

1 *House* BILL NO. *291*  
 2 INTRODUCED BY *Feders*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
 5 94-2-101, AND 94-5-505, R.C.M. 1947, TO ELIMINATE ANTIQUATED  
 6 TERMS AND REDEFINE SECTIONS PERTAINING TO BODILY HEALTH AND  
 7 WELFARE."  
 8

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

10 Section 1. Section 94-2-101, R.C.M. 1947, is amended  
 11 to read as follows:

12 "94-2-101. General definitions. Unless otherwise  
 13 specified in the statute all words will be taken in the  
 14 objective standard rather than i. the subjective.

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

19 (2) "Another" means a person or persons as defined in  
 20 this code other than the offender.

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

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

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

10 (6) "Co-habit" means to live together under the  
 11 representation of being married.

12 (7) "Common scheme" means a series of acts or omissions  
 13 motivated by a purpose to accomplish a single criminal  
 14 objective, or by a common purpose or plan and which resulted  
 15 in the repeated commission of the same offense or affects  
 16 the same person or the same persons or the property thereof.

17 (8) "Conduct" means an act or series of acts, and the  
 18 accompanying mental state.

19 (9) "Conviction" means a judgment of conviction or  
 20 sentence entered upon a plea of guilty or upon a verdict or  
 21 finding of guilty of an offense, rendered by a legally  
 22 constituted jury or by a court of competent jurisdiction  
 23 authorized to try the case without a jury.

24 (10) "Correctional institution" means the state prison,  
 25 county or city jail, or other institution for the

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1 incarceration or custody of persons under sentence for  
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

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

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

8 (c) prevent another from acquiring information  
9 pertinent to the disposition of the property involved; or

10 (d) sell or otherwise transfer or encumber property,  
11 failing to disclose a lien, adverse claim, or other legal  
12 impediment to the enjoyment of the property, whether such  
13 impediment is or is not of value or is not a matter of  
14 official record; or

15 (e) promise performance which the offender does not  
16 intend to perform or knows will not be performed. Failure to  
17 perform standing alone is not evidence that the offender did  
18 not intend to perform.

19 (12) "Defamatory matter" means anything which exposes a  
20 person or a group, class or association to hatred, contempt,  
21 ridicule, degradation or disgrace in society, or injury to  
22 his or its business or occupation.

23 (13) "Deprive" means to withhold property of another:

24 (a) permanently; or

25 (b) for such a period as to appropriate a portion of

1 its value; or

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

4 (d) to dispose of the property and use or deal with the  
5 property so as to make it unlikely that the owner will  
6 recover it.

7 ~~(14) "Deviate sexual relations" means sexual contact or~~  
8 ~~sexual intercourse between two (2) persons of the same sex,~~  
9 ~~or any form of sexual intercourse with an animal.~~

10 ~~(15)~~ (14) "Felony" means an offense in which the  
11 sentence imposed upon conviction is death or imprisonment in  
12 the state prison for any term exceeding one (1) year.

13 ~~(16)~~ (15) "A frisk" is a search by an external patting  
14 of a person's clothing.

15 ~~(17)~~ (16) "Forcible felony" means any felony which  
16 involves the use or threat of physical force or violence  
17 against any individual.

18 ~~(18)~~ (17) "Government" includes any branch, subdivision  
19 or agency of the government of the state or any locality  
20 within it.

21 ~~(19)~~ (18) "Harm" means loss, disadvantage or injury, or  
22 anything so regarded by the person affected, including loss,  
23 disadvantage or injury to any person or entity in whose  
24 welfare he is interested.

25 ~~(20)~~ (19) "He, she, it". The singular term shall

1 include the plural and the masculine gender the feminine  
2 except where a particular context clearly requires a  
3 different meaning.

4 ~~(21)~~ (20) "A house of prostitution" means any place  
5 where prostitution or promotion of prostitution is regularly  
6 carried on by one (1) person under the control, management  
7 or supervision of another.

8 ~~(22)~~ (21) "Human being" means a person who has been  
9 born and is alive.

10 ~~(23)~~ (22) "An illegal article" is an article or thing  
11 which is prohibited by statute, rule, regulation or order  
12 from being in the possession of a person subject to official  
13 detention.

14 ~~(24)~~ (23) "Inmate" means a person who engages in  
15 prostitution in or through the agency of a house of  
16 prostitution.

17 ~~(25)~~ (24) "Intoxicating substance" means any substance  
18 having an hallucinogenic, depressant, stimulating, or  
19 narcotic effect, taken in such quantities as to impair  
20 mental or physical capability including but not limited to  
21 any beverage containing one-half of one per centum (1/2 of  
22 1%) or more of alcohol by volume; provided, that the  
23 foregoing definition shall not extend to dealcoholized wine,  
24 nor to any beverage or liquid produced by the process by  
25 which beer, ale, port or wine is produced, if it contains

1 less than one-half of one per centum (1/2 of 1%) of alcohol  
2 by volume.

3 ~~(26)~~ (25) "An involuntary act" means any act which is:

4 (a) a reflex or convulsion; or

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

6 or

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

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

12 ~~(27)~~ (26) "Juror" means any person who is a member of  
13 any jury, including a grand jury, impaneled by any court in  
14 this state in any action or proceeding or by any officer  
15 authorized by law to impanel a jury in any action or  
16 proceeding. The term juror also includes a person who has  
17 been drawn or summoned to attend as a prospective juror.

18 ~~(28)~~ (27) "Knowingly"--A person acts knowingly with  
19 respect to conduct or to a circumstance described by a  
20 statute defining an offense when he is aware of his conduct  
21 or that the circumstance exists. When knowledge of the  
22 existence of a particular fact is an element of an offense,  
23 such knowledge is established if a person is aware of a high  
24 probability of its existence. Equivalent terms such as  
25 "knowing" or "with knowledge" have the same meaning.

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1       ~~(28)~~ (28) "Mentally defective" means that a person  
 2 suffers from a mental disease or defect which ~~renders him~~  
 3 ~~incapable of appreciating the nature of his conduct~~ can be  
 4 verified by three specialists in the field of psychology or  
 5 psychiatry.

6       ~~(29)~~ (29) "Mentally incapacitated" means that a person  
 7 is rendered temporarily incapable of appreciating or  
 8 controlling his conduct as result of the influence of an  
 9 intoxicating substance.

10       ~~(30)~~ (30) "Misdemeanor" means an offense in which the  
 11 sentence imposed upon conviction is imprisonment in the  
 12 county jail for any term, or fine, or both or the sentence  
 13 imposed is imprisonment in the state prison for any term of  
 14 one year or less.

15       ~~(31)~~ (31) "Negligently"--A person acts negligently with  
 16 respect to a result or to a circumstance described by a  
 17 statute defining an offense when he consciously disregards a  
 18 risk that the result will occur or that the circumstance  
 19 exists; or if he disregards a risk of which he should be  
 20 aware that the result will occur or that the circumstance  
 21 exists. The risk must be of such a nature and degree that to  
 22 disregard it involves a gross deviation from the standard of  
 23 conduct that a reasonable person would observe in the  
 24 actor's situation. Gross deviation means a deviation that is  
 25 considerably greater than lack of ordinary care. Relevant

1 terms such as "negligent" and "with negligence" have the  
 2 same meaning.

3       ~~(32)~~ (32) "Obtain" means:

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

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

9       ~~(33)~~ (33) "Obtains or exerts control" includes but is  
 10 not limited to the taking, carrying away, or the sale,  
 11 conveyance, or transfer of title to, or interest in, or  
 12 possession of property.

13       ~~(34)~~ (34) "Occupied structure" means any building,  
 14 vehicle or other place suited for human occupancy or night  
 15 lodging of persons or for carrying on business, whether or  
 16 not a person is actually present. Each unit of a building  
 17 consisting of two (2) or more units separately secured or  
 18 occupied is a separate occupied structure.

19       ~~(35)~~ (35) "Offender" means a person who has been or is  
 20 liable to be arrested, charged, convicted or punished for a  
 21 public offense.

22       ~~(36)~~ (36) "Offense" means a crime for which a sentence  
 23 of death or of imprisonment or fine is authorized. Offenses  
 24 are classified as felonies or misdemeanors.

25       ~~(37)~~ (37) "Official detention" means imprisonment which

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

11 ~~(39)~~ (38) "Official proceeding" means a proceeding  
 12 heard or which may be heard before any legislative, judicial,  
 13 administrative or other governmental agency or official  
 14 authorized to take evidence under oath, including any  
 15 referee, hearing examiner, commissioner, notary or other  
 16 person taking testimony or deposition in connection with  
 17 such proceeding.

18 ~~(40)~~ (39) "Other state" means any state or territory of  
 19 the United States, the District of Columbia and the  
 20 Commonwealth of Puerto Rico.

21 ~~(41)~~ (40) "Owner" means a person, other than the  
 22 offender, who has possession of or any other interest in the  
 23 property involved, even though such interest or possession  
 24 is unlawful, and without whose consent the offender has no  
 25 authority to exert control over the property.

1 ~~(42)~~ (41) "Party official" means a person who holds an  
 2 elective or appointive post in a political party in the  
 3 United States by virtue of which he directs or conducts, or  
 4 participates in directing or conducting party affairs at any  
 5 level of responsibility.

6 ~~(43)~~ (42) "Peace officer" means any person who by  
 7 virtue of his office or public employment is vested by law  
 8 with a duty to maintain public order or to make arrests for  
 9 offenses while acting within the scope of his authority.

10 ~~(44)~~ (43) "Pecuniary benefit" is benefit in the form of  
 11 money, property, commercial interests or anything else the  
 12 primary significance of which is economic gain.

13 ~~(45)~~ (44) "Person" includes an individual, business  
 14 association, partnership, corporation, government, or other  
 15 legal entity, and an individual acting or purporting to act  
 16 for or on behalf of any government or subdivision thereof.

17 ~~(46)~~ (45) "Physically helpless" means that a person is  
 18 unconscious or is otherwise physically unable to communicate  
 19 unwillingness to act.

20 ~~(47)~~ (46) "Possession" is the knowing control of  
 21 anything for a sufficient time to be able to terminate  
 22 control.

23 ~~(48)~~ (47) "Premises" includes any type of structure or  
 24 building and any real property.

25 ~~(49)~~ (48) "Property" means anything of value. Property

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1 includes, but is not limited to, real estate, money,  
 2 commercial instruments, admission or transportation tickets,  
 3 written instruments representing or embodying rights  
 4 concerning anything of value, labor, or services, or  
 5 otherwise of value to the owner; things growing on or  
 6 affixed to, or found on land, or part of or affixed to any  
 7 building; electricity, gas and water; birds, animals and  
 8 fish, which ordinarily are kept in a state of confinement;  
 9 food and drink, samples, cultures, micro-organisms,  
 10 specimens, records, recordings, documents, blueprints,  
 11 drawings, maps, and whole or partial copies, descriptions,  
 12 photographs, prototypes or models thereof, or any other  
 13 articles, materials, devices, substances and whole or  
 14 partial copies, descriptions, photographs, prototypes, or  
 15 models thereof which constitute, represent, evidence reflect  
 16 or record secret scientific, technical, merchandising  
 17 production or management information, designed process,  
 18 procedure, formula, invention or improvement.

19 ~~(50)~~ (49) "Property of another" means real or personal  
 20 property in which a person other than the offender has an  
 21 interest which the offender has not authority to defeat or  
 22 impair, even though the offender himself may have an  
 23 interest in the property.

24 ~~(51)~~ (50) "Public place" means any place to which the  
 25 public or any substantial group thereof has access.

1 ~~(52)~~ (51) "Public servant" means any officer or  
 2 employee of government, including but not limited to,  
 3 legislators, judges, and firemen, and any person  
 4 participating as a juror, advisor, consultant,  
 5 administrator, executor, guardian or court appointed  
 6 fiduciary; but the term does not include witnesses. The term  
 7 public servant includes one who has been elected or  
 8 designated to become a public servant.

9 ~~(53)~~ (52) "Purposely"--A person acts purposely with  
 10 respect to a result or to conduct described by a statute  
 11 defining an offense if it is his conscious object to engage  
 12 in that conduct or to cause that result. When a particular  
 13 purpose is an element of an offense, the element is  
 14 established although such purpose is conditional, unless the  
 15 condition negatives the harm or evil sought to be prevented  
 16 by the law defining the offense. Equivalent terms such as  
 17 "purpose" and "with the purpose" have the same meaning.

18 ~~(54)~~ (53) "Serious bodily injury" means bodily injury  
 19 which creates a substantial risk of death or which causes  
 20 serious permanent disfigurement, or protracted loss or  
 21 impairment of the function or process of any bodily member  
 22 or organ and includes serious mental illness or impairment.

23 ~~(55)~~ (54) "Sexual contact" means any touching of the  
 24 sexual or other intimate parts of the person of another for  
 25 the purpose of arousing or gratifying the sexual desire of

1 either party.

2 ~~456~~ (55) "Sexual intercourse" means penetration of the  
3 vulva, anus or mouth of one person by the penis of another  
4 person, or penetration of the vulva or anus of one person by  
5 any body member of another person or penetration of the  
6 vulva, or anus of one person by any foreign instrument or  
7 object manipulated by another person for the purpose of  
8 arousing or gratifying the sexual desire of either party.  
9 Any penetration, however slight, is sufficient.

10 ~~457~~ (56) "Solicit" or "solicitation" means to command,  
11 authorize, urge, incite, request, or advise another to  
12 commit an offense.

13 ~~458~~ (57) "State" or "this state" means the state of  
14 Montana, and all the land and water in respect to which the  
15 state of Montana has either exclusive or concurrent  
16 jurisdiction, and the air space above such land and water.

17 ~~459~~ (58) "Statute" means any act of the legislature of  
18 this state.

19 ~~460~~ (59) "Stolen property" means property over which  
20 control has been obtained by theft.

21 ~~461~~ (60) "A stop" is the temporary detention of a  
22 person that results when a peace officer orders the person  
23 to remain in his presence.

24 ~~462~~ (61) "Tamper" means to interfere with something  
improperly, meddle with it, make unwarranted alterations in

1 its existing condition, or deposit refuse upon it.

2 ~~463~~ (62) "Threat" means a menace, however communicated  
3 to:

4 (a) inflict physical harm on the person threatened or  
5 any other person or on property; or

6 (b) subject any person to physical confinement or  
7 restraint; or

8 (c) commit any criminal offense; or

9 (d) accuse any person of criminal offense; or

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

11 or

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

13 or

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

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

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.

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1       ~~(64)~~ (63) (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 be  
 10 deemed the amount due or collectible thereon or thereby,  
 11 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 deemed the  
 17 amount of economic loss which the owner of the instrument  
 18 might reasonably suffer by virtue of the loss of the  
 19 instrument.

20       (b) When it cannot be determined if the value of the  
 21 property is more or less than one hundred fifty dollars  
 22 (\$150) by the standards set forth in subsection (64) (a)  
 23 above, its value shall be deemed to be an amount less than  
 24 one hundred fifty dollars (\$150).

25       (c) Amounts involved in thefts committed pursuant to a

1 common scheme or the same transaction, whether from the same  
 2 person or several persons, may be aggregated in determining  
 3 the value of the property.

4       ~~(65)~~ (64) "Vehicle" means any device for transportation  
 5 by land, water or air, or mobile equipment with provision  
 6 for transport of an operator.

7       ~~(66)~~ (65) "Weapon" means any instrument, article or  
 8 substance which, regardless of its primary function, is  
 9 readily capable of being used to produce death or serious  
 10 bodily injury.

11       ~~(67)~~ (66) "Witness" means a person whose testimony is  
 12 desired in any proceeding or in any investigation by a grand  
 13 jury or in a criminal action, prosecution or proceeding.

14       ~~(68)~~ (67) "Without consent" means:

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

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

19       (i) mentally defective or incapacitated; or

20       (ii) physically helpless; or

21       (iii) less than sixteen (16) years old."

22       Section 1. Section 94-5-505, R.C.M. 1947, is amended  
 23 to read as follows:

24       "94-5-505. Deviate sexual conduct. (1) A person who  
 25 knowingly engages in deviate sexual relations, or who causes



1 another to engage in deviate sexual relations commits the  
2 offense of deviate sexual conduct.

3 (2) A person convicted of the offense of deviate sexual  
4 conduct shall be imprisoned in the state prison for any term  
5 not to exceed ten (10) years.

6 ~~(3) A person convicted of deviate sexual conduct~~  
7 ~~without consent shall be imprisoned in the state prison for~~  
8 ~~any term not to exceed twenty (20) years."~~

-End-

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