

1 Senate BILL NO. 124  
 2 INTRODUCED BY Roberts Cetrone

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION  
 5 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE  
 6 PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES  
 7 KNOWLEDGE."

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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.

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 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.

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 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  
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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  
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 14 objective, or by a common purpose or plan and which resulted  
 15 in the repeated commission of the same offense or affects  
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19 (9) "Conviction" means a judgment of conviction or  
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 22 constituted jury or by a court of competent jurisdiction  
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24 (10) "Correctional institution" means the state prison,  
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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:

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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  
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10 (d) sell or otherwise transfer or encumber property,  
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12 impediment to the enjoyment of the property, whether such  
13 impediment is or is not of value or is not a matter of  
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15 (e) promise performance which the offender does not  
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 13 jury, including a grand jury, impaneled by any court in this  
 14 state in any action or proceeding or by any officer  
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18 (28) "Knowingly"--A person acts knowingly with respect  
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12 (31) "Misdemeanor" means an offense in which the  
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17 (32) "Negligently"--A person acts negligently with  
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1 actor's situation. Gross deviation means a deviation that is  
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5 (33) "Obtain" means:

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

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

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

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

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

24 (37) "Offense" means a crime for which a sentence of  
 25 death or of imprisonment or fine is authorized. Offenses are

1 classified as felonies or misdemeanors.

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

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

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

23 (41) "Owner" means a person, other than the offender,  
24 who has possession of or any other interest in the property  
25 involved, even though such interest or possession is

1 unlawful, and without whose consent the offender has no  
2 authority to exert control over the property.

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

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

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

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

19 (46) "Physically helpless" means that a person is  
20 unconscious or is otherwise physically unable to communicate  
21 unwillingness to act.

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

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

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

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

25 (51) "Public place" means any place to which the public

1 or any substantial group thereof has access.

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

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

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

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

1 either party.

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

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

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

17 (59) "Statute" means any act of the legislature of this  
18 state.

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

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

24 (62) "Tamper" means to interfere with something  
25 improperly, meddle with it, make unwarranted alterations in

1 its existing condition, or deposit refuse upon it.

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

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

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

7 (c) commit any criminal offense; or

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

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

10 or

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

12 or

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

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

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

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

25 (64) (a) "Value" means the market value of the property

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1 at the time and place of the crime, or if such cannot be  
 2 satisfactorily ascertained, the cost of the replacement of  
 3 the property within a reasonable time after the crime. If  
 4 the offender appropriates a portion of the value of the  
 5 property, the value shall be determined as follows:

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

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

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

23 (c) Amounts involved in thefts committed pursuant to a  
 24 common scheme or the same transaction, whether from the same  
 25 person or several persons, may be aggregated in determining

1 the value of the property.

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

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

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

12 (68) "Without consent" means:

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

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

17 (i) mentally defective or incapacitated; or

18 (ii) physically helpless; or

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

-End-



Approved by Committee  
on Judiciary

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 10 performance thereof.

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

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

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

24 (37) "Offense" means a crime for which a sentence of  
 25 death or of imprisonment or fine is authorized. Offenses are

1 classified as felonies or misdemeanors.

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

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

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

23 (41) "Owner" means a person, other than the offender,  
24 who has possession of or any other interest in the property  
25 involved, even though such interest or possession is

1 unlawful, and without whose consent the offender has no  
2 authority to exert control over the property.

3 (42) "Party official" means a person who holds an  
4 elective or appointive post in a political party in the  
5 United States by virtue of which he directs or conducts, or  
6 participates in directing or conducting party affairs at any  
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9 his office or public employment is vested by law with a duty  
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11 while acting within the scope of his authority.

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

15 (45) "Person" includes an individual, business  
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17 legal entity, and an individual acting or purporting to act  
18 for or on behalf of any government or subdivision thereof.

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

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

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

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

25 (51) "Public place" means any place to which the public

1 or any substantial group thereof has access.

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

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

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 19 creates a substantial risk of death or which causes serious  
 20 permanent disfigurement, or protracted loss or impairment of  
 21 the function or process of any bodily member or organ and  
 22 includes serious mental illness or impairment.

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

1 either party.

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

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

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

17 (59) "Statute" means any act of the legislature of this  
18 state.

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

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

24 (62) "Tamper" means to interfere with something  
25 improperly, meddle with it, make unwarranted alterations in

1 its existing condition, or deposit refuse upon it.

2 (63) "Threat" means a menace, nowever communicated to:

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

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

7 (c) commit any criminal offense; or

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

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

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

12 or

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

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

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

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

25 (64) (a) "Value" means the market value of the property

1 at the time and place of the crime, or if such cannot be  
2 satisfactorily ascertained, the cost of the replacement of  
3 the property within a reasonable time after the crime. If  
4 the offender appropriates a portion of the value of the  
5 property, the value shall be determined as follows:

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

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

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

23 (c) Amounts involved in thefts committed pursuant to a  
24 common scheme or the same transaction, whether from the same  
25 person or several persons, may be aggregated in determining

1 the value of the property.

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

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

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

12 (68) "Without consent" means:

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

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

17 (i) mentally defective or incapacitated; or

18 (ii) physically helpless; or

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

-End-



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INTRODUCED BY Senate BILL NO. 124  
Robert C. Cetrone

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES KNOWLEDGE."

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

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

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

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

(2) "Another" means a person or persons as defined in this 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.

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

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

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

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

(8) "Conduct" means an act or series of acts, and the 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

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

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

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

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

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

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

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

3 (26) "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. A person acts knowingly with  
22 respect to the result of conduct described by a statute  
23 defining an offense when he is aware that such result is  
24 practically certain to be caused by his conduct. When  
25 knowledge of the existence of a particular fact is an

1 element of an offense, such knowledge is established if a  
 2 person is aware of a high probability of its existence.  
 3 Equivalent terms such as "knowing" or "with knowledge" have  
 4 the same meaning.

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

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

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

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

1 actor's situation. Gross deviation means a deviation that is  
 2 considerably greater than lack of ordinary care. Relevant  
 3 terms such as "negligent" and "with negligence" have the  
 4 same meaning.

5 (33) "Obtain" means:

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

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

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 8 building; electricity, gas and water; birds, animals and  
 9 fish, which ordinarily are kept in a state of confinement;  
 10 food and drink, samples, cultures, microorganisms,  
 11 specimens, records, recordings, documents, blueprints,  
 12 drawings, maps, and whole or partial copies, descriptions,  
 13 photographs, prototypes or models thereof, or any other  
 14 articles, materials, devices, substances and whole or  
 15 partial copies, descriptions, photographs, prototypes, or  
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14 legal right, privilege or obligation shall be deemed the  
15 amount of economic loss which the owner of the instrument  
16 might reasonably suffer by virtue of the loss of the  
17 instrument.

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

23 (c) Amounts involved in thefts committed pursuant to a  
24 common scene or the same transaction, whether from the same  
25 person or several persons, may be aggregated in determining

1 the value of the property.

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

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

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

12 (68) "Without consent" means:

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

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

17 (i) mentally defective or incapacitated; or

18 (ii) physically helpless; or

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

-End-



March 28, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to SENATE BILL NO. 124

1. Amend page 6, section 1, subsection (28), line 23

Following: "that"

Insert: "it is highly probable that"

2. Amend page 6, section 1, subsection (28), lines 23 and 24

Following: "result"

Strike: "is practically certain to"

Insert: "will"

AS SO AMENDED  
BE CONCURRED IN

## 1 SENATE BILL NO. 124

2 INTRODUCED BY ROBERTS, CETRONE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION  
5 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE  
6 PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES  
7 KNOWLEDGE."  
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 substance  
17 having an hallucinogenic, depressant, stimulating, or  
18 narcotic effect, taken in such quantities as to impair  
19 mental or physical capability including but not limited to  
20 any beverage containing one-half of one per centum (1/2 of  
21 1%) or more of alcohol by volume; provided, that the  
22 foregoing definition shall not extend to dealcoholized wine,  
23 nor to any beverage or liquid produced by the process by  
24 which beer, ale, port or wine is produced, if it contains  
25 less than one-half of one per centum (1/2 of 1%) of alcohol

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.

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. A person acts knowingly with  
21 respect to the result of conduct described by a statute  
22 defining an offense when he is aware that IT IS HIGHLY  
23 PROBABLE THAT such result is-practically-certain-to WILL be  
24 caused by his conduct. When knowledge of the existence of a  
25 particular fact is an element of an offense, such knowledge

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

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

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

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

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

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

4 (33) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

1 authority to exert control over the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (57) "Solicit" or "solicitation" means to command,  
 10 authorize, urge, incite, request, or advise another to  
 11 commit an offense.

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

16 (59) "Statute" means any act of the legislature of this  
 17 state.

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

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

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

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

4 (b) subject any person to physical confinement or  
 5 restraint; or

6 (c) commit any criminal offense; or

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

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

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

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

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

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

21 (j) testify or provide information or withhold  
 22 testimony or information with respect to another's legal  
 23 claim or defense.

24 (64) (a) "Value" means the market value of the property  
 25 at the time and place of the crime, or if such cannot be



1 satisfactorily ascertained, the cost of the replacement of  
 2 the property within a reasonable time after the crime. If  
 3 the offender appropriates a portion of the value of the  
 4 property, the value shall be determined as follows:

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

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

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

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

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 13 threat of imminent death, bodily injury, or kidnapping, to  
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15 (b) the victim is incapable of consent because he is:

16 (i) mentally defective or incapacitated; or

17 (ii) physically helpless; or

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

-End-