enet, BILL NO. 123 1 INTRODUCED BY 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES

5 DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE 6 TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND 7 94-5-501, R.C.M. 1947."

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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.

(2) "Another" means a person or persons as defined inthis code other than the offender.

(3) "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.

INTRODUCED BILL

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.

(9) "Conviction" means a judgment of conviction or
sentence entered upon a plea of guilty or upon a verdict or
finding of guilty of an offense, rendered by a legally
constituted jury or by a court of competent jurisdiction
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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incarceration or custody of persons under sentence for
 offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

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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 information9 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.

(12) "Defamatory matter" means anything which exposes a
person or a group, class or association to hatred, contempt,
ridicule, degradation or disgrace in society, or injury to
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

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2 (c) with the purpose to restore it only upon payment of3 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 a14 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.

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

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

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plural and the masculine gender the feminine except where a
 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 and8 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.

"Intoxicating substance" means any substance 16 (25)17 having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair 18 19 mental or physical capability including but not limited to any beverage containing one-half of one per centum (1/2 of)20 1%) or more of alcohol by volume; provided, that the 21 foregoing definition shall not extend to dealcoholized wine, 22 nor to any beverage or liquid produced by the process by 23 which beer, ale, port or wine is produced, if it contains 24 less than one-half of one per centum (1/2 of 13) of alcohol 25

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l by volume.

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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;
5	or
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
16	been drawn or summoned to attend as a prospective juror.
17	(28) "Knowingly"A person acts knowingly with respect
18	to conduct or to a circumstance described by a statute
19	defining an offense when he is aware of his conduct or that
20	the circumstance exists. When knowledge of the existence of
21	a particular fact is an element of an offense, such
2 <b>2</b>	knowledge is established if a person is aware of a high
23	probability of its existence. Equivalent terms such as
24	"knowing" or "with knowledge" have the same meaning.
25	(29) "Mentally defective" means that a person suffers
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from a mental disease or defect which renders him incapable
 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 statute defining an offense when he consciously disregards a 14 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 circumstand 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 conduct that a reasonable person would observe in the 20 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.

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(33) "Obtain" means:

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(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.

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

for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical 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, judical,
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.

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

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

participates in directing or conducting party affairs at any
 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 anything18 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

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1 otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any 2 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, microorganisms, specimens. records, recordings, documents, blueprints, 6 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 property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

20 (51) "Public place" means any place to which the public21 or any substantial group thereof has access.

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

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guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who

has been elected or designated to become a public servant.

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

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vulva, or anus of one person by any foreign instrument or
 object manipulated by another person for the purpose of
 arousing or gratifying the sexual desire of either party.
 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 this13 state.

14 (60) "Stolen property" means property over which15 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.

(63) "Threat" means a menace, however communicated to:
(a) inflict physical harm on the person threatened or
any other person or on property; or

25 (b) subject any person to physical confinement or

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1 restraint; or 2 (c) commit any criminal offense; or (d) accuse any person of criminal offense; or З (e) expose any person to hatred, contempt or ridicule; 4 5  $\mathbf{or}$ б (f) harm the credit or business repute of any person; 7 or (g) reveal any information sought to be concealed by R 9 the person threatened; or (h) take action as an official against anyone or 10 91 anything, or withhold official action, or cause such action 12 or withholding; or 13 (i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or 14 15 received for the benefit of the groups which he purports to 16 represent; or (j) testify or provide information or withhold 17 18 testimony or information with respect to another's legal 19 claim or defense. (64) (a) "Value" means the market value of the property 20 21 at the time and place of the crime, or if such cannot be 22 satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If 23 the offender appropriates a portion of the value of the 24 property, the value shall be determined as follows: 25

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

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

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

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(66) "Weapon" means any instrument, article or -15-

1 substance which, regardless of its primary function, is readily capable of being used to produce death or serious 2 3 bodily injury. (67) "Witness" means a person whose testimony is Δ 5 desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding." 6 7 +68}-#Without-consent#-meanst 8 (a)-the-victim-is-compelled-to-submit-by--force--or--by threat-of-imminent-deathy-bodily-injuryy-or-kidnapingy-to-be 9 inflicted-on-anyone;-or 10 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-Section 2. Section 94-5-501, R.C.M. 1947, is amended 15 16 to read as follows: 17 "94-5-501. Definitions. (1) In this part, unless a 18 different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply. 19 (2) As used in sections 94-5-503 and 94-5-505 the term 20 21 "without consent" means: 22 (a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnaping to be 23

- 24 inflicted on anyone; or
- 25 (b) the victim is incapable of consent because he is:

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- 1 (i) mentally defective or incapacitated; or
- 2 (ii) physically helpless; or

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

-End-



Approved by Committee on Judiciary BILL NO. 123 1 Colorit INTRODUCED BY 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES 5 DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND 6 7 94-5-501, R.C.M. 1947." 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 10 Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows: 11 "94-2-101. General definitions. Unless otherwise 12 specified in the statute all words will be taken in the 13 objective standard rather than in the subjective. 14 (1) "Acts" has its usual and ordinary grammatical 15

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 in20 this code other than the offender.

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22 the outcome of which is required to be based on a record or
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SECOND READING

(4) "Benefit" means gain or advantage, or anything 1 2 regarded by the beneficiary as gain or advantage, including 3 benefit to any other person or entity in whose welfare he is Á 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 representation of being married. 11 (7) "Common scheme" means a series of acts or omissions 12 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 accompanying mental state. 18 19 (9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or 20 21 finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction 22 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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detention by a peace officer pursuant to arrest, detention

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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.

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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 anything18 for a sufficient time to be able to terminate control.

19 (48) "Premises" includes any type of structure or20 building and any real property.

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

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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 building; electricity, gas and water; birds, animals and 3 4 fish, which ordinarily are kept in a state of confinement; 5 food and drink. samples, cultures. microorganisms. 6 specimens, records, recordings, documents, blueprints, 7 drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other 8 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, merchandising production or management information, designed 13 14 process, procedure, formula, invention or improvement.

15 (50) "Property of another" means real or personal property in which a person other than the offender has an 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 public21 or any substantial group thereof has access.

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

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

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

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

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

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vulva, or anus of one person by any foreign instrument or
 object manipulated by another person for the purpose of
 arousing or gratifying the sexual desire of either party.
 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 this13 state.

14 (60) "Stolen property" means property over which15 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.

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

(63) "Threat" means a menace, however communicated to:
(a) inflict physical harm on the person threatened or
any other person or on property; or

25 (b) subject any person to physical confinement or -13-

1 restraint; or 2 (c) commit any criminal offense; or 3 (d) accuse any person of criminal offense; or (e) expose any person to hatred, contempt or ridicule; 4 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 91 anything, or withhold official action, or cause such action 12 or withholding; or (i) bring about or continue a strike, boycott, or other 13 similar collective action if the property is not demanded or 14 received for the benefit of the groups which he purports to 15 16 represent; or (j) testify or provide information or withhold 17 testimony or information with respect to another's legal 18 19 claim or defense. (64) (a) "Value" means the market value of the property 20 21 at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of 22 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 dabt, 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.

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

(65) "Vehicle" means any device for transportation by
land, water or air, or mobile equipment with provision for
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	<del>{68}-"Without-consent"-means:</del>
8	{a}-the-victim-is-compelled-to-submit-byforceorby
9	threat-of-imminent-deathy-bodily-injuryy-or-kidnapingy-to-be
10	inflicted-on-anyone;-or
11	{b}-the-victim-is-incapable-of-consent-because-he-is+
12	{i}-mentally-defective-or-incapacitated;-or
13	tii)-physically-helpless/-or
14	{iii}-less-than-sixteen-{16}-years-old.
15	Section 2. Section 94-5-501, R.C.M. 1947, is amended
16	to read as follows:
17	<b>"94-5-501.</b> Definitions. <u>(1)</u> In this part, unless a
18	different meaning plainly is required, the definitions given
19	in chapter 2, 94-2-101 apply.
20	(2) As used in sections 94-5-503 and 94-5-505 the term
21	"without consent" means:
22	(a) the victim is compelled to submit by force or by
23	threat of imminent death, bodily injury, or kidnaping to be
24	inflicted on anyone; or
25	(b) the victim is incapable of consent because he is:
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- 1 (i) mentally defective or incapacitated; or
- 2 (ii) physically helpless; or

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

-End-

ente BILL NO. 123 1 INTRODUCED BY 2 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES 5 DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE 6 TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND 7 94-5-501, R.C.M. 1947."

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 in20 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.

THIRD READING

(4) "Benefit" means gain or advantage, or anything 1 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 group or class of voters as a consequence of public measures 5 which a candidate engages to support or oppose. 6 7 (5) "Bodily injury" means physical pain, illness or any 8 impairment of physical condition and includes mental illness 9 or impairment. 10 "Cohabit" means to live together under the (6) 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 quilty or upon a verdict or 21 finding of quilty 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 1 its value: or 2 offenses or awaiting trial or sentence for offenses. 2 (c) with the purpose to restore it only upon payment of 3 (11) "Deception" means knowingly to: reward or other compensation; or 3 4 (a) create or confirm in another an impression which is 4 (d) to dispose of the property and use or deal with the 5 false and which the offender does not believe to be true; or 5 property so as to make it unlikely that the owner will 6 (b) fail to correct a false impression which the recover it. 6 7 offender previously has created or confirmed; or 7 (14) "Deviate sexual relations" means sexual contact or 8 (c) prevent another from acquiring information 8 sexual intercourse between two (2) persons of the same sex, 9 pertinent to the disposition of the property involved; or 9 or any form of sexual intercourse with an animal. 10 (d) sell or otherwise transfer or encumber property, 10 (15) "Felony" means an offense in which the sentence 11 failing to disclose a lien, adverse claim, or other legal 11 imposed upon conviction is death or imprisonment in the 12 12 state prison for any term exceeding one (1) year. impediment to the enjoyment of the property, whether such 13 impediment is or is not of value or is not a matter of 13 (16) "A frisk" is a search by an external patting of a 14 official record; or 14 person's clothing. 15 (17) "Forcible felony" means any felony which involves 15 (e) promise performance which the offender does not 16 intend to perform or knows will not be performed. Failure to 15 the use or threat of physical force or violence against any 17 perform standing alone is not evidence that the offender did 17 individual. 18 (18) "Government" includes any branch, subdivision or not intend to perform. 18 19 (12) "Defamatory matter" means anything which exposes a 19 agency of the government of the state or any locality within 20 person or a group, class or association to hatred, contempt, 20 it. 21 ridicule, degradation or disgrace in society, or injury to 21 (19) "Harm" means loss, disadvantage or injury, or his or its business or occupation. 22 22 anything so regarded by the person affected, including loss, 23 (13) "Deprive" means to withhold property of another: 23 disadvantage or injury to any person or entity in whose welfare he is interested. 24 24 (a) permanently; or (20) "He, she, it." The singular term shall include the 25 25 (b) for such a period as to appropriate a portion of

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plural and the masculine gender the feminine except where a
 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 and8 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.

(25) "Intoxicating substance" means any substance 16 having an hallucinogenic, depressant, stimulating, or 17 narcotic effect, taken in such quantities as to impair 13 19 mental or physical capability including but not limited to any beverage containing one-half of one per centum (1/2 of 20 1%) or more of alcohol by volume; provided, that the 21 22 foregoing definition shall not extend to dealcoholized wine, 23 nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains 24 less than one-half of one per centum (1/2 of 1%) of alcohol 25

1	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;
5	or
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
16	been drawn or summoned to attend as a prospective juror.
1 <b>7</b>	(28) "Knowingly"A person acts knowingly with respect
18	to conduct or to a circumstance described by a statute
19	defining an offense when he is aware of his conduct or that
20	the circumstance exists. When knowledge of the existence of
21	a particular fact is an element of an offense, such
22	knowledge is established if a person is aware of a high
23	probability of its existence. Equivalent terms such as
24	"knowing" or "with knowledge" have the same meaning.
25	(29) "Mentally defective" means that a person suffers

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from a mental disease or defect which renders him incapable
 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 exists. The risk must be of such a nature and degree that to 18 19 disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the 20 21 actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant 22 terms such as "negligent" and "with negligence" have the 23 same meaning. 24

25 (33) "Obtain" means:

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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.

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

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for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical 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, judical, 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.

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

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participates in directing or conducting party affairs at any
 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 anything18 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.

(49) "Property" means anything of value. Property
includes, but is not limited to, real estate, money,
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written instruments representing or embodying rights
concerning anything of value, labor, or services, or

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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 fish, which ordinarily are kept in a state of confinement: 4 5 food and drink. samples, cultures, microorganisms, 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, merchandising production or management information, designed 13 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.

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

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 has been elected or designated to become a public servant.

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

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vulva, or anus of one person by any foreign instrument or
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 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
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21 its existing condition, or deposit refuse upon it.

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

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1	restraint; or
2	(c) commit any criminal offense; or
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5	or
6	(f) harm the credit or business repute of any person;
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9	the person threatened; or
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91	anything, or withhold official action, or cause such action
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13	(i) bring about or continue a strike, boycott, or other
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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
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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.

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

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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	<del>{68}-<sup>#</sup>Without-consent<sup>#</sup>-means:</del>
8	<pre>(a)-the-victim-is-compelled-to-submit-byforceorby</pre>
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10	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-helpless7-or
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15	Section 2. Section 94-5-501, R.C.M. 1947, is amended
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25	(b) the victim is incapable of consent because he is:
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1 (i) mentally defective or incapacitated; or

## 2 (ii) physically helpless; or

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

-End-

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1 SENATE BILL NO. 123 1 2 INTRODUCED BY ROBERTS, CETRONE 2 3 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES 4 DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE 5 5 TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND б 6 94-5-501, R.C.M. 1947.\* 7 7 8 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 10 Section 1. Section 94-2-101, R.C.M. 1947, is amended 10 11 to read as follows: 11 12 \*94-2-101. General definitions. Unless otherwise 12 13 specified in the statute all words will be taken in the 13 objective standard rather than in the subjective. 14 14 15 (1) "Acts" has its usual and ordinary grammatical 15 16 meaning and includes any bodily movement, any form of 16 communication, and, where relevant, includes a failure or 17 17 18 omission to take action. 18 19 (2) "Another" means a person or persons as defined in 19 this code other than the offender. 20 20 21 (3) "Administrative proceeding" means any proceeding 21 22 the outcome of which is required to be based on a record or 22 documentation prescribed by law, or in which a law or a 23 23 24 regulation is particularized in its application to an 24 individual. 25 25

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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

.8 accompanying mental state.

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

(10) "Correctional institution" means the state prison,
 county or city jail, or other institution for the
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its value; or

reward or other compensation; or

6 (b) fail to correct a false impression which the recover it. 6 7 offender previously has created or confirmed; or (14) "Deviate sexual relations" means sexual contact or 7 8 (C) prevent another from acquiring information -8 sexual intercourse between two (2) persons of the same sex, 9 pertinent to the disposition of the property involved; or .9 or any form of sexual intercourse with an animal. 10 (d) sell or otherwise transfer or encumber property, (15) "Felony" means an offense in which the sentence 10 11 failing to disclose a lien, adverse claim, or other legal imposed upon conviction is death or imprisonment in the 11 12 impediment to the enjoyment of the property, whether such state prison for any term exceeding one (1) year. 12 .13 impediment is or is not of value or is not a matter of (16) "A frisk" is a search by an external patting of a 13 official record; or 14 14 person's clothing. 15 (e) promise performance which the offender does not 15 (17) "Forcible felony" means any felony which involves 16 intend to perform or knows will not be performed. Failure to 16 the use or threat of physical force or violence against any 17 perform standing alone is not evidence that the offender did 17 individual. 18 not intend to perform. (18) "Government" includes any branch, subdivision or 18 19 (12) "Defamatory matter" means anything which exposes a 19 agency of the government of the state or any locality within person or a group, class or association to hatred, contempt, 20 20 it. 21 ridicule, degradation or disgrace in society, or injury to 21 (19) "Harm" means loss, disadvantage or injury, or 22 his or its business or occupation. 22 anything so regarded by the person affected, including loss, 23 (13) "Deprive" means to withhold property of another: disadvantage or injury to any person or entity in whose 23 24 (a) permanently; or 24 welfare he is interested. 25 (b) for such a period as to appropriate a portion of 25 (20) "He, she, it," The singular term shall include the -3-SB 123

incarceration or custody of persons under sentence for

false and which the offender does not believe to be true; or

(a) create or confirm in another an impression which is

offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

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(c) with the purpose to restore it only upon payment of

(d) to dispose of the property and use or deal with the

property so as to make it unlikely that the owner will

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plural and the masculine gender the feminine except where a 1 particular context clearly requires a different meaning. 2 (21) "A house of prostitution" means any place where 3 4 prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management 5 or supervision of another. 6 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 being in the possession of a person subject to official 11 12 detention. 13 (24)"Inmate" means a person who engages in prostitution in or through the agency of a house of 14 15 prostitution. 16 "Intoxicating substance" means any substance (25)17 having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair 18 mental or physical capability including but not limited to 19 any beverage containing one-half of one per centum (1/2 of 20 21 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, 22 nor to any beverage or liquid produced by the process by 23 which beer, ale, port or wine is produced, if it contains 24 less than one-half of one per centum (1/2 of 1%) of alcohol 25

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1	by volume.
2	<pre>{26} "An involuntary act" means any act which is:</pre>
3	(a) a reflex or convulsion; or
4	(b) a bodily movement during unconsciousness or sleep;
5	or
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
16	been drawn or summoned to attend as a prospective juror.
17	(28) "Knowingly"A person acts knowingly with respect
18	to conduct or to a circumstance described by a statute
19	defining an offense when he is aware of his conduct or that
20	the circumstance exists. When knowledge of the existence of
21	a particular fact is an element of an offense, such
22	knowledge is established if a person is aware of a high
23	probability of its existence. Equivalent terms such as
24	"knowing" or "with knowledge" have the same meaning.
25	(29) "Mentally defective" means that a person suffers
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from a mental disease or defect which renders him incapable
 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 exists. The risk must be of such a nature and degree that to 18 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)

(33) "Obtain" means:

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(a) in relation to property, to bring about a transfer
 of interest or possession, whether to the offender or to
 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.

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

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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.

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8 (39) "Official proceeding" means a proceeding heard or 9 which may be heard before any legislative, judical, 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.

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

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

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

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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 or20 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 -10- SB 123

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 fish, which ordinarily are kept in a state of confinement: 4 5 food and drink, samples, cultures, microorganisms, 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 models thereof which constitute, represent. 11 evidence. reflect 12 or record secret scientific, technical, merchandising production or management information, designed 13 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 interest which the offender has not authority to defeat or 17 impair, even though the offender himself may have an 18 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, -11-

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

(53) "Purposely"-A person acts purposely with respect 4 to a result or to conduct described by a statute defining an 5 offense if it is his conscious object to engage in that 6 conduct or to cause that result. When a particular purpose 7 is an element of an offense, the element is established R although such purpose is conditional, unless the condition 9 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.

(54) "Serious bodily injury" means bodily injury which 13 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.

(55) "Sexual contact" means any touching of the sexual 18 or other intimate parts of the person of another for the 19 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 any body member of another person or penetration of the 25 SB 123 -12-

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

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

(58) "State" or "this state" means the state of 8 9 Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent 10 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 that results when a peace officer orders the person to 17 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 -13-

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 testimony or information with respect to another's legal 18 claim or defense. 19 (64) (a) "Value" means the market value of the property 20 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 property, the value shall be determined as follows: 25 -14-SB 123 (i) The value of an instrument constituting an evidence
 of debt, such as a check, draft or promissory note, shall be
 deemed the amount due or collectible thereon or thereby,
 such figure ordinarily being the face amount of the
 indebtedness less any portion thereof which has been
 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.

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

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

25 (66) "Weapon" means any instrument, article or -15- S3 123 substance which, regardless of its primary function, is
 readily capable of being used to produce death or serious
 bodily injury.

4 (67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand 5 jury or in a criminal action, prosecution or proceeding." 6 7 468}-#Withowt-consent#-meanst 8 (a)-the-victim-is-compelled-to-submit-by--force--or--by 9 threat-of-imminent-deathy-bodily-injury-or-kidnapingy-to-be inflicted-on-anyone;-or 10 (b)-the-victim-is-incapable-of-consent-because-he-is+ 11 12 fit-mentally-defective-or-incapacitated;-or 13 (ii)-physically-helpless;-or 14 (iii)-less-than-sixteen-(16)-years-old: 15 Section 2. Section 94-5-501, R.C.M. 1947, is amended 16 to read as follows: 17 "94-5-501. Definitions. (1) In this part, unless a 18 different meaning plainly is required, the definitions given 19 in chapter 2, 94-2-101 apply. 20 (2) As used in sections 94-5-503 and 94-5-505 the term 21 "without consent" means: 22 (a) the victim is compelled to submit by force or by 23 threat of imminent death, bodily injury, or kidnaping to be 24 inflicted on anyone; or 25 (b) the victim is incapable of consent because he is:

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- 1 (i) mentally defective or incapacitated; or
- 2 (ii) physically helpless; or

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

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