real property.

4 †54†(53) "Property" means any tangible or intangible
5 thing of value. Property includes but is not limited to:

- 6 (a) real estate;
- 7 (b) money;
- 8 (c) commercial instruments;
- 9 (d) admission or transportation tickets;
- 10 (e) written instruments which represent or embody
11 rights concerning anything of value, including labor or
12 services, or which are otherwise of value to the owner;
- 13 (f) things growing on, affixed to, or found on land and
14 things which are part of or affixed to any building;
- 15 (g) electricity, gas, and water;
- 16 (h) birds, animals, and fish which ordinarily are kept
17 in a state of confinement;
- 18 (i) food and drink, samples, cultures, microorganisms,
19 specimens, records, recordings, documents, blueprints,
20 drawings, maps, and whole or partial copies, descriptions,
21 photographs, prototypes, or models thereof;
- 22 (j) any other articles, materials, devices, substances,
23 and whole or partial copies, descriptions, photographs,
24 prototypes, or models thereof which constitute, represent,
25 evidence, reflect, or record secret scientific, technical,

1 merchandising, production, or management information or a
2 secret designed process, procedure, formula, invention, or
3 improvement; and

4 (k) electronic impulses, electronically processed or
5 produced data or information, commercial instruments,
6 computer software or computer programs, in either machine-
7 or human-readable form, computer services, any other
8 tangible or intangible item of value relating to a computer,
9 computer system, or computer network, and any copies
10 thereof.

11 ~~(55)~~(54) "Property of another" means real or personal
12 property in which a person other than the offender has an
13 interest which the offender has no authority to defeat or
14 impair, even though the offender himself may have an
15 interest in the property.

16 ~~(56)~~(55) "Public place" means any place to which the
17 public or any substantial group thereof has access.

18 ~~(57)~~(56) "Public servant" means any officer or employee
19 of government, including but not limited to legislators,
20 judges, and firefighters, and any person participating as a
21 juror, advisor, consultant, administrator, executor,
22 guardian, or court-appointed fiduciary. The term does not
23 include witnesses. The term "public servant" includes one
24 who has been elected or designated to become a public
25 servant.

1 ~~(58)~~(57) "Purposely"--a person acts purposely with
2 respect to a result or to conduct described by a statute
3 defining an offense if it is his conscious object to engage
4 in that conduct or to cause that result. When a particular
5 purpose is an element of an offense, the element is
6 established although such purpose is conditional, unless the
7 condition negatives the harm or evil sought to be prevented
8 by the law defining the offense. Equivalent terms such as
9 "purpose" and "with the purpose" have the same meaning.

10 ~~(59)~~(58) "Serious bodily injury" means bodily injury
11 which creates a substantial risk of death or which causes
12 serious permanent disfigurement or protracted loss or
13 impairment of the function or process of any bodily member
14 or organ. It includes serious mental illness or impairment.

15 ~~(60)~~(59) "Sexual contact" means any touching of the
16 sexual or other intimate parts of the person of another for
17 the purpose of arousing or gratifying the sexual desire of
18 either party.

19 ~~(61)~~(60) "Sexual intercourse" means penetration of the
20 vulva, anus, or mouth of one person by the penis of another
21 person, penetration of the vulva or anus of one person by
22 any body member of another person, or penetration of the
23 vulva or anus of one person by any foreign instrument or
24 object manipulated by another person for the purpose of
25 arousing or gratifying the sexual desire of either party.

1 Any penetration, however slight, is sufficient.

2 †62†(61) "Solicit" or "solicitation" means to command,
3 authorize, urge, incite, request, or advise another to
4 commit an offense.

5 †63†(62) "State" or "this state" means the state of
6 Montana, all the land and water in respect to which the
7 state of Montana has either exclusive or concurrent
8 jurisdiction, and the air space above such land and water.

9 †64†(63) "Statute" means any act of the legislature of
10 this state.

11 †65†(64) "Stolen property" means property over which
12 control has been obtained by theft.

13 †66†(65) A "stop" is the temporary detention of a person
14 that results when a peace officer orders the person to
15 remain in his presence.

16 †67†(66) "Tamper" means to interfere with something
17 improperly, meddle with it, make unwarranted alterations in
18 its existing condition, or deposit refuse upon it.

19 †68†(67) "Threat" means a menace, however communicated,
20 to:

21 (a) inflict physical harm on the person threatened or
22 any other person or on property;

23 (b) subject any person to physical confinement or
24 restraint;

25 (c) commit any criminal offense;

1 (d) accuse any person of a criminal offense;

2 (e) expose any person to hatred, contempt, or ridicule;

3 (f) harm the credit or business repute of any person;

4 (g) reveal any information sought to be concealed by
5 the person threatened;

6 (h) take action as an official against anyone or
7 anything, withhold official action, or cause such action or
8 withholding;

9 (i) bring about or continue a strike, boycott, or other
10 similar collective action if the property is not demanded or
11 received for the benefit of the groups which he purports to
12 represent; or

13 (j) testify or provide information or withhold
14 testimony or information with respect to another's legal
15 claim or defense.

16 †69†(68) (a) "Value" means the market value of the
17 property at the time and place of the crime or, if such
18 cannot be satisfactorily ascertained, the cost of the
19 replacement of the property within a reasonable time after
20 the crime. If the offender appropriates a portion of the
21 value of the property, the value shall be determined as
22 follows:

23 (i) The value of an instrument constituting an evidence
24 of debt, such as a check, draft, or promissory note, shall
25 be considered the amount due or collectible thereon or

1 thereby, such figure ordinarily being the face amount of the
 2 indebtedness less any portion thereof which has been
 3 satisfied.

4 (ii) The value of any other instrument which creates,
 5 releases, discharges, or otherwise affects any valuable
 6 legal right, privilege, or obligation shall be considered
 7 the amount of economic loss which the owner of the
 8 instrument might reasonably suffer by virtue of the loss of
 9 the instrument.

10 (iii) The value of electronic impulses, electronically
 11 produced data or information, computer software or programs,
 12 or any other tangible or intangible item relating to a
 13 computer, computer system, or computer network shall be
 14 considered to be the amount of economic loss that the owner
 15 of the item might reasonably suffer by virtue of the loss of
 16 the item. The determination of the amount of such economic
 17 loss includes but is not limited to consideration of the
 18 value of the owner's right to exclusive use or disposition
 19 of the item.

20 (b) When it cannot be determined if the value of the
 21 property is more or less than \$300 by the standards set
 22 forth in subsection ~~(69)(a)~~ above (68)(a), its value shall
 23 be considered to be an amount less than \$300.

24 (c) Amounts involved in thefts committed pursuant to a
 25 common scheme or the same transaction, whether from the same

1 person or several persons, may be aggregated in determining
 2 the value of the property.

3 ~~(70)~~(69) "Vehicle" means any device for transportation
 4 by land, water, or air or mobile equipment with provision
 5 for transport of an operator.

6 ~~(71)~~(70) "Weapon" means any instrument, article, or
 7 substance which, regardless of its primary function, is
 8 readily capable of being used to produce death or serious
 9 bodily injury.

10 ~~(72)~~(71) "Witness" means a person whose testimony is
 11 desired in any official proceeding, in any investigation by
 12 a grand jury, or in a criminal action, prosecution, or
 13 proceeding."

14 **Section 8.** Section 27-2-216, MCA, is amended to read:

15 **"27-2-216. Tort actions -- childhood sexual abuse.** (1)
 16 An action based on intentional conduct brought by a person
 17 for recovery of damages for injury suffered as a result of
 18 childhood sexual abuse must be commenced not later than:

19 (a) 3 years after the act of childhood sexual abuse
 20 that is alleged to have caused the injury; or

21 (b) 3 years after the plaintiff discovers or reasonably
 22 should have discovered that the injury was caused by the act
 23 of childhood sexual abuse.

24 (2) It is not necessary for a plaintiff to establish
 25 which act, in a series of acts of childhood sexual abuse,

1 caused the injury that is the subject of the suit. The
2 plaintiff may compute the period referred to in subsection
3 (1)(a) from the date of the last act by the same
4 perpetrator.

5 (3) As used in this section, "childhood sexual abuse"
6 means any act committed against a plaintiff who was less
7 than 18 years of age at the time the act occurred and that
8 would have been a violation of 45-5-502, 45-5-503, 45-5-504,
9 45-5-505, 45-5-507, 45-5-625, or prior similar laws in
10 effect at the time the act occurred.

11 (4) The provisions of 27-2-401 apply to this section."

12 Section 9, Section 45-1-205, MCA, is amended to read:

13 "45-1-205, General time limitations, (1)(a) A
14 prosecution for deliberate, mitigated, or negligent homicide
15 may be commenced at any time.

16 (b) A prosecution under 45-5-502 through 45-5-505
17 45-5-504, 45-5-507, or 45-5-625 may be commenced within 5
18 years after the victim reaches the age of 18 if the victim
19 was less than 18 years old at the time the offense occurred.

20 (2) Except as otherwise provided by law, prosecutions
21 for other offenses are subject to the following periods of
22 limitation:

23 (a) A prosecution for a felony must be commenced within
24 5 years after it is committed.

25 (b) A prosecution for a misdemeanor must be commenced

1 within 1 year after it is committed.

2 (3) The period prescribed in subsection (2) is extended
3 in a prosecution for theft involving a breach of fiduciary
4 obligation to an aggrieved person as follows:

5 (a) If the aggrieved person is a minor or incompetent,
6 during the minority or incompetency or within 1 year after
7 the termination thereof;

8 (b) In any other instance, within 1 year after the
9 discovery of the offense by the aggrieved person or by a
10 person who has legal capacity to represent an aggrieved
11 person or has a legal duty to report the offense and is not
12 himself a party to the offense or, in the absence of such
13 discovery, within 1 year after the prosecuting officer
14 becomes aware of the offense.

15 (4) The period prescribed in subsection (2) shall be
16 extended in a prosecution for unlawful use of a computer,
17 and prosecution shall be brought within 1 year after the
18 discovery of the offense by the aggrieved person or by a
19 person who has legal capacity to represent an aggrieved
20 person or has a legal duty to report the offense and is not
21 himself a party to the offense or, in the absence of such
22 discovery, within 1 year after the prosecuting officer
23 becomes aware of the offense.

24 (5) An offense is committed either when every element
25 occurs or, when the offense is based upon a continuing

1 course-of-conduct, at the time when the course of conduct is
2 terminated, --~~time~~ starts to run on the day after the offense
3 is committed.

4 ~~(6) A prosecution is commenced either when an~~
5 ~~indictment is found or an information or complaint is~~
6 ~~filed."~~

7 **Section 9.** Section 45-2-103, MCA, is amended to read:

8 **"45-2-103. General requirements of criminal act and**
9 **mental state.** (1) Except for deliberate homicide as defined
10 in 45-5-102(1)(b) or an offense which involves absolute
11 liability, a person is not guilty of an offense unless, with
12 respect to each element described by the statute defining
13 the offense, he acts while having one of the mental states
14 described in subsections ~~(33)~~(32), ~~(37)~~(36), and ~~(58)~~(57) of
15 45-2-101.

16 (2) In deliberate homicide under 45-5-102(1)(b), the
17 offender must act while having the mental state of purposely
18 or knowingly only as to the underlying felony referred to in
19 45-5-102(1)(b).

20 (3) The existence of a mental state may be inferred
21 from the acts of the accused and the facts and circumstances
22 connected with the offense.

23 (4) If the statute defining an offense prescribes a
24 particular mental state with respect to the offense as a
25 whole without distinguishing among the elements thereof, the

1 prescribed mental state applies to each such element.

2 (5) Knowledge that certain conduct constitutes an
3 offense or knowledge of the existence, meaning, or
4 application of the statute defining an offense is not an
5 element of the offense unless the statute clearly defines it
6 as such.

7 (6) A person's reasonable belief that his conduct does
8 not constitute an offense is a defense if:

9 (a) the offense is defined by an administrative
10 regulation or order which is not known to him and has not
11 been published or otherwise made reasonably available to him
12 and he could not have acquired such knowledge by the
13 exercise of due diligence pursuant to facts known to him;

14 (b) he acts in reliance upon a statute which later is
15 determined to be invalid;

16 (c) he acts in reliance upon an order or opinion of the
17 Montana supreme court or a United States appellate court
18 later overruled or reversed; or

19 (d) he acts in reliance upon an official interpretation
20 of the statute, regulation, or order defining the offense
21 made by a public officer or agency legally authorized to
22 interpret such statute.

23 (7) If a person's reasonable belief is a defense under
24 subsection (6), nevertheless he may be convicted of an
25 included offense of which he would be guilty if the law were

1 as he believed it to be.

2 (8) Any defense based upon this section is an
3 affirmative defense."

4 **Section 10.** Section 45-2-104, MCA, is amended to read:

5 "45-2-104. Absolute liability. A person may be guilty
6 of an offense without having, as to each element thereof,
7 one of the mental states described in subsections {33}{32},
8 {37}{36}, and {58}{57} of 45-2-101 only if the offense is
9 punishable by a fine not exceeding \$500 or the statute
10 defining the offense clearly indicates a legislative purpose
11 to impose absolute liability for the conduct described."

12 ~~Section 12. Section 46-15-401, MCA, is amended to read:~~

13 ~~"46-15-401. When videotaped testimony is admissible. For
14 any prosecution commenced under 45-5-502{3}, 45-5-503,
15 45-5-505, or 45-5-507 and for the prosecution of any offense
16 arising from the same transaction, as defined in 46-11-501,
17 the testimony of the victim, at the request of such victim
18 and with the concurrence of the prosecuting attorney, may be
19 recorded by means of videotape for presentation at trial.
20 The testimony so recorded may be presented at trial and
21 shall be received into evidence. The victim need not be
22 physically present in the courtroom when the videotape is
23 admitted into evidence."~~

24 ~~Section 13. Section 46-18-111, MCA, is amended to read:~~

25 ~~"46-18-111. Presentence investigation. No defendant~~

1 convicted of an offense under 45-5-502 through 45-5-505
2 45-5-504, 45-5-507, or 45-5-625 against a victim who was
3 less than 16 years old when the offense was committed may be
4 sentenced or otherwise disposed of before a written report
5 of investigation by a probation officer is presented to and
6 considered by the court. The investigation must include an
7 evaluation of the defendant and a recommendation as to
8 treatment by a person qualified by professional experience.
9 No defendant convicted of any other offense that may result
10 in commitment for 1 year or more in the state prison may be
11 sentenced or otherwise disposed of before a written report
12 of investigation by a probation officer is presented to and
13 considered by the court unless the court deems such report
14 unnecessary. The court may, in its discretion, order a
15 presentence investigation for a defendant convicted of any
16 lesser crime or offense."

17 ~~Section 14. Section 46-18-201, MCA, is amended to read:~~

18 ~~"46-18-201. Sentences that may be imposed. (1) Whenever
19 a person has been found guilty of an offense upon a verdict
20 or a plea of guilty, the court may:~~

21 ~~(a) defer imposition of sentence, excepting sentences
22 for driving under the influence of alcohol or drugs, for a
23 period, except as otherwise provided, not exceeding 1 year
24 for any misdemeanor or for a period not exceeding 3 years
25 for any felony. The sentencing judge may impose upon the~~

1 defendant--any--reasonable--restrictions--or--conditions--during
 2 the--period--of--the--deferred--imposition;--Reasonable
 3 restrictions--or--conditions--may--include:
 4 (i)--jail--base--release;
 5 (ii)--jail--time--not--exceeding--180--days;
 6 (iii)--conditions--for--probation;
 7 (iv)--restitution;
 8 (v)--payment--of--the--costs--of--confinement;
 9 (vi)--payment--of--a--fine--as--provided--in--46--18--231;
 10 (vii)--payment--of--costs--as--provided--in--46--18--232--and
 11 46--18--233;
 12 (viii)--payment--of--costs--of--court--appointed--counsel--as
 13 provided--in--46--8--113;
 14 (ix)--community--service;
 15 (x)--any--other--reasonable--conditions--considered
 16 necessary--for--rehabilitation--or--for--the--protection--of
 17 society;--or
 18 (xi)--any--combination--of--the--above;
 19 (b)--suspend--execution--of--sentence--up--to--the--maximum
 20 sentence--allowed--for--each--particular--offense;--The--sentencing
 21 judge--may--impose--on--the--defendant--any--reasonable
 22 restrictions--or--conditions--during--the--period--of--suspended
 23 sentence;--Reasonable--restrictions--or--conditions--may--include
 24 any--of--those--listed--in--subsections--(1)(a)(i)--through
 25 (1)(a)(xi)-

1 (c)--impose--a--fine--as--provided--by--law--for--the--offense;
 2 (d)--require--payment--of--costs--as--provided--in--46--18--232
 3 or--payment--of--costs--of--court--appointed--counsel--as--provided
 4 in--46--8--113;
 5 (e)--commit--the--defendant--to--a--correctional--institution;
 6 with--or--without--a--fine--as--provided--by--law--for--the--offense;
 7 (f)--impose--any--combination--of--subsections--(1)(b)
 8 through--(1)(e);
 9 (2)--if--any--financial--obligation--is--imposed--as--a
 10 condition--under--subsection--(1)(a);--sentence--may--be--deferred
 11 for--a--period--not--exceeding--2--years--for--any--misdemeanor--or
 12 for--a--period--not--exceeding--6--years--for--any--felony;
 13 regardless--of--whether--any--other--conditions--are--imposed;
 14 (3)--if--any--restrictions--or--conditions--imposed--under
 15 subsection--(1)(a)--or--(1)(b)--are--violated;--the--court--shall
 16 consider--any--elapsed--time--and--either--expressly--allow--part--or
 17 all--of--it--as--a--credit--against--the--sentence--or--reject--all--or
 18 part--as--a--credit--and--state--its--reasons--in--the--order;--Credit;
 19 however;--must--be--allowed--for--jail--time--already--served;
 20 (4)--Except--as--provided--in--46--18--222;--the--imposition--or
 21 execution--of--the--first--2--years--of--a--sentence--of--imprisonment
 22 imposed--under--the--following--sections--may--not--be--deferred--or
 23 suspended:--45--5--103;--45--5--202(3)--relating--to--aggravated
 24 assault;--45--5--302(2);--45--5--303(2);--45--5--401(2);--45--5--503(2)
 25 and--(3);--45--9--101(2);--(3);--and--(5)(d);--45--9--102(3);--and

1 45-9-103(2)-

2 (5)--Except--as--provided--in--46-18-222,--the--imposition--or
3 execution--of--the--first--10--years--of--a--sentence--of
4 imprisonment--imposed--under--45-5-102--may--not--be--deferred--or
5 suspended.

6 (6)--Except--as--provided--in--46-18-222,--imposition--of
7 sentence--in--a--felony--case--may--not--be--deferred--in--the--case--of
8 a--defendant--who--has--been--convicted--of--a--felony--on--a--prior
9 occasion,--whether--or--not--the--sentence--was--imposed,
10 imposition--of--the--sentence--was--deferred,--or--execution--of--the
11 sentence--was--suspended.

12 (7)--If--the--victim--was--less--than--16--years--old,--the
13 imposition--or--execution--of--the--first--30--days--of--a--sentence
14 of--imprisonment--imposed--under--45-5-502(3),--45-5-503,
15 45-5-504,--45-5-505,--or--45-5-507--may--not--be--deferred--or
16 suspended.--Section--46-18-222--does--not--apply--to--the--first--30
17 days--of--such--imprisonment.

18 (8)--In--imposing--a--sentence--on--a--defendant--convicted--of
19 a--sexual--offense--as--defined--in--46-23-502,--the--court--may--not
20 waive--the--registration--requirement--provided--in--46-18-254,
21 46-18-255,--and--Title--46,--chapter--23,--part--5.

22 (9)--A--person--convicted--of--a--sexual--offense,--as--defined
23 in--46-23-502,--and--sentenced--to--imprisonment--in--the--state
24 prison--shall--enroll--in--the--educational--phase--of--the--prison's
25 sexual--offender--program."

1 Section-15,--Section-46-23-502,--MCA,--is--amended--to--read:

2 "46-23-502,--Definitions:--As--used--in--46-18-254,
3 46-18-255,--and--this--part,--the--following--definitions--apply:

4 (1)--"Department"--means--the--department--of--institutions
5 provided--for--in--Title--2,--chapter--15,--part--23.

6 (2)--"Sexual--offender"--means--a--person--who--has--been
7 convicted--of--a--sexual--offense.

8 (3)--"Sexual--offense"--means:

9 (a)--any--violation--of--45-5-502(3),--45-5-503,--45-5-505,
10 45-5-507--(unless--the--act--occurred--between--two--consenting
11 persons--16--years--of--age--or--older),--or--45-5-625,--or

12 (b)--any--violation--of--a--law--of--another--state--or--the
13 federal--government--reasonably--equivalent--to--a--violation
14 listed--in--subsection--(3)(a)."

15 Section 11. Section 50-20-109, MCA, is amended to read:

16 "50-20-109. Control of practice of abortion. (1) No
17 abortion may be performed within the state of Montana:

18 (a) except by a licensed physician;

19 (b) after the first 3 months of pregnancy, except in a
20 hospital licensed by the department;

21 (c) after viability of the fetus, unless in appropriate
22 medical judgment the abortion is necessary to preserve the
23 life or health of the mother.

24 (2) An abortion under subsection (1)(c) may only be
25 performed if:

1 (a) the foregoing judgment of the physician who is to
 2 perform the abortion is first certified in writing by him
 3 setting forth in detail the facts upon which he relies in
 4 making such judgment; and

5 (b) two other licensed physicians have first examined
 6 the patient and concurred in writing with such judgment. The
 7 foregoing certification and concurrence is not required if a
 8 licensed physician certifies the abortion is necessary to
 9 preserve the life of the mother.

10 (3) The timing and procedure used in performing an
 11 abortion under subsection (1)(c) of this section must be
 12 such that the viability of the fetus is not intentionally or
 13 negligently endangered, as the term "negligently" is defined
 14 in 45-2-101{37}. The fetus may be intentionally endangered
 15 or destroyed only if necessary to preserve the life or
 16 health of the mother.

17 (4) No physician, facility, or other person or agency
 18 shall engage in solicitation, advertising, or other form of
 19 communication having the purpose of inviting, inducing, or
 20 attracting any person to come to such physician, facility,
 21 or other person or agency to have an abortion or to purchase
 22 abortifacients.

23 (5) Violation of subsections (1), (2), and (3) of this
 24 section is a felony. Violation of subsection (4) of this
 25 section is a misdemeanor."

1 **Section 12.** Section 61-5-405, MCA, is amended to read:

2 "61-5-405. Offenses furnishing ground for suspension or
 3 revocation of license. (1) Items enumerated in Article
 4 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer
 5 specifically to 45-5-103, 45-5-104, 61-8-401,
 6 45-2-101{22}(20), and 61-7-103, respectively.

7 (2) In addition to convictions mentioned above the
 8 department, for the purpose of suspension, revocation, or
 9 limitation of the license to operate a motor vehicle, shall
 10 give the same effect to the conduct reported as it would if
 11 such conduct had occurred in this state for:

12 (a) convictions of perjury or the making of a false
 13 affidavit relating to the ownership or operation of a motor
 14 vehicle (61-5-303); and

15 (b) three convictions of reckless driving committed
 16 within a period of 12 months (61-8-301)."

17 ~~NEW SECTION--Section 18--Repealer--Section--45-5-505,~~
 18 ~~MCA, is repealed.~~

19 **SECTION 13.** SECTION 45-5-505, MCA, IS AMENDED TO READ:

20 "45-5-505. Deviate--sexual--conduct Bestiality. (1) A
 21 person who knowingly engages in deviate--sexual--relations
 22 bestiality or who causes another to engage in deviate--sexual
 23 relations bestiality commits the offense of deviate--sexual
 24 conduct bestiality.

25 (2) A person convicted of the offense of deviate--sexual

1 conduct bestiality shall be imprisoned in the state prison
2 for any term not to exceed 10 years or be fined an amount
3 not to exceed \$50,000, or both.

4 ~~(3) A person convicted of deviate sexual conduct~~
5 ~~without consent shall be imprisoned in the state prison for~~
6 ~~any term not to exceed 20 years or be fined an amount not to~~
7 ~~exceed \$50,000 or both~~ For purposes of this section,
8 "bestiality" means any form of sexual contact or of sexual
9 intercourse with an animal."

10 NEW SECTION. Section 14. Effective date. [This act] is
11 effective on passage and approval.

-End-

1 HOUSE BILL NO. 451

2 INTRODUCED BY BROOKE, YELLOWTAIL, HANSEN, COCCHIARELLA,
3 J. BROWN, JACOBSON, STRIZICH, WYATT, COHEN, DARKO, BARNHART,
4 REAM, FRITZ, O'KEEFE, DRISCOLL, BECKER, SCHYE, D. BROWN,
5 BRADLEY, WANZENRIED, TOOLE, CONNELLY

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
8 LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES
9 OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL
10 EXEMPTIONS; INCREASING PENALTIES; ~~REPEALING~~ AMENDING
11 CLARIFYING THE BASIS FOR A PROSECUTION FOR THE CRIME OF
12 DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 27-2-216,
13 45-1-2057-45-2-1017-45-2-1037-45-2-1047, 45-5-501, 45-5-502,
14 45-5-503, 45-5-504, 45-5-5057, 45-5-505, 45-5-507, AND
15 45-5-511, 46-15-4017---46-10-1117---46-10-2017---46-23-5027
16 50-20-1097---AND---61-5-4057, MCA; ~~REPEALING SECTION 45-5-5057~~
17 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 45-5-501, MCA, is amended to read:

21 "45-5-501. Definition. (1) As used in 45-5-503 and
22 45-5-505, the term "without consent" means:

23 (a) the victim is compelled to submit by force or by
24 threat of imminent death, bodily injury, or kidnapping to be
25 inflicted on anyone; or

1 (b) the victim is incapable of consent because he
2 is:

3 (i) mentally defective or incapacitated;

4 (ii) physically helpless; or

5 (iii) less than 16 years old.

6 (2) As used in subsection (1), "force" means:

7 (a) the infliction, OR attempted infliction, ~~or~~
8 ~~threatened infliction by the offender~~ of bodily injury or
9 ~~the commission or threat of any other crime~~ OF A FORCIBLE
10 FELONY by the offender; ~~against the victim or another~~

11 (B) THE THREATENED INFLECTION OF BODILY INJURY OR THE
12 THREAT OF A FORCIBLE FELONY BY THE OFFENDER that causes the
13 victim to reasonably believe that the offender has the
14 present ability to execute the threat; or

15 (b)(C) the threat of SUBSTANTIAL retaliatory action by
16 ~~the offender against the victim or another~~ AGAINST A
17 SUBSTANTIAL AND PROTECTED INTEREST OF THE VICTIM that causes
18 the victim to reasonably believe that the offender has the
19 ability to execute the threat."

20 **Section 2.** Section 45-5-502, MCA, is amended to read:

21 "45-5-502. Sexual assault. (1) A person who knowingly
22 subjects another ~~not-his-spouse~~ PERSON to any sexual contact
23 without consent commits the offense of sexual assault.

24 (2) A person convicted of sexual assault shall be fined
25 not to exceed \$500 or be imprisoned in the county jail for

THIRD READING

1 any term not to exceed 6 months, or both.

2 (3) If the victim is less than 16 years old and the
3 offender is 3 or more years older than the victim or if the
4 offender inflicts bodily injury upon anyone in the course of
5 committing sexual assault, he shall be imprisoned in the
6 state prison for any term not to exceed 20 years and may be
7 fined not more than \$50,000.

8 (4) An act "in the course of committing sexual assault"
9 shall include an attempt to commit the offense or flight
10 after the attempt or commission.

11 (5) Consent is ineffective under this section if the
12 victim is less than 14 years old and the offender is 3 or
13 more years older than the victim."

14 **Section 3.** Section 45-5-503, MCA, is amended to read:

15 **"45-5-503. Sexual intercourse without consent.** (1) A
16 person who knowingly has sexual intercourse without consent
17 with ~~a person of the opposite sex~~ another PERSON commits the
18 offense of sexual intercourse without consent. A person may
19 not be convicted under this section based on the age of his
20 spouse as provided in 45-5-501~~(2)(c)~~ (1)(b)(iii).

21 (2) A person convicted of sexual intercourse without
22 consent shall be imprisoned in the state prison for a term
23 of not less than 2 years or more than 20 years and may be
24 fined not more than \$50,000, except as provided in
25 46-18-222.

1 (3) (a) If the victim is less than 16 years old and the
2 offender is 3 or more years older than the victim or if the
3 offender inflicts bodily injury upon anyone in the course of
4 committing sexual intercourse without consent, he shall be
5 imprisoned in the state prison for any term of not less than
6 2 years or more than 40 years and may be fined not more than
7 \$50,000, except as provided in 46-18-222.

8 (b) An act "in the course of committing sexual
9 intercourse without consent" shall include an attempt to
10 commit the offense or flight after the attempt or
11 commission.

12 (4) In addition to any sentence imposed under
13 subsection (2) or (3), after determining the financial
14 resources and future ability of the offender to pay
15 restitution as required by 46-18-242, the court shall
16 require the offender, if able, to pay the victim's
17 reasonable costs of counseling that result from the offense.
18 The amount, method, and time of payment must be determined
19 in the same manner as provided for in 46-18-244."

20 **Section 4.** Section 45-5-504, MCA, is amended to read:

21 **"45-5-504. Indecent exposure.** (1) A person who, for the
22 purpose of arousing or gratifying sexual desire of himself
23 or of any person ~~other than his spouse~~, exposes his genitals
24 under circumstances in which he knows his conduct is likely
25 to cause affront or alarm commits the offense of indecent

1 exposure.

2 (2) A person convicted of the offense of indecent
3 exposure shall be fined not to exceed \$500 or be imprisoned
4 in the county jail for any term not to exceed 6 months, or
5 both."

6 **Section 5.** Section 45-5-507, MCA, is amended to read:

7 **"45-5-507. Incest.** (1) A person commits the offense of
8 incest if he knowingly marries, cohabits with, has sexual
9 intercourse with, or has sexual contact as defined in
10 45-2-101 with an ancestor, a descendant, a brother or sister
11 of the whole or half blood, or any stepson or stepdaughter.
12 The relationships referred to herein include blood
13 relationships without regard to legitimacy, relationships of
14 parent and child by adoption, and relationships involving a
15 stepson or stepdaughter.

16 (2) Consent is a defense under this section to incest
17 with or upon a stepson or stepdaughter, but consent is
18 ineffective if the victim is less than 18 years old.

19 (3) A person convicted of incest shall be imprisoned in
20 the state prison for any term not to exceed ~~10~~ 20 years or
21 be fined an amount not to exceed \$50,000, or both.

22 (4) If the victim is under 16 years of age and the
23 offender is 3 or more years older than the victim or if the
24 offender inflicts bodily injury upon anyone in the course of
25 committing incest, he shall be imprisoned in the state

1 prison for any term not to exceed ~~20~~ 40 20 years and may be
2 fined not more than \$50,000.

3 (5) In addition to any sentence imposed under
4 subsection (3) or (4), after determining the financial
5 resources and future ability of the offender to pay
6 restitution as required by 46-18-242, the court shall
7 require the offender, if able, to pay the victim's
8 reasonable costs of counseling that result from the offense.
9 The amount, method, and time of payment must be determined
10 in the same manner as provided for in 46-18-244."

11 **Section 6.** Section 45-5-511, MCA, is amended to read:

12 **"45-5-511. Provisions generally applicable to sexual**
13 **crimes.** (1) When criminality depends on the victim being
14 less than 16 years old, it is a defense for the offender to
15 prove that he reasonably believed the child to be above that
16 age. Such belief shall not be deemed reasonable if the child
17 is less than 14 years old.

18 ~~(2) Whenever the definition of an offense excludes~~
19 ~~conduct with a spouse, the exclusion shall be deemed to~~
20 ~~extend to persons living as husband and wife regardless of~~
21 ~~the legal status of their relationship. The exclusion shall~~
22 ~~be inoperative as respects spouses living apart whether~~
23 ~~under a decree of judicial separation or otherwise. Where~~
24 ~~the definition of an offense excludes conduct with a spouse,~~
25 ~~this shall not preclude conviction of a spouse in a sexual~~

1 act--which--he--or--she--causes--another--person--not--within--the
2 exclusion--to--perform;

3 {3}--in--a--prosecution--under--the--preceding--sections--on
4 sexual--crimes--{45-5-502--through--45-5-504}--in--which--the
5 victim's--lack--of--consent--is--based--solely--upon--his--incapacity
6 to--consent--because--he--was--mentally--incapacitated--it--is--a
7 defense--to--such--prosecution--that--the--victim--was--a--voluntary
8 social--companion--of--the--defendant--and--the--intoxicating
9 substance--was--voluntarily--and--knowingly--taken;

10 {4}{2} No evidence concerning the sexual conduct of the
11 victim is admissible in prosecutions under this part except:

12 {a}--evidence--of--the--victim's--past--sexual--conduct--with
13 the--offender;

14 {b} EVIDENCE OF THE VICTIM'S PAST SEXUAL CONDUCT WITH
15 THE OFFENDER OR evidence of specific instances of the
16 victim's sexual activity to show the origin of semen,
17 pregnancy, or disease which is at issue in the prosecution.

18 {5}{3} If the defendant proposes for any purpose to
19 offer evidence described in subsection {4}{a}-or--{4}{b}{2},
20 the trial judge shall order a hearing out of the presence of
21 the jury to determine whether the proposed evidence is
22 admissible under subsection {4}{2}.

23 {6}{4} Evidence of failure to make a timely complaint
24 or immediate outcry does not raise any presumption as to the
25 credibility of the victim.

1 {7}{5} Resistance by the victim is not required to show
2 lack of consent. Force, fear, or threat is sufficient alone
3 to show lack of consent."

4 Section 7--Section 45-2-101--MCA--is--amended--to--read:

5 "45-2-101--General--definitions:--Unless--otherwise
6 specified--in--the--statute--all--words--will--be--taken--in--the
7 objective--standard--rather--than--in--the--subjective--and--unless
8 a--different--meaning--plainly--is--required--the--following
9 definitions--apply--in--this--title:

10 {1}--"Acts"--has--its--usual--and--ordinary--meaning--and
11 includes--any--bodily--movement--any--form--of--communication--and
12 where--relevant--a--failure--or--omission--to--take--action;

13 {2}--"Administrative proceeding"--means--any--proceeding
14 the--outcome--of--which--is--required--to--be--based--on--a--record--or
15 documentation--prescribed--by--law--or--in--which--a--law--or--a
16 regulation--is--particularized--in--its--application--to--an
17 individual;

18 {3}--"Another"--means--a--person--or--persons--as--defined--in
19 this--code--other--than--the--offender;

20 {4}--"Benefit"--means--gain--or--advantage--or--anything
21 regarded--by--the--beneficiary--as--gain--or--advantage--including
22 benefit--to--any--other--person--or--entity--in--whose--welfare--he--is
23 interested--but--not--an--advantage--promised--generally--to--a
24 group--or--class--of--voters--as--a--consequence--of--public--measures
25 which--a--candidate--engages--to--support--or--oppose;

1 {5}--"Bodily injury"--means physical pain, illness, or
2 any impairment of physical condition and includes mental
3 illness or impairment.

4 {6}--"Cohabit"--means to live together under the
5 representation of being married.

6 {7}--"Common scheme"--means a series of acts or omissions
7 motivated by a purpose to accomplish a single criminal
8 objective or by a common purpose or plan which results in
9 the repeated commission of the same offense or affects the
10 same person or the same persons or the property thereof.

11 {8}--"Computer"--means an electronic device that performs
12 logical, arithmetic, and memory functions by the
13 manipulation of electronic or magnetic impulses and includes
14 all input, output, processing, storage, software, or
15 communication facilities that are connected or related to
16 such a device in a system or network.

17 {9}--"Computer network"--means the interconnection of
18 communication systems between computers or computers and
19 remote terminals.

20 {10}--"Computer program"--means an instruction or
21 statement or a series of instructions or statements, in a
22 form acceptable to a computer, that in actual or modified
23 form permits the functioning of a computer or computer
24 system and causes it to perform specified functions.

25 {11}--"Computer services"--include but are not limited to

1 computer time, data processing, and storage functions.

2 {12}--"Computer software"--means a set of computer
3 programs, procedures, and associated documentation concerned
4 with the operation of a computer system.

5 {13}--"Computer system"--means a set of related,
6 connected, or unconnected devices, computer software, or
7 other related computer equipment.

8 {14}--"Conduct"--means an act or series of acts and the
9 accompanying mental state.

10 {15}--"Conviction"--means a judgment of conviction or
11 sentence entered upon a plea of guilty or upon a verdict or
12 finding of guilty of an offense rendered by a legally
13 constituted jury or by a court of competent jurisdiction
14 authorized to try the case without a jury.

15 {16}--"Correctional institution"--means the state prison,
16 county or city jail, or other institution for the
17 incarceration or custody of persons under sentence for
18 offenses or awaiting trial or sentence for offenses.

19 {17}--"Reception"--means knowingly to:

20 (a) create or confirm in another an impression which is
21 false and which the offender does not believe to be true;

22 (b) fail to correct a false impression which the
23 offender previously has created or confirmed;

24 (c) prevent another from acquiring information
25 pertinent to the disposition of the property involved;

1 (d)--sell--or--otherwise--transfer--or--encumber--property;
2 failing--to--disclose--a--lien--adverse--claim--or--other--legal
3 impediment--to--the--enjoyment--of--the--property--whether--such
4 impediment--is--or--is--not--of--value--or--is--or--is--not--a--matter--of
5 official--record--or

6 (e)--promise--performance--which--the--offender--does--not
7 intend--to--perform--or--knows--will--not--be--performed--Failure--to
8 perform--standing--alone--is--not--evidence--that--the--offender--did
9 not--intend--to--perform;

10 (18)--"Defamatory--matter"--means--anything--which--exposes--a
11 person--or--a--group--class--or--association--to--hatred--
12 contempt--ridicule--degradation--or--disgrace--in--society--or
13 to--injury--to--his--or--its--business--or--occupation;

14 (19)--"Deprive"--means--to--withhold--property--of--another;

15 (a)--permanently;

16 (b)--for--such--a--period--as--to--appropriate--a--portion--of
17 its--value;

18 (c)--with--the--purpose--to--restore--it--only--upon--payment--of
19 reward--or--other--compensation--or

20 (d)--to--dispose--of--the--property--and--use--or--deal--with--the
21 property--so--as--to--make--it--unlikely--that--the--owner--will
22 recover--it;

23 (20)--"Deviate--sexual--relations"--means--sexual--contact--or
24 sexual--intercourse--between--two--persons--of--the--same--sex--or
25 any--form--of--sexual--intercourse--with--an--animal;

1 (20)--"Deviate--sexual--relations"--means--sexual--contact--or
2 sexual--intercourse--between--two--person--of--the--same--sex--or--any
3 form--of--sexual--intercourse--with--an--animal;

4 (21)(20)(21)--"Felony"--means--an--offense--in--which--the
5 sentence--imposed--upon--conviction--is--death--or--imprisonment--in
6 the--state--prison--for--any--term--exceeding--1--year;

7 (22)(21)(22)--"Forcible--felony"--means--any--felony--which
8 involves--the--use--or--threat--of--physical--force--or--violence
9 against--any--individual;

10 (23)(22)(23)--A--"frisk"--is--a--search--by--an--external
11 patting--of--a--person's--clothing;

12 (24)(23)(24)--"Government"--includes--any--branch--
13 subdivision--or--agency--of--the--government--of--the--state--or--any
14 locality--within--it;

15 (25)(24)(25)--"Harm"--means--loss--disadvantage--or--injury
16 or--anything--so--regarded--by--the--person--affected--including
17 loss--disadvantage--or--injury--to--any--person--or--entity--in
18 whose--welfare--he--is--interested;

19 (26)(25)(26)--A--"house--of--prostitution"--means--any--place
20 where--prostitution--or--promotion--of--prostitution--is--regularly
21 carried--on--by--one--or--more--persons--under--the--control--
22 management--or--supervision--of--another;

23 (27)(26)(27)--"Human--being"--means--a--person--who--has--been
24 born--and--is--alive;

25 (28)(27)(28)--An--"illegal--article"--is--an--article--or--thing

1 which-is-prohibited-by-statute,-rule,-or-order-from-being-in
 2 the-possession-of-a-person-subject-to-official-detention;
 3 ~~(29)(28)(29)~~- "inmate" means--a--person--who--engages-in
 4 prostitution--in--or--through--the--agency--of--a--house--of
 5 prostitution;
 6 ~~(30)(29)(30)~~- "Intoxicating----substance"----means----any
 7 controlled-substance-as-defined-in-Title-50,-chapter-32,-and
 8 any-alcoholic-beverage,-including-but--not--limited--to--any
 9 beverage--containing-1/2-of-it-or-more-of-alcohol-by-volume.
 10 The-foregoing-definition-does-not--extend--to--dealcoholized
 11 wine-or-to-any-beverage-or-liquid-produced-by-the-process-by
 12 which--beer,-ale,-port,-or-wine-is-produced-if-it-contains
 13 less-than-1/2-of-it-of-alcohol-by-volume;
 14 ~~(31)(30)(31)~~- An-"involuntary-act" means--any--act--which
 15 is:
 16 (a)--a-reflex-or-convulsion;
 17 (b)--a-bodily-movement-during-unconsciousness-or-sleep;
 18 (c)--conduct--during-hypnosis-or-resulting-from-hypnotic
 19 suggestion,-or
 20 (d)--a-bodily-movement-that-otherwise-is-not--a--product
 21 of--the--effort--or--determination--of--the--actor,-either
 22 conscious-or-habitual;
 23 ~~(32)(31)(32)~~- "Juror" means-any-person-who-is-a-member-of
 24 any-jury,-including-a-grand-jury,-impaneled-by-any-court--in
 25 this--state--in--any--action-or-proceeding-or-by-any-officer

1 authorized-by-law--to--impanel--a--jury--in--any--action--or
 2 proceeding,-The-term-"juror" also-includes-a-person-who-has
 3 been-drawn-or-summoned-to-attend-as-a-prospective-juror;
 4 ~~(33)(32)(33)~~- "Knowingly" a-person-acts--knowingly--with
 5 respect--to--conduct--or--to--a--circumstance-described-by-a
 6 statute-defining-an-offense-when-he-is-aware-of-his--conduct
 7 or--that--the--circumstance--exists,-A-person-acts-knowingly
 8 with-respect-to-the-result-of-conduct-described-by-a-statute
 9 defining-an-offense-when-he--is--aware--that--it--is--highly
 10 probable--that--such--result--will-be-caused-by-his-conduct.
 11 When-knowledge-of-the-existence-of-a-particular-fact--is--an
 12 element--of--an--offense,-such-knowledge-is-established-if-a
 13 person-is-aware-of-a--high--probability--of--its--existence.
 14 Equivalent--terms-such-as-"knowing" or-"with-knowledge" have
 15 the-same-meaning;
 16 ~~(34)(33)(34)~~- "Mentally-defective" means--that--a--person
 17 suffers--from--a--mental-disease-or-defect-which-renders-him
 18 incapable-of-appreciating-the-nature-of-his-conduct;
 19 ~~(35)(34)(35)~~- "Mentally--incapacitated" means----that----a
 20 person--is-rendered-temperarily-incapable-of-appreciating-or
 21 controlling-his-conduct-as-a-result-of-the-influence--of--an
 22 intoxicating-substance;
 23 ~~(36)(35)(36)~~- "Misdemeanor" means-an-offense-in-which-the
 24 sentence--imposed--upon--conviction--is--imprisonment-in-the
 25 county-jail-for-any-term-or-a-fine,-or-both,-or-the-sentence

1 imposed-is-imprisonment-in-the-state-prison-for-any-term--of
2 1-year-or-less:

3 (37)(36)(37)-"Negligently"--a--person--acts--negligently
4 with-respect-to-a-result-or-to-a-circumstance-described-by-a
5 statute-defining-an-offense-when-he-consciously-disregards-a
6 risk--that--the--result--will-occur-or-that-the-circumstance
7 exists-or-when-he-disregards-a-risk-of-which--he--should--be
8 aware--that--the--result-will-occur-or-that-the-circumstance
9 exists-The-risk-must-be-of-such-a-nature-and-degree-that-to
10 disregard-it-involves-a-gross-deviation-from-the-standard-of
11 conduct-that--a--reasonable--person--would--observe--in--the
12 actor's--situation-"Gross-deviation"--means-a-deviation-that
13 is-considerably-greater-than-lack-of-ordinary-care-Relevant
14 terms-such-as-"negligent"--and--"with--negligence"--have--the
15 same-meaning:

16 (38)(37)(30)-"Obtain"--means:

17 (a)--in--relation--to--property,--to--bring--about--a--transfer
18 of-interest-or-possession,--whether--to--the--offender--or--to
19 another,--and

20 (b)--in--relation--to--labor--or--services,--to--secure--the
21 performance--thereof:

22 (39)(38)(39)-"Obtains-or-exerts-control"--includes-but-is
23 not--limited--to--the--taking,--carrying--away,--or--sale,
24 conveyance,--or--transfer--of--title--to,--interest--in,--or
25 possession-of-property:

1 (40)(39)(40)-"Occupied--structure"--means--any-building,
2 vehicle,--or--other--place--suitable--for--human--occupancy--or
3 night-lodging--of--persons--or--for--carrying--on--business,
4 whether-or-not-a-person-is-actually-present-Each-unit-of--a
5 building--consisting-of-two-or-more-units-separately-secured
6 or-occupied-is-a-separate-occupied-structure:

7 (41)(40)(41)-"Offender"--means-a-person-who-has--been--or
8 is--liable--to--be--arrested,--charged,--convicted,--or--punished
9 for-a-public-offense:

10 (42)(41)(42)-"Offense"--means--a--crime--for--which--a
11 sentence--of--death--or--of--imprisonment--or--a--fine--is
12 authorized--Offenses--are--classified--as--felonies--or
13 misdemeanors:

14 (43)(42)(43)-"Official--detention"--means--imprisonment
15 resulting-from-a-conviction-for-an-offense,--confinement--for
16 an-offense,--confinement-of-a-person-charged-with-an-offense,
17 detention--by--a-peace-officer-pursuant-to-arrest,--detention
18 for-extradition-or-deportation,--or-any-lawful-detention--for
19 the--purpose--of--the-protection-of-the-welfare-of-the-person
20 detained--or--for--the--protection--of--society,--Official
21 detention--does--not--include--supervision--of--probation-or
22 parole,--constraint-incident-to--release--on--bail,--or--an
23 unlawful-arrest-unless-the-person-arrested-employed-physical
24 force,--a-threat-of-physical-force,--or-a-weapon-to-escape:

25 (44)(43)(44)-"Official--proceeding"--means--a--proceeding

1 heard--or--which--may--be--heard--before--any--legislative,
 2 judicial,--administrative,--or--other-governmental--agency--or
 3 official--authorized--to--take--evidence--under--oath,--including
 4 any--referee,--hearing--examiner,--commissioner,--notary,--or
 5 other--person--taking--testimony--or--deposition--in--connection
 6 with--such--proceeding:

7 (45)(44)(45)--"Other--state"--means--any--state--or--territory
 8 of--the--United--States,--the--District--of--Columbia,--and--the
 9 Commonwealth--of--Puerto--Rico:

10 (46)(45)(46)--"Owner"--means--a--person--other--than--the
 11 offender--who--has--possession--of--or--any--other--interest--in--the
 12 property--involved,--even--though--such--interest--or--possession
 13 is--unlawful,--and--without--whose--consent--the--offender--has--no
 14 authority--to--exert--control--over--the--property:

15 (47)(46)(47)--"Party--official"--means--a--person--who--holds
 16 an--elective--or--appointive--post--in--a--political--party--in--the
 17 United--States--by--virtue--of--which--he--directs--or--conducts--or
 18 participates--in--directing--or--conducting--party--affairs--at--any
 19 level--of--responsibility:

20 (48)(47)(48)--"Peace--officer"--means--any--person--who--by
 21 virtue--of--his--office--or--public--employment--is--vested--by--law
 22 with--a--duty--to--maintain--public--order--or--to--make--arrests--for
 23 offenses--while--acting--within--the--scope--of--his--authority:

24 (49)(48)(49)--"Pecuniary--benefit"--is--benefit--in--the--form
 25 of--money,--property,--commercial--interests,--or--anything--else

1 the--primary--significance--of--which--is--economic--gain:

2 (50)(49)(50)--"Person"--includes--an--individual,--business
 3 association,--partnership,--corporation,--government,--or--other
 4 legal--entity--and--an--individual--acting--or--purporting--to--act
 5 for--or--on--behalf--of--any--government--or--subdivision--thereof:

6 (51)(50)(51)--"Physically--helpless"--means--that--a--person
 7 is--unconscious--or--is--otherwise--physically--unable--to
 8 communicate--unwillingness--to--act:

9 (52)(51)(52)--"Possession"--is--the--knowing--control--of
 10 anything--for--a--sufficient--time--to--be--able--to--terminate
 11 control:

12 (53)(52)(53)--"Premises"--includes--any--type--of--structure
 13 or--building--and--any--real--property:

14 (54)(53)(54)--"Property"--means--any--tangible--or--intangible
 15 thing--of--value. Property--includes--but--is--not--limited--to:

- 16 (a)--real--estate;
- 17 (b)--money;
- 18 (c)--commercial--instruments;
- 19 (d)--admission--or--transportation--tickets;
- 20 (e)--written--instruments--which--represent--or--embody
- 21 rights--concerning--anything--of--value,--including--labor--or
- 22 services,--or--which--are--otherwise--of--value--to--the--owner;
- 23 (f)--things--growing--on,--affixed--to,--or--found--on--land--and
- 24 things--which--are--part--of--or--affixed--to--any--building;
- 25 (g)--electricity,--gas,--and--water;

1 (h)--birds,--animals,--and--fish--which--ordinarily--are--kept
 2 in--a--state--of--confinement;
 3 (i)--food--and--drink,--samples,--cultures,--microorganisms,
 4 specimens,--records,--recordings,--documents,--blueprints,
 5 drawings,--maps,--and--whole--or--partial--copies,--descriptions,
 6 photographs,--prototypes,--or--models--thereof;
 7 (j)--any--other--articles,--materials,--devices,--substances,
 8 and--whole--or--partial--copies,--descriptions,--photographs,
 9 prototypes,--or--models--thereof--which--constitute,--represent,
 10 evidence,--reflect,--or--record--secret--scientific,--technical,
 11 merchandising,--production,--or--management--information--or--a
 12 secret--designed--process,--procedure,--formula,--invention,--or
 13 improvement,--and
 14 (k)--electronic--impulses,--electronically--processed--or
 15 produced--data--or--information,--commercial--instruments,
 16 computer--software--or--computer--programs,--in--either--machine-
 17 or--human--readable--form,--computer--services,--any--other
 18 tangible--or--intangible--item--of--value--relating--to--a--computer,
 19 computer--system,--or--computer--network,--and--any--copies
 20 thereof;
 21 (55)(54)(55)--"Property--of--another"--means--real--or
 22 personal--property--in--which--a--person--other--than--the--offender
 23 has--an--interest--which--the--offender--has--no--authority--to
 24 defeat--or--impair,--even--though--the--offender--himself--may--have
 25 an--interest--in--the--property;

1 (56)(55)(56)--"Public--place"--means--any--place--to--which--the
 2 public--or--any--substantial--group--thereof--has--access;
 3 (57)(56)(57)--"Public--servant"--means--any--officer--or
 4 employee--of--government,--including--but--not--limited--to
 5 legislators,--judges,--and--firefighters,--and--any--person
 6 participating--as--a--juror,--advisor,--consultant,
 7 administrator,--executor,--guardian,--or--court--appointed
 8 fiduciary. The term does not include witnesses. The term
 9 "public--servant"--includes--one--who--has--been--elected--or
 10 designated--to--become--a--public--servant;
 11 (58)(57)(58)--"Purposely"--a--person--acts--purposely--with
 12 respect--to--a--result--or--to--conduct--described--by--a--statute
 13 defining--an--offense--if--it--is--his--conscious--object--to--engage
 14 in--that--conduct--or--to--cause--that--result. When a particular
 15 purpose--is--an--element--of--an--offense,--the--element--is
 16 established--although--such--purpose--is--conditional,--unless--the
 17 condition--negatives--the--harm--or--evil--sought--to--be--prevented
 18 by--the--law--defining--the--offense. Equivalent terms such as
 19 "purpose"--and--"with--the--purpose"--have--the--same--meaning;
 20 (59)(58)(59)--"Serious--bodily--injury"--means--bodily--injury
 21 which--creates--a--substantial--risk--of--death--or--which--causes
 22 serious--permanent--disfigurement--or--protracted--loss--or
 23 impairment--of--the--function--or--process--of--any--bodily--member
 24 or--organ. It includes serious mental illness or impairment;
 25 (60)(59)(60)--"Sexual--contact"--means--any--touching--of--the

1 sexual-or-other-intimate-parts-of-the-person-of-another--for
2 the--purpose--of-arousing-or-gratifying-the-sexual-desire-of
3 either-party;

4 (61)(60)(61)-"Sexual-intercourse"-means--penetration--of
5 the--vulva--anus--or--mouth--of-one-person-by-the-penis-of
6 another-person; penetration-of-the--vulva--or--anus--of--one
7 person--by-any-body-member-of-another-person; or-penetration
8 of-the-vulva-or-anus-of-one-person-by-any-foreign-instrument
9 or-object-manipulated-by-another-person-for-the--purpose--of
10 arousing--or--gratifying--the-sexual-desire-of-either-party;
11 Any-penetration-however-slight-is-sufficient;

12 (62)(61)(62)-"Solicit"--or--"solicitation"--means---to
13 command,-authorize,-urge,-incite,-request,-or-advise-another
14 to-commit-an-offense;

15 (63)(62)(63)-"State"--or--"this-state"-means-the-state-of
16 Montana,-all-the-land-and-water--in--respect--to--which--the
17 state--of--Montana--has--either--exclusive--or--concurrent
18 jurisdiction,-and-the-air-space-above-such-land-and-water;

19 (64)(63)(64)-"Statute"-means-any-act-of-the--legislature
20 of-this-state;

21 (65)(64)(65)-"Stolen-property"-means-property-over-which
22 control-has-been-obtained-by-theft;

23 (66)(65)(66)-A--"stop"--is--the-temporary-detention-of-a
24 person-that-results-when-a-peace-officer-orders--the--person
25 to-remain-in-his-presence;

1 (67)(66)(67)-"Tamper"--means-to-interfere-with-something
2 improperly,-meddle-with-it,-make-unwarranted-alterations--in
3 its-existing-condition,-or-deposit-refuse-upon-it;

4 (68)(67)(68)-"Threat"--means----a----menace;----however
5 communicated;-to:

6 (a)--inflict-physical-harm-on-the-person--threatened--or
7 any-other-person-or-on-property;

8 (b)--subject--any--person--to--physical--confinement--or
9 restraint;

10 (c)--commit-any-criminal-offense;

11 (d)--accuse-any-person-of-a-criminal-offense;

12 (e)--expose-any-person-to-hatred,-contempt,-or-ridicule;

13 (f)--harm-the-credit-or-business-repute-of-any-person;

14 (g)--reveal--any--information--sought-to-be-concealed-by
15 the-person-threatened;

16 (h)--take--action--as--an--official--against--anyone--or
17 anything,-withhold-official-action,-or-cause-such-action--or
18 withholding;

19 (i)--bring-about-or-continue-a-strike,-boycott,-or-other
20 similar-collective-action-if-the-property-is-not-demanded-or
21 received--for-the-benefit-of-the-groups-which-he-purports-to
22 represent;-or

23 (j)--testify--or--provide--information--or--withhold
24 testimony--or--information--with--respect-to-another's-legal
25 claim-or-defense;

1 (69)(68)(69)-(a)-"Value"-means-the-market-value--of--the
2 property--at--the--time--and--place-of-the-crime-or,--if--such
3 cannot--be--satisfactorily--ascertained,--the--cost--of--the
4 replacement-of-the-property-within-a-reasonable--time--after
5 the--crime,--if--the--offender-appropriates-a-portion-of-the
6 value-of-the-property,--the--value--shall--be--determined--as
7 follows:

8 (i)--The-value-of-an-instrument-constituting-an-evidence
9 of--debt,--such-as-a-check,--draft,--or--promissory-note,--shall
10 be-considered-the--amount--due--or--collectible--thereon--or
11 thereby,--such-figure-ordinarily-being-the-face-amount-of-the
12 indebtedness---less-any-portion--thereof--which--has--been
13 satisfied.

14 (ii)-The-value-of-any-other--instrument--which--creates,
15 releases,--discharges,--or--otherwise--affects--any-valuable
16 legal-right,--privilege,--or--obligation--shall--be--considered
17 the--amount--of--economic--loss--which--the--owner--of--the
18 instrument-might-reasonably-suffer-by-virtue-of-the-loss--of
19 the-instrument.

20 (iii)-The--value--of--electronic-impulses,--electronically
21 produced-data-or-information,--computer-software-or-programs,
22 or-any-other-tangible--or--intangible--item--relating--to--a
23 computer,--computer--system,--or--computer--network-shall-be
24 considered-to-be-the-amount-of-economic-loss-that-the-owner
25 of-the-item-might-reasonably-suffer-by-virtue-of-the-loss-of

1 the--item,--The-determination-of-the-amount-of-such-economic
2 loss-includes-but-is-not-limited--to--consideration--of--the
3 value--of--the-owner's-right-to-exclusive-use-or-disposition
4 of-the-item.

5 (b)--When-it-cannot-be-determined-if-the--value--of--the
6 property--is--more--or--less--than-\$300-by-the-standards-set
7 forth-in-subsection-(69)(a)-above (68)(a),--its--value--shall
8 be-considered-to-be-an-amount-less-than-\$300.

9 (c)--Amounts--involved-in-thefts-committed-pursuant-to-a
10 common-scheme-or-the-same-transaction,--whether-from-the-same
11 person-or-several-persons,--may-be-aggregated-in--determining
12 the-value-of-the-property.

13 (70)(69)(70)-"Vehicle"-----means----any----device----for
14 transportation-by-land,--water,--or--air--or--mobile--equipment
15 with-provision-for-transport-of-an-operator.

16 (71)(70)(71)-"Weapon"--means-any-instrument,--article,--or
17 substance-which,--regardless--of--its--primary--function,--is
18 readily--capable--of--being-used-to-produce-death-or-serious
19 bodily-injury.

20 (72)(71)(72)-"Witness"--means-a-person-whose-testimony-is
21 desired-in-any-official-proceeding,--in-any-investigation--by
22 a--grand--jury,--or--in--a--criminal-action,--prosecution,--or
23 proceeding."

24 Section-0,--Section-27-2-216,--MCA,--is-amended-to-read:

25 "27-2-216--Port-actions---childhood-sexual-abuse--(i)

1 An action based on intentional conduct brought by a person
2 for recovery of damages for injury suffered as a result of
3 childhood sexual abuse must be commenced not later than:

4 (a) 3 years after the act of childhood sexual abuse
5 that is alleged to have caused the injury; or

6 (b) 3 years after the plaintiff discovers or reasonably
7 should have discovered that the injury was caused by the act
8 of childhood sexual abuse.

9 (2) It is not necessary for a plaintiff to establish
10 which act, in a series of acts of childhood sexual abuse,
11 caused the injury that is the subject of the suit. The
12 plaintiff may compute the period referred to in subsection
13 (1)(a) from the date of the last act by the same
14 perpetrator.

15 (3) As used in this section, "childhood sexual abuse"
16 means any act committed against a plaintiff who was less
17 than 18 years of age at the time the act occurred and that
18 would have been a violation of 45-5-502, 45-5-503, 45-5-504,
19 45-5-505, 45-5-507, 45-5-625, or prior similar laws in
20 effect at the time the act occurred.

21 (4) The provisions of 27-2-401 apply to this section.
22 Section 9, Section 45-1-205, MCA, is amended to read:

23 "45-1-205. General time limitations. (1)(a) A
24 prosecution for deliberate, mitigated, or negligent homicide
25 may be commenced at any time.

1 (b) A prosecution under 45-5-502 through 45-5-505
2 45-5-504, 45-5-507, or 45-5-625 may be commenced within 5
3 years after the victim reaches the age of 18 if the victim
4 was less than 18 years old at the time the offense occurred.

5 (2) Except as otherwise provided by law, prosecutions
6 for other offenses are subject to the following periods of
7 limitation:

8 (a) A prosecution for a felony must be commenced within
9 5 years after it is committed.

10 (b) A prosecution for a misdemeanor must be commenced
11 within 1 year after it is committed.

12 (3) The period prescribed in subsection (2) is extended
13 in a prosecution for theft involving a breach of fiduciary
14 obligation to an aggrieved person as follows:

15 (a) If the aggrieved person is a minor or incompetent,
16 during the minority or incompetency or within 1 year after
17 the termination thereof.

18 (b) In any other instance, within 1 year after the
19 discovery of the offense by the aggrieved person or by a
20 person who has legal capacity to represent an aggrieved
21 person or has a legal duty to report the offense and is not
22 himself a party to the offense or, in the absence of such
23 discovery, within 1 year after the prosecuting officer
24 becomes aware of the offense.

25 (4) The period prescribed in subsection (2) shall be

1 extended-in-a-prosecution-for-unlawful-use-of-a-computer,
 2 and-prosecution-shall-be-brought-within-1-year-after-the
 3 discovery-of-the-offense-by-the-aggrieved-person-or-by-a
 4 person-who-has-legal-capacity-to-represent-an-aggrieved
 5 person-or-has-a-legal-duty-to-report-the-offense-and-is-not
 6 himself-a-party-to-the-offense-or, in-the-absence-of-such
 7 discovery, within-1-year-after-the-prosecuting-officer
 8 becomes-aware-of-the-offense.

9 (5)--An-offense-is-committed-either-when-every-element
 10 occurs-or, when-the-offense-is-based-upon-a-continuing
 11 course-of-conduct, at-the-time-when-the-course-of-conduct-is
 12 terminated. Time-starts-to-run-on-the-day-after-the-offense
 13 is-committed.

14 (6)--A-prosecution-is-commenced-either-when-an
 15 indictment-is-found-or-an-information-or-complaint-is
 16 filed."

17 Section-9--Section-45-2-103, MCA, is-amended-to-read:

18 "45-2-103--General-requirements-of-criminal-act-and
 19 mental-state--(1) Except-for-deliberate-homicide-as-defined
 20 in-45-5-102(1)(b)-or-an-offense-which-involves-absolute
 21 liability, a-person-is-not-guilty-of-an-offense-unless, with
 22 respect-to-each-element-described-by-the-statute-defining
 23 the-offense, he-acts-while-having-one-of-the-mental-states
 24 described-in-subsections-(33)(32), (37)(36), and-(58)(57) of
 25 45-2-101.

1 (2)--in-deliberate-homicide-under-45-5-102(1)(b), the
 2 offender-must-act-while-having-the-mental-state-of-purposely
 3 or-knowingly-only-as-to-the-underlying-felony-referred-to-in
 4 45-5-102(1)(b);

5 (3)--The-existence-of-a-mental-state-may-be-inferred
 6 from-the-acts-of-the-accused-and-the-facts-and-circumstances
 7 connected-with-the-offense.

8 (4)--If-the-statute-defining-an-offense-prescribes-a
 9 particular-mental-state-with-respect-to-the-offense-as-a
 10 whole-without-distinguishing-among-the-elements-thereof, the
 11 prescribed-mental-state-applies-to-each-such-element.

12 (5)--Knowledge-that-certain-conduct-constitutes-an
 13 offense-or-knowledge-of-the-existence, meaning, or
 14 application-of-the-statute-defining-an-offense-is-not-an
 15 element-of-the-offense-unless-the-statute-clearly-defines-it
 16 as-such.

17 (6)--A-person's-reasonable-belief-that-his-conduct-does
 18 not-constitute-an-offense-is-a-defense-if:

19 (a)--the-offense-is-defined-by-an-administrative
 20 regulation-or-order-which-is-not-known-to-him-and-has-not
 21 been-published-or-otherwise-made-reasonably-available-to-him
 22 and-he-could-not-have-acquired-such-knowledge-by-the
 23 exercise-of-due-diligence-pursuant-to-facts-known-to-him;

24 (b)--he-acts-in-reliance-upon-a-statute-which-later-is
 25 determined-to-be-invalid;

1 (c) he acts in reliance upon an order or opinion of the
2 Montana supreme court or a United States appellate court
3 later overruled or reversed; or

4 (d) he acts in reliance upon an official interpretation
5 of the statute, regulation, or order defining the offense
6 made by a public officer or agency legally authorized to
7 interpret such statute;

8 (7) if a person's reasonable belief is a defense under
9 subsection (6), nevertheless he may be convicted of an
10 included offense of which he would be guilty if the law were
11 as he believed it to be;

12 (f) Any defense based upon this section is an
13 affirmative defense."

14 Section 10, Section 45-2-104, MCA, is amended to read:

15 "45-2-104. Absolute liability. A person may be guilty
16 of an offense without having, as to each element thereof,
17 one of the mental states described in subsections (33)(32),
18 (37)(36), and (50)(57) of 45-2-101 only if the offense is
19 punishable by a fine not exceeding \$500 or the statute
20 defining the offense clearly indicates a legislative purpose
21 to impose absolute liability for the conduct described."

22 Section 12, Section 46-15-401, MCA, is amended to read:

23 "46-15-401. When videotaped testimony admissible. For
24 any prosecution commenced under 45-5-502(3), 45-5-503,
25 45-5-505, or 45-5-507 and for the prosecution of any offense

1 arising from the same transaction, as defined in 46-11-501,
2 the testimony of the victim, at the request of such victim
3 and with the concurrence of the prosecuting attorney, may be
4 recorded by means of videotape for presentation at trial.
5 The testimony so recorded may be presented at trial and
6 shall be received into evidence. The victim need not be
7 physically present in the courtroom when the videotape is
8 admitted into evidence."

9 Section 13, Section 46-18-111, MCA, is amended to read:

10 "46-18-111. Presentence investigation. No defendant
11 convicted of an offense under 45-5-502 through 45-5-505
12 45-5-504, 45-5-507, or 45-5-625 against a victim who was
13 less than 16 years old when the offense was committed may be
14 sentenced or otherwise disposed of before a written report
15 of investigation by a probation officer is presented to and
16 considered by the court. The investigation must include an
17 evaluation of the defendant and a recommendation as to
18 treatment by a person qualified by professional experience.
19 No defendant convicted of any other offense that may result
20 in commitment for 1 year or more in the state prison may be
21 sentenced or otherwise disposed of before a written report
22 of investigation by a probation officer is presented to and
23 considered by the court unless the court deems such report
24 unnecessary. The court may, in its discretion, order a
25 presentence investigation for a defendant convicted of any

1 lesser-crime-or-offense."

2 Section-147--Section-46-18-2017-MEA7-is-amended-to-read:

3 "46-18-2017--Sentences-that-may-be-imposed7-(1)Whenever

4 a--person-has-been-found-guilty-of-an-offense-upon-a-verdict

5 or-a-plea-of-guilty7-the-court-may:

6 (a)--defer-imposition-of-sentence7--excepting--sentences

7 for--driving--under-the-influence-of-alcohol-or-drugs7-for-a

8 period7-except-as-otherwise-provided7-not-exceeding-1--year

9 for--any--misdemeanor--or-for-a-period-not-exceeding-3-years

10 for-any-felony7-The-sentencing-judge-may-impose-upon-the

11 defendant--any--reasonable-restrictions-or-conditions-during

12 the--period--of--the--deferred--imposition7--Reasonable

13 restrictions-or-conditions-may-include:

14 (i)--jail-base-release7

15 (ii)--jail-time-not-exceeding-180-days7

16 (iii)--conditions-for-probation7

17 (iv)--restitution7

18 (v)--payment-of-the-costs-of-confinement7

19 (vi)--payment-of-a-fine-as-provided-in-46-18-2317

20 (vii)--payment--of--costs--as--provided--in-46-18-232-and

21 46-18-2337

22 (viii)--payment-of-costs-of-court--appointed--counsel--as

23 provided-in-46-8-1137

24 (ix)--community-service7

25 (x)--any--other--reasonable--conditions--considered

1 necessary--for--rehabilitation--or--for--the--protection--of

2 society7-or

3 (xi)--any-combination-of-the-above7

4 (b)--suspend-execution-of-sentence--up--to--the--maximum

5 sentence-allowed-for-each-particular-offense7-The-sentencing

6 judge--may--impose--on--the--defendant--any--reasonable

7 restrictions-or-conditions-during-the--period--of--suspended

8 sentence7--Reasonable-restrictions-or-conditions-may-include

9 any--of--those--listed--in--subsections--(1)(a)(i)--through

10 (1)(a)(xi):

11 (c)--impose-a-fine-as-provided-by-law-for-the-offense7

12 (d)--require-payment--of--costs--as--provided--in-46-18-232

13 or-payment-of-costs-of-court-appointed-counsel--as--provided

14 in-46-8-1137

15 (e)--commit-the-defendant-to-a-correctional-institution7

16 with-or-without-a-fine-as-provided-by-law-for-the-offense7

17 (f)--impose--any--combination--of--subsections--(1)(b)

18 through-(1)(e):

19 (2)--If-any-financial--obligation--is--imposed--as--a

20 condition--under-subsection-(1)(a)7-sentence-may-be-deferred

21 for-a-period-not-exceeding-2-years-for-any-misdemeanor--or

22 for--a--period--not--exceeding--6--years--for--any--felony7

23 regardless-of-whether-any-other-conditions-are-imposed7

24 (3)--If-any-restrictions--or--conditions--imposed--under

25 subsection--(1)(a)--or--(1)(b)--are-violated7-the-court-shall

1 consider any elapsed time and either expressly allow part or
2 all of it as a credit against the sentence or reject all or
3 part as a credit and state its reasons in the order. Credit,
4 however, must be allowed for jail time already served.

5 (4) Except as provided in 46-18-222, the imposition or
6 execution of the first 2 years of a sentence of imprisonment
7 imposed under the following sections may not be deferred or
8 suspended: 45-5-103, 45-5-202(3) relating to aggravated
9 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
10 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
11 45-9-103(2).

12 (5) Except as provided in 46-18-222, the imposition or
13 execution of the first 18 years of a sentence of
14 imprisonment imposed under 45-5-102 may not be deferred or
15 suspended.

16 (6) Except as provided in 46-18-222, imposition of
17 sentence in a felony case may not be deferred in the case of
18 a defendant who has been convicted of a felony on a prior
19 occasion, whether or not the sentence was imposed,
20 imposition of the sentence was deferred, or execution of the
21 sentence was suspended.

22 (7) If the victim was less than 16 years old, the
23 imposition or execution of the first 30 days of a sentence
24 of imprisonment imposed under 45-5-502(3), 45-5-503,
25 45-5-504, 45-5-505, or 45-5-507 may not be deferred or

1 suspended. Section 46-18-222 does not apply to the first 30
2 days of such imprisonment.

3 (8) In imposing a sentence on a defendant convicted of
4 a sexual offense as defined in 46-23-502, the court may not
5 waive the registration requirement provided in 46-18-254,
6 46-18-255, and Title 46, chapter 23, part 5.

7 (9) A person convicted of a sexual offense, as defined
8 in 46-23-502, and sentenced to imprisonment in the state
9 prison shall enroll in the educational phase of the prison's
10 sexual offender program.

11 Section 15, Section 46-23-502, MCA, is amended to read:
12 "46-23-502. Definitions. As used in 46-18-254,
13 46-18-255, and this part, the following definitions apply:

14 (1) "Department" means the department of institutions
15 provided for in Title 2, chapter 15, part 23.

16 (2) "Sexual offender" means a person who has been
17 convicted of a sexual offense.

18 (3) "Sexual offense" means:

19 (a) any violation of 45-5-502(3), 45-5-503, 45-5-505,
20 45-5-507 (unless the act occurred between two consenting
21 persons 16 years of age or older), or 45-5-625, or

22 (b) any violation of a law of another state or the
23 federal government reasonably equivalent to a violation
24 listed in subsection (3)(a)."

25 Section 11, Section 50-20-109, MCA, is amended to read:

1 ~~450-20-109,--Control-of-practice-of--abortion,--(1)--No~~
 2 ~~abortion-may-be-performed-within-the-state-of-Montana;~~
 3 ~~(a)--except-by-a-licensed-physician;~~
 4 ~~(b)--after--the-first-3-months-of-pregnancy,--except-in-a~~
 5 ~~hospital-licensed-by-the-department;~~
 6 ~~(c)--after-viability-of-the-fetus,--unless-in-appropriate~~
 7 ~~medical-judgment-the-abortion-is-necessary-to--preserve--the~~
 8 ~~life-or-health-of-the-mother;~~
 9 ~~(2)--An--abortion--under--subsection--(1)(c)--may-only-be~~
 10 ~~performed-if:~~
 11 ~~(a)--the-foregoing-judgment-of-the-physician-who--is--to~~
 12 ~~perform--the--abortion--is-first-certified-in-writing-by-him~~
 13 ~~setting-forth-in-detail-the-facts-upon-which-he-relies--in~~
 14 ~~making-such-judgment;--and~~
 15 ~~(b)--two--other--licensed-physicians-have-first-examined~~
 16 ~~the-patient-and-concurred-in-writing-with-such-judgment;--The~~
 17 ~~foregoing-certification-and-concurrence-is-not-required-if-a~~
 18 ~~licensed-physician-certifies-the-abortion--is--necessary--to~~
 19 ~~preserve-the-life-of-the-mother;~~
 20 ~~(3)--The--timing--and--procedure--used--in-performing-an~~
 21 ~~abortion-under-subsection-(1)(c)-of--this--section--must--be~~
 22 ~~such-that-the-viability-of-the-fetus-is-not-intentionally-or~~
 23 ~~negligently-endangered,--as-the-term-"negligently"--is-defined~~
 24 ~~in--45-2-101(37);--The-fetus-may-be-intentionally-endangered~~
 25 ~~or-destroyed-only-if--necessary--to--preserve--the--life--or~~

1 ~~health-of-the-mother;~~
 2 ~~(4)--No--physician,--facility,--or-other-person-or-agency~~
 3 ~~shall-engage-in-solicitation,--advertising,--or-other-form-of~~
 4 ~~communication--having--the-purpose-of-inviting,--inducing,--or~~
 5 ~~attracting-any-person-to-come-to-such--physician,--facility,~~
 6 ~~or-other-person-or-agency-to-have-an-abortion-or-to-purchase~~
 7 ~~abortifacients;~~
 8 ~~(5)--Violation--of-subsections-(1)-(2),--and-(3)-of-this~~
 9 ~~section-is-a-felony;--Violation-of--subsection--(4)--of--this~~
 10 ~~section-is-a-misdemeanor;"~~
 11 ~~Section-12;--Section-61-5-405,--MCA,--is-amended-to-read:~~
 12 ~~461-5-405,--Offenses-furnishing-ground-for-suspension-or~~
 13 ~~revocation--of--license,--(1)--Items--enumerated--in-Article~~
 14 ~~IV(1),--subsections-(a)-(b)-(c),--and-(d)-of-61-5-401--refer~~
 15 ~~specifically--to--45-5-103,--45-5-104,--61-8-401,~~
 16 ~~45-2-101(21)(20),--and-61-7-103,--respectively;~~
 17 ~~(2)--In-addition--to--convictions--mentioned--above--the~~
 18 ~~department,--for--the--purpose-of-suspension,--revocation,--or~~
 19 ~~limitation-of-the-license-to-operate-a-motor-vehicle,--shall~~
 20 ~~give--the-same-effect-to-the-conduct-reported-as-it-would-if~~
 21 ~~such-conduct-had-occurred-in-this-state-for:~~
 22 ~~(a)--convictions-of-perjury-or-the--making--of--a--false~~
 23 ~~affidavit--relating-to-the-ownership-or-operation-of-a-motor~~
 24 ~~vehicle-(61-5-303);--and~~
 25 ~~(b)--three-convictions--of--reckless--driving--committed~~

1 ~~within a period of 12 months (61-8-301)."~~
 2 ~~NEW SECTION. Section 18. Repealer. Section 45-5-5057~~
 3 ~~MCA is repealed.~~
 4 ~~SECTION 13. SECTION 45-5-5057, MCA, IS AMENDED TO READ:~~
 5 ~~"45-5-505. Deviate sexual conduct--Bestiality. (1) A~~
 6 ~~person who knowingly engages in deviate sexual relations~~
 7 ~~bestiality or who causes another to engage in deviate sexual~~
 8 ~~relations bestiality commits the offense of deviate sexual~~
 9 ~~conduct bestiality.~~
 10 ~~(2) A person convicted of the offense of deviate sexual~~
 11 ~~conduct bestiality shall be imprisoned in the state prison~~
 12 ~~for any term not to exceed 10 years or be fined an amount~~
 13 ~~not to exceed \$50,000 or both.~~
 14 ~~(3) A person convicted of deviate sexual conduct~~
 15 ~~without consent shall be imprisoned in the state prison for~~
 16 ~~any term not to exceed 20 years or be fined an amount not to~~
 17 ~~exceed \$50,000 or both. For purposes of this section,~~
 18 ~~"bestiality" means any form of sexual contact or of sexual~~
 19 ~~intercourse with an animal."~~

20 **Section 7.** Section 45-5-505, MCA, is amended to read:
 21 "45-5-505. Deviate sexual conduct. (1) A person who
 22 knowingly engages in deviate sexual relations or who causes
 23 another to engage in deviate sexual relations commits the
 24 offense of deviate sexual conduct.
 25 (2) A person convicted of the offense of deviate sexual

1 conduct shall be imprisoned in the state prison for any term
 2 not to exceed 10 years or be fined an amount not to exceed
 3 \$50,000, or both.
 4 (3) A person convicted of deviate sexual conduct
 5 without consent shall be imprisoned in the state prison for
 6 any term not to exceed 20 years or be fined an amount not to
 7 exceed \$50,000, or both.
 8 (4) THE FACT THAT A PERSON SEEKS TESTING OR RECEIVES
 9 TREATMENT FOR THE HIV-RELATED VIRUS OR ANOTHER SEXUALLY
 10 TRANSMITTED DISEASE MAY NOT BE USED AS A BASIS FOR A
 11 PROSECUTION UNDER THIS SECTION AND IS NOT ADMISSIBLE IN
 12 EVIDENCE IN A PROSECUTION UNDER THIS SECTION."

13 **NEW SECTION. Section 8.** Effective date. [This act] is
 14 effective on passage and approval.
 -End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 4, 1991 8:41 am

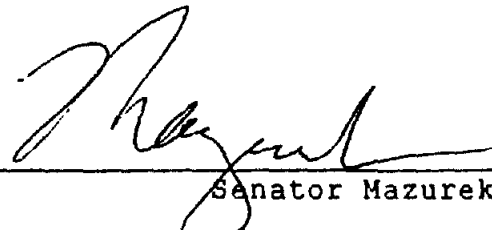
Mr. Chairman: I move to amend House Bill No. 451 (third reading copy -- blue) as follows:

1. Page 2, line 12.
Strike: "A FORCIBLE FELONY"
Insert: "another crime"

ADOPT

REJECT

Signed: _____


Senator Mazurek

LB 4/4/91
Amd. Coord.

SB 4/4 8:55
Sec. of Senate

SENATE
HB 451

HOUSE BILL NO. 451

INTRODUCED BY BROOKE, YELLOWTAIL, HANSEN, COCCHIARELLA, J. BROWN, JACOBSON, STRIZICH, WYATT, COHEN, DARKO, BARNHART, REAM, FRITZ, O'KEEFE, DRISCOLL, BECKER, SCHYE, D. BROWN, BRADLEY, WANZENRIED, TOOLE, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL EXEMPTIONS; INCREASING PENALTIES; REPEALING AMENDING CLARIFYING THE BASIS FOR A PROSECUTION FOR THE CRIME OF DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 27-2-216, 45-1-205, 45-2-101, 45-2-103, 45-2-104, 45-5-501, 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-505, 45-5-507, AND 45-5-511, 46-15-401, 46-18-111, 46-18-201, 46-23-502, 50-20-109, AND 61-5-405, MCA; REPEALING SECTION 45-5-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503 and 45-5-505, the term "without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

- (i) mentally defective or incapacitated;
(ii) physically helpless; or
(iii) less than 16 years old.

(2) As used in subsection (1), "force" means:

(a) the infliction OR attempted infliction or threatened infliction by the offender of bodily injury or the commission or threat of any other crime OF A FORCIBLE FELONY by the offender; against the victim or another

(b) THE THREATENED INFLECTION OF BODILY INJURY OR THE THREAT OF A FORCIBLE FELONY ANOTHER CRIME BY THE OFFENDER that causes the victim to reasonably believe that the offender has the present ability to execute the threat; or

(c) the threat of SUBSTANTIAL retaliatory action by the offender against the victim or another AGAINST A SUBSTANTIAL AND PROTECTED INTEREST OF THE VICTIM that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another not-his-spouse PERSON to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for



1 any term not to exceed 6 months, or both.

2 (3) If the victim is less than 16 years old and the
3 offender is 3 or more years older than the victim or if the
4 offender inflicts bodily injury upon anyone in the course of
5 committing sexual assault, he shall be imprisoned in the
6 state prison for any term not to exceed 20 years and may be
7 fined not more than \$50,000.

8 (4) An act "in the course of committing sexual assault"
9 shall include an attempt to commit the offense or flight
10 after the attempt or commission.

11 (5) Consent is ineffective under this section if the
12 victim is less than 14 years old and the offender is 3 or
13 more years older than the victim."

14 **Section 3.** Section 45-5-503, MCA, is amended to read:

15 "45-5-503. Sexual intercourse without consent. (1) A
16 person who knowingly has sexual intercourse without consent
17 with ~~a person of the opposite sex~~ another PERSON commits the
18 offense of sexual intercourse without consent. A person may
19 not be convicted under this section based on the age of his
20 spouse as provided in 45-5-501~~(2)(c)~~ (1)(b)(iii).

21 (2) A person convicted of sexual intercourse without
22 consent shall be imprisoned in the state prison for a term
23 of not less than 2 years or more than 20 years and may be
24 fined not more than \$50,000, except as provided in
25 46-18-222.

1 (3) (a) If the victim is less than 16 years old and the
2 offender is 3 or more years older than the victim or if the
3 offender inflicts bodily injury upon anyone in the course of
4 committing sexual intercourse without consent, he shall be
5 imprisoned in the state prison for any term of not less than
6 2 years or more than 40 years and may be fined not more than
7 \$50,000, except as provided in 46-18-222.

8 (b) An act "in the course of committing sexual
9 intercourse without consent" shall include an attempt to
10 commit the offense or flight after the attempt or
11 commission.

12 (4) In addition to any sentence imposed under
13 subsection (2) or (3), after determining the financial
14 resources and future ability of the offender to pay
15 restitution as required by 46-18-242, the court shall
16 require the offender, if able, to pay the victim's
17 reasonable costs of counseling that result from the offense.
18 The amount, method, and time of payment must be determined
19 in the same manner as provided for in 46-18-244."

20 **Section 4.** Section 45-5-504, MCA, is amended to read:

21 "45-5-504. Indecent exposure. (1) A person who, for the
22 purpose of arousing or gratifying sexual desire of himself
23 or of any person ~~other than his spouse~~, exposes his genitals
24 under circumstances in which he knows his conduct is likely
25 to cause affront or alarm commits the offense of indecent

1 exposure.

2 (2) A person convicted of the offense of indecent
3 exposure shall be fined not to exceed \$500 or be imprisoned
4 in the county jail for any term not to exceed 6 months, or
5 both."

6 **Section 5.** Section 45-5-507, MCA, is amended to read:

7 *45-5-507. Incest. (1) A person commits the offense of
8 incest if he knowingly marries, cohabits with, has sexual
9 intercourse with, or has sexual contact as defined in
10 45-2-101 with an ancestor, a descendant, a brother or sister
11 of the whole or half blood, or any stepson or stepdaughter.
12 The relationships referred to herein include blood
13 relationships without regard to legitimacy, relationships of
14 parent and child by adoption, and relationships involving a
15 stepson or stepdaughter.

16 (2) Consent is a defense under this section to incest
17 with or upon a stepson or stepdaughter, but consent is
18 ineffective if the victim is less than 18 years old.

19 (3) A person convicted of incest shall be imprisoned in
20 the state prison for any term not to exceed ~~10~~ 20 years or
21 be fined an amount not to exceed \$50,000, or both.

22 (4) If the victim is under 16 years of age and the
23 offender is 3 or more years older than the victim or if the
24 offender inflicts bodily injury upon anyone in the course of
25 committing incest, he shall be imprisoned in the state

1 prison for any term not to exceed ~~20~~ 40 20 years and may be
2 fined not more than \$50,000.

3 (5) In addition to any sentence imposed under
4 subsection (3) or (4), after determining the financial
5 resources and future ability of the offender to pay
6 restitution as required by 46-18-242, the court shall
7 require the offender, if able, to pay the victim's
8 reasonable costs of counseling that result from the offense.
9 The amount, method, and time of payment must be determined
10 in the same manner as provided for in 46-18-244."

11 **Section 6.** Section 45-5-511, MCA, is amended to read:

12 *45-5-511. Provisions generally applicable to sexual
13 crimes. (1) When criminality depends on the victim being
14 less than 16 years old, it is a defense for the offender to
15 prove that he reasonably believed the child to be above that
16 age. Such belief shall not be deemed reasonable if the child
17 is less than 14 years old.

18 ~~(2) Whenever the definition of an offense excludes~~
19 ~~conduct with a spouse, the exclusion shall be deemed to~~
20 ~~extend to persons living as husband and wife regardless of~~
21 ~~the legal status of their relationship. The exclusion shall~~
22 ~~be inoperative as respects spouses living apart whether~~
23 ~~under a decree of judicial separation or otherwise. Where~~
24 ~~the definition of an offense excludes conduct with a spouse,~~
25 ~~this shall not preclude conviction of a spouse in a sexual~~

1 act--which--he--or--she--causes--another--person--not--within--the
2 exclusion--to--perform--

3 (3)--In--a--prosecution--under--the--preceding--sections--on
4 sexual--crimes--(45-5-502--through--45-5-504)--in--which--the
5 victim's--lack--of--consent--is--based--solely--upon--his--incapacity
6 to--consent--because--he--was--mentally--incapacitated--it--is--a
7 defense--to--such--prosecution--that--the--victim--was--a--voluntary
8 social--companion--of--the--defendant--and--the--intoxicating
9 substance--was--voluntarily--and--knowingly--taken--

10 (4)(2) No evidence concerning the sexual conduct of the
11 victim is admissible in prosecutions under this part except--

12 (a)--evidence--of--the--victim's--past--sexual--conduct--with
13 the--offender--

14 (b) EVIDENCE OF THE VICTIM'S PAST SEXUAL CONDUCT WITH
15 THE OFFENDER OR evidence of specific instances of the
16 victim's sexual activity to show the origin of semen,
17 pregnancy, or disease which is at issue in the prosecution.

18 (5)(3) If the defendant proposes for any purpose to
19 offer evidence described in subsection (4)(a)--or--(4)(b)(2),
20 the trial judge shall order a hearing out of the presence of
21 the jury to determine whether the proposed evidence is
22 admissible under subsection (4)(2).

23 (6)(4) Evidence of failure to make a timely complaint
24 or immediate outcry does not raise any presumption as to the
25 credibility of the victim.

1 (7)(5) Resistance by the victim is not required to show
2 lack of consent. Force, fear, or threat is sufficient alone
3 to show lack of consent."

4 Section 7--Section 45-2-101--MCA--is--amended--to--read--
5 "45-2-101--General--definitions:--Unless--otherwise
6 specified--in--the--statute--all--words--will--be--taken--in--the
7 objective--standard--rather--than--in--the--subjective--and--unless
8 a--different--meaning--plainly--is--required--the--following
9 definitions--apply--in--this--title--

10 (1)--"Acts"--has--its--usual--and--ordinary--meaning--and
11 includes--any--bodily--movement--any--form--of--communication--and
12 where--relevant--a--failure--or--omission--to--take--action--

13 (2)--"Administrative proceeding"--means--any--proceeding
14 the--outcome--of--which--is--required--to--be--based--on--a--record--or
15 documentation--prescribed--by--law--or--in--which--a--law--or--a
16 regulation--is--particularized--in--its--application--to--an
17 individual--

18 (3)--"Another"--means--a--person--or--persons--as--defined--in
19 this--code--other--than--the--offender--

20 (4)--"Benefit"--means--gain--or--advantage--or--anything
21 regarded--by--the--beneficiary--as--gain--or--advantage--including
22 benefit--to--any--other--person--or--entity--in--whose--welfare--he--is
23 interested--but--not--an--advantage--promised--generally--to--a
24 group--or--class--of--voters--as--a--consequence--of--public--measures
25 which--a--candidate--engages--to--support--or--oppose--

1 (5)--"Bodily injury" means physical pain, illness, or
 2 any impairment of physical condition and includes mental
 3 illness or impairment;
 4 (6)--"Cohabit" means to live together under the
 5 representation of being married;
 6 (7)--"Common scheme" means a series of acts or omissions
 7 motivated by a purpose to accomplish a single criminal
 8 objective or by a common purpose or plan which results in
 9 the repeated commission of the same offense or affects the
 10 same person or the same persons or the property thereof;
 11 (8)--"Computer" means an electronic device that performs
 12 logical, arithmetic, and memory functions by the
 13 manipulation of electronic or magnetic impulses and includes
 14 all input, output, processing, storage, software, or
 15 communication facilities that are connected or related to
 16 such a device in a system or network;
 17 (9)--"Computer network" means the interconnection of
 18 communication systems between computers or computers and
 19 remote terminals;
 20 (10)--"Computer program" means an instruction or
 21 statement or a series of instructions or statements, in a
 22 form acceptable to a computer, that in actual or modified
 23 form permits the functioning of a computer or computer
 24 system and causes it to perform specified functions;
 25 (11)--"Computer services" include but are not limited to

1 computer time, data processing, and storage functions;
 2 (12)--"Computer software" means a set of computer
 3 programs, procedures, and associated documentation concerned
 4 with the operation of a computer system;
 5 (13)--"Computer system" means a set of related,
 6 connected, or unconnected devices, computer software, or
 7 other related computer equipment;
 8 (14)--"Conduct" means an act or series of acts and the
 9 accompanying mental state;
 10 (15)--"Conviction" means a judgment of conviction or
 11 sentence entered upon a plea of guilty or upon a verdict or
 12 finding of guilty of an offense rendered by a legally
 13 constituted jury or by a court of competent jurisdiction
 14 authorized to try the case without a jury;
 15 (16)--"Correctional institution" means the state prison,
 16 county or city jail, or other institution for the
 17 incarceration or custody of persons under sentence for
 18 offenses or awaiting trial or sentence for offenses;
 19 (17)--"Deception" means knowingly to:
 20 (a) create or confirm in another an impression which is
 21 false and which the offender does not believe to be true;
 22 (b) fail to correct a false impression which the
 23 offender previously has created or confirmed;
 24 (c) prevent another from acquiring information
 25 pertinent to the disposition of the property involved;

1 (d)--sell--or--otherwise--transfer--or--encumber--property,
 2 failing--to--disclose--a--lien,
 3 adverse--claim,
 4 --or--other--legal
 5 impediment--to--the--enjoyment--of--the--property,
 6 whether--such
 7 impediment--is--or--is--not--of--value--or--is--or--is--not--a--matter--of
 8 official--record;
 9 or
 10 (e)--promise--performance--which--the--offender--does--not
 11 intend--to--perform--or--knows--will--not--be--performed;
 12 Failure--to
 13 perform--standing--alone--is--not--evidence--that--the--offender--did
 14 not--intend--to--perform;
 15 (18)--"Defamatory--matter"--means--anything--which--exposes--a
 16 person--or--a--group,
 17 --class,
 18 --or--association--to--hatred,
 19 contempt,
 20 --ridicule,
 21 --degradation,
 22 --or--disgrace--in--society--or
 23 to--injury--to--his--or--its--business--or--occupation;
 24 (19)--"Deprive"--means--to--withhold--property--of--another:
 25 (a)--permanently;
 (b)--for--such--a--period--as--to--appropriate--a--portion--of
 its--value;
 (c)--with--the--purpose--to--restore--it--only--upon--payment--of
 reward--or--other--compensation;
 or
 (d)--to--dispose--of--the--property--and--use--or--deal--with--the
 property--so--as--to--make--it--unlikely--that--the--owner--will
 recover--it;
 (20)--"Deviate--sexual--relations"--means--sexual--contact--or
 sexual--intercourse--between--two--persons--of--the--same--sex--or
 any--form--of--sexual--intercourse--with--an--animal;

1 (20)--"Deviate--sexual--relations"--means--sexual--contact--or
 2 sexual--intercourse--between--two--person--of--the--same--sex--or--any
 3 form--of--sexual--intercourse--with--an--animal;
 4 (21)(20)(21)--"Felony"--means--an--offense--in--which--the
 5 sentence--imposed--upon--conviction--is--death--or--imprisonment--in
 6 the--state--prison--for--any--term--exceeding--1--year;
 7 (22)(21)(22)--"Forcible--felony"--means--any--felony--which
 8 involves--the--use--or--threat--of--physical--force--or--violence
 9 against--any--individual;
 10 (23)(22)(23)--A--"frisk"--is--a--search--by--an--external
 11 patting--of--a--person's--clothing;
 12 (24)(23)(24)--"Government"--includes--any--branch,
 13 subdivision,
 14 --or--agency--of--the--government--of--the--state--or--any
 15 locality--within--it;
 16 (25)(24)(25)--"Harm"--means--loss,
 17 disadvantage,
 18 --or--injury--or--anything--so--regarded--by--the--person--affected,
 19 including
 20 loss,
 21 disadvantage,
 22 --or--injury--to--any--person--or--entity--in
 23 whose--welfare--he--is--interested;
 24 (26)(25)(26)--A--"house--of--prostitution"--means--any--place
 25 where--prostitution--or--promotion--of--prostitution--is--regularly
 carried--on--by--one--or--more--persons--under--the--control,
 management,
 or--supervision--of--another;
 (27)(26)(27)--"Human--being"--means--a--person--who--has--been
 born--and--is--alive;
 (28)(27)(28)--An--"illegal--article"--is--an--article--or--thing

1 which-is-prohibited-by-statute,rule,or-order-from-being-in
 2 the-possession-of-a-person-subject-to-official-detention;
 3 (29)(28)(29)-"inmate"---means---a---person---who---engages-in
 4 prostitution--in--or--through--the--agency--of--a--house--of
 5 prostitution;
 6 (30)(29)(30)-"Intoxicating---substance"---means---any
 7 controlled-substance-as-defined-in-title-50,chapter-32,--and
 8 any-alcoholic-beverage,--including-but--not--limited--to--any
 9 beverage--containing-1/2-of-1%--or--more--of--alcohol-by-volume.
 10 The-foregoing-definition-does-not--extend--to--dealcoholized
 11 wine-or-to-any-beverage-or-liquid-produced-by-the-process-by
 12 which--beer,--ale,--port,--or--wine-is-produced-if-it-contains
 13 less-than-1/2-of-1%--of--alcohol-by-volume;
 14 (31)(30)(31)-An-"involuntary-act"---means---any--act--which
 15 is:
 16 (a)--a-reflex-or-convulsion;
 17 (b)--a-bodily-movement-during-unconsciousness-or-sleep;
 18 (c)--conduct--during-hypnosis-or-resulting-from-hypnotic
 19 suggestion,--or
 20 (d)--a-bodily-movement-that-otherwise-is-not--a--product
 21 of--the--effort--or--determination--of--the--actor,--either
 22 conscious-or-habitual;
 23 (32)(31)(32)-"Juror"---means---any-person-who-is-a-member-of
 24 any-jury,--including-a-grand-jury,--impaneled-by-any-court--in
 25 this--state--in--any--action-or-proceeding--or--by--any-officer

1 authorized-by-law--to--impanel--a--jury--in--any--action--or
 2 proceeding,--The-term-"juror"---also---includes---a---person---who---has
 3 been-drawn-or-summoned-to-attend-as-a-prospective-juror;
 4 (33)(32)(33)-"Knowingly"---a-person-acts--knowingly--with
 5 respect--to--conduct--or--to--a--circumstance-described-by-a
 6 statute-defining-an-offense-when-he-is-aware-of-his--conduct
 7 or--that--the-circumstance--exists,--A-person-acts-knowingly
 8 with-respect-to-the-result-of-conduct-described-by-a-statute
 9 defining-an-offense-when-he--is--aware--that--it--is--highly
 10 probable--that--such--result--will-be-caused-by-his-conduct,
 11 When-knowledge-of-the-existence-of-a-particular-fact--is--an
 12 element--of--an--offense,--such-knowledge-is-established-if-a
 13 person-is-aware-of-a--high--probability--of--its--existence.
 14 Equivalent--terms--such-as-"knowing"---or--"with-knowledge"---have
 15 the-same-meaning;
 16 (34)(33)(34)-"Mentally-defective"---means---that--a--person
 17 suffers--from--a--mental-disease-or-defect-which-renders-him
 18 incapable-of-appreciating-the-nature-of-his-conduct,
 19 (35)(34)(35)-"Mentally--incapacitated"---means---that--a
 20 person--is-rendered-temporarily-incapable-of-appreciating-or
 21 controlling-his-conduct-as-a-result-of-the-influence--of--an
 22 intoxicating-substance;
 23 (36)(35)(36)-"Misdemeanor"---means---an-offense-in-which-the
 24 sentence--imposed--upon--conviction--is--imprisonment-in-the
 25 county-jail-for-any-term-or-a-fine,--or-both,--or-the-sentence

1 imposed-is-imprisonment-in-the-state-prison-for-any-term--of
2 i-year-or-less.

3 (37)(36)(37)-"Negligently"--a--person--acts--negligently
4 with-respect-to-a-result-or-to-a-circumstance-described-by-a
5 statute-defining-an-offense-when-he-consciously-disregards-a
6 risk--that--the--result--will-occur-or-that-the-circumstance
7 exists-or-when-he-disregards-a-risk-of-which-he-should-be
8 aware--that--the--result-will-occur-or-that-the-circumstance
9 exists--The-risk-must-be-of-such-a-nature-and-degree-that-to
10 disregard-it-involves-a-gross-deviation-from-the-standard-of
11 conduct-that--a--reasonable--person--would--observe--in--the
12 actor's--situation--"Gross-deviation"--means-a-deviation-that
13 is-considerably-greater-than-lack-of-ordinary-care--Relevant
14 terms-such-as-"negligent"--and--"with-negligence"--have--the
15 same-meaning.

16 (38)(37)(38)-"Obtain"--means:

17 (a)--in--relation-to-property,-to-bring-about-a-transfer
18 of-interest-or-possession,-whether-to--the--offender--or--to
19 another,-and

20 (b)--in--relation--to--labor--or--services,-to-secure-the
21 performance-thereof.

22 (39)(38)(39)-"Obtains-or-exerts-control"--includes-but-is
23 not--limited--to--the-taking,-carrying-away,-or--sale,
24 conveyance,-or--transfer--of--title--to,-interest-in,-or
25 possession-of-property.

1 (40)(39)(40)-"Occupied--structure"--means--any-building,
2 vehicle,-or-other-place--suitable--for--human--occupancy--or
3 night--lodging--of--persons--or--for--carrying--on-business,
4 whether-or-not-a-person-is-actually-present--Each-unit-of--a
5 building--consisting-of-two-or-more-units-separately-secured
6 or-occupied-is-a-separate-occupied-structure.

7 (41)(40)(41)-"Offender"--means-a-person-who-has--been--or
8 is--liable--to--be-arrested,-charged,-convicted,-or-punished
9 for-a-public-offense.

10 (42)(41)(42)-"Offense"--means--a--crime--for--which--a
11 sentence--of--death--or--of--imprisonment--or--a--fine--is
12 authorized,-Offenses--are--classified--as--felonies--or
13 misdemeanors.

14 (43)(42)(43)-"Official--detention"--means--imprisonment
15 resulting-from-a-conviction-for-an-offense,-confinement--for
16 an-offense,-confinement-of-a-person-charged-with-an-offense,
17 detention--by--a-peace-officer-pursuant-to-arrest,-detention
18 for-extradition-or-deportation,-or-any-lawful-detention--for
19 the--purpose--of-the-protection-of-the-welfare-of-the-person
20 detained--or--for--the--protection--of--society,-Official
21 detention--does--not--include--supervision--of--probation-or
22 parole,-constraint-incident-to-release--on--bail,-or--an
23 unlawful-arrest-unless-the-person-arrested-employed-physical
24 force,-a-threat-of-physical-force,-or-a-weapon-to-escape.

25 (44)(43)(44)-"Official--proceeding"--means--a-proceeding

1 heard--or--which--may--be--heard--before--any---legislative,
 2 judicial,--administrative,--or--other-governmental-agency-or
 3 official-authorized-to-take-evidence-under--oath,--including
 4 any--referee,--hearing--examiner,--commissioner,--notary,--or
 5 other-person-taking-testimony-or--deposition--in--connection
 6 with-such-proceeding;

7 (45)(44)(45)--"Other--state"--means-any-state-or-territory
 8 of-the-United-States,--the--District--of--Columbia,--and--the
 9 Commonwealth-of-Puerto-Rico;

10 (46)(45)(46)--"Owner"--means--a--person--other--than--the
 11 offender--who-has-possession-of-or-any-other-interest-in-the
 12 property-involved,--even-though-such-interest--or--possession
 13 is--unlawful,--and-without-whose-consent-the-offender-has-no
 14 authority-to-exert-control-over-the-property;

15 (47)(46)(47)--"Party-official"--means-a-person--who--holds
 16 an--elective--or--appointive-post-in-a-political-party-in-the
 17 United-States-by-virtue-of-which-he-directs-or--conducts--or
 18 participates-in-directing-or-conducting-party-affairs-at-any
 19 level-of-responsibility;

20 (48)(47)(48)--"Peace--officer"--means--any--person-who-by
 21 virtue-of-his-office-or-public-employment-is-vested--by--law
 22 with--a-duty-to-maintain-public-order-or-to-make-arrests-for
 23 offenses-while-acting-within-the-scope-of-his-authority;

24 (49)(48)(49)--"Pecuniary-benefit"--is-benefit-in-the--form
 25 of--money,--property,--commercial-interests,--or--anything-else

1 the-primary-significance-of-which-is-economic-gain;

2 (50)(49)(50)--"Person"--includes-an--individual,--business
 3 association,--partnership,--corporation,--government,--or--other
 4 legal-entity-and-an-individual-acting-or-purporting--to--act
 5 for-or-on-behalf-of-any-government-or-subdivision-thereof;

6 (51)(50)(51)--"Physically--helpless"--means-that-a-person
 7 is--unconscious--or--is--otherwise--physically--unable--to
 8 communicate-unwillingness-to-act;

9 (52)(51)(52)--"Possession"--is--the--knowing--control--of
 10 anything--for--a--sufficient--time--to--be-able-to-terminate
 11 control;

12 (53)(52)(53)--"Premises"--includes-any-type--of--structure
 13 or-building-and-any-real-property;

14 (54)(53)(54)--"Property"--means-any-tangible-or-intangible
 15 thing-of-value--Property-includes-but-is-not-limited-to:

- 16 (a)--real-estate;
- 17 (b)--money;
- 18 (c)--commercial-instruments;
- 19 (d)--admission-or-transportation-tickets;
- 20 (e)--written--instruments--which--represent--or--embody
- 21 rights-concerning-anything--of--value,--including--labor--or
- 22 services,--or-which-are-otherwise-of-value-to-the-owner;
- 23 (f)--things-growing-on,--affixed-to,--or-found-on-land-and
- 24 things-which-are-part-of-or-affixed-to-any-building;
- 25 (g)--electricity,--gas,--and-water;

1 (h)--birds,--animals,--and--fish--which--ordinarily--are--kept
 2 in--a--state--of--confinement;
 3 (i)--food--and--drink,--samples,--cultures,--microorganisms,
 4 specimens,--records,--recordings,--documents,--blueprints,
 5 drawings,--maps,--and--whole--or--partial--copies,--descriptions,
 6 photographs,--prototypes,--or--models--thereof;
 7 (j)--any--other--articles,--materials,--devices,--substances,
 8 and--whole--or--partial--copies,--descriptions,--photographs,
 9 prototypes,--or--models--thereof--which--constitute,--represent,
 10 evidence,--reflect,--or--record--secret--scientific,--technical,
 11 merchandising,--production,--or--management--information--or--a
 12 secret--designed--process,--procedure,--formula,--invention,--or
 13 improvement;--and
 14 (k)--electronic--impulses,--electronically--processed--or
 15 produced--data--or--information,--commercial--instruments,
 16 computer--software--or--computer--programs,--in--either--machine-
 17 or--human--readable--form,--computer--services,--any--other
 18 tangible--or--intangible--item--of--value--relating--to--a--computer,
 19 computer--system,--or--computer--network,--and--any--copies
 20 thereof;
 21 (55)(54)(55)--"Property--of--another"--means--real--or
 22 personal--property--in--which--a--person--other--than--the--offender
 23 has--an--interest--which--the--offender--has--no--authority--to
 24 defeat--or--impair,--even--though--the--offender--himself--may--have
 25 an--interest--in--the--property;

1 (56)(55)(56)--"Public--place"--means--any--place--to--which--the
 2 public--or--any--substantial--group--thereof--has--access;
 3 (57)(56)(57)--"Public--servant"--means--any--officer--or
 4 employee--of--government,--including--but--not--limited--to
 5 legislators,--judges,--and--firefighters,--and--any--person
 6 participating--as--a--juror,--advisor,--consultant,
 7 administrator,--executor,--guardian,--or--court--appointed
 8 fiduciary. The term does not include witnesses. The term
 9 "public--servant"--includes--one--who--has--been--elected--or
 10 designated--to--become--a--public--servant;
 11 (58)(57)(58)--"Purposely"--a--person--acts--purposely--with
 12 respect--to--a--result--or--to--conduct--described--by--a--statute
 13 defining--an--offense--if--it--is--his--conscious--object--to--engage
 14 in--that--conduct--or--to--cause--that--result. When a particular
 15 purpose--is--an--element--of--an--offense,--the--element--is
 16 established--although--such--purpose--is--conditional,--unless--the
 17 condition--negatives--the--harm--or--evil--sought--to--be--prevented
 18 by--the--law--defining--the--offense. Equivalent terms such as
 19 "purpose" and "with the purpose" have the same meaning;
 20 (59)(58)(59)--"Serious--bodily--injury"--means--bodily--injury
 21 which--creates--a--substantial--risk--of--death--or--which--causes
 22 serious--permanent--disfigurement--or--protracted--loss--or
 23 impairment--of--the--function--or--process--of--any--bodily--member
 24 or--organ,--it--includes--serious--mental--illness--or--impairment;
 25 (60)(59)(60)--"Sexual--contact"--means--any--touching--of--the

1 sexual-or-other-intimate-parts-of-the-person-of-another--for
 2 the--purpose--of-arousing-or-gratifying-the-sexual-desire-of
 3 either-party;

4 {61}{60}{61}-"Sexual-intercourse"-means--penetration--of
 5 the--vulva,-anus,-or--mouth--of-one-person-by-the-penis-of
 6 another-person,-penetration-of-the--vulva--or--anus--of--one
 7 person--by-any-body-member-of-another-person,-or-penetration
 8 of-the-vulva-or-anus-of-one-person-by-any-foreign-instrument
 9 or-object-manipulated-by-another-person-for-the--purpose--of
 10 arousing--or--gratifying--the-sexual-desire-of-either-party.
 11 Any-penetration,-however-slight,-is-sufficient;

12 {62}{61}{62}-"Solicit"--or--"solicitation"--means--to
 13 command,-authorize,-urge,-incite,-request,-or-advise-another
 14 to-commit-an-offense;

15 {63}{62}{63}-"State"--or--"this-state"-means-the-state-of
 16 Montana,-all-the-land-and-water--in--respect--to--which--the
 17 state--of--Montana--has--either--exclusive--or--concurrent
 18 jurisdiction,-and-the-air-space-above-such-land-and-water;

19 {64}{63}{64}-"Statute"-means-any-act-of-the--legislature
 20 of-this-state;

21 {65}{64}{65}-"Stolen-property"-means-property-over-which
 22 control-has-been-obtained-by-theft;

23 {66}{65}{66}-A--"stop"--is--the-temporary-detention-of-a
 24 person-that-results-when-a-peace-officer-orders--the--person
 25 to-remain-in-his-presence;

1 {67}{66}{67}-"Tamper"--means-to-interfere-with-something
 2 improperly,-meddle-with-it,-make-unwarranted-alterations--in
 3 its-existing-condition,-or-deposit-refuse-upon-it;

4 {68}{67}{68}-"Threat"--means--a--menace,-however
 5 communicated,-to;

6 (a)--inflict-physical-harm-on-the-person--threatened--or
 7 any-other-person-or-on-property;

8 (b)--subject--any--person--to--physical--confinement--or
 9 restraint;

10 (c)--commit-any-criminal-offense;

11 (d)--accuse-any-person-of-a-criminal-offense;

12 (e)--expose-any-person-to-hatred,-contempt,-or-ridicule;

13 (f)--harm-the-credit-or-business-repute-of-any-person;

14 (g)--reveal--any--information--sought-to-be-concealed-by
 15 the-person-threatened;

16 (h)--take--action--as--an--official--against--anyone--or
 17 anything,-withhold-official-action,-or-cause-such-action--or
 18 withholding;

19 (i)--bring-about-or-continue-a-strike,-boycott,-or-other
 20 similar-collective-action-if-the-property-is-not-demanded-or
 21 received--for-the-benefit-of-the-groups-which-he-purports-to
 22 represent,-or

23 (j)--testify--or--provide--information--or--withhold
 24 testimony--or--information--with--respect-to-another's-legal
 25 claim-or-defense;

1 (69)(68)(69)-(a)-"Value" means the market value of the
 2 property at the time and place of the crime or, if such
 3 cannot be satisfactorily ascertained, the cost of the
 4 replacement of the property within a reasonable time after
 5 the crime, if the offender appropriates a portion of the
 6 value of the property, the value shall be determined as
 7 follows:

8 (i)-The value of an instrument constituting an evidence
 9 of debt, such as a check, draft, or promissory note, shall
 10 be considered the amount due or collectible thereon or
 11 thereby, such figure ordinarily being the face amount of the
 12 indebtedness, less any portion thereof which has been
 13 satisfied.

14 (ii)-The value of any other instrument which creates,
 15 releases, discharges, or otherwise affects any valuable
 16 legal right, privilege, or obligation shall be considered
 17 the amount of economic loss which the owner of the
 18 instrument might reasonably suffer by virtue of the loss of
 19 the instrument.

20 (iii)-The value of electronic impulses, electronically
 21 produced data or information, computer software or programs,
 22 or any other tangible or intangible item relating to a
 23 computer, computer system, or computer network shall be
 24 considered to be the amount of economic loss that the owner
 25 of the item might reasonably suffer by virtue of the loss of

1 the item. The determination of the amount of such economic
 2 loss includes but is not limited to consideration of the
 3 value of the owner's right to exclusive use or disposition
 4 of the item.

5 (b)-When it cannot be determined if the value of the
 6 property is more or less than \$300 by the standards set
 7 forth in subsection (69)(a) above (68)(a), its value shall
 8 be considered to be an amount less than \$300.

9 (c)-Amounts involved in thefts committed pursuant to a
 10 common scheme or the same transaction, whether from the same
 11 person or several persons, may be aggregated in determining
 12 the value of the property.

13 (70)(69)(70)-"Vehicle" means any device for
 14 transportation by land, water, or air or mobile equipment
 15 with provision for transport of an operator.

16 (71)(70)(71)-"Weapon" means any instrument, article, or
 17 substance which, regardless of its primary function, is
 18 readily capable of being used to produce death or serious
 19 bodily injury.

20 (72)(71)(72)-"Witness" means a person whose testimony is
 21 desired in any official proceeding, in any investigation by
 22 a grand jury, or in a criminal action, prosecution, or
 23 proceeding."

24 Section 8--Section 27-2-216, MCA, is amended to read:
 25 "27-2-216--Fort actions--childhood sexual abuse--(i)

1 An action based on intentional conduct brought by a person
2 for recovery of damages for injury suffered as a result of
3 childhood sexual abuse must be commenced not later than:

4 (a) 3 years after the act of childhood sexual abuse
5 that is alleged to have caused the injury; or

6 (b) 3 years after the plaintiff discovers or reasonably
7 should have discovered that the injury was caused by the act
8 of childhood sexual abuse.

9 (2) It is not necessary for a plaintiff to establish
10 which act, in a series of acts of childhood sexual abuse,
11 caused the injury that is the subject of the suit. The
12 plaintiff may compute the period referred to in subsection
13 (1)(a) from the date of the last act by the same
14 perpetrator.

15 (3) As used in this section, "childhood sexual abuse"
16 means any act committed against a plaintiff who was less
17 than 18 years of age at the time the act occurred and that
18 would have been a violation of 45-5-502, 45-5-503, 45-5-504,
19 45-5-505, 45-5-507, 45-5-625, or prior similar laws in
20 effect at the time the act occurred.

21 (4) The provisions of 27-2-401 apply to this section.

22 Section 9, Section 45-1-205, MCA, is amended to read:

23 "45-1-205. General time limitations. (1)(a) A
24 prosecution for deliberate, mitigated, or negligent homicide
25 may be commenced at any time.

1 (b) A prosecution under 45-5-502 through 45-5-505
2 45-5-504, 45-5-507, or 45-5-625 may be commenced within 5
3 years after the victim reaches the age of 18 if the victim
4 was less than 18 years old at the time the offense occurred.

5 (2) Except as otherwise provided by law, prosecutions
6 for other offenses are subject to the following periods of
7 limitation:

8 (a) A prosecution for a felony must be commenced within
9 5 years after it is committed.

10 (b) A prosecution for a misdemeanor must be commenced
11 within 1 year after it is committed.

12 (3) The period prescribed in subsection (2) is extended
13 in a prosecution for theft involving a breach of fiduciary
14 obligation to an aggrieved person as follows:

15 (a) If the aggrieved person is a minor or incompetent,
16 during the minority or incompetency or within 1 year after
17 the termination thereof;

18 (b) In any other instance, within 1 year after the
19 discovery of the offense by the aggrieved person or by a
20 person who has legal capacity to represent an aggrieved
21 person or has a legal duty to report the offense and is not
22 himself a party to the offense or, in the absence of such
23 discovery, within 1 year after the prosecuting officer
24 becomes aware of the offense.

25 (4) The period prescribed in subsection (2) shall be

1 extended in a prosecution for unlawful use of a computer,
 2 and prosecution shall be brought within 1 year after the
 3 discovery of the offense by the aggrieved person or by a
 4 person who has legal capacity to represent an aggrieved
 5 person or has a legal duty to report the offense and is not
 6 himself a party to the offense or, in the absence of such
 7 discovery, within 1 year after the prosecuting officer
 8 becomes aware of the offense.

9 (5) An offense is committed either when every element
 10 occurs or, when the offense is based upon a continuing
 11 course of conduct, at the time when the course of conduct is
 12 terminated. Time starts to run on the day after the offense
 13 is committed.

14 (6) A prosecution is commenced either when an
 15 indictment is found or an information or complaint is
 16 filed."

17 Section 9, Section 45-2-103, MCA, is amended to read:
 18 "45-2-103. General requirements of criminal act and
 19 mental state. (1) Except for deliberate homicide as defined
 20 in 45-5-102(1)(b) or an offense which involves absolute
 21 liability, a person is not guilty of an offense unless, with
 22 respect to each element described by the statute defining
 23 the offense, he acts while having one of the mental states
 24 described in subsections (3)(32), (37)(36), and (58)(57) of
 25 45-2-101.

1 (2) In deliberate homicide under 45-5-102(1)(b), the
 2 offender must act while having the mental state of purpose,
 3 or knowingly only as to the underlying felony referred to in
 4 45-5-102(1)(b).

5 (3) The existence of a mental state may be inferred
 6 from the acts of the accused and the facts and circumstances
 7 connected with the offense.

8 (4) If the statute defining an offense prescribes a
 9 particular mental state with respect to the offense as a
 10 whole without distinguishing among the elements thereof, the
 11 prescribed mental state applies to each such element.

12 (5) Knowledge that certain conduct constitutes an
 13 offense or knowledge of the existence, meaning, or
 14 application of the statute defining an offense is not an
 15 element of the offense unless the statute clearly defines it
 16 as such.

17 (6) A person's reasonable belief that his conduct does
 18 not constitute an offense is a defense if:

19 (a) the offense is defined by an administrative
 20 regulation or order which is not known to him and has not
 21 been published or otherwise made reasonably available to him
 22 and he could not have acquired such knowledge by the
 23 exercise of due diligence pursuant to facts known to him;

24 (b) he acts in reliance upon a statute which later is
 25 determined to be invalid.

1 (c)--he acts in reliance upon an order or opinion of the
 2 Montana--supreme--court--or--a United-States appellate court
 3 later overruled or reversed; or

4 (d)--he acts in reliance upon an official interpretation
 5 of the statute, regulation, or order defining the offense
 6 made by a public officer or agency legally authorized to
 7 interpret such statute;

8 (7)--if a person's reasonable belief is a defense under
 9 subsection (6), nevertheless he may be convicted of an
 10 included offense of which he would be guilty if the law were
 11 as he believed it to be;

12 (8)--Any defense based upon this section is an
 13 affirmative defense."

14 Section 10, Section 45-2-104, MCA, is amended to read:

15 "45-2-104. Absolute liability. A person may be guilty
 16 of an offense without having, as to each element thereof,
 17 one of the mental states described in subsections (33)(32),
 18 (37)(36), and (58)(57) of 45-2-101 only if the offense is
 19 punishable by a fine not exceeding \$500 or the statute
 20 defining the offense clearly indicates a legislative purpose
 21 to impose absolute liability for the conduct described."

22 Section 12, Section 46-15-401, MCA, is amended to read:

23 "46-15-401. When videotaped testimony admissible. For
 24 any prosecution commenced under 45-5-502(3), 45-5-503,
 25 45-5-505, or 45-5-507 and for the prosecution of any offense

1 arising from the same transaction, as defined in 46-11-501,
 2 the testimony of the victim, at the request of such victim
 3 and with the concurrence of the prosecuting attorney, may be
 4 recorded by means of videotape for presentation at trial.
 5 The testimony so recorded may be presented at trial and
 6 shall be received into evidence. The victim need not be
 7 physically present in the courtroom when the videotape is
 8 admitted into evidence."

9 Section 13, Section 46-18-111, MCA, is amended to read:

10 "46-18-111. Presentence investigation. No defendant
 11 convicted of an offense under 45-5-502 through 45-5-505
 12 45-5-504, 45-5-507, or 45-5-625 against a victim who was
 13 less than 16 years old when the offense was committed may be
 14 sentenced or otherwise disposed of before a written report
 15 of investigation by a probation officer is presented to and
 16 considered by the court. The investigation must include an
 17 evaluation of the defendant and a recommendation as to
 18 treatment by a person qualified by professional experience.
 19 No defendant convicted of any other offense that may result
 20 in commitment for 1 year or more in the state prison may be
 21 sentenced or otherwise disposed of before a written report
 22 of investigation by a probation officer is presented to and
 23 considered by the court unless the court deems such report
 24 unnecessary. The court may, in its discretion, order a
 25 presentence investigation for a defendant convicted of any

1 lesser-crime-or-offense."

2 Section-14.--Section-46-18-2017-MCA7-is-amended-to-read:

3 "46-18-2017--Sentences-that-may-be-imposed--(i)-Whenever

4 a--person-has-been-found-guilty-of-an-offense-upon-a-verdict

5 or-a-plea-of-guilty7-the-court-may:

6 (a)--defer-imposition-of-sentence7--excepting--sentences

7 for--driving--under-the-influence-of-alcohol-or-drugs7-for-a

8 period7-except-as-otherwise-provided7-not-exceeding-1--year

9 for--any--misdemeanor--or-for-a-period-not-exceeding-3-years

10 for-any-felony7-The-sentencing-judge-may-impose-upon--the

11 defendant--any--reasonable-restrictions-or-conditions-during

12 the--period---of---the---deferred---imposition;---Reasonable

13 restrictions-or-conditions-may-include:

14 (i)--jail-base-release;

15 (ii)--jail-time-not-exceeding-180-days;

16 (iii)--conditions-for-probation;

17 (iv)--restitution;

18 (v)--payment-of-the-costs-of-confinement;

19 (vi)--payment-of-a-fine-as-provided-in-46-18-2317

20 (vii)--payment--of--costs--as--provided--in-46-18-232-and

21 46-18-233;

22 (viii)--payment-of-costs-of-court--appointed--counsel--as

23 provided-in-46-8-1137

24 (ix)--community-service;

25 (x)--any---other---reasonable---conditions---considered

1 necessary--for--rehabilitation--or--for--the--protection--of

2 society7-or

3 (xi)--any-combination-of-the-above;

4 (b)--suspend-execution-of-sentence-up-to--the--maximum

5 sentence-allowed-for-each-particular-offense7-The-sentencing

6 judge---may---impose---on---the---defendant--any--reasonable

7 restrictions-or-conditions-during-the--period--of--suspended

8 sentence7--Reasonable-restrictions-or-conditions-may-include

9 any--of--those--listed--in--subsections--(1)(a)(i)---through

10 (1)(a)(xi)7-

11 (c)--impose-a-fine-as-provided-by-law-for-the-offense;

12 (d)--require--payment--of--costs--as--provided--in-46-18-232

13 or-payment-of-costs-of-court-appointed-counsel--as--provided

14 in-46-8-1137;

15 (e)--commit-the-defendant-to-a-correctional-institution7

16 with-or-without-a-fine-as-provided-by-law-for-the-offense;

17 (f)--impose---any---combination--of--subsections--(1)(b)

18 through-(1)(e)-

19 (2)--If--any--financial--obligation--is--imposed--as---a

20 condition--under-subsection-(1)(a)7-sentence-may-be-deferred

21 for-a-period-not-exceeding-2-years-for--any--misdemeanor--or

22 for---a--period--not--exceeding--6--years--for--any--felony7

23 regardless-of-whether-any-other-conditions-are-imposed;

24 (3)--If-any-restrictions--or--conditions--imposed--under

25 subsection--(1)(a)--or--(1)(b)-are-violated7-the-court-shall

1 consider any elapsed time and either expressly allow part or
 2 all of it as a credit against the sentence or reject all or
 3 part as a credit and state its reasons in the order. Credit,
 4 however, must be allowed for jail time already served.

5 (4) Except as provided in 46-18-222, the imposition or
 6 execution of the first 2 years of a sentence of imprisonment
 7 imposed under the following sections may not be deferred or
 8 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 9 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 10 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
 11 45-9-103(2).

12 (5) Except as provided in 46-18-222, the imposition or
 13 execution of the first 10 years of a sentence of
 14 imprisonment imposed under 45-5-102 may not be deferred or
 15 suspended.

16 (6) Except as provided in 46-18-222, imposition of
 17 sentence in a felony case may not be deferred in the case of
 18 a defendant who has been convicted of a felony on a prior
 19 occasion, whether or not the sentence was imposed,
 20 imposition of the sentence was deferred, or execution of the
 21 sentence was suspended.

22 (7) If the victim was less than 16 years old, the
 23 imposition or execution of the first 30 days of a sentence
 24 of imprisonment imposed under 45-5-502(3), 45-5-503,
 25 45-5-504, 45-5-505, or 45-5-507 may not be deferred or

1 suspended. Section 46-18-222 does not apply to the first 30
 2 days of such imprisonment.

3 (8) In imposing a sentence on a defendant convicted of
 4 a sexual offense as defined in 46-23-502, the court may not
 5 waive the registration requirement provided in 46-18-254,
 6 46-18-255, and Title 46, chapter 23, part 5.

7 (9) A person convicted of a sexual offense, as defined
 8 in 46-23-502, and sentenced to imprisonment in the state
 9 prison shall enroll in the educational phase of the prison's
 10 sexual offender program.

11 Section 15. Section 46-23-502, MCA, is amended to read:
 12 "46-23-502. Definitions. As used in 46-18-254,
 13 46-18-255, and this part, the following definitions apply:

14 (1) "Department" means the department of institutions
 15 provided for in Title 2, chapter 15, part 23.

16 (2) "Sexual offender" means a person who has been
 17 convicted of a sexual offense.

18 (3) "Sexual offense" means:

19 (a) any violation of 45-5-502(3), 45-5-503, 45-5-505,
 20 45-5-507 (unless the act occurred between two consenting
 21 persons 16 years of age or older), or 45-5-625; or

22 (b) any violation of a law of another state or the
 23 federal government reasonably equivalent to a violation
 24 listed in subsection (3)(a)."

25 Section 11. Section 50-20-169, MEA, is amended to read:

1 *50-20-109---Control-of-practice-of-abortion---(1)--No
2 abortion-may-be-performed-within-the-state-of-Montana:
3 (a)--except-by-a-licensed-physician;
4 (b)--after-the-first-3-months-of-pregnancy,except-in-a
5 hospital-licensed-by-the-department;
6 (c)--after-viability-of-the-fetus,unless-in-appropriate
7 medical-judgment-the-abortion-is-necessary-to--preserve--the
8 life-or-health-of-the-mother;
9 (2)--An-abortion--under--subsection--(1)(c)--may-only-be
10 performed-if:
11 (a)--the-foregoing-judgment-of-the-physician-who--is--to
12 perform--the--abortion--is-first-certified-in-writing-by-him
13 setting-forth-in-detail-the-facts-upon-which--he--relies--in
14 making-such-judgment;and
15 (b)--two--other--licensed-physicians-have-first-examined
16 the-patient-and-concurred-in-writing-with-such-judgment;The
17 foregoing-certification-and-concurrence-is-not-required-if-a
18 licensed-physician-certifies-the-abortion--is--necessary--to
19 preserve-the-life-of-the-mother;
20 (3)--The--timing--and--procedure--used--in-performing-an
21 abortion-under-subsection-(1)(c)-of--this--section--must--be
22 such-that-the-viability-of-the-fetus-is-not-intentionally-or
23 negligently-endangered,as-the-term-"negligently"-is-defined
24 in--45-2-101(37);--The-fetus-may-be-intentionally-endangered
25 or-destroyed-only-if--necessary--to--preserve--the--life--or

1 health-of-the-mother;
2 (4)--No--physician,--facility,or-other-person-or-agency
3 shall-engage-in-solicitation,advertising,or-other-form-of
4 communication--having--the-purpose-of-inviting,inducing,or
5 attracting-any-person-to-come-to-such--physician,--faciility,
6 or-other-person-or-agency-to-have-an-abortion-or-to-purchase
7 abortifacients;
8 (5)--Violation--of--subsections--(1),(2),and-(3)-of-this
9 section-is-a-felony;Violation-of--subsection--(4)--of--this
10 section-is-a-misdemeanor;"
11 Section-12;--Section-61-5-405,MEA,--is-amended-to-read:
12 *61-5-405;--Offenses-furnishing-ground-for-suspension-or
13 revocation--of--license,--(1)--Items--enumerated--in-Article
14 IV(1);subsections-(a),(b),(c),and-(d)-of-61-5-401--refer
15 specifically-----to-----45-5-103;-----45-5-104;-----61-8-401;
16 45-2-101(21)(20);and-61-7-103,--respectively;
17 (2)--In-addition--to--convictions--mentioned--above--the
18 department,--for--the--purpose-of-suspension,revocation,or
19 limitation-of-the-license-to-operate-a-motor-vehicle,--shall
20 give--the-same-effect-to-the-conduct-reported-as-it-would-if
21 such-conduct-had-occurred-in-this-state-for:
22 (a)--convictions-of-perjury-or-the--making--of--a--false
23 affidavit--relating-to-the-ownership-or-operation-of-a-motor
24 vehicle-(61-5-303);and
25 (b)--three-convictions--of--reckless-driving--committed

1 within a period of 12 months (61-8-301)."

2 ~~NEW SECTION. Section 18. Repealer. Section 45-5-505,~~
3 ~~MCA is repealed.~~

4 ~~SECTION 13. SECTION 45-5-505, MCA IS AMENDED TO READ:~~
5 ~~"45-5-505. Deviate sexual conduct--Bestiality. (1) A~~
6 ~~person who knowingly engages in deviate sexual relations~~
7 ~~bestiality or who causes another to engage in deviate sexual~~
8 ~~relations bestiality commits the offense of deviate sexual~~
9 ~~conduct bestiality.~~

10 ~~(2) A person convicted of the offense of deviate sexual~~
11 ~~conduct bestiality shall be imprisoned in the state prison~~
12 ~~for any term not to exceed 10 years or be fined an amount~~
13 ~~not to exceed \$50,000, or both.~~

14 ~~(3) A person convicted of deviate sexual conduct~~
15 ~~without consent shall be imprisoned in the state prison for~~
16 ~~any term not to exceed 20 years or be fined an amount not to~~
17 ~~exceed \$50,000, or both. For purposes of this section,~~
18 ~~"bestiality" means any form of sexual contact or of sexual~~
19 ~~intercourse with an animal."~~

20 **Section 7.** Section 45-5-505, MCA, is amended to read:

21 **"45-5-505. Deviate sexual conduct.** (1) A person who
22 knowingly engages in deviate sexual relations or who causes
23 another to engage in deviate sexual relations commits the
24 offense of deviate sexual conduct.

25 (2) A person convicted of the offense of deviate sexual

1 conduct shall be imprisoned in the state prison for any term
2 not to exceed 10 years or be fined an amount not to exceed
3 \$50,000, or both.

4 (3) A person convicted of deviate sexual conduct
5 without consent shall be imprisoned in the state prison for
6 any term not to exceed 20 years or be fined an amount not to
7 exceed \$50,000, or both.

8 (4) THE FACT THAT A PERSON SEEKS TESTING OR RECEIVES
9 TREATMENT FOR THE HIV-RELATED VIRUS OR ANOTHER SEXUALLY
10 TRANSMITTED DISEASE MAY NOT BE USED AS A BASIS FOR A
11 PROSECUTION UNDER THIS SECTION AND IS NOT ADMISSIBLE IN
12 EVIDENCE IN A PROSECUTION UNDER THIS SECTION."

13 **NEW SECTION. Section 8.** Effective date. [This act] is
14 effective on passage and approval.

-End-

Free Conference Committee
on House Bill 451
Report No. 1, April 19, 1991

4-19-91
3:25 PM
DJA

April 19, 1991
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 451 and recommend that House Bill 451 (reference copy -- salmon) be amended as follows:

1. Page 2, line 7.

Following: the first "infliction"

Insert: ", "

Strike: "OR"

2. Page 2, line 8.

Following: "offender"

Insert: ", or threatened infliction"

3. Page 2, line 10.

Following: "i"

Insert: "or"

4. Page 2, lines 11 through 14.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

5. Page 2, lines 16 and 17.

Following: "another" on line 16

Strike: remainder of line 16 through "VICTIM" on line 17

6. Page 38, line 13.

Following: line 12

Insert: "NEW SECTION. Section 8. Coordination. The amendment in section 1, Chapter 218, Laws of 1991, inserting subsection (2)(b) of 45-5-501 is void."

Renumber: subsequent section

And this Free Conference Committee report be adopted.

For the House:

For the Senate:


Rep. Brooke, Chair


Sen. Svrcek, Chair


Rep. Toole


Sen. Doherty


Rep. Mercer


Sen. Grosfield

ADOPT

REJECT

841338CC.HSF

841338CC.H

HOUSE BILL NO. 451

INTRODUCED BY BROOKE, YELLOWTAIL, HANSEN, COCCHIARELLA,
 J. BROWN, JACOBSON, STRIZICH, WYATT, COHEN, DARKO, BARNHART,
 REAM, FRITZ, O'KEEFE, DRISCOLL, BECKER, SCHYE, D. BROWN,
 BRADLEY, WANZENRIED, TOOLE, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES
 OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL
 EXEMPTIONS; INCREASING PENALTIES; REPEALING ~~AMENDING~~
CLARIFYING THE BASIS FOR A PROSECUTION FOR THE CRIME OF
DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 27-2-216,
45-1-205, 45-2-101, 45-2-103, 45-2-104, 45-5-501, 45-5-502,
45-5-503, 45-5-504, 45-5-505, 45-5-505, 45-5-507, AND
45-5-511, 46-15-401, 46-18-111, 46-18-201, 46-23-502,
50-20-109, AND 61-5-405, MCA; REPEALING SECTION 45-5-505,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503 and
 45-5-505, the term "without consent" means:

(a) the victim is compelled to submit by force or by
 threat of imminent death, bodily injury, or kidnapping to be
 inflicted on anyone; or

(b) the victim is incapable of consent because he
 is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), "force" means:

(a) the infliction, OR attempted infliction, OR
 threatened infliction, OR THREATENED
 INFLICTION of bodily injury or THE commission or threat of
 any other crime OF A FORCIBLE FELONY by the offender; OR
 against the victim or another

~~(b) THE THREATENED INFLICTION OF BODILY INJURY OR THE
 THREAT OF A FORCIBLE FELONY ANOTHER CRIME BY THE OFFENDER
 that causes the victim to reasonably believe that the
 offender has the present ability to execute the threat, or~~

(b)(B) the threat of SUBSTANTIAL retaliatory action
 by the offender against the victim or another AGAINST A
 SUBSTANTIAL AND PROTECTED INTEREST OF THE VICTIM that causes
 the victim to reasonably believe that the offender has the
 ability to execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly
 subjects another not-his-spouse PERSON to any sexual contact
 without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined

1 not to exceed \$500 or be imprisoned in the county jail for
2 any term not to exceed 6 months, or both.

3 (3) If the victim is less than 16 years old and the
4 offender is 3 or more years older than the victim or if the
5 offender inflicts bodily injury upon anyone in the course of
6 committing sexual assault, he shall be imprisoned in the
7 state prison for any term not to exceed 20 years and may be
8 fined not more than \$50,000.

9 (4) An act "in the course of committing sexual assault"
10 shall include an attempt to commit the offense or flight
11 after the attempt or commission.

12 (5) Consent is ineffective under this section if the
13 victim is less than 14 years old and the offender is 3 or
14 more years older than the victim."

15 **Section 3.** Section 45-5-503, MCA, is amended to read:

16 "45-5-503. Sexual intercourse without consent. (1) A
17 person who knowingly has sexual intercourse without consent
18 with ~~a person of the opposite sex~~ another PERSON commits the
19 offense of sexual intercourse without consent. A person may
20 not be convicted under this section based on the age of his
21 spouse as provided in 45-5-501~~(2)(c)~~ (1)(b)(iii).

22 (2) A person convicted of sexual intercourse without
23 consent shall be imprisoned in the state prison for a term
24 of not less than 2 years or more than 20 years and may be
25 fined not more than \$50,000, except as provided in

1 46-18-222.

2 (3) (a) If the victim is less than 16 years old and the
3 offender is 3 or more years older than the victim or if the
4 offender inflicts bodily injury upon anyone in the course of
5 committing sexual intercourse without consent, he shall be
6 imprisoned in the state prison for any term of not less than
7 2 years or more than 40 years and may be fined not more than
8 \$50,000, except as provided in 46-18-222.

9 (b) An act "in the course of committing sexual
10 intercourse without consent" shall include an attempt to
11 commit the offense or flight after the attempt or
12 commission.

13 (4) In addition to any sentence imposed under
14 subsection (2) or (3), after determining the financial
15 resources and future ability of the offender to pay
16 restitution as required by 46-18-242, the court shall
17 require the offender, if able, to pay the victim's
18 reasonable costs of counseling that result from the offense.
19 The amount, method, and time of payment must be determined
20 in the same manner as provided for in 46-18-244."

21 **Section 4.** Section 45-5-504, MCA, is amended to read:

22 "45-5-504. Indecent exposure. (1) A person who, for the
23 purpose of arousing or gratifying sexual desire of himself
24 or of any person ~~other than his spouse~~, exposes his genitals
25 under circumstances in which he knows his conduct is likely

1 to cause affront or alarm commits the offense of indecent
2 exposure.

3 (2) A person convicted of the offense of indecent
4 exposure shall be fined not to exceed \$500 or be imprisoned
5 in the county jail for any term not to exceed 6 months, or
6 both."

7 **Section 5.** Section 45-5-507, MCA, is amended to read:

8 *45-5-507. Incest. (1) A person commits the offense of
9 incest if he knowingly marries, cohabits with, has sexual
10 intercourse with, or has sexual contact as defined in
11 45-2-101 with an ancestor, a descendant, a brother or sister
12 of the whole or half blood, or any stepson or stepdaughter.
13 The relationships referred to herein include blood
14 relationships without regard to legitimacy, relationships of
15 parent and child by adoption, and relationships involving a
16 stepson or stepdaughter.

17 (2) Consent is a defense under this section to incest
18 with or upon a stepson or stepdaughter, but consent is
19 ineffective if the victim is less than 18 years old.

20 (3) A person convicted of incest shall be imprisoned in
21 the state prison for any term not to exceed ~~10~~ 20 years or
22 be fined an amount not to exceed \$50,000, or both.

23 (4) If the victim is under 16 years of age and the
24 offender is 3 or more years older than the victim or if the
25 offender inflicts bodily injury upon anyone in the course of

1 committing incest, he shall be imprisoned in the state
2 prison for any term not to exceed ~~20~~ 40 20 years and may be
3 fined not more than \$50,000.

4 (5) In addition to any sentence imposed under
5 subsection (3) or (4), after determining the financial
6 resources and future ability of the offender to pay
7 restitution as required by 46-18-242, the court shall
8 require the offender, if able, to pay the victim's
9 reasonable costs of counseling that result from the offense.
10 The amount, method, and time of payment must be determined
11 in the same manner as provided for in 46-18-244."

12 **Section 6.** Section 45-5-511, MCA, is amended to read:

13 *45-5-511. Provisions generally applicable to sexual
14 crimes. (1) When criminality depends on the victim being
15 less than 16 years old, it is a defense for the offender to
16 prove that he reasonably believed the child to be above that
17 age. Such belief shall not be deemed reasonable if the child
18 is less than 14 years old.

19 ~~(2) Whenever the definition of an offense excludes~~
20 ~~conduct with a spouse, the exclusion shall be deemed to~~
21 ~~extend to persons living as husband and wife regardless of~~
22 ~~the legal status of their relationship. The exclusion shall~~
23 ~~be inoperative as respects spouses living apart whether~~
24 ~~under a decree of judicial separation or otherwise. Where~~
25 ~~the definition of an offense excludes conduct with a spouse,~~

1 this shall not preclude conviction of a spouse in a sexual
 2 act which he or she causes another person, not within the
 3 exclusion, to perform.

4 (3) In a prosecution under the preceding sections on
 5 sexual crimes (45-5-502 through 45-5-504) in which the
 6 victim's lack of consent is based solely upon his incapacity
 7 to consent because he was mentally incapacitated, it is a
 8 defense to such prosecution that the victim was a voluntary
 9 social companion of the defendant and the intoxicating
 10 substance was voluntarily and knowingly taken.

11 (4)(2) No evidence concerning the sexual conduct of the
 12 victim is admissible in prosecutions under this part except:
 13 (a) evidence of the victim's past sexual conduct with
 14 the offender;

15 (b) EVIDENCE OF THE VICTIM'S PAST SEXUAL CONDUCT WITH
 16 THE OFFENDER OR evidence of specific instances of the
 17 victim's sexual activity to show the origin of semen,
 18 pregnancy, or disease which is at issue in the prosecution.

19 (5)(3) If the defendant proposes for any purpose to
 20 offer evidence described in subsection (4)(a) or (4)(b)(2),
 21 the trial judge shall order a hearing out of the presence of
 22 the jury to determine whether the proposed evidence is
 23 admissible under subsection (4)(2).

24 (6)(4) Evidence of failure to make a timely complaint
 25 or immediate outcry does not raise any presumption as to the

1 credibility of the victim.

2 (7)(5) Resistance by the victim is not required to show
 3 lack of consent. Force, fear, or threat is sufficient alone
 4 to show lack of consent."

5 Section 7, Section 45-2-101, MCA, is amended to read:
 6 "45-2-101. General definitions. Unless otherwise
 7 specified in the statute, all words will be taken in the
 8 objective standard rather than in the subjective, and unless
 9 a different meaning plainly is required, the following
 10 definitions apply in this title:

11 (1) "Acts" has its usual and ordinary meaning and
 12 includes any bodily movement, any form of communication, and
 13 where relevant, a failure or omission to take action;

14 (2) "Administrative proceeding" means any proceeding
 15 the outcome of which is required to be based on a record or
 16 documentation prescribed by law or in which a law or a
 17 regulation is particularized in its application to an
 18 individual;

19 (3) "Another" means a person or persons, as defined in
 20 this code, other than the offender.

21 (4) "Benefit" means gain or advantage or anything
 22 regarded by the beneficiary as gain or advantage, including
 23 benefit to any other person or entity in whose welfare he is
 24 interested, but not an advantage promised generally to a
 25 group or class of voters as a consequence of public measures

1 which a candidate engages to support or oppose;

2 (5) "Bodily injury" means physical pain, illness, or

3 any impairment of physical condition and includes mental

4 illness or impairment;

5 (6) "Cohabit" means to live together under the

6 representation of being married;

7 (7) "Common scheme" means a series of acts or omissions

8 motivated by a purpose to accomplish a single criminal

9 objective or by a common purpose or plan which results in

10 the repeated commission of the same offense or affects the

11 same person or the same persons or the property thereof;

12 (8) "Computer" means an electronic device that performs

13 logical, arithmetic, and memory functions by the

14 manipulation of electronic or magnetic impulses and includes

15 all input, output, processing, storage, software, or

16 communication facilities that are connected or related to

17 such a device in a system or network;

18 (9) "Computer network" means the interconnection of

19 communication systems between computers or computers and

20 remote terminals;

21 (10) "Computer program" means an instruction or

22 statement or a series of instructions or statements, in a

23 form acceptable to a computer, that in actual or modified

24 form permits the functioning of a computer or computer

25 system and causes it to perform specified functions;

1 (11) "Computer services" include but are not limited to

2 computer time, data processing, and storage functions;

3 (12) "Computer software" means a set of computer

4 programs, procedures, and associated documentation concerned

5 with the operation of a computer system;

6 (13) "Computer system" means a set of related,

7 connected, or unconnected devices, computer software, or

8 other related computer equipment;

9 (14) "Conduct" means an act or series of acts and the

10 accompanying mental state;

11 (15) "Conviction" means a judgment of conviction or

12 sentence entered upon a plea of guilty or upon a verdict or

13 finding of guilty of an offense rendered by a legally

14 constituted jury or by a court of competent jurisdiction

15 authorized to try the case without a jury;

16 (16) "Correctional institution" means the state prison,

17 county or city jail, or other institution for the

18 incarceration or custody of persons under sentence for

19 offenses or awaiting trial or sentence for offenses;

20 (17) "Deception" means knowingly to:

21 (a) create or confirm in another an impression which is

22 false and which the offender does not believe to be true;

23 (b) fail to correct a false impression which the

24 offender previously has created or confirmed;

25 (c) prevent another from acquiring information

1 pertinent-to-the-disposition-of-the-property-involved;

2 (d)--sell--or--otherwise--transfer--or--encumber--property;

3 failing-to-disclose-a-lien,adverse-claim,--or--other--legal

4 impediment--to--the--enjoyment--of--the--property,whether-such

5 impediment-is-or-is-not-of-value-or-is-or-is-not-a-matter-of

6 official-record,;or

7 (e)--promise-performance-which--the--offender--does--not

8 intend-to-perform-or-knows-will-not-be-performed,;Failure-to

9 perform-standing-alone-is-not-evidence-that-the-offender-did

10 not-intend-to-perform,;

11 (f8)--"Defamatory--matter"--means--anything--which--exposes--a

12 person--or--a--group,;class,;--or--association--to--hatred,

13 contempt,;--ridicule,;--degradation,;or--disgrace--in--society--or

14 to--injury--to--his--or--its--business--or--occupation,;

15 (f9)--"Deprive"--means--to--withhold--property--of--another,;

16 (a)--permanently,;

17 (b)--for--such--a--period--as--to--appropriate--a--portion--of

18 its--value,;

19 (c)--with--the--purpose--to--restore--it--only--upon--payment--of

20 reward--or--other--compensation,;or

21 (d)--to--dispose--of--the--property--and--use--or--deal--with--the

22 property--so--as--to--make--it--unlikely--that--the--owner--will

23 recover--it,;

24 (20)--"Deviate--sexual--relations"--means--sexual--contact--or

25 sexual--intercourse--between--two--persons--of--the--same--sex--or

1 any-form-of-sexual-intercourse-with-an-animal,;

2 (20)--"Deviate--sexual--relations"--means--sexual--contact--or

3 sexual--intercourse--between--two--person--of--the--same--sex--or--any

4 form--of--sexual--intercourse--with--an--animal,;

5 (21)(20)(21)--"Felony"--means--an--offense--in--which--the

6 sentence--imposed--upon--conviction--is--death--or--imprisonment--in

7 the--state--prison--for--any--term--exceeding--1--year,;

8 (22)(21)(22)--"Forcible--felony"--means--any--felony--which

9 involves--the--use--or--threat--of--physical--force--or--violence

10 against--any--individual,;

11 (23)(22)(23)--A--"frisk"--is--a--search--by--an--external

12 patting--of--a--person's--clothing,;

13 (24)(23)(24)--"Government"--includes--any--branch,

14 subdivision,;or--agency--of--the--government--of--the--state--or--any

15 locality--within--it,;

16 (25)(24)(25)--"Harm"--means--loss,;disadvantage,;or--injury

17 or--anything--so--regarded--by--the--person--affected,;--including

18 loss,;--disadvantage,;--or--injury--to--any--person--or--entity--in

19 whose--welfare--he--is--interested,;

20 (26)(25)(26)--A--"house--of--prostitution"--means--any--place

21 where--prostitution--or--promotion--of--prostitution--is--regularly

22 carried--on--by--one--or--more--persons--under--the--control,;

23 management,;or--supervision--of--another,;

24 (27)(26)(27)--"Human--being"--means--a--person--who--has--been

25 born--and--is--alive,;

1 ~~(20)(27)(28)~~ An "illegal article" is an article or thing
2 which is prohibited by statute, rule, or order from being in
3 the possession of a person subject to official detention.

4 ~~(29)(28)(29)~~ "Inmate" means a person who engages in
5 prostitution in or through the agency of a house of
6 prostitution.

7 ~~(30)(29)(30)~~ "Intoxicating substance" means any
8 controlled substance as defined in Title 50, chapter 32, and
9 any alcoholic beverage, including but not limited to any
10 beverage containing 1/2 of 1% or more of alcohol by volume.
11 The foregoing definition does not extend to de-alcoholized
12 wine or to any beverage or liquid produced by the process by
13 which beer, ale, port, or wine is produced if it contains
14 less than 1/2 of 1% of alcohol by volume.

15 ~~(31)(30)(31)~~ An "involuntary act" means any act which
16 is:

- 17 (a) a reflex or convulsion;
- 18 (b) a bodily movement during unconsciousness or sleep;
- 19 (c) conduct during hypnosis or resulting from hypnotic
20 suggestion; or
- 21 (d) a bodily movement that otherwise is not a product
22 of the effort or determination of the actor, either
23 conscious or habitual.

24 ~~(32)(31)(32)~~ "Juror" means any person who is a member of
25 any jury, including a grand jury, impaneled by any court in

1 this state in any action or proceeding or by any officer
2 authorized by law to impanel a jury in any action or
3 proceeding. The term "juror" also includes a person who has
4 been drawn or summoned to attend as a prospective juror.

5 ~~(33)(32)(33)~~ "Knowingly" a person acts knowingly with
6 respect to conduct or to a circumstance described by a
7 statute defining an offense when he is aware of his conduct
8 or that the circumstance exists. A person acts knowingly
9 with respect to the result of conduct described by a statute
10 defining an offense when he is aware that it is highly
11 probable that such result will be caused by his conduct.
12 When knowledge of the existence of a particular fact is an
13 element of an offense, such knowledge is established if a
14 person is aware of a high probability of its existence.
15 Equivalent terms such as "knowing" or "with knowledge" have
16 the same meaning.

17 ~~(34)(33)(34)~~ "Mentally defective" means that a person
18 suffers from a mental disease or defect which renders him
19 incapable of appreciating the nature of his conduct.

20 ~~(35)(34)(35)~~ "Mentally incapacitated" means that a
21 person is rendered temporarily incapable of appreciating or
22 controlling his conduct as a result of the influence of an
23 intoxicating substance.

24 ~~(36)(35)(36)~~ "Misdemeanor" means an offense in which the
25 sentence imposed upon conviction is imprisonment in the

1 county-jail-for-any-term-or-a-fine,or-both,or-the-sentence
 2 imposed-is-imprisonment-in-the-state-prison-for-any-term-of
 3 1-year-or-less.

4 (37)(36)(37)-"Negligently"--a-person--acts--negligently
 5 with-respect-to-a-result-or-to-a-circumstance-described-by-a
 6 statute-defining-an-offense-when-he-consciously-disregards-a
 7 risk--that--the--result--will-occur-or-that-the-circumstance
 8 exists-or-when-he-disregards-a-risk-of-which--he--should--be
 9 aware--that--the--result-will-occur-or-that-the-circumstance
 10 exists.-The-risk-must-be-of-such-a-nature-and-degree-that-to
 11 disregard-it-involves-a-gross-deviation-from-the-standard-of
 12 conduct-that--a--reasonable--person--would--observe--in--the
 13 actor's--situation.-"Gross-deviation"--means-a-deviation-that
 14 is-considerably-greater-than-lack-of-ordinary-care.-Relevant
 15 terms-such-as-"negligent"--and--"with-negligence"--have--the
 16 same-meaning.

17 (38)(37)(38)-"Obtain"--means:

18 (a)--in--relation-to-property,--to-bring-about-a-transfer
 19 of-interest-or-possession,whether-to--the--offender--or--to
 20 another,--and

21 (b)--in--relation--to--labor--or-services,--to-secure-the
 22 performance-thereof.

23 (39)(38)(39)-"Obtains-or-exerts-control"--includes-but-is
 24 not--limited--to--the--taking,--carrying--away,--or--sale,
 25 conveyance,--or--transfer--of--title--to,--interest--in,--or

1 possession-of-property:

2 (40)(39)(40)-"Occupied--structure"--means--any-building,
 3 vehicle,or-other-place--suitable--for--human--occupancy--or
 4 night--lodging--of--persons--or--for--carrying--on-business,
 5 whether-or-not-a-person-is-actually-present.-Each-unit-of--a
 6 building--consisting-of-two-or-more-units-separately-secured
 7 or-occupied-is-a-separate-occupied-structure.

8 (41)(40)(41)-"Offender"--means-a-person-who-has--been--or
 9 is--liable--to--be-arrested,charged,convicted,or-punished
 10 for-a-public-offense.

11 (42)(41)(42)-"Offense"--means--a--crime--for--which--a
 12 sentence--of--death--or--of--imprisonment--or--a--fine--is
 13 authorized.-Offenses--are--classified--as--felonies--or
 14 misdemeanors.

15 (43)(42)(43)-"Official--detention"--means--imprisonment
 16 resulting-from-a-conviction-for-an-offense,confinement--for
 17 an-offense,confinement-of-a-person-charged-with-an-offense,
 18 detention--by--a-peace-officer-pursuant-to-arrest,--detention
 19 for-extradition-or-deportation,or-any-lawful-detention--for
 20 the--purpose--of-the-protection-of-the-welfare-of-the-person
 21 detained--or--for--the--protection--of--society.-Official
 22 detention--does--not--include--supervision--of--probation-or
 23 parole,constraint-incident-to-release--on--bail,--or--an
 24 unlawful-arrest-unless-the-person-arrested-employed-physical
 25 force,a-threat-of-physical-force,or-a-weapon-to-escape.

1 ~~(44)(43)(44)~~ "Official proceeding" means a proceeding
 2 heard or which may be heard before any legislative,
 3 judicial, administrative, or other governmental agency or
 4 official authorized to take evidence under oath, including
 5 any referee, hearing examiner, commissioner, notary, or
 6 other person taking testimony or deposition in connection
 7 with such proceeding.

8 ~~(45)(44)(45)~~ "Other state" means any state or territory
 9 of the United States, the District of Columbia, and the
 10 Commonwealth of Puerto Rico.

11 ~~(46)(45)(46)~~ "Owner" means a person other than the
 12 offender who has possession of or any other interest in the
 13 property involved, even though such interest or possession
 14 is unlawful, and without whose consent the offender has no
 15 authority to exert control over the property.

16 ~~(47)(46)(47)~~ "Party official" means a person who holds
 17 an elective or appointive post in a political party in the
 18 United States by virtue of which he directs or conducts or
 19 participates in directing or conducting party affairs at any
 20 level of responsibility.

21 ~~(48)(47)(48)~~ "Peace officer" means any person who by
 22 virtue of his office or public employment is vested by law
 23 with a duty to maintain public order or to make arrests for
 24 offenses while acting within the scope of his authority.

25 ~~(49)(48)(49)~~ "Pecuniary benefit" is benefit in the form

1 of money, property, commercial interests, or anything else
 2 the primary significance of which is economic gain.

3 ~~(50)(49)(50)~~ "Person" includes an individual, business
 4 association, partnership, corporation, government, or other
 5 legal entity and an individual acting or purporting to act
 6 for or on behalf of any government or subdivision thereof.

7 ~~(51)(50)(51)~~ "Physically helpless" means that a person
 8 is unconscious or is otherwise physically unable to
 9 communicate unwillingness to act.

10 ~~(52)(51)(52)~~ "Possession" is the knowing control of
 11 anything for a sufficient time to be able to terminate
 12 control.

13 ~~(53)(52)(53)~~ "Premises" includes any type of structure
 14 or building and any real property.

15 ~~(54)(53)(54)~~ "Property" means any tangible or intangible
 16 thing of value. Property includes but is not limited to

- 17 (a) real estate;
- 18 (b) money;
- 19 (c) commercial instruments;
- 20 (d) admission or transportation tickets;
- 21 (e) written instruments which represent or embody
- 22 rights concerning anything of value, including labor or
- 23 services, or which are otherwise of value to the owner;
- 24 (f) things growing on, affixed to, or found on land and
- 25 things which are part of or affixed to any building;

1 (g)--electricity, gas, and water;

2 (h)--birds, animals, and fish which ordinarily are kept

3 in a state of confinement;

4 (i)--food and drink, samples, cultures, microorganisms,

5 specimens, records, recordings, documents, blueprints,

6 drawings, maps, and whole or partial copies, descriptions,

7 photographs, prototypes, or models thereof;

8 (j)--any other articles, materials, devices, substances,

9 and whole or partial copies, descriptions, photographs,

10 prototypes, or models thereof which constitute, represent,

11 evidence, reflect, or record secret scientific, technical,

12 merchandising, production, or management information or a

13 secret designed process, procedure, formula, invention, or

14 improvement; and

15 (k)--electronic impulses, electronically processed or

16 produced data or information, commercial instruments,

17 computer software or computer programs, in either machine-

18 or human-readable form, computer services, any other

19 tangible or intangible item of value relating to a computer,

20 computer system, or computer network, and any copies

21 thereof;

22 (55)(54)(55)--"Property of another" means real or

23 personal property in which a person other than the offender

24 has an interest which the offender has no authority to

25 defeat or impair, even though the offender himself may have

1 an interest in the property;

2 (56)(55)(56)--"Public place" means any place to which the

3 public or any substantial group thereof has access;

4 (57)(56)(57)--"Public servant" means any officer or

5 employee of government, including but not limited to

6 legislators, judges, and firefighters, and any person

7 participating as a juror, advisory, consultant,

8 administrator, executor, guardian, or court-appointed

9 fiduciary. The term does not include witnesses. The term

10 "public servant" includes one who has been elected or

11 designated to become a public servant;

12 (58)(57)(58)--"Purposeful" a person acts purposeful with

13 respect to a result or to conduct described by a statute

14 defining an offense if it is his conscious object to engage

15 in that conduct or to cause that result. When a particular

16 purpose is an element of an offense, the element is

17 established although such purpose is conditional, unless the

18 condition negates the harm or evil sought to be prevented

19 by the law defining the offense. Equivalent terms such as

20 "purpose" and "with the purpose" have the same meaning;

21 (59)(58)(59)--"Serious bodily injury" means bodily injury

22 which creates a substantial risk of death or which causes

23 serious permanent disfigurement or protracted loss or

24 impairment of the function or process of any bodily member

25 or organ, it includes serious mental illness or impairment.

1 (60)(59)(60) "Sexual contact" means any touching of the
2 sexual or other intimate parts of the person of another for
3 the purpose of arousing or gratifying the sexual desire of
4 either party;

5 (61)(60)(61) "Sexual intercourse" means penetration of
6 the vulva, anus, or mouth of one person by the penis of
7 another person, penetration of the vulva or anus of one
8 person by any body member of another person, or penetration
9 of the vulva or anus of one person by any foreign instrument
10 or object manipulated by another person for the purpose of
11 arousing or gratifying the sexual desire of either party;
12 Any penetration, however slight, is sufficient;

13 (62)(61)(62) "Solicit" or "solicitation" means to
14 command, authorize, urge, incite, request, or advise another
15 to commit an offense;

16 (63)(62)(63) "State" or "this state" means the state of
17 Montana, all the land and water in respect to which the
18 state of Montana has either exclusive or concurrent
19 jurisdiction, and the air space above such land and water;

20 (64)(63)(64) "Statute" means any act of the legislature
21 of this state;

22 (65)(64)(65) "Stolen property" means property over which
23 control has been obtained by theft;

24 (66)(65)(66) A "stop" is the temporary detention of a
25 person that results when a peace officer orders the person

1 to remain in his presence;

2 (67)(66)(67) "Tamper" means to interfere with something
3 improperly, meddle with it, make unwarranted alterations in
4 its existing condition, or deposit refuse upon it;

5 (68)(67)(68) "Threat" means a menace, however
6 communicated, to:

7 (a) inflict physical harm on the person threatened or
8 any other person or on property;

9 (b) subject any person to physical confinement or
10 restraint;

11 (c) commit any criminal offense;

12 (d) accuse any person of a criminal offense;

13 (e) expose any person to hatred, contempt, or ridicule;

14 (f) harm the credit or business repute of any person;

15 (g) reveal any information sought to be concealed by
16 the person threatened;

17 (h) take action as an official against anyone or
18 anything, withhold official action, or cause such action or
19 withholding;

20 (i) bring about or continue a strike, boycott, or other
21 similar collective action if the property is not demanded or
22 received for the benefit of the groups which he purports to
23 represent; or

24 (j) testify or provide information or withhold
25 testimony or information with respect to another's legal

1 claim-or-defense:

2 ~~(69)(68)(69)-(a)~~ "Value" means the market value of the

3 property at the time and place of the crime or, if such

4 cannot be satisfactorily ascertained, the cost of the

5 replacement of the property within a reasonable time after

6 the crime; if the offender appropriates a portion of the

7 value of the property, the value shall be determined as

8 follows:

9 (i) The value of an instrument constituting an evidence

10 of debt, such as a check, draft, or promissory note, shall

11 be considered the amount due or collectible thereon or

12 thereby, such figure ordinarily being the face amount of the

13 indebtedness, less any portion thereof which has been

14 satisfied;

15 (ii) The value of any other instrument which creates,

16 releases, discharges, or otherwise affects any valuable

17 legal right, privilege, or obligation shall be considered

18 the amount of economic loss which the owner of the

19 instrument might reasonably suffer by virtue of the loss of

20 the instrument;

21 (iii) The value of electronic impulses, electronically

22 produced data or information, computer software or programs,

23 or any other tangible or intangible item relating to a

24 computer, computer system, or computer network shall be

25 considered to be the amount of economic loss that the owner

1 of the item might reasonably suffer by virtue of the loss of

2 the item. The determination of the amount of such economic

3 loss includes but is not limited to consideration of the

4 value of the owner's right to exclusive use or disposition

5 of the item.

6 (b) When it cannot be determined if the value of the

7 property is more or less than \$300 by the standards set

8 forth in subsection ~~(69)(a)~~ above ~~(68)(a)~~, its value shall

9 be considered to be an amount less than \$300.

10 (c) Amounts involved in thefts committed pursuant to a

11 common scheme or the same transaction, whether from the same

12 person or several persons, may be aggregated in determining

13 the value of the property.

14 ~~(70)(69)(70)~~ "Vehicle" means any device for

15 transportation by land, water, or air or mobile equipment

16 with provision for transport of an operator.

17 ~~(71)(70)(71)~~ "Weapon" means any instrument, article, or

18 substance which, regardless of its primary function, is

19 readily capable of being used to produce death or serious

20 bodily injury.

21 ~~(72)(71)(72)~~ "Witness" means a person whose testimony is

22 desired in any official proceeding, in any investigation by

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

24 proceeding."

25 Section 8--Section 27-2-216, MCA, is amended to read:

1 ~~427-2-216. Tort actions---childhood-sexual-abuse. (1)~~
 2 ~~An action based on intentional conduct brought by a person~~
 3 ~~for recovery of damages for injury suffered as a result of~~
 4 ~~childhood sexual abuse must be commenced not later than:~~

5 ~~(a) 3 years after the act of childhood sexual abuse~~
 6 ~~that is alleged to have caused the injury; or~~

7 ~~(b) 3 years after the plaintiff discovers or reasonably~~
 8 ~~should have discovered that the injury was caused by the act~~
 9 ~~of childhood sexual abuse.~~

10 ~~(2) It is not necessary for a plaintiff to establish~~
 11 ~~which act, in a series of acts of childhood sexual abuse,~~
 12 ~~caused the injury that is the subject of the suit. The~~
 13 ~~plaintiff may compute the period referred to in subsection~~
 14 ~~(1)(a) from the date of the last act by the same~~
 15 ~~perpetrator.~~

16 ~~(3) As used in this section, "childhood sexual abuse"~~
 17 ~~means any act committed against a plaintiff who was less~~
 18 ~~than 18 years of age at the time the act occurred and that~~
 19 ~~would have been a violation of 45-5-502, 45-5-503, 45-5-504,~~
 20 ~~45-5-505, 45-5-507, 45-5-625, or prior similar laws in~~
 21 ~~effect at the time the act occurred.~~

22 ~~(4) The provisions of 27-2-401 apply to this section."~~

23 ~~Section 9. Section 45-1-205, MCA, is amended to read:~~

24 ~~"45-1-205. General time limitations. (1)(a) A~~
 25 ~~prosecution for deliberate, mitigated, or negligent homicide~~

1 ~~may be commenced at any time.~~

2 ~~(b) A prosecution under 45-5-502 through 45-5-505~~
 3 ~~45-5-504, 45-5-507, or 45-5-625 may be commenced within 5~~
 4 ~~years after the victim reaches the age of 18 if the victim~~
 5 ~~was less than 18 years old at the time the offense occurred.~~

6 ~~(2) Except as otherwise provided by law, prosecutions~~
 7 ~~for other offenses are subject to the following periods of~~
 8 ~~limitation:~~

9 ~~(a) A prosecution for a felony must be commenced within~~
 10 ~~5 years after it is committed.~~

11 ~~(b) A prosecution for a misdemeanor must be commenced~~
 12 ~~within 1 year after it is committed.~~

13 ~~(3) The period prescribed in subsection (2) is extended~~
 14 ~~in a prosecution for theft involving a breach of fiduciary~~
 15 ~~obligation to an aggrieved person as follows:~~

16 ~~(a) if the aggrieved person is a minor or incompetent,~~
 17 ~~during the minority or incompetency or within 1 year after~~
 18 ~~the termination thereof;~~

19 ~~(b) in any other instance, within 1 year after the~~
 20 ~~discovery of the offense by the aggrieved person or by a~~
 21 ~~person who has legal capacity to represent an aggrieved~~
 22 ~~person or has a legal duty to report the offense and is not~~
 23 ~~himself a party to the offense or, in the absence of such~~
 24 ~~discovery, within 1 year after the prosecuting officer~~
 25 ~~becomes aware of the offense.~~

1 ~~(4) The period prescribed in subsection (2) shall be~~
 2 ~~extended in a prosecution for unlawful use of a computer,~~
 3 ~~and prosecution shall be brought within 1 year after the~~
 4 ~~discovery of the offense by the aggrieved person or by a~~
 5 ~~person who has legal capacity to represent an aggrieved~~
 6 ~~person or has a legal duty to report the offense and is not~~
 7 ~~himself a party to the offense or, in the absence of such~~
 8 ~~discovery, within 1 year after the prosecuting officer~~
 9 ~~becomes aware of the offense.~~

10 ~~(5) An offense is committed either when every element~~
 11 ~~occurs or, when the offense is based upon a continuing~~
 12 ~~course of conduct, at the time when the course of conduct is~~
 13 ~~terminated. Time starts to run on the day after the offense~~
 14 ~~is committed.~~

15 ~~(6) A prosecution is commenced either when an~~
 16 ~~indictment is found or an information or complaint is~~
 17 ~~filed."~~

18 ~~Section 9. Section 45-2-103, MCA, is amended to read:~~
 19 ~~"45-2-103. General requirements of criminal act and~~
 20 ~~mental state. (1) Except for deliberate homicide as defined~~
 21 ~~in 45-5-102(1)(b) or an offense which involves absolute~~
 22 ~~liability, a person is not guilty of an offense unless, with~~
 23 ~~respect to each element described by the statute defining~~
 24 ~~the offense, he acts while having one of the mental states~~
 25 ~~described in subsections (33)(32), (37)(36), and (58)(57) of~~

1 ~~45-2-101.~~

2 ~~(2) In deliberate homicide under 45-5-102(1)(b), the~~
 3 ~~offender must act while having the mental state of purposely~~
 4 ~~or knowingly only as to the underlying felony referred to in~~
 5 ~~45-5-102(1)(b).~~

6 ~~(3) The existence of a mental state may be inferred~~
 7 ~~from the acts of the accused and the facts and circumstances~~
 8 ~~connected with the offense.~~

9 ~~(4) If the statute defining an offense prescribes a~~
 10 ~~particular mental state with respect to the offense as a~~
 11 ~~whole without distinguishing among the elements thereof, the~~
 12 ~~prescribed mental state applies to each such element.~~

13 ~~(5) Knowledge that certain conduct constitutes an~~
 14 ~~offense or knowledge of the existence, meaning, or~~
 15 ~~application of the statute defining an offense is not an~~
 16 ~~element of the offense unless the statute clearly defines it~~
 17 ~~as such.~~

18 ~~(6) A person's reasonable belief that his conduct does~~
 19 ~~not constitute an offense is a defense if:~~

20 ~~(a) the offense is defined by an administrative~~
 21 ~~regulation or order which is not known to him and has not~~
 22 ~~been published or otherwise made reasonably available to him~~
 23 ~~and he could not have acquired such knowledge by the~~
 24 ~~exercise of due diligence pursuant to facts known to him;~~

25 ~~(b) he acts in reliance upon a statute which later is~~

1 determined-to-be-invalid;

2 (c)--he-acts-in-reliance-upon-an-order-or-opinion-of-the

3 Montana--supreme--court--or--a-United-States-appellate-court

4 later-overruled-or-reversed;-or

5 (d)--he-acts-in-reliance-upon-an-official-interpretation

6 of-the-statute;-regulation;-or-order--defining--the--offense

7 made--by--a--public--officer-or-agency-legally-authorized-to

8 interpret-such-statute;

9 (7)--If-a-person's-reasonable-belief-is-a-defense--under

10 subsection--(6);--nevertheless--he--may--be--convicted-of-an

11 included-offense-of-which-he-would-be-guilty-if-the-law-were

12 as-he-believed-it-to-be;

13 (8)--Any--defense--based--upon--this--section---is---an

14 affirmative-defense."

15 Section-10;--Section-45-2-104;-MCA;-is-amended-to-read:

16 "45-2-104--Absolute--liability;-A-person-may-be-guilty

17 of-an-offense-without-having;-as-to--each--element--thereof;

18 one--of--the-mental-states-described-in-subsections--(33){32};

19 (37){36};-and-(58){57} of-45-2-101-only-if--the--offense--is

20 punishable--by--a--fine--not--exceeding--\$500-or-the-statute

21 defining-the-offense-clearly-indicates-a-legislative-purpose

22 to-impose-absolute-liability-for-the-conduct-described."

23 Section-12;--Section-46-15-401;-MCA;-is-amended-to-read:

24 "46-15-401;-When-videotaped-testimony--admissible;-For

25 any--prosecution--commenced--under--45-5-502(3);-45-5-503;

1 45-5-505;-or-45-5-507-and-for-the-prosecution-of-any-offense

2 arising-from-the-same-transaction;-as-defined-in--46-11-501;

3 the--testimony--of--the-victim;-at-the-request-of-such-victim

4 and-with-the-concurrence-of-the-prosecuting-attorney;-may-be

5 recorded-by-means-of-videotape-for--presentation--at--trial;

6 The--testimony--so--recorded--may--be-presented-at-trial-and

7 shall-be-received-into-evidence;-The--victim--need--not--be

8 physically--present--in--the-courtroom-when-the-videotape-is

9 admitted-into-evidence;"

10 Section-13;--Section-46-18-111;-MCA;-is-amended-to-read:

11 "46-18-111;-Presentence--investigation;-No--defendant

12 convicted--of--an--offense--under--45-5-502-through-45-5-505

13 45-5-504;-45-5-507;-or-45-5-625-against--a--victim--who--was

14 less-than-16-years-old-when-the-offense-was-committed-may-be

15 sentenced--or--otherwise-disposed-of-before-a-written-report

16 of-investigation-by-a-probation-officer-is-presented-to--and

17 considered--by--the-court;-The-investigation-must-include-an

18 evaluation-of-the--defendant--and--a--recommendation--as--to

19 treatment--by--a-person-qualified-by-professional-experience;

20 No-defendant-convicted-of-any-other-offense-that-may--result

21 in--commitment-for-1-year-or-more-in-the-state-prison-may-be

22 sentenced-or-otherwise-disposed-of-before-a--written--report

23 of--investigation-by-a-probation-officer-is-presented-to-and

24 considered-by-the-court-unless-the-court-deems--such--report

25 unnecessary;-The--court--may;-in--its--discretion;-order-a

1 presentence-investigation-for-a-defendant-convicted--of--any
 2 lesser-crime-or-offense;⁴
 3 Section-14;--Section-46-18-201;--MCA;--is-amended-to-read:
 4 "46-18-201;--Sentences-that-may-be-imposed;--(1)Whenever
 5 a--person-has-been-found-guilty-of-an-offense-upon-a-verdict
 6 or-a-plea-of-guilty;--the-court-may:
 7 (a)--defer-imposition-of-sentence;--excepting--sentences
 8 for--driving--under-the-influence-of-alcohol-or-drugs;--for-a
 9 period;--except-as-otherwise-provided;--not-exceeding--1--year
 10 for--any--misdemeanor--or-for-a-period-not-exceeding-3-years
 11 for--any--felony;--The-sentencing-judge--may--impose--upon--the
 12 defendant--any--reasonable-restrictions-or-conditions-during
 13 the--period--of--the--deferred--imposition;--Reasonable
 14 restrictions-or-conditions-may-include:
 15 (i)--jail-bare-release;
 16 (ii)--jail-time-not-exceeding-100-days;
 17 (iii)--conditions-for-probation;
 18 (iv)--restitution;
 19 (v)--payment-of-the-costs-of-confinement;
 20 (vi)--payment-of-a-fine-as-provided-in-46-18-231;
 21 (vii)--payment--of--costs--as--provided--in-46-18-232-and
 22 46-18-233;
 23 (viii)--payment-of-costs-of-court--appointed--counsel--as
 24 provided-in-46-8-113;
 25 (ix)--community-service;

1 (x)--any---other---reasonable---conditions---considered
 2 necessary--for--rehabilitation--or--for--the--protection--of
 3 society;--or
 4 (xi)--any-combination-of-the-above;
 5 (b)--suspend-execution-of-sentence--up--to--the--maximum
 6 sentence-allowed-for-each-particular-offense;--The-sentencing
 7 judge--may--impose--on--the--defendant--any--reasonable
 8 restrictions-or-conditions-during-the--period--of--suspended
 9 sentence;--Reasonable-restrictions-or-conditions-may-include
 10 any--of--those--listed--in--subsections--(1)(a)(i)--through
 11 (1)(a)(xi);
 12 (c)--impose-a-fine-as-provided-by-law-for-the-offense;
 13 (d)--require--payment--of--costs--as--provided--in-46-18-232
 14 or-payment-of-costs-of-court-appointed-counsel--as--provided
 15 in-46-8-113;
 16 (e)--commit-the-defendant-to-a-correctional-institution;
 17 with-or-without-a-fine-as-provided-by-law-for-the-offense;
 18 (f)--impose--any--combination--of--subsections--(1)(b)
 19 through--(1)(e);
 20 (2)--If--any--financial--obligation--is--imposed--as--a
 21 condition--under-subsection--(1)(a);--sentence-may-be-deferred
 22 for-a-period-not-exceeding-2-years-for--any--misdemeanor--or
 23 for--a--period--not--exceeding--6--years--for--any--felony;
 24 regardless-of-whether-any-other-conditions-are-imposed;
 25 (3)--If-any-restrictions--or--conditions--imposed--under

1 subsection (1)(a) or (1)(b) are violated, the court shall
 2 consider any elapsed time and either expressly allow part or
 3 all of it as a credit against the sentence or reject all or
 4 part as a credit and state its reasons in the order. Credit,
 5 however, must be allowed for jail time already served.

6 (4) Except as provided in 46-18-222, the imposition or
 7 execution of the first 2 years of a sentence of imprisonment
 8 imposed under the following sections may not be deferred or
 9 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 10 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 11 and (3), 45-9-101(2), (3) and (5)(d), 45-9-102(3) and
 12 45-9-103(2).

13 (5) Except as provided in 46-18-222, the imposition or
 14 execution of the first 10 years of a sentence of
 15 imprisonment imposed under 45-5-102 may not be deferred or
 16 suspended.

17 (6) Except as provided in 46-18-222, imposition of
 18 sentence in a felony case may not be deferred in the case of
 19 a defendant who has been convicted of a felony on a prior
 20 occasion, whether or not the sentence was imposed,
 21 imposition of the sentence was deferred, or execution of the
 22 sentence was suspended.

23 (7) If the victim was less than 16 years old, the
 24 imposition or execution of the first 30 days of a sentence
 25 of imprisonment imposed under 45-5-502(3), 45-5-503,

1 45-5-504, 45-5-505 or 45-5-507 may not be deferred or
 2 suspended. Section 46-18-222 does not apply to the first 30
 3 days of such imprisonment.

4 (8) In imposing a sentence on a defendant convicted of
 5 a sexual offense as defined in 46-23-502, the court may not
 6 waive the registration requirement provided in 46-18-254,
 7 46-18-255, and Title 46, chapter 23, part 5.

8 (9) A person convicted of a sexual offense, as defined
 9 in 46-23-502, and sentenced to imprisonment in the state
 10 prison shall enroll in the educational phase of the prison's
 11 sexual offender program.

12 Section 15. Section 46-23-502, MCA, is amended to read:
 13 "46-23-502. Definitions. As used in 46-18-254,
 14 46-18-255, and this part, the following definitions apply:

15 (1) "Department" means the department of institutions
 16 provided for in Title 2, chapter 15, part 23.

17 (2) "Sexual offender" means a person who has been
 18 convicted of a sexual offense.

19 (3) "Sexual offense" means:

20 (a) any violation of 45-5-502(3), 45-5-503, 45-5-505,
 21 45-5-507 (unless the act occurred between two consenting
 22 persons 16 years of age or older), or 45-5-625, or

23 (b) any violation of a law of another state or the
 24 federal government reasonably equivalent to a violation
 25 listed in subsection (3)(a).

1 Section-11---Section-58-28-109, MCA, is amended to read:
 2 "58-28-109---Control-of-practice-of-abortion---(1)---No
 3 abortion-may-be-performed-within-the-state-of-Montana:
 4 (a)---except-by-a-licensed-physician;
 5 (b)---after--the-first-3-months-of-pregnancy, except-in-a
 6 hospital-licensed-by-the-department;
 7 (c)---after-viability-of-the-fetus, unless-in-appropriate
 8 medical-judgment-the-abortion-is-necessary-to--preserve--the
 9 life-or-health-of-the-mother;
 10 (2)---An-abortion--under--subsection--(1)(c) may-only-be
 11 performed-if:
 12 (a)---the-foregoing-judgment-of-the-physician-who--is--to
 13 perform--the--abortion--is-first-certified-in-writing-by-him
 14 setting-forth-in-detail-the-facts-upon-which--he--relies--in
 15 making-such-judgment; and
 16 (b)---two--other--licensed-physicians-have-first-examined
 17 the-patient-and-concurred-in-writing-with-such-judgment--The
 18 foregoing-certification-and-concurrence-is-not-required-if-a
 19 licensed-physician-certifies-the-abortion--is--necessary--to
 20 preserve-the-life-of-the-mother;
 21 (3)---The--timing--and--procedure--used--in-performing-an
 22 abortion-under-subsection-(1)(c) of--this--section--must--be
 23 such-that-the-viability-of-the-fetus-is-not-intentionally-or
 24 negligently-endangered, as-the-term-"negligently"-is-defined
 25 in--45-2-101(37);--The-fetus-may-be-intentionally-endangered

1 or-destroyed-only-if--necessary--to--preserve--the--life--or
 2 health-of-the-mother.
 3 (4)---No--physician, facility, or-other-person-or-agency
 4 shall-engage-in-solicitation, advertising, or-other-form--of
 5 communication--having--the-purpose-of-inviting, inducing, or
 6 attracting-any-person-to-come-to-such--physician, facility,
 7 or-other-person-or-agency-to-have-an-abortion-or-to-purchase
 8 abortifacients.
 9 (5)---Violation--of-subsections-(1), (2), and-(3) of-this
 10 section-is-a-felony--Violation-of--subsection--(4) of--this
 11 section-is-a-misdemeanor."
 12 Section-12---Section-61-5-405, MCA, is amended to read:
 13 "61-5-405---Offenses-furnishing-ground-for-suspension-or
 14 revocation--of--license---(1)---Items--enumerated--in-Article
 15 IV(1), subsections-(a), (b), (c), and-(d) of-61-5-401 refer
 16 specifically-----to-----45-5-103,-----45-5-104,-----61-8-401,
 17 45-2-101(21)(20), and-61-7-103, respectively;
 18 (2)---In-addition--to--convictions--mentioned--above--the
 19 department,--for--the--purpose-of-suspension, revocation, or
 20 limitation-of-the-license-to-operate-a-motor-vehicle,--shall
 21 give--the-same-effect-to-the-conduct-reported-as-it-would-if
 22 such-conduct-had-occurred-in-this-state-for:
 23 (a)---convictions-of-perjury-or-the--making--of--a--false
 24 affidavit--relating-to-the-ownership-or-operation-of-a-motor
 25 vehicle-(61-5-303); and

1 (b)--three-convictions--of--reckless-driving--committed
 2 within-a-period-of-12-months-(62-8-301),"

3 NEW-SECTION--Section-18--Repeater--Section--45-5-505,
 4 MCA, is repealed.

5 SECTION-13--SECTION-45-5-505, MCA, IS AMENDED TO READ:
 6 "45-5-505--Deviate--sexual--conduct--Bestiality--(1)-A
 7 person-who-knowingly-engages--in--deviate--sexual--relations
 8 bestiality or-who-causes-another-to-engage-in-deviate-sexual
 9 relations bestiality commits-the-offense-of-deviate-sexual
 10 conduct bestiality.

11 (2)--A-person-convicted-of-the-offense-of-deviate-sexual
 12 conduct bestiality shall-be-imprisoned-in-the--state--prison
 13 for--any--term--not-to-exceed-10-years-or-be-fined-an-amount
 14 not-to-exceed-\$50,000,--or--both.

15 (3)--A--person--convicted--of--deviate--sexual--conduct
 16 without--consent--shall-be-imprisoned-in-the-state-prison-for
 17 any-term-not-to-exceed-20-years-or-be-fined-an-amount-not-to
 18 exceed-\$50,000,--or--both For--purposes--of--this--section,
 19 "bestiality"--means--any-form-of-sexual-contact-or-of-sexual
 20 intercourse-with-an-animal."

21 **Section 7.** Section 45-5-505, MCA, is amended to read:
 22 "45-5-505. Deviate sexual conduct. (1) A person who
 23 knowingly engages in deviate sexual relations or who causes
 24 another to engage in deviate sexual relations commits the
 25 offense of deviate sexual conduct.

1 (2) A person convicted of the offense of deviate sexual
 2 conduct shall be imprisoned in the state prison for any term
 3 not to exceed 10 years or be fined an amount not to exceed
 4 \$50,000, or both.

5 (3) A person convicted of deviate sexual conduct
 6 without consent shall be imprisoned in the state prison for
 7 any term not to exceed 20 years or be fined an amount not to
 8 exceed \$50,000, or both.

9 (4) THE FACT THAT A PERSON SEEKS TESTING OR RECEIVES
 10 TREATMENT FOR THE HIV-RELATED VIRUS OR ANOTHER SEXUALLY
 11 TRANSMITTED DISEASE MAY NOT BE USED AS A BASIS FOR A
 12 PROSECUTION UNDER THIS SECTION AND IS NOT ADMISSIBLE IN
 13 EVIDENCE IN A PROSECUTION UNDER THIS SECTION."

14 - NEW SECTION. SECTION 8. COORDINATION. THE AMENDMENT IN
 15 SECTION 1, CHAPTER 218, LAWS OF 1991, INSERTING SUBSECTION
 16 (2)(B) OF 45-5-501 IS VOID.

17 NEW SECTION. Section 9. Effective date. [This act] is
 18 effective on passage and approval.

-End-