

1 Senate BILL NO. 121  
2 INTRODUCED BY Edw. J. Roberts

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5 94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF  
6 INTOXICATING SUBSTANCE BY DELETING REFERENCES TO  
7 NON-ALCOHOLIC SUBSTANCES."

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 in 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) "Cohabit" 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  
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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) "Felony" means an offense in which the sentence  
11 imposed upon conviction is death or imprisonment in the  
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13 (16) "A frisk" is a search by an external patting of a  
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17 individual.

18 (18) "Government" includes any branch, subdivision or  
19 agency of the government of the state or any locality within  
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23 disadvantage or injury to any person or entity in whose  
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25 (20) "He, she, it." The singular term shall include the

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

3 (21) "A house of prostitution" means any place where  
4 prostitution or promotion of prostitution is regularly  
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7 (22) "Human being" means a person who has been born and  
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9 (23) "An illegal article" is an article or thing which  
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13 (24) "Inmate" means a person who engages in  
14 prostitution in or through the agency of a house of  
15 prostitution.

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

1 1%) of alcohol by volume.

2 (26) "An involuntary act" means any act which is:

3 (a) a reflex or convulsion; or

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

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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 (27) "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  
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17 (28) "Knowingly"--A person acts knowingly with respect  
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19 defining an offense when he is aware of his conduct or that  
20 the circumstance exists. When knowledge of the existence of  
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22 knowledge is established if a person is aware of a high  
23 probability of its existence. Equivalent terms such as  
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25 (29) "Mentally defective" means that a person suffers

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2 of appreciating the nature of his conduct.

3 (30) "Mentally incapacitated" means that a person is  
4 rendered temporarily incapable of appreciating or  
5 controlling his conduct as result of the influence of an  
6 intoxicating substance.

7 (31) "Misdemeanor" means an offense in which the  
8 sentence imposed upon conviction is imprisonment in the  
9 county jail for any term, or fine, or both or the sentence  
10 imposed is imprisonment in the state prison for any term of  
11 one year or less.

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

25 (33) "Obtain" means:

1 (a) in relation to property, to bring about a transfer  
2 of interest or possession, whether to the offender or to  
3 another; and

4 (b) in relation to labor or services, to secure the  
5 performance thereof.

6 (34) "Obtains or exerts control" includes but is not  
7 limited to the taking, carrying away, or the sale,  
8 conveyance, or transfer of title to, or interest in, or  
9 possession of property.

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

16 (36) "Offender" means a person who has been or is  
17 liable to be arrested, charged, convicted or punished for a  
18 public offense.

19 (37) "Offense" means a crime for which a sentence of  
20 death or of imprisonment or fine is authorized. Offenses are  
21 classified as felonies or misdemeanors.

22 (38) "Official detention" means imprisonment which  
23 resulted from a conviction for an offense, confinement for  
24 an offense, confinement of a person charged with an offense,  
25 detention by a peace officer pursuant to arrest, detention

1 for extradition or deportation, or any lawful detention for  
 2 the purpose of the protection of the welfare of the person  
 3 detained or for the protection of society; but "official  
 4 detention" does not include supervision of probation or  
 5 parole, constraint incidental to release on bail, or an  
 6 unlawful arrest unless the person arrested employed physical  
 7 force, a threat of physical force, or a weapon to escape.

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

15 (40) "Other state" means any state or territory of the  
 16 United States, the District of Columbia and the Commonwealth  
 17 of Puerto Rico.

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

23 (42) "Party official" means a person who holds an  
 24 elective or appointive post in a political party in the  
 25 United States by virtue of which he directs or conducts, or

1 participates in directing or conducting party affairs at any  
 2 level of responsibility.

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

7 (44) "Pecuniary benefit" is benefit in the form of  
 8 money, property, commercial interests or anything else the  
 9 primary significance of which is economic gain.

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

14 (46) "Physically helpless" means that a person is  
 15 unconscious or is otherwise physically unable to communicate  
 16 unwillingness to act.

17 (47) "Possession" is the knowing control of anything  
 18 for a sufficient time to be able to terminate control.

19 (48) "Premises" includes any type of structure or  
 20 building and any real property.

21 (49) "Property" means anything of value. Property  
 22 includes, but is not limited to, real estate, money,  
 23 commercial instruments, admission or transportation tickets,  
 24 written instruments representing or embodying rights  
 25 concerning anything of value, labor, or services, or

1 otherwise of value to the owner; things growing on or  
 2 affixed to, or found on land, or part of or affixed to any  
 3 building; electricity, gas and water; birds, animals and  
 4 fish, which ordinarily are kept in a state of confinement;  
 5 food and drink, samples, cultures, micro-organisms,  
 6 specimens, records, recordings, documents, blueprints,  
 7 drawings, maps, and whole or partial copies, descriptions,  
 8 photographs, prototypes or models thereof, or any other  
 9 articles, materials, devices, substances and whole or  
 10 partial copies, descriptions, photographs, prototypes, or  
 11 models thereof which constitute, represent, evidence,  
 12 reflect or record secret scientific, technical,  
 13 merchandising production or management information, designed  
 14 process, procedure, formula, invention or improvement.

15 (50) "Property of another" means real or personal  
 16 property in which a person other than the offender has an  
 17 interest which the offender has not authority to defeat or  
 18 impair, even though the offender himself may have an  
 19 interest in the property.

20 (51) "Public place" means any place to which the public  
 21 or any substantial group thereof has access.

22 (52) "Public servant" means any officer or employee of  
 23 government, including but not limited to, legislators,  
 24 judges, and firemen, and any person participating as a  
 25 juror, advisor, consultant, administrator, executor,

1 guardian or court-appointed fiduciary; but the term does not  
 2 include witnesses. The term public servant includes one who  
 3 has been elected or designated to become a public servant.

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

13 (54) "Serious bodily injury" means bodily injury which  
 14 creates a substantial risk of death or which causes serious  
 15 permanent disfigurement, or protracted loss or impairment of  
 16 the function or process of any bodily member or organ and  
 17 includes serious mental illness or impairment.

18 (55) "Sexual contact" means any touching of the sexual  
 19 or other intimate parts of the person of another for the  
 20 purpose of arousing or gratifying the sexual desire of  
 21 either party.

22 (56) "Sexual intercourse" means penetration of the  
 23 vulva, anus or mouth of one person by the penis of another  
 24 person, or penetration of the vulva or anus of one person by  
 25 any body member of another person or penetration of the

1 vulva, or anus of one person by any foreign instrument or  
 2 object manipulated by another person for the purpose of  
 3 arousing or gratifying the sexual desire of either party.  
 4 Any penetration, however slight, is sufficient.

5 (57) "Solicit" or "solicitation" means to command,  
 6 authorize, urge, incite, request, or advise another to  
 7 commit an offense.

8 (58) "State" or "this state" means the state of  
 9 Montana, and all the land and water in respect to which the  
 10 state of Montana has either exclusive or concurrent  
 11 jurisdiction, and the air space above such land and water.

12 (59) "Statute" means any act of the legislature of this  
 13 state.

14 (60) "Stolen property" means property over which  
 15 control has been obtained by theft.

16 (61) "A stop" is the temporary detention of a person  
 17 that results when a peace officer orders the person to  
 18 remain in his presence.

19 (62) "Tamper" means to interfere with something  
 20 improperly, meddle with it, make unwarranted alterations in  
 21 its existing condition, or deposit refuse upon it.

22 (63) "Threat" means a menace, however communicated to:

23 (a) inflict physical harm on the person threatened or  
 24 any other person or on property; or

25 (b) subject any person to physical confinement or

1 restraint; or

2 (c) commit any criminal offense; or

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

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

5 or

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

7 or

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

10 (h) take action as an official against anyone or  
 11 anything, or withhold official action, or cause such action  
 12 or withholding; or

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

17 (j) testify or provide information or withhold  
 18 testimony or information with respect to another's legal  
 19 claim or defense.

20 (64) (a) "Value" means the market value of the property  
 21 at the time and place of the crime, or if such cannot be  
 22 satisfactorily ascertained, the cost of the replacement of  
 23 the property within a reasonable time after the crime. If  
 24 the offender appropriates a portion of the value of the  
 25 property, the value shall be determined as follows:

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1 (i) The value of an instrument constituting an evidence  
 2 of debt, such as a check, draft or promissory note, shall be  
 3 deemed the amount due or collectible thereon or thereby,  
 4 such figure ordinarily being the face amount of the  
 5 indebtedness less any portion thereof which has been  
 6 satisfied.

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

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

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

22 (65) "Vehicle" means any device for transportation by  
 23 land, water or air, or mobile equipment with provision for  
 24 transport of an operator.

25 (66) "Weapon" means any instrument, article or

1 substance which, regardless of its primary function, is  
 2 readily capable of being used to produce death or serious  
 3 bodily injury.

4 (67) "Witness" means a person whose testimony is  
 5 desired in any proceeding or in any investigation by a grand  
 6 jury or in a criminal action, prosecution or proceeding.

7 (68) "Without consent" means:

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

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

12 (i) mentally defective or incapacitated; or

13 (ii) physically helpless; or

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

-End-



Approved by Committee  
on Judiciary

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16 (25) "Intoxicating substance" means any CONTROLLED  
17 SUBSTANCES AS DEFINED IN CHAPTER 3 OF TITLE 54, R.C.M. 1947,  
18 AND substance---having---an---hallucinogenic,---depressant,  
19 stimulating,---or---narcotic---effect,---taken---in---such---quantities---as  
20 to---impair---mental---or---physical---capability alcoholic beverage  
21 including but not limited to any beverage containing  
22 one-half of one per centum (1/2 of 1%) or more of alcohol by  
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22 classified as felonies or misdemeanors.

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25 an offense, confinement of a person charged with an offense,

1 detention by a peace officer pursuant to arrest, detention  
 2 for extradition or deportation, or any lawful detention for  
 3 the purpose of the protection of the welfare of the person  
 4 detained or for the protection of society; but "official  
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 6 parole, constraint incidental to release on bail, or an  
 7 unlawful arrest unless the person arrested employed physical  
 8 force, a threat of physical force, or a weapon to escape.

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 25 written instruments representing or embodying rights

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 2 otherwise of value to the owner; things growing on or  
 3 affixed to, or found on land, or part of or affixed to any  
 4 building; electricity, gas and water; birds, animals and  
 5 fish, which ordinarily are kept in a state of confinement;  
 6 food and drink, samples, cultures, micro-organisms,  
 7 specimens, records, recordings, documents, blueprints,  
 8 drawings, maps, and whole or partial copies, descriptions,  
 9 photographs, prototypes or models thereof, or any other  
 10 articles, materials, devices, substances and whole or  
 11 partial copies, descriptions, photographs, prototypes, or  
 12 models thereof which constitute, represent, evidence,  
 13 reflect or record secret scientific, technical,  
 14 merchandising production or management information, designed  
 15 process, procedure, formula, invention or improvement.

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

21 (51) "Public place" means any place to which the public  
 22 or any substantial group thereof has access.

23 (52) "Public servant" means any officer or employee of  
 24 government, including but not limited to, legislators,  
 25 judges, and firemen, and any person participating as a

1 juror, advisor, consultant, administrator, executor,  
 2 guardian or court-appointed fiduciary; but the term does not  
 3 include witnesses. The term public servant includes one who  
 4 has been elected or designated to become a public servant.

5 (53) "Purposely"--A person acts purposely with respect  
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 24 vulva, anus or mouth of one person by the penis of another  
 25 person, or penetration of the vulva or anus of one person by

1 any body member of another person or penetration of the  
 2 vulva, or anus of one person by any foreign instrument or  
 3 object manipulated by another person for the purpose of  
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 5 Any penetration, however slight, is sufficient.

6 (57) "Solicit" or "solicitation" means to command,  
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 8 commit an offense.

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 10 Montana, and all the land and water in respect to which the  
 11 state of Montana has either exclusive or concurrent  
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13 (59) "Statute" means any act of the legislature of this  
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15 (60) "Stolen property" means property over which  
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17 (61) "A stop" is the temporary detention of a person  
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23 (63) "Threat" means a menace, however communicated to:

24 (a) inflict physical harm on the person threatened or  
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7 (f) harm the credit or business repute of any person;

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

11 (h) take action as an official against anyone or  
 12 anything, or withhold official action, or cause such action  
 13 or withholding; or

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

18 (j) testify or provide information or withhold  
 19 testimony or information with respect to another's legal  
 20 claim or defense.

21 (64) (a) "Value" means the market value of the property  
 22 at the time and place of the crime, or if such cannot be  
 23 satisfactorily ascertained, the cost of the replacement of  
 24 the property within a reasonable time after the crime. If  
 25 the offender appropriates a portion of the value of the

1 property, the value shall be determined as follows:

2 (i) The value of an instrument constituting an evidence  
3 of debt, such as a check, draft or promissory note, shall be  
4 deemed the amount due or collectible thereon or thereby,  
5 such figure ordinarily being the face amount of the  
6 indebtedness less any portion thereof which has been  
7 satisfied.

8 (ii) The value of any other instrument which creates,  
9 releases, discharges, or otherwise affects any valuable  
10 legal right, privilege or obligation shall be deemed the  
11 amount of economic loss which the owner of the instrument  
12 might reasonably suffer by virtue of the loss of the  
13 instrument.

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

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

23 (65) "Vehicle" means any device for transportation by  
24 land, water or air, or mobile equipment with provision for  
25 transport of an operator.

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

5 (67) "Witness" means a person whose testimony is  
6 desired in any proceeding or in any investigation by a grand  
7 jury or in a criminal action, prosecution or proceeding.

8 (68) "Without consent" means:

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

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

13 (i) mentally defective or incapacitated; or

14 (ii) physically helpless; or

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

-End-



1 SENATE BILL NO. 121  
2 INTRODUCED BY ROBERTS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5 94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF  
6 INTOXICATING SUBSTANCE BY ~~DELETING~~ CHANGING THE REFERENCES  
7 TO NONALCOHOLIC SUBSTANCES."

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 in 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) "Cohabit" 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

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

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

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

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

21 (19) "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) "He, she, it." The singular term shall include the

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

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

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

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

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

16 (25) "Intoxicating substance" means any CONTROLLED  
17 SUBSTANCES AS DEFINED IN CHAPTER 3 OF TITLE 54, R.C.M. 1947,  
18 AND substance---having---an---hallucinogenic,---depressant,  
19 stimulating,-or-narcotic-effect,-taken-in-such-quantities-as  
20 to--impair--mental-or-physical-capability alcoholic beverage  
21 including but not limited to any beverage containing  
22 one-half of one per centum (1/2 of 1%) or more of alcohol by  
23 volume; provided, that the foregoing definition shall not  
24 extend to dealcoholized wine, nor to any beverage or liquid  
25 produced by the process by which beer, ale, port or wine is

1 produced, if it contains less than one-half of one per  
2 centum (1/2 of 1%) of alcohol by volume.

3 (26) "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) "Juror" means any person who is a member of any  
13 jury, including a grand jury, impaneled by any court in this  
14 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) "Knowingly"--A person acts knowingly with respect  
19 to conduct or to a circumstance described by a statute  
20 defining an offense when he is aware of his conduct or that  
21 the circumstance exists. When knowledge of the existence of  
22 a particular fact is an element of an offense, such  
23 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.

1 (29) "Mentally defective" means that a person suffers  
2 from a mental disease or defect which renders him incapable  
3 of appreciating the nature of his conduct.

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

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

13 (32) "Negligently"--A person acts negligently with  
14 respect to a result or to a circumstance described by a  
15 statute defining an offense when he consciously disregards a  
16 risk that the result will occur or that the circumstance  
17 exists; or if he disregards a risk of which he should be  
18 aware that the result will occur or that the circumstance  
19 exists. The risk must be of such a nature and degree that to  
20 disregard it involves a gross deviation from the standard of  
21 conduct that a reasonable person would observe in the  
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 10 articles, materials, devices, substances and whole or  
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6 indebtedness less any portion thereof which has been  
7 satisfied.

8 (ii) The value of any other instrument which creates,  
9 releases, discharges, or otherwise affects any valuable  
10 legal right, privilege or obligation shall be deemed the  
11 amount of economic loss which the owner of the instrument  
12 might reasonably suffer by virtue of the loss of the  
13 instrument.

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

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

23 (65) "Vehicle" means any device for transportation by  
24 land, water or air, or mobile equipment with provision for  
25 transport of an operator.

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

5 (67) "Witness" means a person whose testimony is  
6 desired in any proceeding or in any investigation by a grand  
7 jury or in a criminal action, prosecution or proceeding.

8 (68) "Without consent" means:

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

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

13 (i) mentally defective or incapacitated; or

14 (ii) physically helpless; or

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

-End-



HOUSE OF REPRESENTATIVES

Date: March 8, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 121

Be amended in the third reading bill as follows:

1. Amend title, page 1, line 7.  
Following: "NONALCOHOLIC"  
Strike: "SUBSTANCES"  
Insert: "SUBSTANCE"
2. Amend page 5, section 1, subsection (25), line 17.  
Strike: "SUBSTANCES"  
Insert: "SUBSTANCE"

AS SO AMENDED  
BE CONCURRED IN

1                   SENATE BILL NO. 121  
2                   INTRODUCED BY ROBERTS

3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5   94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF  
6   INTOXICATING SUBSTANCE BY ~~DELETING~~ CHANGING THE REFERENCES  
7   TO NONALCOHOLIC ~~SUBSTANCES~~ SUBSTANCE."

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 in 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) "Cohabit" 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

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

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

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

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

21 (19) "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) "He, she, it." The singular term shall include the

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

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

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

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

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

16 (25) "Intoxicating substance" means any CONTROLLED  
17 SUBSTANCES SUBSTANCE AS DEFINED IN CHAPTER 3 OF TITLE 54,  
18 R.C.M. 1947, AND substance--having--an--hallucinogenic,  
19 depressant,-stimulating,-or-narcotic-effect,-taken--in--such  
20 quantities--as--to--impair--mental--or--physical--capability  
21 alcoholic beverage including but not limited to any beverage  
22 containing one-half of one per centum (1/2 of 1%) or more of  
23 alcohol by volume; provided, that the foregoing definition  
24 shall not extend to dealcoholized wine, nor to any beverage  
25 or liquid produced by the process by which beer, ale, port

1 or wine is produced, if it contains less than one-half of  
2 one per centum (1/2 of 1%) of alcohol by volume.

3 (26) "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) "Juror" means any person who is a member of any  
13 jury, including a grand jury, impaneled by any court in this  
14 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) "Knowingly"--A person acts knowingly with respect  
19 to conduct or to a circumstance described by a statute  
20 defining an offense when he is aware of his conduct or that  
21 the circumstance exists. When knowledge of the existence of  
22 a particular fact is an element of an offense, such  
23 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.

1 (29) "Mentally defective" means that a person suffers  
2 from a mental disease or defect which renders him incapable  
3 of appreciating the nature of his conduct.

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

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

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

1 (33) "Obtain" means:

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

5 (b) in relation to labor or services, to secure the  
6 performance thereof.

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

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

17 (36) "Offender" means a person who has been or is  
18 liable to be arrested, charged, convicted or punished for a  
19 public offense.

20 (37) "Offense" means a crime for which a sentence of  
21 death or of imprisonment or fine is authorized. Offenses are  
22 classified as felonies or misdemeanors.

23 (38) "Official detention" means imprisonment which  
24 resulted from a conviction for an offense, confinement for  
25 an offense, confinement of a person charged with an offense,

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

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

16 (40) "Other state" means any state or territory of the  
 17 United States, the District of Columbia and the Commonwealth  
 18 of Puerto Rico.

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

24 (42) "Party official" means a person who holds an  
 25 elective or appointive post in a political party in the

1 United States by virtue of which he directs or conducts, or  
 2 participates in directing or conducting party affairs at any  
 3 level of responsibility.

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

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

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

15 (46) "Physically helpless" means that a person is  
 16 unconscious or is otherwise physically unable to communicate  
 17 unwillingness to act.

18 (47) "Possession" is the knowing control of anything  
 19 for a sufficient time to be able to terminate control.

20 (48) "Premises" includes any type of structure or  
 21 building and any real property.

22 (49) "Property" means anything of value. Property  
 23 includes, but is not limited to, real estate, money,  
 24 commercial instruments, admission or transportation tickets,  
 25 written instruments representing or embodying rights

1 concerning anything of value, labor, or services, or  
 2 otherwise of value to the owner; things growing on or  
 3 affixed to, or found on land, or part of or affixed to any  
 4 building; electricity, gas and water; birds, animals and  
 5 fish, which ordinarily are kept in a state of confinement;  
 6 food and drink, samples, cultures, micro-organisms,  
 7 specimens, records, recordings, documents, blueprints,  
 8 drawings, maps, and whole or partial copies, descriptions,  
 9 photographs, prototypes or models thereof, or any other  
 10 articles, materials, devices, substances and whole or  
 11 partial copies, descriptions, photographs, prototypes, or  
 12 models thereof which constitute, represent, evidence,  
 13 reflect or record secret scientific, technical,  
 14 merchandising production or management information, designed  
 15 process, procedure, formula, invention or improvement.

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

21 (51) "Public place" means any place to which the public  
 22 or any substantial group thereof has access.

23 (52) "Public servant" means any officer or employee of  
 24 government, including but not limited to, legislators,  
 25 judges, and firemen, and any person participating as a

1 juror, advisor, consultant, administrator, executor,  
 2 guardian or court-appointed fiduciary; but the term does not  
 3 include witnesses. The term public servant includes one who  
 4 has been elected or designated to become a public servant.

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

14 (54) "Serious bodily injury" means bodily injury which  
 15 creates a substantial risk of death or which causes serious  
 16 permanent disfigurement, or protracted loss or impairment of  
 17 the function or process of any bodily member or organ and  
 18 includes serious mental illness or impairment.

19 (55) "Sexual contact" means any touching of the sexual  
 20 or other intimate parts of the person of another for the  
 21 purpose of arousing or gratifying the sexual desire of  
 22 either party.

23 (56) "Sexual intercourse" means penetration of the  
 24 vulva, anus or mouth of one person by the penis of another  
 25 person, or penetration of the vulva or anus of one person by

1 any body member of another person or penetration of the  
2 vulva, or anus of one person by any foreign instrument or  
3 object manipulated by another person for the purpose of  
4 arousing or gratifying the sexual desire of either party.  
5 Any penetration, however slight, is sufficient.

6 (57) "Solicit" or "solicitation" means to command,  
7 authorize, urge, incite, request, or advise another to  
8 commit an offense.

9 (58) "State" or "this state" means the state of  
10 Montana, and all the land and water in respect to which the  
11 state of Montana has either exclusive or concurrent  
12 jurisdiction, and the air space above such land and water.

13 (59) "Statute" means any act of the legislature of this  
14 state.

15 (60) "Stolen property" means property over which  
16 control has been obtained by theft.

17 (61) "A stop" is the temporary detention of a person  
18 that results when a peace officer orders the person to  
19 remain in his presence.

20 (62) "Tamper" means to interfere with something  
21 improperly, meddle with it, make unwarranted alterations in  
22 its existing condition, or deposit refuse upon it.

23 (63) "Threat" means a menace, however communicated to:

24 (a) inflict physical harm on the person threatened or  
25 any other person or on property; or

1 (b) subject any person to physical confinement or  
2 restraint; or

3 (c) commit any criminal offense; or

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

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

6 or

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

8 or

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

11 (h) take action as an official against anyone or  
12 anything, or withhold official action, or cause such action  
13 or withholding; or

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

18 (j) testify or provide information or withhold  
19 testimony or information with respect to another's legal  
20 claim or defense.

21 (64) (a) "Value" means the market value of the property  
22 at the time and place of the crime, or if such cannot be  
23 satisfactorily ascertained, the cost of the replacement of  
24 the property within a reasonable time after the crime. If  
25 the offender appropriates a portion of the value of the



1 property, the value shall be determined as follows:

2 (i) The value of an instrument constituting an evidence  
3 of debt, such as a check, draft or promissory note, shall be  
4 deemed the amount due or collectible thereon or thereby,  
5 such figure ordinarily being the face amount of the  
6 indebtedness less any portion thereof which has been  
7 satisfied.

8 (ii) The value of any other instrument which creates,  
9 releases, discharges, or otherwise affects any valuable  
10 legal right, privilege or obligation shall be deemed the  
11 amount of economic loss which the owner of the instrument  
12 might reasonably suffer by virtue of the loss of the  
13 instrument.

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

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

23 (65) "Vehicle" means any device for transportation by  
24 land, water or air, or mobile equipment with provision for  
25 transport of an operator.

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

5 (67) "Witness" means a person whose testimony is  
6 desired in any proceeding or in any investigation by a grand  
7 jury or in a criminal action, prosecution or proceeding.

8 (68) "Without consent" means:

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

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

13 (i) mentally defective or incapacitated; or

14 (ii) physically helpless; or

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

-End-