

1 ~~the district court.~~

2 (5) Ultimate users and practitioners and agents under
3 their supervision acting in the course of a professional
4 practice, as defined by 54-301, are exempt from this
5 section."

6 Section 3. Section 54-134, R.C.M. 1947, is amended to
7 read as follows:

8 "54-134. Fraudulently obtaining dangerous drugs. A
9 person commits the offense of fraudulently obtaining
10 dangerous drugs if he obtains or attempts to obtain a
11 dangerous drug, as defined in 54-301, by:

12 ~~(a)~~ (1) fraud, deceit, misrepresentation, or
13 subterfuge;

14 ~~(b)~~ (2) falsely assuming the title of, or representing
15 himself to be a manufacturer, wholesaler, practitioner,
16 pharmacist, owner of a pharmacy, or other ~~persons~~ person
17 authorized to possess dangerous drugs;

18 ~~(c)~~ (3) the use of a forged, altered, or fictitious
19 prescription;

20 ~~(d)~~ (4) the use of a false name or a false address on a
21 prescription; or

22 ~~(e)~~ (5) the concealment of a material fact."

23 Section 4. Section 54-135, R.C.M. 1947, is amended to
24 read as follows:

25 "54-135. Altering labels on dangerous drugs. A person

1 commits the offense of altering labels on dangerous drugs if
2 he affixes a false, forged, or altered label to or otherwise
3 misrepresents a package or receptacle containing a dangerous
4 drug, ~~or otherwise misrepresents the package containing a~~
5 ~~dangerous drug as defined in 54-301."~~

6 Section 5. Section 54-137, R.C.M. 1947, is amended to
7 read as follows:

8 "54-137. Alternative sentencing authority. A person
9 convicted of criminal possession of dangerous drugs,
10 fraudulently obtaining dangerous drugs, or altering labels
11 on dangerous drugs, if he is shown to be an excessive or
12 habitual user of dangerous drugs, as defined in 54-301,
13 either from the face of the record or by a presentence
14 investigation, may, in lieu of imprisonment, be committed to
15 the custody of any institution for rehabilitative treatment
16 for not less than ~~six~~ (6) months ~~or~~ or more than ~~two~~ (2)
17 years."

18 Section 6. Section 54-138, R.C.M. 1947, is amended to
19 read as follows:

20 "54-138. Jurisdiction. The district court ~~shall have~~
21 has exclusive trial jurisdiction over all prosecutions
22 commenced under ~~the Montana Dangerous Drug Act~~ this
23 chapter."

24 Section 7. Section 94-1-103, R.C.M. 1947, is amended
25 to read as follows:

1 "94-1-103. Application to offenses committed before
2 and after enactment. (1) The provisions of this code shall
3 apply to any offense defined in this code and committed
4 after ~~the effective date thereof~~ January 1, 1974.

5 (2) Unless otherwise expressly provided, or unless the
6 context otherwise requires, the provisions of this ~~code~~
7 shall title and Title 95 govern the construction of and
8 punishment for any offense defined outside of this code and
9 committed after ~~the effective date thereof~~ January 1, 1974,
10 as well as the construction and application of any defense
11 to a prosecution for such an offense.

12 (3) The provisions of this code do not apply to any
13 offense defined outside of this code and committed before
14 ~~the effective date thereof~~ January 1, 1974. Such an offense
15 must be construed and punished according to the provisions
16 of law existing at the time of the commission thereof in the
17 same manner as if this code had not been enacted."

18 Section 8. Section 94-1-105, R.C.M. 1947, is amended
19 to read as follows:

20 "94-1-105. Classification of offenses. (1) For the
21 determination of the court's jurisdiction at the
22 commencement of the action and for the determination of the
23 commencement of the period of limitations, the offense shall
24 be designated a felony or misdemeanor based upon the maximum
25 potential sentence which could be imposed by statute.

1 (2) An offense defined by any statute of this state
2 other than this code shall be classified as provided in this
3 section and the sentence that may be imposed upon conviction
4 thereof shall be governed by this ~~code~~ title and Title 95."

5 Section 9. Section 94-1-106, R.C.M. 1947, is amended
6 to read as follows:

7 "94-1-106. General time limitations. (1) A prosecution
8 for criminal homicide may be commenced at any time.

9 (2) Except as otherwise provided ~~in this code~~ by law,
10 prosecutions for other offenses are subject to the following
11 periods of limitation:

12 (a) a prosecution for ~~any a~~ a felony must be commenced
13 within ~~five~~ {5} years after it is committed;

14 (b) a prosecution for a misdemeanor must be commenced
15 within ~~one~~ {1} year after it is committed.

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

19 (a) ~~If~~ if the aggrieved person is a minor or
20 incompetent, ~~then~~ during the minority or incompetency or
21 within ~~one~~ {1} year after the termination thereof;

22 (b) ~~is~~ in any other instance, within ~~one~~ {1} year
23 after the discovery of the offense by the aggrieved person,
24 or by a person who has legal capacity to represent an
25 aggrieved person, or has a legal duty to report the offense,

1 and is not himself a party to the offense, or, in the
2 absence of such discovery, within ~~one~~ (1) year after the
3 prosecuting officer becomes aware of the offense.

4 (4) An offense is committed either when every element
5 occurs, or, when the offense is based upon a continuing
6 course of conduct, at the time when the course of conduct is
7 terminated. Time starts to run on the day after the offense
8 is committed.

9 (5) A prosecution is commenced either when an
10 indictment is found or an information or complaint is
11 filed."

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

14 "94-2-101. General definitions. Unless otherwise
15 specified in the statute, all words will be taken in the
16 objective standard rather than in the subjective, and
17 unless a different meaning plainly is required, the
18 following definitions apply in this title:

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

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

25 (3) "Administrative proceeding" means any proceeding

1 the outcome of which is required to be based on a record or
2 documentation prescribed by law, or in which a law or a
3 regulation is particularized in its application to an
4 individual.

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

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

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

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

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

24 (9) "Conviction" means a judgment of conviction or
25 sentence entered upon a plea of guilty or upon a verdict or

1 finding of guilty of an offense, rendered by a legally
2 constituted jury or by a court of competent jurisdiction
3 authorized to try the case without a jury.

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

8 (11) "Deception" means knowingly to:

9 (a) create or confirm in another an impression which
10 is false and which the offender does not believe to be true;
11 ~~or~~

12 (b) fail to correct a false impression which the
13 offender previously has created or confirmed; ~~or~~

14 (c) prevent another from acquiring information
15 pertinent to the disposition of the property involved; ~~or~~

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

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

25 (12) "Defamatory matter" means anything which exposes a

1 person or a group, class, or association to hatred,
2 contempt, ridicule, degradation, or disgrace in society, or
3 injury to his or its business or occupation.

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

5 (a) permanently; ~~or~~

6 (b) for such a period as to appropriate a portion of
7 its value; ~~or~~

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

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

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

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

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

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

24 (18) "Government" includes any branch, subdivision, or
25 agency of the government of the state or any locality within

1 it.

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

6 ~~(20) "He, she, it." The singular term shall include the~~
7 ~~plural and the masculine gender the feminine except where a~~
8 ~~particular context clearly requires a different meaning.~~

9 ~~(21) (20)~~ "A house of prostitution" means any place
10 where prostitution or promotion of prostitution is regularly
11 carried on by one ~~(1)~~ person or more persons under the
12 control, management, or supervision of another.

13 ~~(22) (21)~~ "Human being" means a person who has been born
14 and is alive.

15 ~~(23) (22)~~ "An illegal article" is an article or thing
16 which is prohibited by statute, rule, regulation or order
17 from being in the possession of a person subject to official
18 detention.

19 ~~(24) (23)~~ "Inmate" means a person who engages in
20 prostitution in or through the agency of a house of
21 prostitution.

22 ~~(25) (24)~~ "Intoxicating substance" means any controlled
23 substance as defined in chapter 3 of Title 54, ~~R.C.M., 1947,~~
24 and any alcoholic beverage including but not limited to any
25 beverage containing ~~one-half of one per centum (1/2 of 1%)~~

1 or more of alcohol by volume, ~~provided, that the The~~
2 foregoing definition shall not extend to dealcoholized wine,
3 ~~nor or~~ to any beverage or liquid produced by the process by
4 which beer, ale, port, or wine is produced, if it contains
5 less than ~~one-half of one per centum (1/2 of 1%)~~ of alcohol
6 by volume.

7 ~~(26) (25)~~ "An involuntary act" means any act which is:

- 8 (a) a reflex or convulsion; ~~or~~
9 (b) a bodily movement during unconsciousness or sleep;

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

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

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

22 ~~(28) (27)~~ "Knowingly"—A person acts knowingly with
23 respect to conduct or to a circumstance described by a
24 statute defining an offense when he is aware of his conduct
25 or that the circumstance exists. A person acts knowingly

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

9 ~~(27)~~ (28) "Mentally defective" means that a person
 10 suffers from a mental disease or defect which renders him
 11 incapable of appreciating the nature of his conduct.

12 ~~(28)~~ (29) "Mentally incapacitated" means that a person
 13 is rendered temporarily incapable of appreciating or
 14 controlling his conduct as result of the influence of an
 15 intoxicating substance.

16 ~~(29)~~ (30) "Misdemeanor" means an offense in which the
 17 sentence imposed upon conviction is imprisonment in the
 18 county jail for any term, or fine, or both, or the sentence
 19 imposed is imprisonment in the state prison for any term of
 20 one 1 year or less.

21 ~~(30)~~ (31) "Negligently"— a person acts negligently
 22 with respect to a result or to a circumstance described by a
 23 statute defining an offense when he consciously disregards a
 24 risk that the result will occur or that the circumstance
 25 exists, or if he disregards a risk of which he should be

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

9 ~~(31)~~ (32) "Obtain" means:

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

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

15 ~~(32)~~ (33) "Obtains or exerts control" includes but is
 16 not limited to the taking, carrying away, or the sale,
 17 conveyance, or transfer of title to, or interest in, or
 18 possession of property.

19 ~~(33)~~ (34) "Occupied structure" means any building,
 20 vehicle, or other place suited for human occupancy or night
 21 lodging of persons or for carrying on business, whether or
 22 not a person is actually present. Each unit of a building
 23 consisting of two ~~(2)~~ or more units separately secured or
 24 occupied is a separate occupied structure.

25 ~~(34)~~ (35) "Offender" means a person who has been or is

1 liable to be arrested, charged, convicted, or punished for a
2 public offense.

3 ~~(37)~~ (36) "Offense" means a crime for which a sentence
4 of death or of imprisonment or fine is authorized. Offenses
5 are classified as felonies or misdemeanors.

6 ~~(38)~~ (37) "Official detention" means imprisonment ~~which~~
7 ~~resulted~~ resulting from a conviction for an offense,
8 confinement for an offense, confinement of a person charged
9 with an offense, detention by a peace officer pursuant to
10 arrest, detention for extradition or deportation, or any
11 lawful detention for the purpose of the protection of the
12 welfare of the person detained or for the protection of
13 society, ~~but~~ ~~official~~ Official detention" does not
14 include supervision of probation or parole, constraint
15 incidental to release on bail, or an unlawful arrest unless
16 the person arrested employed physical force, a threat of
17 physical force, or a weapon to escape.

18 ~~(39)~~ (38) "Official proceeding" means a proceeding heard
19 or which may be heard before any legislative, judicial,
20 administrative, or other governmental agency or official
21 authorized to take evidence under oath, including any
22 referee, hearing examiner, commissioner, notary, or other
23 person taking testimony or deposition in connection with
24 such proceeding.

25 ~~(40)~~ (39) "Other state" means any state or territory of

1 the United States, the District of Columbia, and the
2 Commonwealth of Puerto Rico.

3 ~~(43)~~ (40) "Owner" means a person, other than the
4 offender, who has possession of or any other interest in the
5 property involved, even though such interest or possession
6 is unlawful, and without whose consent the offender has no
7 authority to exert control over the property.

8 ~~(43)~~ (41) "Party official" means a person who holds an
9 elective or appointive post in a political party in the
10 United States by virtue of which he directs, or conducts, or
11 participates in directing or conducting party affairs at any
12 level of responsibility.

13 ~~(43)~~ (42) "Peace officer" means any person who by virtue
14 of his office or public employment is vested by law with a
15 duty to maintain public order or to make arrests for
16 offenses while acting within the scope of his authority.

17 ~~(44)~~ (43) "Pecuniary benefit" is benefit in the form of
18 money, property, commercial interests, or anything else the
19 primary significance of which is economic gain.

20 ~~(45)~~ (44) "Person" includes an individual, business
21 association, partnership, corporation, government, or other
22 legal entity, and an individual acting or purporting to act
23 for or on behalf of any government or subdivision thereof.

24 ~~(46)~~ (45) "Physically helpless" means that a person is
25 unconscious or is otherwise physically unable to communicate

1 unwillingness to act.

2 ~~(47)~~ (46) "Possession" is the knowing control of
3 anything for a sufficient time to be able to terminate
4 control.

5 ~~(48)~~ (47) "Premises" includes any type of structure or
6 building and any real property.

7 ~~(49)~~ (48) "Property" means anything of value. Property
8 includes, but is not limited to:

9 (a) real estate;

10 (b) money;

11 (c) commercial instruments;

12 (d) admission or transportation tickets;

13 (e) written instruments ~~representing~~ which represent
14 or ~~embodying~~ embody rights concerning anything of value,
15 including labor or services, or which are otherwise of
16 value to the owner;

17 (f) things growing on, ~~or~~ affixed to, or found on
18 land, ~~or~~ and things which are part of or affixed to any
19 building;

20 (g) electricity, gas, and water;

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

23 (i) food and drink, samples, cultures, microorganisms,
24 specimens, records, recordings, documents, blueprints,
25 drawings, maps, and whole or partial copies, descriptions,

1 photographs, prototypes, or models thereof; ~~or~~ and

2 (j) any other articles, materials, devices,
3 substances, and whole or partial copies, descriptions,
4 photographs, prototypes, or models thereof which constitute,
5 represent, evidence, reflect, or record secret scientific,
6 technical, merchandising, production, or management
7 information, or a secret designed process, procedure,
8 formula, invention, or improvement.

9 ~~(50)~~ (49) "Property of another" means real or personal
10 property in which a person other than the offender has an
11 interest which the offender has not authority to defeat or
12 impair, even though the offender himself may have an
13 interest in the property.

14 ~~(51)~~ (50) "Public place" means any place to which the
15 public or any substantial group thereof has access.

16 ~~(52)~~ (51) "Public servant" means any officer or employee
17 of government, including but not limited to, legislators,
18 judges, and firemen, and any person participating as a
19 juror, advisor, consultant, administrator, executor,
20 guardian, or court-appointed fiduciary, ~~but the~~ The term
21 does not include witnesses. The term public servant includes
22 one who has been elected or designated to become a public
23 servant.

24 ~~(53)~~ (52) "Purposely" ~~means~~ a person acts purposely with
25 respect to a result or to conduct described by a statute

1 defining an offense if it is his conscious object to engage
 2 in that conduct or to cause that result. When a particular
 3 purpose is an element of an offense, the element is
 4 established although such purpose is conditional, unless the
 5 condition negatives the harm or evil sought to be prevented
 6 by the law defining the offense. Equivalent terms such as
 7 "purpose" and "with the purpose" have the same meaning.

8 ~~(54)~~ (53) "Serious bodily injury" means bodily injury
 9 which creates a substantial risk of death or which causes
 10 serious permanent disfigurement, or protracted loss or
 11 impairment of the function or process of any bodily member
 12 or organ, and it includes serious mental illness or
 13 impairment.

14 ~~(55)~~ (54) "Sexual contact" means any touching of the
 15 sexual or other intimate parts of the person of another for
 16 the purpose of arousing or gratifying the sexual desire of
 17 either party.

18 ~~(56)~~ (55) "Sexual intercourse" means penetration of the
 19 vulva, anus, or mouth of one person by the penis of another
 20 person, ~~or~~ penetration of the vulva or anus of one person by
 21 any body member of another person, or penetration of the
 22 vulva, or anus of one person by any foreign instrument or
 23 object manipulated by another person for the purpose of
 24 arousing or gratifying the sexual desire of either party.
 25 Any penetration, however slight, is sufficient.

1 ~~(57)~~ (56) "Solicit" or "solicitation" means to command,
 2 authorize, urge, incite, request, or advise another to
 3 commit an offense.

4 ~~(58)~~ (57) "State" or "this state" means the state of
 5 Montana, and all the land and water in respect to which the
 6 state of Montana has either exclusive or concurrent
 7 jurisdiction, and the air space above such land and water.

8 ~~(59)~~ (58) "Statute" means any act of the legislature of
 9 this state.

10 ~~(60)~~ (59) "Stolen property" means property over which
 11 control has been obtained by theft.

12 ~~(64)~~ (60) "A stop" is the temporary detention of a
 13 person that results when a peace officer orders the person
 14 to remain in his presence.

15 ~~(62)~~ (61) "Tamper" means to interfere with something
 16 improperly, meddle with it, make unwarranted alterations in
 17 its existing condition, or deposit refuse upon it.

18 ~~(63)~~ (62) "Threat" means a menace, however communicated,
 19 to:

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

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

24 (c) commit any criminal offense; ~~or~~

25 (d) accuse any person of criminal offense; ~~or~~

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

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

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

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

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

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

17 ~~(64)~~ (63) (a) "Value" means the market value of the
18 property at the time and place of the crime, or, if such
19 cannot be satisfactorily ascertained, the cost of the
20 replacement of the property within a reasonable time after
21 the crime. If the offender appropriates a portion of the
22 value of the property, the value shall be determined as
23 follows:

24 (i) The value of an instrument constituting an
25 evidence of debt, such as a check, draft, or promissory

1 note, shall be deemed the amount due or collectible thereon
2 or thereby, such figure ordinarily being the face amount of
3 the indebtedness less any portion thereof which has been
4 satisfied.

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

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

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

20 ~~(65)~~ (64) "Vehicle" means any device for transportation
21 by land, water, or air, or mobile equipment with provision
22 for transport of an operator.

23 ~~(66)~~ (65) "Weapon" means any instrument, article, or
24 substance which, regardless of its primary function, is
25 readily capable of being used to produce death or serious

1 bodily injury.

2 ~~(67)~~ (66) "Witness" means a person whose testimony is
3 desired in any official proceeding, ~~or~~ in any investigation
4 by a grand jury, or in a criminal action, prosecution, or
5 proceeding."

6 Section 11. Section 94-2-103, R.C.M. 1947, is amended
7 to read as follows:

8 "94-2-103. General requirements of criminal act and
9 mental state. (1) A person is not guilty of an offense,
10 other than an offense which involves absolute liability, ~~and~~
11 unless, with respect to each element described by the
12 statute defining the offense, he acts while having one ~~(4)~~
13 of the mental states described in ~~sections 94-2-101 (28),~~
14 ~~94-2-101(22) and 94-2-101 (53) subsections (27), (31), and~~
15 ~~(52) of 94-2-101.~~

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

21 (3) Knowledge that certain conduct constitutes an
22 offense, or knowledge of the existence, meaning, or
23 application of the statute defining an offense, is not an
24 element of the offense unless the statute clearly defines it
25 as such.

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

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

8 (b) he acts in reliance upon a statute which later is
9 determined to be invalid; ~~or~~

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

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

17 (5) If a person's reasonable belief is a defense under
18 subsection (4) ~~of this section~~, nevertheless he may be
19 convicted of an included offense of which he would be guilty
20 if the law were as he believed it to be.

21 (6) Any defense based upon this section is an
22 affirmative defense."

23 Section 12. Section 94-2-104, R.C.M. 1947, is amended
24 to read as follows:

25 "94-2-104. Absolute liability. A person may be guilty

1 of an offense without having, as to each element thereof,
 2 one of the mental states described in ~~94-2-101 (28)~~,
 3 ~~94-2-101(22) and 94-2-101(53)~~ subsections (27), (31), and
 4 (52) of 94-2-101 only if the offense is punishable by a fine
 5 not exceeding ~~five hundred dollars (\$500)~~, and the statute
 6 defining the offense clearly indicates a legislative purpose
 7 to impose absolute liability for the conduct described."

8 Section 13. Section 94-2-111, R.C.M. 1947, is amended
 9 to read as follows:

10 "94-2-111. Consent as a defense. (1) The consent of
 11 the victim to conduct charged to constitute an offense or to
 12 the result thereof is a defense.

13 (2) Consent is ineffective if:

14 (a) it is given by a person who is legally incompetent
 15 to authorize the conduct charged to constitute the offense;
 16 ~~or~~

17 (b) it is given by a person who by reason of youth,
 18 mental disease or defect, or intoxication is unable to make
 19 a reasonable judgment as to the nature or harmfulness of the
 20 conduct charged to constitute the offense; ~~or~~

21 (c) it is induced by force, duress, or deception; or

22 (d) it is against public policy to permit the conduct
 23 or the resulting harm, even though consented to."

24 Section 14. Section 94-5-105, R.C.M. 1947, is amended
 25 to read as follows:

1 "94-5-105. Sentence of death for deliberate homicide.
 2 (1) ~~When~~ Unless there are mitigating circumstances, when a
 3 defendant is convicted of the offense of deliberate
 4 homicide, the court shall impose a sentence of death in any
 5 of the following circumstances, unless there are mitigating
 6 circumstances:

7 (a) The deliberate homicide was committed by a person
 8 serving a sentence of imprisonment in the state prison; ~~or~~

9 (b) The defendant was previously convicted of another
 10 deliberate homicide; ~~or~~

11 (c) The deliberate homicide was committed by means of
 12 torture; ~~or~~

13 (d) The deliberate homicide was committed by a person
 14 lying in wait or ambush; ~~or~~

15 (e) The deliberate homicide was committed as a part of
 16 a scheme or operation which, if completed, would result in
 17 the death of more than one person.

18 (2) ~~Notwithstanding~~ Notwithstanding the provisions of
 19 subsection (1) and regardless of circumstances, when a
 20 defendant is convicted of the offense of deliberate homicide
 21 under subsection (1) (a) of ~~section~~ 94-5-102 ~~in which~~ and the
 22 victim was a peace officer killed while performing his duty,
 23 the court shall impose a sentence of death."

24 Section 15. Section 94-5-501, R.C.M. 1947, is amended
 25 to read as follows:

1 "94-5-501. Definitions. ~~(1) In this part, unless a~~
 2 ~~different meaning plainly is required, the definitions given~~
 3 ~~in chapter 2, 94-2-101 apply.~~

4 (2) As used in ~~sections~~ 94-5-503 and 94-5-505, the
 5 term "without consent" means:

6 ~~(i)(1)~~ the victim is compelled to submit by force or
 7 by threat of imminent death, bodily injury, or ~~kidnaping~~
 8 kidnapping to be inflicted on anyone; or

9 ~~(ii)(2)~~ the victim is incapable of consent because he
 10 is:

11 ~~(i)(a)~~ mentally defective or incapacitated; or

12 ~~(ii)(b)~~ physically helpless; or

13 ~~(iii)(c)~~ less than ~~sixteen~~-(16) years old."

14 Section 16. Section 94-5-503, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-503. Sexual intercourse without consent. (1) A
 17 person who knowingly has sexual intercourse without consent
 18 with a person of the opposite sex not his spouse commits the
 19 offense of sexual intercourse without consent.

20 (2) A person convicted of sexual intercourse without
 21 consent shall be imprisoned in the state prison for any term
 22 not to exceed ~~twenty~~-(20) years.

23 (3) If the victim is less than ~~sixteen~~-(16) years old
 24 and the offender is ~~three~~-(3) or more years older than the
 25 victim, or if the offender inflicts bodily injury upon

1 anyone in the course of committing sexual intercourse
 2 without consent, he shall be imprisoned in the state prison
 3 for any term not to exceed ~~forty~~-(40) years.

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

8 (5) No evidence concerning the sexual conduct of the
 9 victim is admissible in prosecutions under this section,
 10 except:

11 (a) ~~Evidence~~ evidence of the victim's past sexual
 12 conduct with the offender;

13 (b) ~~Evidence~~ evidence of specific instances of the
 14 victim's sexual activity to show the origin of semen,
 15 pregnancy, or disease which is at issue in the prosecution
 16 under this section.

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

22 ~~(6)~~ (7) If the issue of failure to make a timely
 23 complaint or immediate outcry is raised, the jury shall be
 24 informed that such fact, standing alone, may not bar
 25 conviction."

1 Section 17. Section 94-5-506, R.C.M. 1947, is amended
2 to read as follows:

3 "94-5-506. Provisions generally applicable to sexual
4 crimes ~~(94-5-501 to 94-5-505)~~. (1) When criminality depends
5 on the victim being less than ~~sixteen~~ (16) years old, it is
6 a defense for the offender to prove that he reasonably
7 believed the child to be above that age. Such belief shall
8 not be deemed reasonable if the child is less than ~~fourteen~~
9 ~~(14)~~ years old.

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

20 (3) In a prosecution under the preceding sections on
21 sexual crimes (94-5-502 ~~to through~~ 94-5-504) in which the
22 victim's lack of consent is based solely upon his incapacity
23 to consent because he was mentally incapacitated, it is a
24 defense to such prosecution that the victim was a voluntary
25 social companion of the defendant, and the intoxicating

1 substance was voluntarily and knowingly taken."

2 Section 18. Section 94-5-607, R.C.M. 1947, is amended
3 to read as follows:

4 "94-5-607. Endangering the welfare of children. (1) A
5 parent, guardian, or other person supervising the welfare of
6 a child less than ~~sixteen~~ (16) years old commits the offense
7 of endangering the welfare of children if he knowingly
8 endangers the child's welfare by violating a duty of care,
9 protection, or support.

10 (2) A parent, guardian, or other person commits the
11 offense of endangering the welfare of children if he
12 knowingly contributes to the delinquency of a ~~youth~~ child
13 less than 16 years old by:

14 (a) supplying or encouraging the use of intoxicating
15 substances by ~~a~~ the child; or

16 (b) assisting, promoting, or encouraging ~~a~~ the child
17 to leave or abandon his place of residence without the
18 consent of his parents or guardian, to enter a place of
19 prostitution, to engage in sexual conduct, or to enter
20 places exclusively for adults.

21 (3) A person convicted of endangering the welfare of
22 children shall be fined not to exceed ~~five hundred dollars~~
23 ~~(\$500)~~ or be imprisoned in the county jail for any term not
24 to exceed ~~six~~ (6) months, or both. A person convicted of a
25 second offense of endangering the welfare of children shall

1 be fined not to exceed ~~one thousand dollars (\$1,000)~~ or be
2 imprisoned in the county jail for any term not to exceed ~~six~~
3 ~~(6)~~ months, or both.

4 (4) ~~Evidence.~~ On the issue of whether there has been a
5 violation of the duty of care, protection, and support, the
6 following, in addition to all other admissible evidence,
7 ~~shall be~~ is admissible: cruel treatment,; abuse,; infliction
8 of unnecessary and cruel punishment,; abandonment,;
9 neglect,; lack of proper medical care, clothing, shelter,
10 and food; and evidence of past bodily injury.

11 (5) The court may order, in its discretion, any fine
12 levied or any bond forfeited upon a charge of endangering
13 the welfare of children paid to or for the benefit of the
14 person or persons whose welfare the defendant has
15 endangered."

16 Section 19. Section 94-5-608, R.C.M. 1947, is amended
17 to read as follows:

18 "94-5-608. Nonsupport. (1) A person commits the
19 offense of nonsupport if he fails to provide support which
20 he can provide and which he knows he is legally obliged to
21 provide to a spouse, child, or other dependent.

22 (2) A person commits the offense of aggravated
23 nonsupport if:

24 (a) the offender has left the state to avoid the duty
25 of support; or

1 (b) the offender has been previously convicted of the
2 offense of nonsupport.

3 (3) A person convicted of nonsupport shall be fined
4 not to exceed ~~five hundred dollars (\$500)~~ or be imprisoned
5 in the county jail for any term not to exceed ~~six~~ ~~(6)~~
6 months, or both. A person convicted of aggravated nonsupport
7 shall be imprisoned in the state prison for any term not to
8 exceed ~~ten~~ ~~(10)~~ years.

9 (4) The court may order, in its discretion, any fine
10 levied or any bond forfeited upon a charge of nonsupport
11 paid to or for the benefit of any person ~~or persons~~ that the
12 defendant has failed to support."

13 Section 20. Section 94-5-618, R.C.M. 1947, is amended
14 to read as follows:

15 "94-5-618. Control of practice of abortion. (1) No
16 abortion may be performed within the state of Montana:

17 (a) ~~Except~~ except by a licensed physician,;

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

20 (c) ~~After~~ after viability of the fetus, unless in
21 appropriate medical judgment, the abortion is necessary to
22 preserve the life or health of the mother. An abortion under
23 this subsection (1)(c) may only be performed if:

24 (i) the foregoing judgment of the physician who is to
25 perform the abortion is first certified in writing by him,

1 setting forth in detail the facts upon which he relies in
2 making such judgment; and

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

8 (2) The timing and procedure used in performing an
9 abortion under subsection (1) (c) of this section must be
10 such that the viability of the fetus is not intentionally or
11 negligently endangered, as the term "negligently" is defined
12 in ~~section 94-2-101(32)~~ [31]. The fetus may be intentionally
13 endangered or destroyed only if necessary to preserve the
14 life or health of the mother.

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

21 (4) Violation of subsections (1) and (2) of this
22 section is a felony. Violation of subsection (3) of this
23 section is a misdemeanor."

24 Section 21. Section 94-6-201, R.C.M. 1947, is amended
25 to read as follows:

1 "94-6-201. ~~Definitions~~ Definition. (1) "Enter or
2 remain unlawfully". A person enters or remains unlawfully in
3 or upon any vehicle, ~~or~~ occupied structure, or premises when
4 he is not licensed, invited, or otherwise privileged to do
5 so. A person who enters or remains upon land does so with
6 privilege unless notice is personally communicated to him by
7 an authorized person, or unless such notice is given by
8 posting in a conspicuous manner.

9 (2) In no event shall civil liability be imposed upon
10 the owner or occupier of premises by reason of any privilege
11 created by this ~~action~~ section."

12 Section 22. Section 94-6-307, R.C.M. 1947, is amended
13 to read as follows:

14 "94-6-307. Deceptive practices. (1) A person commits
15 the offense of deceptive practices when he purposely or
16 knowingly:

17 (a) causes another, by deception or threat, to execute
18 a document disposing of property or a document by which a
19 pecuniary obligation is incurred; ~~or~~

20 (b) makes or directs another to make a false or
21 deceptive statement addressed to the public or any person
22 for the purpose of promoting or procuring the sale of
23 property or services; ~~or~~

24 (c) makes, ~~or~~ directs another to make, or ~~knowingly~~
25 accepts a false or deceptive statement to any person

1 respecting his financial condition for the purpose of
2 procuring a loan or credit; or

3 (d) obtains, or attempts to obtain property, labor, or
4 services by any of the following means:

5 (i) ~~Using~~ using a credit card which was issued to
6 another, without the other's consent;

7 (ii) ~~Using~~ using a credit card that has been revoked or
8 canceled;

9 (iii) ~~Using~~ using a credit card that has been falsely
10 made, counterfeited, or altered in any material respect;

11 (iv) ~~Using~~ using the pretended number or description of
12 a fictitious credit card;

13 (v) ~~Using~~ using a credit card which has expired
14 provided ~~that~~ the credit card clearly indicates the
15 expiration date.

16 (2) A person convicted of the offense of deceptive
17 practices shall be fined not to exceed ~~five hundred dollars~~
18 ~~(\$500)~~ or be imprisoned in the county jail for ~~any~~ a term
19 not to exceed ~~six~~ ~~(6)~~ months, or both. If the deceptive
20 practices are part of a common scheme or the value of any
21 property, labor, or services obtained, or attempted to be
22 obtained exceeds ~~one hundred fifty dollars~~ ~~(\$150)~~, then the
23 offender shall be imprisoned in the state prison for ~~any~~ a
24 term not to exceed ~~ten~~ ~~(10)~~ years.

25 Section 23. Section 94-6-308.1, is amended to read as

1 follows:

2 "94-6-308.1. Chain distributor schemes. (1) As used in
3 this ~~act~~ ~~[section]~~:

4 (a) "~~Person~~ person" means a natural person,
5 corporation, partnership, trust, or other entity; and in the
6 case of an entity it shall include any other entity which
7 has a majority interest in such entity or effectively
8 controls such other entity as well as the individual
9 officers, directors, and other persons in act of control of
10 the activities of each entity;

11 (b) "~~Chain~~ chain distributor scheme" means a sales
12 device whereby a person, under a condition that he make an
13 investment, is granted a license or right to recruit for
14 consideration one or more additional persons who are also
15 granted such license or right upon condition of making an
16 investment, and may further perpetuate the chain of persons
17 who are granted such license or right upon such condition.

18 (2) It is unlawful for any person to promote, sell, or
19 encourage participation in any chain distributor scheme.

20 (3) Any person violating the provisions of this ~~act~~
21 ~~[section]~~ shall ~~be deemed guilty of a felony~~ and upon
22 conviction, shall be imprisoned in the state prison for a
23 period not to exceed ~~one~~ ~~(1)~~ year, or ~~punishable by a fine~~
24 fined not to exceed ~~one thousand dollars~~ ~~(\$1,000)~~, or both
25 ~~such fine and imprisonment.~~

1 (4) Any person convicted of a second offense under
 2 this ~~act [section]~~ shall be imprisoned in the state prison
 3 for a period not to exceed ~~five (5) years or punishable by a~~
 4 ~~fine~~ fined not to exceed ~~five thousand dollars (\$5,000),~~ or
 5 both ~~such fine and imprisonment.~~"

6 Section 24. Section 94-7-103, R.C.M. 1947, is amended
 7 to read as follows:

8 "94-7-103. Threats and other improper influence in
 9 official and political matters. (1) A person commits an
 10 offense under this section if he purposely or knowingly:

11 (a) threatens unlawful harm to any person with the
 12 purpose to influence his decision, opinion, recommendation,
 13 vote, or other exercise of discretion as a public servant,
 14 party official, or voter; ~~or~~

15 (b) threatens harm to any public servant with the
 16 purpose to influence his decision, opinion, recommendation,
 17 vote, or other exercise of discretion in a judicial or
 18 administrative proceeding; ~~or~~

19 (c) threatens harm to any public servant or party
 20 official with the purpose to influence him to violate his
 21 duty; ~~or~~

22 (d) privately addresses to any public servant who has
 23 or will have ~~an~~ official discretion in a judicial or
 24 administrative proceeding any representation, entreaty,
 25 argument, or other communication designed to influence the

1 outcome on the basis of considerations other than those
 2 authorized by law. ~~It is no defense to prosecution under~~
 3 ~~this section that a person whom the offender sought to~~
 4 ~~influence was not qualified to act in the desired way,~~
 5 ~~whether because he had not yet assumed office, or lacked~~
 6 ~~jurisdiction, or for any other reason; or~~

7 (e) as a juror, or officer in charge of a jury,
 8 receives or permits to be received any communication
 9 relating to any matter pending before such jury, except
 10 according to the regular course of proceedings.

11 (2) It is no defense to prosecution under subsections
 12 (1) (a) through (1) (d) that a person whom the offender sought
 13 to influence was not qualified to act in the desired way,
 14 whether because he had not yet assumed office or lacked
 15 jurisdiction or for any other reason.

16 ~~(2) (3)~~ A person convicted under this section shall be
 17 fined not to exceed ~~five hundred dollars (\$500)~~ or be
 18 imprisoned in the county jail for any term not to exceed ~~six~~
 19 ~~(6)~~ months, or both, unless the offender threatened to
 20 commit an offense or made a threat with the purpose to
 21 influence a judicial or administrative proceeding, in which
 22 case the offender shall be imprisoned in the state prison
 23 for any term not to exceed ~~ten (10)~~ years."

24 Section 25. Section 94-7-104, R.C.M. 1947, is amended
 25 to read as follows:

"94-7-104. Compensation for past official behavior.

(1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, ~~or~~ for having otherwise exercised a discretion in ~~his~~ another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation, ~~acceptance of~~ which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed ~~five hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail for any term not to exceed ~~six~~ ~~(6)~~ months, or both."

Section 26. Section 94-7-207, R.C.M. 1947, is amended to read as follows:

"94-7-207. Tampering with witnesses and informants.

(1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely; ~~or~~

(b) withhold any testimony, information, document, or

thing; ~~or~~

(c) elude legal process summoning him to testify or supply evidence ~~evidence~~; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed ~~ten~~ ~~(10)~~ years."

Section 27. Section 94-7-307, R.C.M. 1947, is amended to read as follows:

"94-7-307. Transferring illegal articles or unauthorized communication. (1) ~~Transferring—Illegal Articles.~~ (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed ~~twenty~~ ~~(20)~~ years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed ~~one hundred dollars~~ ~~(\$100)~~ ~~if he conveys any other article or thing to a person subject to official detention~~ or be imprisoned in the county jail for

any term not to exceed ~~ten~~ (10) days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) ~~This shall~~ Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

~~(2) Unauthorized Communication.~~

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed ~~one hundred dollars~~ (\$100) or be imprisoned in the county jail for any term not to exceed ~~ten~~ (10) days, or both."

Section 28. Section 94-7-503, R.C.M. 1947, is amended to read as follows:

"94-7-503. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, ~~or~~ malicious damage or injury to property, ~~or~~ violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism; ~~or~~

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another ~~who purposely thereby~~ whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays, any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed ~~ten~~ (10) years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such ~~premise~~ premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned in the county jail for a term not to exceed ~~six~~ (6) months, or both."

Section 29. Section 94-8-107, R.C.M. 1947, is amended to read as follows:

"94-8-107. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is

1 offensive to the senses, or obstructs the free use of
2 property, so as to interfere with the comfortable enjoyment
3 of life or property by an entire community or neighborhood,
4 or by any considerable number of persons; ~~or~~

5 (b) any premises where persons gather for the purpose
6 of engaging in unlawful conduct; or

7 (c) a condition which renders dangerous for passage,
8 any public highway or ~~right-of-way~~, right-of-way or waters
9 used by the public.

10 (2) A person commits the offense of maintaining a
11 public nuisance if he knowingly creates, conducts, or
12 maintains a public nuisance.

13 (3) Any act which affects an entire community or
14 neighborhood, or any considerable number of persons (as
15 specified in subsection (1) (a) ~~of this section~~), is no less
16 a nuisance because the extent of the annoyance or damage
17 inflicted upon individuals is unequal.

18 (4) A person convicted of maintaining a public
19 nuisance shall be fined not to exceed ~~five hundred dollars~~
20 ~~(\$500)~~ or be imprisoned in the county jail for a term not to
21 exceed ~~six (6)~~ months, or both. Each day of such conduct
22 constitutes a separate offense.

23 (5) Action to abate a public nuisance.

24 (a) Every ~~premises upon which~~ a public nuisance ~~is~~
25 ~~being maintained~~ may be abated, and the persons maintaining

1 such nuisance and the possessor of the premises who permits
2 the same to be maintained may be enjoined from such conduct
3 by an action in equity in the name of the state of Montana
4 by the county attorney, or any resident of the state.

5 (b) Upon the filing of the complaint in such action
6 the judge may issue a temporary injunction.

7 (c) In such action evidence of the general reputation
8 of the premises ~~shall be~~ is admissible for the purpose of
9 proving the existence of ~~such the~~ nuisance.

10 (d) If the existence of the nuisance ~~be~~ is
11 established, an order of abatement shall be entered as part
12 of the judgment in the case. The judge issuing ~~such the~~
13 order may, in his discretion:

14 (i) confiscate all fixtures used on the premises to
15 maintain the nuisance and either sell them and transmit the
16 proceeds to the county general fund, ~~or~~ destroy them, or
17 return them to their rightful ownership; ~~or~~

18 (ii) close the premises for any period not to exceed
19 ~~one (1)~~ year, and during ~~such~~ which period the premises
20 shall remain in the custody of the court; ~~or~~

21 (iii) allow the premises to be opened upon posting bond
22 sufficient in amount to assure compliance with the order of
23 abatement. The bond shall be forfeited if the nuisance is
24 continued or resumed. The procedure for forfeiture ~~and/or~~
25 discharge of the bond shall be as provided in ~~section~~

1 95-1116; or
 2 (iv) any combination of the above."
 3 Section 30. Section 94-8-108, R.C.M. 1947, is amended
 4 to read as follows:
 5 "94-8-108. Creating a hazard. (1) A person commits the
 6 offense of creating a hazard if he knowingly:
 7 (a) discards in any place where it might attract
 8 children, a container having a compartment of more than ~~one~~
 9 ~~and one-half~~ {1 1/2} cubic feet capacity and a door or lid
 10 that locks or fastens automatically when closed and cannot
 11 easily be opened from the inside, and fails to remove the
 12 door, lid, or locking or fastening device; ~~or~~
 13 (b) being the owner ~~of~~ or otherwise having possession
 14 of property upon which there is a well, cistern, cesspool,
 15 mine shaft, or other hole of a depth of ~~four~~ {4} feet or
 16 more and a top width of ~~twelve~~ {12} inches or more, and he
 17 fails to cover or fence it with a suitable protective
 18 construction; ~~or~~
 19 (c) tampers with an aircraft without the consent of
 20 the owner; ~~or~~
 21 (d) being the owner or otherwise ~~have~~ having
 22 possession of property upon which there is a steam engine or
 23 steam boiler, he continues to use a steam engine or steam
 24 boiler which is in an unsafe condition; ~~or~~
 25 (e) being a person in the act of game hunting, he acts

1 in a negligent manner or knowingly fails to give all
 2 reasonable assistance to any person whom he has injured; or
 3 (f) deposits any hard substance upon or between any
 4 railroad tracks, which will tend to derail railroad cars or
 5 other vehicles.
 6 (2) A person convicted of the offense of creating a
 7 hazard shall be fined not to exceed ~~five hundred dollars~~
 8 ~~{500}~~ or be imprisoned in the county jail for a term not to
 9 exceed ~~six~~ {6} months, or both."
 10 Section 31. Section 94-8-110.2, R.C.M. 1947, is
 11 amended to read as follows:
 12 "94-8-110.2. Contraceptive Sale and advertisement of
 13 contraceptive drugs ~~or~~ and devices. (1) It ~~shall be~~ is
 14 unlawful for any person, firm, corporation, ~~or partnership~~
 15 partnership, or association to sell, offer for sale, or give
 16 away, ~~through the medium~~ by means of vending machines,
 17 personal or collective distribution, ~~by~~ solicitation, or
 18 peddling or in any other manner whatsoever, contraceptive
 19 drugs or devices, prophylactic rubber goods, or other
 20 articles for the prevention of venereal diseases. ~~The~~
 21 ~~foregoing provisions shall~~ This subsection does not apply to
 22 regularly licensed practitioners of medicine, or osteopathy,
 23 ~~or~~ other licensed persons practicing other healing arts, and
 24 registered pharmacists, ~~or to~~ or wholesale drug jobbers or
 25 manufacturers who sell to retail stores only.

1 (2) It ~~shall be~~ is unlawful to:
 2 (a) exhibit or display prophylactics or contraceptives
 3 in any show window, upon the streets, or in any public
 4 place, other than in the place of business of a licensed
 5 pharmacist; ~~or~~

6 (b) ~~to~~ advertise such in any magazine, newspaper, or
 7 other form of publication, originating in, or published
 8 within the state of Montana;

9 (c) ~~to~~ publish, or distribute from house to house or
 10 upon the streets, any circular, booklet, or other form of
 11 advertising, of prophylactics or contraceptives; or

12 (d) advertise such by other visual means, ~~or by~~
 13 auditory method, or ~~by~~ radio broadcast, or by the use of
 14 outside signs on stores, billboards, window displays, or
 15 other advertising visible to persons upon the streets or
 16 public highways, ~~provided, however, that~~

17 (3) ~~nothing~~ Nothing in this ~~act shall prevent~~ section
 18 prevents the advertising of prophylactics or contraceptives
 19 in the trade press, ~~of~~ those magazines whose principal
 20 circulation is to the medical and pharmaceutical
 21 professions, ~~or to~~ those magazines and other publications
 22 having interstate circulation, or originating outside of the
 23 state of Montana where the advertising does not violate any
 24 United States law or federal postal regulation.

25 (4) ~~nor to~~ Nothing in this section prevents the

1 furnishing within the store or place of business of a
 2 licensed pharmacist, to persons qualified to purchase, and
 3 then only upon their inquiry, such printed or other
 4 information as ~~is~~ is requisite to proper use in relation to
 5 any merchandise coming within the provisions of this ~~act~~
 6 ~~[section].~~

7 (5) ~~Provided, nothing herein shall prevent~~ Nothing in
 8 this section prevents the dissemination of medically
 9 acceptable contraceptive information by printed or other
 10 methods concerning the availability and use of any
 11 merchandise coming within the provisions of this ~~act~~
 12 section.

13 (3) (6) Any officer of the law ~~shall have the power to~~
 14 may cause the arrest of ~~any~~ a person violating any provision
 15 of this ~~act~~ section, ~~to~~ seize stocks illegally held, and ~~to~~
 16 ~~make seizure of~~ seize any mechanical device or vending
 17 machine containing any merchandise coming within the
 18 provisions of this ~~act~~ section, holding the owner of ~~such~~
 19 the machine, and the occupier and ~~the~~ owner of the premises
 20 where seizure is made to be in violation of this ~~act~~
 21 ~~[section].~~

22 (4) (7) Any person, ~~or~~ any member of a firm, or
 23 ~~copartnership~~ partnership, or the officers of a corporation
 24 or association who ~~or which~~ knowingly ~~violates~~ violate any
 25 of the provisions of this ~~act shall be~~ section are guilty of

1 a misdemeanor, and shall, upon conviction, be punished by a
2 fine not to exceed ~~five hundred dollars (\$500)~~, or by
3 imprisonment ~~of~~ not to exceed ~~six (6)~~ months in the county
4 jail, or both, ~~provided, however, that the~~

5 ~~(8)~~ Justice Justice of the peace courts and the
6 district courts of the state ~~shall~~ have concurrent
7 jurisdiction in all prosecutions and causes arising under
8 this ~~act~~ section."

9 Section 32. Section 94-8-111, R.C.M. 1947, is amended
10 to read as follows:

11 "94-8-111. Criminal defamation. (1) Defamatory matter
12 is anything which exposes a person or a group, class, or
13 association to hatred, contempt, ridicule, degradation, or
14 disgrace in society, or causes injury to his or its business
15 or occupation.

16 (2) Whoever, with knowledge of its defamatory
17 character, orally, in writing, or by any other means,
18 communicates any defamatory matter to a third person without
19 the consent of the person defamed commits the offense of
20 criminal defamation and may be sentenced to imprisonment for
21 not more than ~~six (6)~~ months in the county jail or a fine of
22 not more than ~~five hundred dollars (\$500)~~, or both.

23 (3) Violation of subsection (2) is justified if:

24 (a) the defamatory matter is true and is communicated
25 with good motives and for justifiable ends; ~~or~~

1 (b) the communication is absolutely privileged; ~~or~~

2 (c) the communication consists of fair comment made in
3 good faith with respect to persons participating in matters
4 of public concern; ~~or~~

5 (d) the communication consists of a fair and true
6 report or a fair summary of any judicial, legislative, or
7 other public or official proceedings; or

8 (e) the communication is between persons each having
9 an interest or duty with respect to the subject matter of
10 the communication and is made with the purpose to further
11 such interest or duty.

12 (4) No person ~~shall~~ may be convicted on the basis of
13 an oral communication of defamatory matter except upon the
14 testimony of at least two ~~(2)~~ other persons that they heard
15 and understood the oral statement as defamatory or upon a
16 plea of guilty."

17 Section 33. Section 94-8-114, R.C.M. 1947, is amended
18 to read as follows:

19 "94-8-114. Privacy in communications. (1) A person
20 commits the offense of violating privacy in communications
21 if he knowingly or purposely:

22 (a) ~~Communicates with any person by telephone with the~~
23 intent purpose to terrify, intimidate, threaten, harass,
24 annoy, or offend, communicates with any person by telephone
25 ~~or use~~ and uses any obscene, lewd, or profane language, ~~or~~

1 ~~suggest~~ suggests any lewd or lascivious act, or ~~threatens~~
 2 threatens to inflict injury or physical harm to the person
 3 or property of any person ~~(the use of obscene, lewd, or~~
 4 ~~profane language or the making of a threat or lewd or~~
 5 ~~lascivious suggestions is prima facie evidence of an intent~~
 6 ~~to terrify, intimidate, threaten, harass, annoy, or offend);~~

7 (b) ~~Uses~~ uses a telephone to attempt to extort money
 8 or any other thing of value from any person, or to disturb
 9 by repeated telephone calls the peace, quiet, or right of
 10 privacy of any person at the place where the telephone call
 11 or calls ~~were~~ are received; ~~The use of obscene, lewd or~~
 12 ~~profane language or the making of a threat or lewd or~~
 13 ~~lascivious suggestions shall be prima facie evidence of an~~
 14 ~~intent to terrify, intimidate, threaten, harass, annoy or~~
 15 ~~offend.~~

16 (c) ~~Records~~ records or causes to be recorded any
 17 conversation by use of ~~any~~ a hidden electronic or mechanical
 18 device which reproduces a human conversation without the
 19 knowledge of all parties to the conversation. Subsection (c)
 20 ~~shall~~ does not apply to duly elected or appointed public
 21 officials or employees when ~~such~~ the transcription or
 22 recording is done in the performance of official duty, ~~as~~
 23 to persons speaking at public meetings, ~~or~~ to persons given
 24 warning of ~~such~~ the recording;

25 (d) ~~Attempts~~ by means of any machine, instrument, or

1 contrivance, or in any other manner;

2 (i) ~~reads, or attempts to read any other manner,~~
 3 ~~reads, or attempts to read~~ any message or learn the contents
 4 thereof, while ~~the same~~ it is being sent over ~~any~~ a
 5 telegraph line;

6 (ii) ~~or~~ learns or attempts to learn the contents of any
 7 message, ~~whilst the same~~ while it is in ~~any~~ a telegraph
 8 office or is being received thereat or sent therefrom; or

9 (iii) ~~who~~ uses, ~~or~~ attempts to use, or ~~communicate~~
 10 communicates to others, any information so obtained;

11 (e) ~~Discloses~~ discloses the contents of a telegraphic
 12 message or any part thereof, addressed to another person
 13 without the permission of such person, unless directed to do
 14 so by the lawful order of a court; or

15 (f) ~~Opens~~ opens or reads or causes to be read any
 16 sealed letter not addressed to himself, without being
 17 authorized to do so by either the writer of ~~such~~ the letter
 18 or by the person to whom it is addressed, ~~and every person~~
 19 ~~who~~ or, without the like authority, publishes any of the
 20 contents of ~~such letters~~ the letter knowing the same to have
 21 been unlawfully opened.

22 (2) A person convicted of the offense of violating ~~the~~
 23 privacy in communications shall be fined not to exceed ~~five~~
 24 ~~hundred dollars~~ (\$500) or be imprisoned in the county jail
 25 for a term not to exceed ~~six~~ (6) months, or both."

1 Section 34. Section 94-8-201, R.C.M. 1947, is amended
2 to read as follows:

3 "~~94-8-201. Machine guns definitions~~ Definitions. In
4 94-8-202 through 94-8-208 the following definitions apply:

5 (1) "Machine gun" applies to and includes means a
6 weapon of any description by whatever name known, loaded or
7 unloaded, from which more than six shots or bullets may be
8 rapidly, ~~or~~ automatically, or semiautomatically discharged
9 from a magazine by a single function of the firing device.

10 (2) "Crime of violence" applies to and includes means
11 any of the following crimes or an attempt to commit any of
12 the same; ~~namely, murder, manslaughter, kidnaping, rape,~~
13 ~~mayhem, assault to do great bodily harm, any forcible~~
14 felony, robbery, burglary, ~~housebreaking, breaking and~~
15 ~~entering, and larceny and criminal trespass.~~

16 (3) "Person" applies to and includes a firm,
17 partnership, association, or corporation."

18 Section 35. Section 94-8-202, R.C.M. 1947, is amended
19 to read as follows:

20 "94-8-202. Possession or use of machine gun in
21 connection with a crime when unlawful. Possession or use
22 of a machine gun in the ~~perpetration~~ commission or attempted
23 ~~perpetration~~ commission of a crime of violence is ~~hereby~~
24 ~~declared to be a crime an offense~~ punishable by imprisonment
25 in the state ~~penitentiary~~ prison for a term of not less than

1 ~~twenty 20 years or more than 50 years."~~

2 Section 36. Section 94-8-203, R.C.M. 1947, is amended
3 to read as follows:

4 "~~94-8-203. Punishment for possession~~ Possession or use
5 of machine gun for an offensive purpose. Possession or use
6 of a machine gun for an offensive or aggressive purpose is
7 ~~hereby declared to be a crime an offense~~ punishable by
8 imprisonment in the state ~~penitentiary~~ prison for a term of
9 not less than ~~ten 10 years or more than 20 years."~~

10 Section 37. Section 94-8-204, R.C.M. 1947, is amended
11 to read as follows:

12 "94-8-204. Presumption of possession or use for
13 offensive or aggressive purpose. Possession or use of a
14 machine gun shall be presumed to be for offensive or
15 aggressive purpose:

16 ~~(a)(1) When when~~ the machine gun is on premises not
17 owned or rented, for bona fide permanent residence or
18 business occupancy, by the person in whose possession the
19 machine gun may be found; ~~or~~

20 ~~(b)(2) When when the machine gun is~~ in the possession
21 of, or used by, ~~an unnaturalized foreign born person, or a~~
22 person who has been convicted of a crime of violence in any
23 court of record, state or federal, ~~or in~~ the United States
24 of America, or its territories or insular possessions; ~~or~~

25 ~~(c)(3) When when~~ the machine gun is of the kind

1 described in ~~section~~ 94-8-208 and has not been registered as
2 required in ~~said that~~ section ~~required~~; or

3 ~~(d)(4)~~ When when empty or loaded pistol shells of 30
4 (.30 in. or 7.63 mm.) or larger caliber which have been or
5 are susceptible of ~~use~~ being used in the machine gun are
6 found in the immediate vicinity thereof."

7 Section 38. Section 94-8-210, R.C.M. 1947, is amended
8 to read as follows:

9 "94-8-210. Carrying ~~certain~~ concealed weapons in
10 cities or towns ~~forbidden-punishment~~ prohibited. Every
11 person who, within the limits of any city or town, carries
12 or bears concealed upon his person a dirk, dagger, pistol,
13 revolver, slingshot, ~~swordcane~~ sword cane, billy, knuckles
14 made of any metal or hard substance, knife having a blade
15 ~~four 1/2~~ inches long or longer, razor, not including a safety
16 razor, or other deadly weapon, shall be punished by a fine
17 not exceeding ~~five hundred dollars~~ \$500 or by imprisonment
18 in the county jail for a period not exceeding ~~six 6~~ months,
19 or by both ~~such fine and imprisonment~~, or ~~may be punished~~ by
20 imprisonment in the state ~~penitentiary~~ prison for a period
21 not exceeding ~~five 5~~ years."

22 Section 39. Section 94-8-212, R.C.M. 1947, is amended
23 to read as follows:

24 "~~94-8-212. Carrying certain concealed weapons outside~~
25 ~~of cities or towns forbidden-punishment who excepted from~~

1 ~~act~~ Exceptions. The preceding sections Sections 94-8-210
2 and 94-8-211 shall do not apply to:

3 ~~1. A sheriff or his deputy;~~
4 ~~2. A marshal or his deputy;~~
5 ~~3. A constable or his deputy;~~
6 ~~4. A police officer or policeman;~~
7 ~~5. A United States marshal or his deputy;~~
8 ~~6. A person in the secret service of the United~~
9 ~~States;~~

10 ~~7. A game warden or his deputy;~~
11 ~~8. A U. S. forest reserve official or his deputy;~~
12 (1) any peace officer of the state of Montana;
13 (2) any officer of the United States government
14 authorized to carry a concealed weapon;

15 ~~9. (3) A a person in actual service as a national~~
16 ~~guardsman;~~

17 ~~10. A revenue officer or his deputy;~~
18 ~~11. (4) A a person summoned to the aid of either any of~~
19 ~~the foregoing named persons named in subsections (1) through~~
20 ~~(3);~~

21 ~~12. (5) A a civil officer or his deputy engaged in the~~
22 ~~discharge of official business;~~

23 ~~13. (6) A a person authorized by a judge of a district~~
24 ~~court of this state to carry a weapon; or~~

25 ~~14. (7) The the~~ carrying of arms on one's own premises

1 or at ~~his one's~~ home or place of business₂
 2 ~~15. Any peace officer of the state of Montana,~~
 3 ~~16. United States immigration and naturalization~~
 4 ~~service officers,~~
 5 ~~17. National park service rangers."~~
 6 Section 40. Section 94-8-214, R.C.M. 1947, is amended
 7 to read as follows:
 8 "94-8-214. ~~Concealed weapons district judge may issue~~
 9 ~~permits to carry~~ Permits to carry concealed weapons --
 10 records -- revocation. (1) Any judge of a district court of
 11 this state may grant permission to carry or bear₂ concealed
 12 or otherwise₂ a pistol or revolver for a term not exceeding
 13 ~~one~~ 1 year.
 14 (2) All applications for such permission must be made
 15 by petition filed with the clerk of the district court₂. No
 16 charge may be made for the filing of ~~which the~~ petition ~~no~~
 17 ~~charge shall be made.~~
 18 (3) The applicant shall, if personally unknown to the
 19 judge, furnish proof by a credible witness of his good moral
 20 character and peaceable disposition.
 21 (4) No such permission shall be granted any person who
 22 is not a citizen of the United States and who has not been
 23 an actual bona fide resident of the state of Montana for ~~six~~
 24 6 months immediately next preceding the date of such
 25 application.

1 (5) A record of permission granted shall be kept by
 2 the clerk of the court₂, ~~which The~~ record shall state the
 3 date of the application, the date of the permission, the
 4 name of the person to whom permission is granted, the name
 5 of the judge granting the permission, and the name of the
 6 person, if any, by whom good moral character and peaceable
 7 disposition are proved₂, ~~and which The~~ record must be signed
 8 by the person who is granted such permission.
 9 (6) The clerk shall thereupon issue under his hand and
 10 the seal of the court a certificate, in a convenient card
 11 form so that the same may be carried in the pocket, stating:
 12 "Permission to authorizing him to carry or bear₂
 13 concealed or otherwise₂ a pistol or revolver for the period
 14 of from the date hereof, has been granted by, a
 15 judge of the district court of the judicial district of
 16 the state of Montana, in and for the county of
 17
 18 "Witness the hand of the clerk and the seal of said
 19 court this day of, 19...
 20
 21 Clerk."
 22 (7) The date of the certificate shall be the date of
 23 the granting of such permission. The certificate shall bear
 24 upon its face the signature of the person receiving the
 25 same.

1 (8) Upon good cause shown the judge granting such
2 permission may, and in his discretion without notice to the
3 person receiving such permission, revoke the same, ~~the~~ The
4 date of the revocation being shall be noted by the clerk
5 upon the record kept by him.

6 (9) All permissions to carry or bear concealed weapons
7 ~~heretofore~~ granted before March 3, 1919, are hereby
8 revoked."

9 Section 41. Section 94-8-218, R.C.M. 1947, is amended
10 to read as follows:

11 "94-8-218. Firing firearms. Every person who willfully
12 shoots or fires off, a gun, pistol, or any other firearm,
13 within the limits of any town or city, or of any private
14 inclosure which contains a dwelling house, is punishable by
15 a fine not exceeding ~~twenty-five dollars~~ \$25."

16 Section 42. Section 94-8-221, R.C.M. 1947, is amended
17 to read as follows:

18 "94-8-221. ~~Firearms—use~~ Use of firearms by children
19 under ~~the age of fourteen years~~ prohibited. It ~~shall be~~ is
20 unlawful for ~~any~~ a parent, guardian, or other person, having
21 ~~the~~ charge or custody of ~~any~~ a minor child under the age of
22 ~~fourteen 14~~ years, to permit ~~such~~ the minor child to carry
23 or use in public any firearms of any description, loaded
24 with powder and lead, ~~in public,~~ except when ~~such~~ the child
25 is ~~in the company of such parent or guardian~~ accompanied by

1 a person having charge or custody of the child or under the
2 supervision of a qualified firearms safety instructor, who
3 has been ~~duly~~ authorized by ~~such~~ the parent or guardian."

4 Section 43. Section 3-228.3, R.C.M. 1947, is amended
5 to read as follows:

6 "3-228.3. Suspension or revocation of license. (1) The
7 department may, after notice and an opportunity for a
8 hearing in accordance with the Montana Administrative
9 Procedure Act ~~[82-4204 to 82-4225]~~ has have been afforded to
10 the licensee, suspend or revoke a license if the licensee
11 has failed to comply with this act or rules of the
12 department, or if the licensee has:

13 (a) violated this act or ~~section~~ 3-229;

14 (b) been found guilty of ~~fraud, deceit,~~ dishonesty,
15 ~~forgery,~~ burglary, ~~or larceny~~ theft, or any other offense
16 defined in Title 94, chapter 6, part 3;

17 (c) failed or refused to furnish information, records,
18 or reports required by statute or rule.

19 (2) The department may, in accordance with the Montana
20 Administrative Procedure Act, summarily suspend a license
21 where the public health, safety, or welfare imperatively
22 requires emergency action."

23 Section 44. Section 5-1040, R.C.M. 1947, is amended to
24 read as follows:

25 "5-1040. Penalty for unlawful hypothecation of

1 property received. Any officer or employee of any bank doing
 2 business in this state, who, except in the manner authorized
 3 by law or the contract of the parties, hypothecates,
 4 pledges, or in any way alienates any notes, stocks, bonds,
 5 mortgages, securities, or any other property coming into his
 6 hands or into the possession of ~~said the~~ bank as collateral,
 7 for safekeeping or in any other manner, and to which the
 8 bank has not acquired full title, ~~shall be~~ is guilty of
 9 ~~embezzlement,~~ theft and upon conviction thereof shall be
 10 punished as for other felonies."

11 Section 45. Section 5-1044, R.C.M. 1947, is amended to
 12 read as follows:

13 "5-1044. ~~Embezzlement~~ Theft of bank funds by officers
 14 or employees. Any banker, officer, director, or employee of
 15 any bank who ~~embezzles~~ fraudulently appropriates or
 16 abstracts or misapplies any of the moneys, funds, credits,
 17 or property of the bank when owned by it or held in trust,
 18 or ~~who~~ issues or puts forth any certificate of deposit,
 19 draws any order or bill of exchange, makes any acceptance,
 20 assigns any note, bond, draft, bill of exchange, mortgage,
 21 judgment, or decree, with intent, in any case to injure or
 22 defraud the bank or any person or corporation, or to deceive
 23 any officer of the bank, or any other person, or ~~any one~~
 24 anyone appointed to examine the affairs of ~~each the~~ bank, or
 25 any person, who with like intent, aids or abets any officer,

1 clerk, or employee in the violation of this section, ~~shall~~
 2 be is guilty of a ~~felony~~ theft and upon conviction thereof,
 3 shall be imprisoned in the state ~~penitentiary~~ prison for a
 4 period of not exceeding ~~twenty~~ (20) years."

5 Section 46. Section 11-1916, R.C.M. 1947, is amended
 6 to read as follows:

7 "11-1916. ~~Embezzlement of Theft from~~ funds. Any person
 8 who ~~shall embezzle~~ fraudulently appropriates any of the
 9 money or other valuable thing belonging to the disability
 10 and pension fund of any fire department relief association,
 11 or who ~~shall take~~ takes part, in, or in any manner ~~aid~~ aids
 12 in any scheme or plan whereby ~~said the~~ fund or association
 13 ~~shall be is~~ defrauded out of any of the money in ~~said the~~
 14 fund, ~~shall be is~~ guilty of a ~~felony,~~ theft and upon
 15 conviction thereof, shall be punished by imprisonment in the
 16 state prison for not less than ~~one~~ 1 year or more than ~~ten~~
 17 10 years."

18 Section 47. Section 14-631, R.C.M. 1947, is amended to
 19 read as follows:

20 "14-631. Duties of directors. ~~It shall be the duty of~~
 21 ~~the~~ The directors ~~to~~ shall:

22 (1) act upon applications for membership, or ~~to~~
 23 appoint one ~~(4)~~ or more membership officers to approve
 24 applications for membership under such conditions as the
 25 board prescribes. A record of a membership officer's

1 approval or denial of membership shall be available to the
2 board of directors for inspection. A person denied
3 membership by a membership officer may appeal the denial to
4 the board.

5 (2) purchase a blanket fidelity bond, in accordance
6 with any rules ~~and regulations~~ of the director, to protect
7 the credit union against losses caused by occurrences
8 covered therein such as fraud, dishonesty, forgery,
9 ~~embezzlement~~ theft, misappropriation, misapplication, or
10 unfaithful performance of duty by a director, officer,
11 employee, member of an official committee, ~~attorney-at-law~~
12 attorney-at-law, or other agent;

13 (3) determine from time to time the interest rate or
14 rates consistent with this act, ~~which shall~~ to be charged on
15 loans and ~~to~~ authorize interest refunds, if any, to members
16 from income earned and received in proportion to the
17 interest paid by them on such classes of loans and under
18 such conditions as the board prescribes;

19 (4) fix from time to time the maximum amount which may
20 be loaned to any one member;

21 (5) declare dividends on shares in the manner and form
22 as provided in the bylaws;

23 (6) limit the number of shares which may be owned by a
24 member, such limitations to apply alike to all members;

25 (7) have charge of the investment of surplus funds,

1 except that the board of directors may designate an
2 investment committee or any qualified individual to have
3 charge of making investments under controls established by
4 the board of directors;

5 (8) authorize the employment of such persons necessary
6 to carry on the business of the credit union, including the
7 credit manager, loan officers, and auditing assistants
8 requested by the supervisory committee, and fix the
9 compensation, if any, of the treasurer and the general
10 manager and provide for compensation for other employees
11 within guidelines predetermined by the board of directors;

12 (9) authorize the conveyance of property;

13 (10) borrow or lend money to carry on the functions of
14 the credit union;

15 (11) designate a depository or depositories for the
16 funds of the credit union;

17 (12) suspend any or all members of the credit or
18 supervisory committee for failure to perform their duties;

19 (13) appoint any special committees ~~deemed~~ considered
20 necessary; and

21 (14) perform such other duties as the members from time
22 to time direct, and perform or authorize any action not
23 inconsistent with this act and not specifically reserved by
24 the bylaws for the members."

25 Section 48. Section 31-110, R.C.M. 1947, is amended to

1 read as follows:

2 "31-110. Offenses for which arrest may be made by
3 patrolmen ~~—murder, etc. — patrolmen~~ when patrolmen police
4 officers — forbidden to act in labor disputes — temporary
5 control of traffic in cities and towns — investigations of
6 accidents — inspection of livestock. [1] In addition to the
7 above duties, the highway patrol supervisor and all
8 patrolmen ~~are authorized under this act to~~ may make arrests
9 for the following offenses ~~committed~~; if committed in the
10 presence of ~~said~~ the supervisor or any of ~~said~~ the
11 patrolmen, ~~or~~; if committed in a rural district, upon the
12 request of a peace officer; or if committed in a city or
13 town of less than ~~twenty-five hundred (2,500)~~ inhabitants,
14 upon the request of any peace officer, or the mayor of ~~said~~
15 the city or town: ~~The crimes of murder deliberate homicide,~~
16 assault with a deadly weapon, arson, criminal mischief,
17 burglary, ~~larceny~~ theft, ~~kidnaping~~ kidnapping, illegal
18 transportation of narcotics, or violation of the Dyer ~~act~~
19 Act regarding the transportation of stolen automobiles.
20 ~~Provided, that such~~ Such highway patrolmen ~~shall~~ have no
21 authority and are expressly forbidden to make arrests in
22 labor disputes or ~~in preventing to prevent~~ violence in
23 connection with strikes, and ~~shall not be permitted to may~~
24 not perform any duties whatsoever in connection with labor
25 disputes, strikes, or boycotts.

1 ~~(2) Patrolmen shall be deemed~~ are considered police
2 officers ~~in for the purpose of making arrests in for~~ all
3 offenses occurring on the highways ~~and in or involving~~ the
4 use of motor vehicles or the registration thereof, and for
5 the purpose of serving warrants of arrest in connection with
6 such violations.

7 ~~(3) The patrolmen Patrolmen are also hereby empowered~~
8 ~~to may~~ stop any truck or motor vehicle in which livestock or
9 livestock products are being transported and ascertain
10 whether the driver of such truck or vehicle is rightfully in
11 possession of such livestock or livestock products, ~~and~~
12 ~~whenever~~ if the patrolmen have good reason to believe that
13 ~~such~~ livestock or livestock products have been stolen, they
14 ~~are empowered to may~~ take possession of the same until ~~such~~
15 the livestock or livestock products can be delivered into
16 the custody of the sheriff or until such time as the facts
17 as to the actual ownership can be ascertained."

18 Section 49. Section 31-146, R.C.M. 1947, is amended to
19 read as follows:

20 "31-146. Mandatory revocation of license by board or
21 chief upon proper authority. The board or chief upon proper
22 authority shall ~~forthwith~~ revoke the license or operating
23 privilege of any operator or chauffeur upon receiving a
24 record of such operator's or chauffeur's conviction or
25 forfeiture of bail not vacated of any of the following

1 offenses, when such conviction or forfeiture has become
2 final:

3 ~~1-(1) Manslaughter~~ negligent homicide resulting from
4 the operation of a motor vehicle;

5 ~~2-(2) Driving~~ driving a motor vehicle while under the
6 influence of intoxicating liquor or narcotic drug, or
7 willfully or knowingly under the influence of any other drug
8 to a degree which renders him incapable of safely driving a
9 motor vehicle, or a combination thereof;

10 ~~3-(3) Any~~ any felony in the commission of which a
11 motor vehicle is used;

12 ~~4-(4) Failure~~ failure to stop and render aid as
13 required under the laws of this state in the event of a
14 motor vehicle accident resulting in the death or personal
15 injury of another;

16 ~~5-(5) Perjury~~ perjury or the making of a false
17 affidavit or statement under oath to the board under this
18 act or under any other law relating to the ownership or
19 operation of motor vehicles;

20 ~~6-(6) Conviction,~~ conviction or forfeiture of bail not
21 vacated, upon three ~~(3)~~ charges of reckless driving
22 committed within a period of ~~twelve-(12)~~ months."

23 Section 50. Section 31-177, R.C.M. 1947, is amended to
24 read as follows:

25 "31-177. Definitions. As used in this act, the

1 following definitions apply:

2 (1) "Habitual traffic offender" means any person, who,
3 within a ~~five-(5)-year~~ 5-year period, from and after passage
4 of this act, accumulates ~~thirty-(30)~~ or more conviction
5 points according to the schedule specified in this
6 subsection;

7 (a) ~~first-or-second-degree-murder~~ deliberate homicide
8 resulting from the operation of a motor vehicle, ~~fifteen~~
9 ~~(15)~~ points;

10 (b) ~~voluntary-or-involuntary-manslaughter~~ mitigated
11 deliberate homicide or negligent homicide resulting from
12 operation of a motor vehicle, ~~twelve-(12)~~ points;

13 (c) any offenses punishable as a felony under the
14 motor vehicle laws of Montana, or any felony in the
15 commission of which a motor vehicle is used, ~~twelve-(12)~~
16 points;

17 (d) driving while under the influence of intoxicating
18 liquor or narcotics or drugs of any kind, ~~ten-(10)~~ points;

19 (e) operating a motor vehicle while his license to do
20 so has been suspended or revoked, ~~ten-(10)~~ points;

21 (f) failure of the driver of a motor vehicle involved
22 in an accident resulting in death or injury to any person to
23 stop at the scene of the accident and give the required
24 information and assistance, ~~eight-(8)~~ points;

25 (g) willful failure of the driver involved in an

1 accident resulting in property damage of ~~two hundred fifty~~
2 ~~dollars~~ (\$250) to stop at the scene of the accident and give
3 the required information or to otherwise fail to report an
4 accident in violation of the law, ~~four~~ (4) points;

5 (h) reckless driving, ~~five~~ (5) points;

6 (i) illegal drag racing or engaging in a speed contest
7 in violation of the law, ~~six~~ (6) points;

8 (j) operating a motor vehicle without a license to do
9 so, ~~six~~ (6) points, ~~except as hereafter provided:~~ (this
10 subsection (j) does not apply to operating a motor vehicle
11 while license has expired within a period of one hundred and
12 eighty (180) days from the date the license expired);

13 (k) speeding, ~~three~~ (3) points;

14 (l) all other moving violations, including operation
15 of a motor vehicle without a license to do so ~~where said~~
16 ~~when the~~ license has expired in the previous ~~one hundred and~~
17 ~~eighty (180) days, two~~ (2) points; ~~(a) there~~ There shall
18 be no multiple application of cumulative points when two (2)
19 or more charges are filed involving a single occurrence. If
20 there are two (2) or more convictions involving a single
21 occurrence, only the number of points for the specific
22 conviction carrying the highest points shall be chargeable
23 against that defendant.

24 (2) "Conviction" means a finding of guilt by duly
25 constituted judicial authority, ~~or~~ a plea of guilty, or a

1 forfeiture of bail, bond, or other security deposited to
2 secure appearance by a person charged with having committed
3 any offense relating to the use or operation of a motor
4 vehicle which is prohibited by law, ordinance, or
5 administrative order.

6 (3) "Administrator" means the Montana highway patrol
7 chief.

8 (4) "Bureau" means the Montana highway patrol bureau.

9 (5) "License" means any ~~and all types type~~ of licenses
10 license or ~~permits~~ permit to operate a motor vehicle."

11 Section 51. Section 40-2905, R.C.M. 1947, is amended
12 to read as follows:

13 "40-2905. "Casualty insurance" defined. (1) Casualty
14 insurance includes:

15 (a) ~~Vehicle~~ vehicle insurance ~~which is~~ ~~insurance~~
16 insurance against loss of or damage to any land vehicle or
17 aircraft or any draft or riding animal or to property while
18 contained therein or thereon or being loaded or unloaded
19 therein or therefrom, from any hazard or cause, and against
20 any loss, liability, or expense resulting from or incidental
21 to ownership, maintenance, or use of any such vehicle,
22 aircraft, or animal, together with insurance against
23 accidental death or accidental injury to individuals,
24 including the named insured, while in, entering, alighting
25 from, adjusting, repairing, cranking, or caused by being

1 struck by a vehicle, aircraft, or draft or riding animal, if
2 such insurance is issued as an incidental part of insurance
3 on the vehicle, aircraft, or draft or riding animal;

4 (b) ~~Liability~~ liability insurance, ~~insurance which is~~
5 insurance against legal liability for the death, injury, or
6 disability of any human being, or for damage to property,
7 and provision of medical, hospital, surgical, and disability
8 benefits to injured persons and funeral and death benefits
9 to dependents, beneficiaries, or personal representatives of
10 persons killed, irrespective of legal liability of the
11 insured, when issued as an incidental coverage with or
12 supplemental to liability insurance;

13 (c) ~~workmen's~~ workers' compensation and employer's
14 liability, ~~insurance which is insurance~~ of the obligations
15 accepted by, imposed upon, or assumed by employers under law
16 for death, disablement, or injury of employees;

17 (d) ~~Burglary~~ burglary and theft, ~~insurance which is~~
18 insurance against loss or damage by burglary, theft,
19 ~~larceny~~, robbery, forgery, fraud, deceptive practices,
20 vandalism, ~~malicious~~ criminal mischief, confiscation, or
21 wrongful conversion, disposal, or concealment, or from any
22 attempt at any of the foregoing, including supplemental
23 coverage for medical, hospital, surgical, and funeral
24 expense incurred by the named insured or any other person as
25 a result of bodily injury during the commission of a

1 burglary, robbery, or theft by another; also insurance
2 against loss of or damage to moneys, coins, bullion,
3 securities, notes, drafts, acceptances, or any other
4 valuable papers and documents, resulting from any cause;

5 (e) ~~Personal~~ personal property floater, ~~insurance~~
6 which is insurance upon personal effects against loss or
7 damage from any cause under a personal property floater;

8 (f) ~~Glass~~ insurance glass which is insurance against
9 loss or damage to glass, including its lettering,
10 ornamentation, and fittings;

11 (g) ~~Boiler~~ boiler and machinery, ~~insurance which is~~
12 insurance against any liability and loss or damage to
13 property or interest resulting from accident to or
14 explosions of boilers, pipes, pressure containers,
15 machinery, or apparatus, and ~~to make from making~~
16 of and ~~issue~~ issuing certificates of inspection upon
17 boilers, machinery, and apparatus of any kind, whether or
18 not insured;

19 (h) Leakage ~~leakage~~ and fire extinguishing equipment,
20 ~~insurance which is insurance~~ against loss or damage to any
21 property or interest caused by the breakage or leakage of
22 sprinklers, hoses, pumps, and other fire extinguishing
23 equipment or apparatus, water pipes, or containers, or by
24 water entering through leaks or openings in buildings, and
25 insurance against loss or damage to such sprinklers, hoses,

1 pumps, and other fire extinguishing equipment or apparatus; i

2 (i) ~~Credit. Insurance~~ credit which is insurance
3 against loss or damage resulting from failure of debtors to
4 pay their obligations to the insured; i

5 (j) ~~Malpractice. Insurance~~ malpractice which is
6 insurance against legal liability of the insured, and
7 against loss, damage, or expense incidental to a claim of
8 such liability, and including medical, hospital, surgical,
9 and funeral benefits to injured persons, irrespective of
10 legal liability of the insured, arising out of the death,
11 injury, or disablement of any person, or arising out of
12 damage to the economic interest of any person, as the result
13 of negligence in rendering expert, fiduciary, or
14 professional service; i

15 (k) ~~Elevator. Insurance~~ elevator which is insurance
16 against loss of or damage to any property of the insured,
17 resulting from the ownership, maintenance, or use of
18 elevators, except loss or damage by fire, and ~~to take from~~
19 making inspection of and ~~issue~~ issuing certificates of
20 inspection upon elevators; i

21 (l) ~~Livestock. Insurance~~ livestock which is insurance
22 against loss or damage to livestock, and for services of a
23 veterinary for such animals; i

24 (m) ~~Entertainments. Insurance~~ entertainments which is
25 insurance indemnifying the producer of any motion picture,

1 television, radio, theatrical, sport, spectacle,
2 entertainment, or similar production, event, or exhibition
3 against loss from interruption, postponement, or
4 cancellation thereof due to death, accidental injury, or
5 sickness of performers, participants, directors, or other
6 principals; i

7 (n) ~~Miscellaneous. Insurance~~ miscellaneous which is
8 insurance against any other kind of loss, damage, or
9 liability properly a subject of insurance and not within any
10 other kind of insurance as defined in this chapter, if such
11 insurance is not disapproved by the commissioner as being
12 contrary to law or public policy.

13 (2) Provision of medical, hospital, surgical, and
14 funeral benefits, and of coverage against accidental death
15 or injury, as incidental to and part of other insurance as
16 stated under subdivisions (a) (vehicle), (b) (liability),
17 (d) (burglary), and (j) (malpractice) of subsection (1)
18 shall for all purposes be ~~deemed~~ considered to be the same
19 kind of insurance to which it is so incidental, and shall
20 not be subject to provisions of this code applicable to life
21 or disability insurances."

22 Section 52. Section 40-2906, R.C.M. 1947, is amended
23 to read as follows:

24 "40-2906. "Surety insurance" defined. Surety insurance
25 includes:

1 (1) ~~Fidelity~~ fidelity insurance, which is insurance
2 guaranteeing the fidelity of persons holding positions of
3 public or private trust;

4 (2) ~~Insurance~~ insurance guaranteeing the performance
5 of contracts, other than insurance policies, and
6 guaranteeing and executing bonds, undertakings, and
7 contracts of suretyship;

8 (3) ~~Insurance~~ insurance indemnifying banks, bankers,
9 brokers, financial or moneyed corporations or associations
10 against check forgery or alteration, or against loss
11 resulting from any cause, of bills of exchange, notes,
12 bonds, securities, evidences of debt, deeds, mortgages,
13 warehouse receipts, or other valuable papers, documents,
14 money, precious metals, and articles made therefrom,
15 jewelry, watches, necklaces, bracelets, gems, or precious
16 and semiprecious stones, including any loss while the same
17 are being transported in armored motor vehicles, by mail, or
18 by messenger, but not including any other risks of
19 transportation or navigation; also insurance against loss or
20 damage to such an insured's premises or to his furnishings,
21 fixtures, equipment, safes, and vaults therein, caused by
22 burglary, robbery, theft, vandalism, or ~~malicious~~ criminal
23 mischief, or any attempt thereat."

24 Section 53. Section 40-3324, R.C.M. 1947, is amended
25 to read as follows:

1 "40-3324. Reporting and accounting for premiums. (1)
2 All premiums or return premiums received by an agent or
3 solicitor shall be trust funds so received by the licensee
4 in a fiduciary capacity, and the agent or solicitor shall in
5 the applicable regular course of business account for and
6 pay the same to the insured, insurer, or agent entitled
7 thereto. If the licensee establishes a separate deposit for
8 funds so belonging to others in order to avoid a commingling
9 of such fiduciary funds with his own funds, he may deposit
10 and commingle in the same such separate deposit all such
11 funds belonging to others so long as the amount of such
12 deposit so held for each respective other person is
13 reasonably ascertainable from the records and accounts of
14 the licensee.

15 (2) Any agent or solicitor who, not being lawfully
16 entitled thereto, diverts or appropriates such funds or any
17 portion thereof to his own use, ~~shall is,~~ upon conviction,
18 be guilty of ~~larceny~~ theft and shall be punished as provided
19 by law."

20 Section 54. Section 46-104, R.C.M. 1947, is amended to
21 read as follows:

22 "46-104. Duties and powers of department. The
23 department shall exercise general supervision over, and, so
24 far as possible, protect the livestock interests of the
25 state from theft and disease, and recommend legislation

1 which, in the judgment of the department, fosters this
 2 industry. The department may compel the attendance of
 3 witnesses, employ counsel to assist in the prosecution of
 4 violations of laws made for the protection of the livestock
 5 interests, and assist in the prosecution of persons charged
 6 with ~~feloniously~~ illegal branding or ~~stealing~~ theft of
 7 livestock, or any other crime under the laws of this state
 8 for the protection of stock owners. It may adopt rules
 9 governing the recording and use of livestock brands."

10 Section 55. Section 46-703, R.C.M. 1947, is amended to
 11 read as follows:

12 "46-703. Duties. The stock inspectors and detectives
 13 shall arrest all persons who in their presence violate the
 14 stock laws of this state. Every stock inspector and
 15 detective, on information that a person has committed an
 16 offense against the laws of this state by engaging in
 17 illegal, in feloniously branding or ~~stealing~~ theft of stock
 18 of, or an offense against the laws of this state for the
 19 protection of the rights and interests of stock owners, must
 20 make the necessary affidavit for the arrest and examination
 21 of the person, and on a warrant issued for the person,
 22 immediately arrest the person and bring him before the
 23 proper officer and notify the department of his acts."

24 Section 56. Section 66-1602, R.C.M. 1947, is amended
 25 to read as follows:

1 "66-1602. Search warrant may issue. Whenever any
 2 person makes oath before a magistrate that any property
 3 belonging to him has been ~~embezzled or taken without his~~
 4 ~~consent~~ taken by theft or otherwise without his consent, and
 5 that he has reason to believe or suspect, and does suspect,
 6 that such property has been pledged with any pawnbroker or
 7 junk dealer, such magistrate, if satisfied, must issue his
 8 warrant to search for the property so taken, and, if found,
 9 to seize and bring the same before him."

10 Section 57. Section 67-2129, R.C.M. 1947, is amended
 11 to read as follows:

12 "67-2129. Revocation. (1) A registration may be
 13 revoked after notice and hearing upon a written finding of
 14 fact that the subdivider has:

15 (a) ~~Failed~~ failed to comply with the terms of a cease
 16 and desist order;

17 (b) ~~Has been~~ been convicted in any court subsequent to the
 18 filing of the application for registration of a crime
 19 involving fraud, ~~deception~~ deceptive practices, false
 20 pretenses, misrepresentation, false advertising, or
 21 dishonest dealing in real estate transactions;

22 (c) ~~Disposed~~ disposed of, concealed, or diverted any
 23 funds or assets of any person so as to defeat the rights of
 24 subdivision purchasers;

25 (d) ~~Failed~~ failed faithfully to perform any

1 stipulation or agreement made with the board as an
2 inducement to grant any registration, to reinstate any
3 registration, or to approve any promotional plan or public
4 offering statement; or

5 (e) ~~made~~ made intentional misrepresentations or
6 concealed material facts in an application for registration.

7 (2) Findings of fact, if set forth in statutory
8 language, shall be accompanied by a concise and explicit
9 statement of the underlying facts supporting the findings.

10 ~~(2)(3)~~ If the board finds after notice and hearing
11 that the subdivider has been guilty of a violation for which
12 revocation could be ordered, it may issue a cease and desist
13 order instead."

14 Section 58. Section 69-1929, R.C.M. 1947, is amended
15 to read as follows:

16 "69-1929. Penalty when death caused by violation of
17 this act. When the death of any person is caused by the
18 explosion of any powder, gunpowder, giant or Hercules
19 powder, giant caps, or other highly explosive substance that
20 has been stored, kept, handled, or transported, contrary to
21 the provisions of the foregoing sections, the person or
22 persons who have so unlawfully stored, kept, handled, or
23 transported such explosives, or who may have knowingly or
24 negligently permitted their agents, servants, or employees
25 to so unlawfully store, keep, handle, or transport the same,

1 ~~shall be~~ are guilty of ~~manslaughter,~~ negligent homicide and,
2 on conviction, shall be punished by imprisonment in the
3 state ~~penitentiary prison~~ prison for a period not exceeding ~~ten~~ 10
4 years."

5 Section 59. Section 72-116, R.C.M. 1947, is amended to
6 read as follows:

7 "72-116. Power of board to fix rates, schedules, and
8 classifications. ~~The power and authority is hereby vested in~~
9 ~~the said~~

10 (1) ~~The board, and it is hereby made its duty to shall~~
11 ~~adopt, as soon as practicable after the organization of the~~
12 ~~board,~~ all necessary rates, charges, and regulations to
13 govern and regulate freight and passenger tariffs, to
14 correct abuses, and prevent unjust discrimination and
15 ~~extortion~~ intimidation in the rates of freight and passenger
16 tariffs on the different railroads in this state, and to
17 make the same effective by enforcing the penalties
18 prescribed in this act. The ~~said~~ board shall ~~have the power,~~
19 ~~and it shall be its duty,~~ to fairly and justly classify and
20 subdivide all freight and merchandise of ~~whatsoever~~ whatever
21 character that may be transported over railroads of this
22 state, into such general and special classes or subdivisions
23 as may be ~~deemed~~ considered necessary or expedient. The ~~said~~
24 board may fix different rates for different railroads and
25 for different lines under the same management, or for

1 different parts of the same lines, if found necessary to do
 2 justice, and may make rates for express companies different
 3 from the rates fixed for railroads. ~~Said~~ The board shall
 4 also ~~have the power, and it shall be its duty, to~~ fix and
 5 establish for all or any connecting lines of railroad in
 6 this state reasonable joint rates of freight charges for the
 7 various classes of freight, and cars that may pass over two
 8 or more lines of such railroads.

9 (2) The rates, tolls, or charges on any property,
 10 which shall for any reason remain unclassified by the board,
 11 shall not in any event exceed the highest rates fixed for
 12 any classification by ~~said~~ the board. ~~And it shall be within~~
 13 ~~the province of the~~ The board ~~to~~ may entertain and hear
 14 complaints made by any shipper to the effect that unjust
 15 discrimination is being made as against the state of
 16 Montana, or any point therein, in the way of rates for the
 17 transportation of freight or passengers from points without
 18 the state to points within the state, and vice versa, ~~and~~
 19 ~~is~~ In proper cases, where it appears that the United States
 20 interstate commerce commission law has been violated, ~~it is~~
 21 ~~hereby made the duty of said~~ the board ~~to make complaint~~
 22 shall complain to the interstate commerce commission of the
 23 United States, and ~~to~~ aid such commission in any
 24 investigation it may make concerning violations of the
 25 United States law, by furnishing evidence, and in any other

1 manner which may seem best suited to enforce both the United
 2 States and state law, and to protect the interests of the
 3 people."

4 Section 60. Section 72-126, B.C.M. 1947, is amended to
 5 read as follows:

6 *72-126. Prohibition against rebates and
 7 discrimination. If any railroad subject hereto, directly or
 8 indirectly or by any special rate, rebate, drawback, or
 9 other device, ~~shall charge, demand~~ charges, demands, or
 10 ~~receive~~ receives from any person, firm, or corporation, a
 11 greater or less compensation for any service rendered, or to
 12 be rendered, in the transportation of property subject to
 13 the provisions of this act, than that fixed by the ~~said~~
 14 commission for such service, such railroad ~~shall be deemed~~
 15 is guilty of ~~extortion~~ intimidation, and shall forfeit and
 16 pay to the state of Montana not less than ~~five hundred~~
 17 ~~dollars nor \$500 or more than two thousand dollars~~ \$2,000
 18 ~~for each offense, provided, that nothing herein shall be so~~
 19 ~~construed as to prevent.~~ Nothing in this section prevents
 20 any railroad or railroad corporation from giving excursion
 21 rates to or from any point within or without the state."

22 Section 61. Section 72-127, B.C.M. 1947, is amended to
 23 read as follows:

24 *72-127. Discrimination in rates and charges. If any
 25 railroad subject to this act, or its agents or officers,

1 ~~shall hereafter collect, charge, demand, or receive~~
 2 collects, charges, demands, or receives from any person,
 3 company, firm, or corporation, a greater rate, charge, or
 4 compensation than that fixed and established by the said
 5 commission for the transportation of freight, ~~passenger~~
 6 passengers, or cars, or for the use of any car on the line
 7 of its railroad, or any line operated by it, or for
 8 receiving, forwarding, handling, or storing any such freight
 9 car, or for any other service performed, or to be performed
 10 by it, such railroad and its agents and officers ~~shall be~~
 11 deemed are guilty of ~~extortion~~ intimidation, and shall
 12 forfeit and pay to the state of Montana a sum not less than
 13 ~~five hundred dollars nor \$500 or~~ more than ~~two thousand~~
 14 dollars \$2,000."

15 Section 62. Section 79-811, R.C.M. 1947, is amended to
 16 read as follows:

17 "79-811. Temporary suspension of treasurer. ~~The if,~~
 18 upon examination, the state board of examiners, ~~if, upon~~
 19 examination, find finds that the books of the state
 20 treasurer do not correspond with the amount of funds on
 21 hand, ~~or~~ do not show the actual condition of the funds, ~~or~~
 22 ~~if it appear to said board~~ that any moneys belonging to the
 23 state have been ~~embezzled, diverted, or in any manner taken~~
 24 diverted or taken by theft or any other means from the
 25 treasury, without authority of law, or that the state

1 treasurer has been guilty of negligence in keeping his
 2 books, or of taking care of the public moneys, the board
 3 must certify the fact to the governor, who, upon receipt of
 4 such certificate, must ~~forthwith~~ immediately take possession
 5 of all books, moneys, papers, and other property belonging
 6 to the state which have come into the possession of such
 7 state treasurer, by virtue of his office or otherwise, and
 8 must temporarily suspend ~~him~~ the treasurer from ~~his~~
 9 ~~of state treasurer.~~"

10 Section 63. Section 79-812, R.C.M. 1947, is amended to
 11 read as follows:

12 "79-812. Appointment in place of suspended treasurer.
 13 [1] The ~~state~~ board of examiners must thereupon procure the
 14 services of an expert to examine the books, papers, and all
 15 matters connected with the office of the state treasurer so
 16 suspended, and if it appears to ~~said~~ the board on such
 17 examination that ~~such~~ the state treasurer has ~~embezzled or~~
 18 converted to his own use or committed theft of the public
 19 moneys, or has been negligent in keeping his books, or in
 20 taking care of the public moneys, the governor, on the
 21 certificate of ~~said~~ the board of that fact, must appoint
 22 another person to fill the place of such suspended state
 23 treasurer, and such person so appointed must execute an
 24 official bond and enter upon the office of state treasurer,
 25 as provided by law.

1 (2) The governor must report all his acts done under
2 this section and ~~the next preceding section 79-811~~ to the
3 next succeeding ~~legislative assembly~~ legislature, and the
4 state treasurer so appointed holds his office until the
5 suspended state treasurer is restored or his successor is
6 elected and qualified."

7 Section 64. Section 79-2314, R.C.M. 1947, is amended
8 to read as follows:

9 "79-2314. Information from state agencies. (1) All
10 state agencies shall aid and assist the legislative auditor
11 in the auditing of books, accounts, and records.

12 (2) The legislative auditor may examine at any time
13 the books, accounts, and records, confidential or otherwise,
14 of a state agency, ~~however, this~~ This shall not be
15 construed as authorizing the publication of information
16 which the law prohibits publishing.

17 (3) The head of each state agency shall immediately
18 notify the legislative auditor in writing upon the discovery
19 of any ~~larceny, or embezzlement~~ theft, actual or suspected,
20 involving state moneys or property under his control or for
21 which he is responsible."

22 Section 65. Section 87A-2-403, R.C.M. 1947, is amended
23 to read as follows:

24 "87A-2-403. Power to transfer -- good faith purchase
25 of goods -- "entrusting". (1) A purchaser of goods acquires

1 all title which his transferor had or had power to transfer
2 except that a purchaser of a limited interest acquires
3 rights only to the extent of the interest purchased. A
4 person with voidable title has power to transfer a good
5 title to a good faith purchaser for value. When goods have
6 been delivered under a transaction of purchase the purchaser
7 has such power even though;

8 (a) the transferor was deceived as to the identity of
9 the purchaser; ~~or~~

10 (b) the delivery was in exchange for a check which is
11 later dishonored; ~~or~~

12 (c) it was agreed that the transaction was to be a
13 "cash sale"; or

14 (d) the delivery was procured through fraud punishable
15 as ~~larcenous~~ theft under the criminal law.

16 (2) Any entrusting of possession of goods to a
17 merchant who deals in goods of that kind gives him power to
18 transfer all rights of the entruster to a buyer in ordinary
19 course of business.

20 (3) "Entrusting" includes any delivery and any
21 acquiescence in retention of possession regardless of any
22 condition expressed between the parties to the delivery or
23 acquiescence and regardless of whether the procurement of
24 the entrusting or the possessor's disposition of the goods
25 ~~have~~ has been such as to be ~~larcenous~~ constitute theft under

1 the criminal law.

2 (4) The rights of other purchasers of goods and of
3 lien creditors are governed by the ~~Chapters~~ chapters on
4 ~~Secured secured Transactions transactions~~ (Chapter chapter
5 9), ~~Bulk bulk Transfers transfers~~ (Chapter chapter 6) and
6 ~~Documents documents of Title title~~ (Chapter chapter 7)."

7 Section 66. Section 89-714, R.C.M. 1947, is amended to
8 read as follows:

9 "89-714. Penalties. Any person violating any of the
10 provisions of this chapter is punishable as provided in
11 ~~section 94-35-105~~, and if death ~~ensue~~ ensues by reason of
12 any of the acts prohibited by this chapter, the person
13 guilty of the same may be convicted of ~~murder, manslaughter,~~
14 ~~or any other felony, as the case may be~~ homicide."

15 Section 67. Section 91-608, R.C.M. 1947, is amended to
16 read as follows:

17 "91-608. Order to examine party charged with
18 ~~embezzling~~ misappropriating estate. When the public
19 administrator complains to the district court, or a judge
20 thereof, on oath, that any person has concealed, ~~embezzled~~
21 committed theft of, or disposed of, or has in his possession
22 any money, goods, property, or effects, to the possession of
23 which such administrator is entitled in his official
24 capacity, the court or judge may cite such person to appear,
25 and may examine him on oath touching the matter of such

1 complaint."

2 Section 68. Section 91-2301, R.C.M. 1947, is amended
3 to read as follows:

4 "91-2301. ~~Embezzling~~ Mishandling of estate before
5 grant of letters testamentary. If any person, before the
6 granting of letters testamentary or of administration,
7 ~~embezzles~~ commits theft of or alienates any of the moneys,
8 goods, chattels, or effects of a decedent, he is charged
9 therewith and liable to an action by the executor or
10 administrator of the estate for double the value of the
11 property so ~~embezzled or alienated~~ mishandled, to be
12 recovered for the benefit of the estate."

13 Section 69. Section 91-2302, R.C.M. 1947, is amended
14 to read as follows:

15 "91-2302. Citation to person suspected ~~to have~~
16 ~~embezzled of having mishandled estate, etc.~~ If any executor
17 or administrator, or any person interested in the estate of
18 a decedent, complains to the court or judge, on oath, that
19 any person is suspected ~~to have~~ of having concealed,
20 ~~embezzled,~~ smuggled, conveyed away, ~~or~~ disposed of, or
21 committed theft of any moneys, goods, or chattels of the
22 decedent, or has in his possession or knowledge any deeds,
23 conveyances, bonds, contracts, or other writings, which
24 contain evidences of or tend to disclose the right, title,
25 interest, or claim of the decedent to any real or personal

1 estate, or any claim or demand, or any lost will, the said
 2 court or judge may cite such person to appear before such
 3 the court, and may examine him on oath upon the matter of
 4 such the complaint. If such person is not in the county
 5 where such the decedent dies, or where letters have been
 6 granted, he may be cited and examined either before the
 7 district court or judge of the county where the decedent
 8 dies, or where letters have been granted. But if he appears
 9 and is found innocent, his necessary expenses must be
 10 allowed him out of the estate."

11 Section 70. Section 91-2303, R.C.M. 1947, is amended
 12 to read as follows:

13 "91-2303. Refusal to obey citation, ~~penalty for, and~~
 14 ~~for sequestration may be compelled to disclose by~~
 15 ~~imprisonment liable for double damages — order for~~
 16 disclosure. If the person so cited refuses to appear and
 17 submit to an examination, or to answer such interrogatories
 18 as may be put to him, touching the matters of the complaint,
 19 the court or judge may, by warrant for that purpose, commit
 20 him to the county jail, there to remain in close custody
 21 until he submits to the order of the court, or is discharged
 22 according to law. If, upon examination, it appears that he
 23 has concealed, ~~embezzled,~~ smuggled, conveyed away, or
 24 disposed of, or committed theft of any moneys, goods, or
 25 chattels of the decedent, or that he has in his possession

1 or knowledge any deeds, conveyances, bonds, contracts, or
 2 other writings containing evidence of or tending to disclose
 3 the right, title, interest, or claim of the decedent to any
 4 real or personal estate, claim, or demand, or any lost will
 5 of the decedent, the court or judge may make an order
 6 requiring such person to disclose his knowledge thereof to
 7 the executor or administrator, and may commit him to the
 8 county jail, there to remain until the order is complied
 9 with, or he is discharged according to law; and all such
 10 interrogatories and answers must be in writing, signed by
 11 the party examined, and filed in the court. The order for
 12 such disclosure made upon such examination shall be prima
 13 facie evidence of the right of the executor or administrator
 14 to such property in any action brought for the recovery
 15 thereof, and any judgment recovered therein must be for
 16 double the value of the property as assessed by the court or
 17 jury, or for the return of the property and damages in
 18 addition thereto, equal to the value of such property. In
 19 addition to the examination of the party, witnesses may be
 20 produced and examined on either side."

21 Section 71. Section 93-4002, R.C.M. 1947, is amended
 22 to read as follows:

23 "93-4002. When defendant may be arrested in a civil
 24 action. The defendant may be arrested in the following
 25 cases:

1 4-(1) ~~It is~~ in an action for the recovery of money or
2 damages, on a cause of action arising upon contract, express
3 or implied, when the defendant is about to depart from the
4 state, with intent to defraud his creditors; or when the
5 action is for willful injury to person, to character, or to
6 property, knowing the property to belong to another;

7 2-(2) ~~It is~~ in an action for a fine or penalty, or for
8 money or property ~~embezzled, or~~ fraudulently misapplied, or
9 converted to his own use, by a public officer, ~~or~~ an officer
10 of a corporation, or an attorney, factor, broker, agent, or
11 clerk, in the course of his employment as such, or by any
12 other person in a fiduciary capacity, ~~or~~ for misconduct or
13 neglect in office, or in a professional employment, ~~or~~ for
14 a willful violation of duty;

15 3-(3) ~~It is~~ in an action to recover possession of
16 personal property unjustly obtained, when the property, or
17 any part thereof, has been concealed, removed, or disposed
18 of so that it cannot be found, or taken by the sheriff;

19 4-(4) ~~When~~ when the defendant has been guilty of fraud
20 in contracting the debt, incurring the obligation for which
21 the action is brought, or in concealing or disposing of the
22 property, or for taking, detention, or conversion of which
23 the action is brought;

24 5-(5) ~~When~~ when the defendant has removed or disposed
25 of his property, or is about to do so, with intent to

1 defraud his creditors."

2 Section 72. Section 94-8-405, R.C.M. 1947, is amended
3 to read as follows:

4 "94-8-405. Obtaining money by means of gambling games
5 or tricks ~~deemed to be larceny~~ considered theft. Every
6 person who, by means of any game, device, sleight-of-hand
7 trick, or other means whatever, by the use of cards or other
8 implements other than those mentioned in ~~the following~~
9 ~~section hereof~~ 94-8-406, or while betting on sides, or
10 hands, of any such game or play, fraudulently obtains from
11 another person money or property of any description, ~~shall~~
12 ~~be deemed~~ is guilty of ~~larceny~~ theft of property of like
13 value."

14 Section 73. Section 95-408, R.C.M. 1947, is amended to
15 read as follows:

16 "95-408. Stolen property. ~~Where~~ When a person obtains
17 property by ~~larceny~~ theft, robbery, ~~false pretenses or~~
18 ~~embezzlement or deceptive practices~~, he may be tried in any
19 county in which he exerted control over such property."

20 Section 74. Section 69-1931, R.C.M. 1947, is
21 renumbered 94-8-209.1 and is amended to read as follows:

22 "~~69-1931~~ 94-8-209.1. Destructive device -- and
23 explosive defined. (1) "Destructive device", as used in this
24 chapter, ~~shall include~~ includes, but is not limited to, the
25 following weapons:

1 (a) ~~Any~~ a projectile containing ~~any~~ an explosive or
2 incendiary material or any other similar chemical substance,
3 including, but not limited to, that which is commonly known
4 as tracer or incendiary ammunition, except tracer ammunition
5 manufactured for use in shotguns;

6 (b) ~~Any~~ a bomb, grenade, explosive missile, or similar
7 device or ~~any~~ a launching device therefor;

8 (c) ~~Any~~ a weapon of a caliber greater than .60 caliber
9 which fires fixed ammunition, or any ammunition therefor,
10 other than a shotgun or shotgun ammunition;

11 (d) ~~Any~~ a rocket, rocket-propelled projectile, or
12 similar device of a diameter greater than 0.60 inch, or ~~any~~
13 a launching device therefor, and ~~any~~ a rocket,
14 rocket-propelled projectile, or similar device containing
15 ~~any~~ an explosive or incendiary material or any other similar
16 chemical substance, other than the propellant for ~~such~~ the
17 device, except ~~such~~ devices ~~as~~ are designed primarily for
18 emergency or distress signaling purposes;

19 (e) ~~Any~~ a breakable container which contains a
20 flammable liquid with a flashpoint of 150 degrees Fahrenheit
21 or less and which has a wick or similar device capable of
22 being ignited, other than a device which is commercially
23 manufactured primarily for the purpose of illumination.

24 (2) "Explosive", as used in this chapter, ~~shall mean~~
25 means any explosive defined in ~~section 69-1901, R.C.M.~~

1 1947."

2 Section 75. Section 69-1932, R.C.M. 1947, is
3 renumbered 94-8-209.2 and is amended to read as follows:

4 "~~69-1932~~ 94-8-209.2. Possession of a destructive
5 device ~~or explosive with felonious intent~~ penalty. (1)
6 ~~Every~~ A person who, with ~~intent~~ the purpose to commit a
7 felony, has in his possession any destructive device ~~or any~~
8 ~~explosive~~ on a public street or highway, in or near any
9 theater, hall, school, college, church, hotel, other public
10 building, or private habitation, in, on, or near any
11 aircraft, railway passenger train, car, vessel engaged in
12 carrying passengers for hire, or other public place
13 ordinarily passed by human beings is guilty of ~~a felony~~, the
14 offense of possession of a destructive device.

15 (2) ~~and~~ A person convicted of the offense of possession
16 of a destructive device shall be ~~punishable by imprisonment~~
17 imprisoned in the state prison for a period of not more than
18 ~~ten~~ (10) years."

19 Section 76. Section 94-6-105, R.C.M. 1947, is
20 renumbered 94-8-209.3 and is amended to read as follows:

21 "~~94-6-105~~ 94-8-209.3. Possession of explosives. (1) A
22 person commits the offense of possession of explosives if he
23 possesses, manufactures, ~~or~~ transports, buys, or sells ~~any~~
24 an explosive compound, flammable material, or timing, ~~or~~
25 detonating, or similar device for use with ~~any~~ an explosive

1 compound or incendiary device, and:

2 (a) has the purpose to use such explosive, material,
3 or device to commit ~~any~~ an offense; or

4 (b) knows that another has the purpose to use such
5 explosive, material, or device to commit ~~any~~ an offense.

6 (2) A person convicted of the offense of possession of
7 explosives shall be imprisoned in the state prison for any
8 term not to exceed ~~twenty~~ (20) years."

9 Section 77. There is a new R.C.M. section numbered
10 94-8-209.4 that reads as follows:

11 94-8-209.4. Possession of a silencer. (1) A person
12 commits the offense of possession of a silencer if he
13 possesses, manufactures, transports, buys, or sells a
14 silencer and has the purpose to use it to commit an offense
15 or knows that another person has such a purpose.

16 (2) A person convicted of the offense of possession of
17 a silencer is punishable by imprisonment in the state prison
18 for a term of not less than 5 years or more than 30 years or
19 a fine of not less than \$1,000 or more than \$20,000 or by
20 both such fine and imprisonment.

21 Section 78. There is a new R.C.M. section numbered
22 94-8-209.5 that reads as follows:

23 94-8-209.5. Possession prima facie evidence of
24 unlawful purpose. Possession of a silencer or of an
25 explosive compound, flammable material, or timing,

1 detonating, or similar device for use with an explosive
2 compound or incendiary device is prima facie evidence of a
3 purpose to use the same to commit an offense.

-End-

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LC 0003

1977 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 34

TO GENERALLY REVISE THE LAWS CONCERNING CRIMES.

(This summary does not include discussion of routine form and grammatical changes.)

GENERAL COMMENTS

This bill includes sections from several titles which need amendment to update the names of crimes. The Criminal Law Study Commission made major changes in this area and dropped many of the familiar common law names. For example, "theft" now covers a broad range of conduct including what was formerly called "larceny," "embezzlement," and various kinds of "fraud."

"Defalcation" has not been eliminated because it is used in a general sense rather than in defining a crime. Its meaning, according to Black's Law Dictionary, is broader than theft. See, e.g., section 6-106, R.C.M. 1947.

"Treason" was also retained although there is no statute defining it. The Montana Constitution refers to treason and limits its definition. Therefore, it was decided to keep the procedural provisions that apply to it in case the crime does exist as a state, as opposed to a federal, offense.

In 67-2129(1)(b), "false pretenses" was retained because the section seems to refer to the law of other states. In 31-146(1), "manslaughter" was changed to "negligent homicide" (although it technically also includes mitigated deliberate homicide) because it makes more sense and mitigated deliberate homicide is included in 31-146(3) "any felony . . ." There has been no change in meaning.

EXPLANATION OF SECTION CONSIDERED
BUT NOT INCLUDED IN LC 0003

Section 94-5-501(2) defines "without consent" as used in 94-5-503 and 94-5-505. It has been suggested that 94-5-502 should also be included. However, after consultation with members of the commission, it was determined that the omission of 94-5-502 was intentional and that "without consent" has its ordinary meaning in that section.

SECTIONS OF BILL MERITING SPECIAL ATTENTION

Section 2. 54-133.

Section 7. 94-1-103.

Section 8. 94-1-105.

Section 9. 94-1-106.

Section 10. 94-2-101, introduction and subsection (67) (now subsection (66)).

Section 16. 94-5-503.

Section 18. 94-5-607(2).

Section 19. 94-5-608(2).

Section 22. 94-6-307(1)(c).

Section 24. 94-7-103(1)(a).

Section 32. 94-8-111.

Section 35. 94-8-202.

Section 36. 94-8-203.

Section 37. 94-8-204(2).

Sections 73 through 77. Explosives.

Section 78. Repeals.

Section 1. 54-132. Criminal sale of dangerous drugs. Changed "this act" to "54-301" to clarify where "dangerous drug" is defined. Added "as defined by 54-301" after "professional practice" to correct apparent error of omission and clarify.

Section 2. 54-133. Criminal possession of dangerous drugs. Changed "this act" in subsection (1) to "54-301" to clarify where "dangerous drug" is defined. Deleted last section about jurisdiction - contained in 54-138. Added a new subsection (5) to exempt practitioners and persons with prescriptions - apparent error.

Section 3. 54-134. Fraudulently obtaining dangerous drugs. Added "as defined in 54-301" to clarify where "dangerous drug" is defined. Changed "persons" to "person" - apparent error.

Section 4. 54-135. Altering labels on dangerous drugs. Same change as first change under Section 3. 54-134.

Section 5. 54-137. Alternative sentencing authority. Same change as first change under Section 3. 54-134.

Section 6. 54-138. Jurisdiction. Changed "Montana Dangerous Drug Act" to "this chapter" because the former has never been officially adopted as the title to any act.

Section 7. 94-1-103. Application to offenses committed before and after enactment. Changed "code" in subsection (2) to "title and Title 95" to clarify - "this code" refers only to Title 94 but many of the sentencing (punishment) provisions are in Title 95. Apparently the Criminal Code Commission thought of Titles 94 and 95 as a unit for some purposes.

Section 8. 94-1-105. Classification of offenses. Same change as under Section 7. 94-1-103.

Section 9. 94-1-106. General time limitations. Changed "in this code" to "by law" to clarify. "This code" was ambiguous - apply to the entire R.C.M. or just "The Criminal Code". Since the intent appears to have been to create uniform limitations, the former interpretation was chosen.

Section 10. 94-2-101. General definitions. Clarified introductory clause - the definitions must apply to all of Title 94, whether or not there is a provision in a particular part stating so. For example, in part 1 of chapter 5, the terms "purposely", etc., are used but are not defined except as 94-2-101 applies. (See also the comment under Section 69 of this bill.) In subsection (7), changed "resulted" to "results" - clarification. In subsection (11)(d), added "or is" - apparent error. Deleted subsection (20), contained in 19-103. In subsection (21) (now subsection (20)), changed "one person" to "one or more persons" - clarification. In subsection (38) (now subsection (37)), changed "which resulted" to "resulting" - clarification. Rewrote subsections (49)(e), (f), and (j) (now subsections (48)(e), (f), and (j) to clarify. In subsection (67) (now subsection (66)), added "official" - clarification.

Section 11. 94-2-103. General requirements of criminal act and mental state. In subsection (1), corrected internal references to account for renumbering of subsections of 94-2-101. In subsection (2), changed "prescribed" to "prescribes" - apparent error.

Section 12. 94-2-104. Absolute liability. Corrected internal references to account for renumbering of subsections of 94-2-101.

Section 13. 94-2-111. Consent as a defense. In subsection (2)(b), added "it is given by a person who" - apparent error.

Section 14. 94-5-105. Sentence of death for deliberate homicide. In subsection (2), changed "in which" to "and" - clarification.

Section 15. 94-5-501. Definitions. Deleted subsection (1) - redundant with 94-2-101, as amended in this bill.

Section 16. 94-5-503. Sexual intercourse without consent. Added "of the opposite sex" to clarify confusion created when references to gender deleted in 1975. Homosexual rape is covered by 94-5-505. Deviate sexual conduct. The penalty structures and defenses to 94-5-503 and 94-5-505 are different.

Section 17. 94-5-506. Provisions generally applicable to sexual crimes. In subsection (2), changed "extension" to "exclusion" - apparent error.

Section 18. 94-5-607. Endangering the welfare of children. In subsection (2), changed "youth" to "child less than 16 years old" to clarify - the commission comment seems to indicate that the age limitation was intended to apply to both subsections (1) and (2); changed "youth" to "child" for consistency. In subsections (2)(a) and (b), changed "a" to "the" to clarify that the child mentioned in subsection (2) is being referred to. In subsections (3) and (5), added "the" in three places - consistency in terminology.

Section 19. 94-5-608. Nonsupport. Added "or" at end of subsection (2)(a) to clarify that the offense is aggravated nonsupport if either of the circumstances exists. In subsection (4), changed "person or persons" to "any person" - grammatical clarity.

Section 20. 94-5-618. Control of practice of abortion. Corrected internal reference in subsection (2) to account for renumbering of subsections of 94-2-101.

Section 21. 94-6-201. Definition. In subsection (2), changed "action" to "section" - apparent error.

Section 22. 94-6-307. Deceptive practices. In subsection (1)(c), clarified and deleted "knowingly" as an apparent error - "knowingly" appears in introductory clause.

Section 23. 94-6-308.1. Chain distributor schemes. In subsection (3), deleted reference to felony to correct conflict with 94-2-101(15) - the punishment for a first offense calls for classification as a misdemeanor.

Section 24. 94-7-103. Threats and other improper influences in official and political matters. In subsection (1)(a), deleted "unlawful" - there is no apparent reason for its inclusion in subsection (1)(a) but not in subsections (1)(b) and (1)(c). It is desirable to prohibit any sort of threat intended to influence governmental functions or the exercise of the franchise. In subsection (1)(d), deleted "an" - grammatical clarity. Moved part of subsection (1)(d) to new subsection (2) and clarified its application. It was unclear whether it applied just to subsection (1)(d), to the whole section, or to subsections (1)(a) through (1)(d). The last was chosen since it is the most logical and since it is the application found in Model Penal Code, section 240.2, from which subsections (1)(a) through (1)(d) were adopted.

Section 25. 94-7-104. Compensation for past official behavior. Changed "his" to "another's" to clarify.

Section 26. 94-7-207. Tampering with witnesses and informants. In subsection (1)(c), corrected spelling of "evidence". (Note R.C.M. 1947, has two errors which do not appear in the session laws but does not have the misspelling which is in the session laws.)

Section 27. 94-7-307. Transferring illegal articles or unauthorized communication. In subsection (1)(a), added "illegal" in two places to clarify. Same change in subsection (1)(b)(ii). Made last sentence of subsection (1)(b)(ii) new subsection (1)(c) and clarified its application.

Section 28. 94-7-503. Criminal syndicalism. Reworded subsection (2)(c) for grammatical clarity.

Section 29. 94-8-107. Public nuisance. Reworded subsection (5)(a) to clarify - a nuisance is abated, not the property on which it is maintained; "premise" is peculiar usage.

Section 30. 94-8-108. Creating a hazard. In subsection (1)(b), changed "of" to "or" - apparent error. Minor rewording of subsections (1)(b), (1)(d), and (1)(e) for grammatical clarity.

Section 31. 94-8-110.2. Sale and advertisement of contraceptive drugs and devices. Minor revision of subsection (1) for grammatical accuracy and clarity. Divided subsection (2) into further subsections with minor rewording for clarity. In subsection (3), changed "act" to "section" to clarify and deleted "of" and "to" - apparent errors. Added "or" to clarify. Either "and" or "or" was required; "or" was chosen since "and" would be unconstitutional. It was assumed that the legislature intended the constitutional interpretation.

In subsection (4), changed "in" to "is" - apparent error. Changed "act" to "section" to clarify, in subsections (4), (5), (6), (7), and (8).

Section 32. 94-8-111. Criminal defamation. Substantive change. Added "causes" because it seems undesirable to merely require that a business be "exposed" to injury. The wording is peculiar and somewhat unclear without "causes".

Section 33. 94-8-114. Privacy in communications. Reworded subsection (1)(a) for clarity and grammatical accuracy, changing "intent" to "purpose", which is defined. Moved part of subsection (1)(b) to subsection (1)(a) to correct apparent error. In subsection (1)(c), added "any conversation" to clarify. Minor revision of subsection (1)(d) and its subsections and subsection (1)(p) for clarity and grammatical accuracy. In subsection (2), deleted "the" - apparent error.

Section 34. 94-8-201. Definitions. Added an introductory clause to clarify the application of the definitions. In subsection (2), substituted current names for crimes in place of the old names and grouped several of them under "forcible felony", defined in 94-2-101. Note that the reference to "larceny" (now called "theft") was deleted - any theft involving a threat to a person becomes robbery, which, along with "forcible felony", burglary, and criminal trespass, should suffice to cover crimes which are made more dangerous by the use of a machine gun.

Sections 35 and 36. 94-8-202, 94-8-203. Possession or use of machine gun in connection with a crime or for an offensive purpose. SUBSTANTIVE CHANGE. Added maximum penalties. Formerly, there were minimums but no maximums. Since the maximum for robbery is 40 years, 50 years was chosen for the commission of such a crime with a machine gun. There is no real parallel for possession for an offensive purpose - 10 to 20 years was chosen as realistic.

Section 37. 94-8-204. Presumption of offensive or aggressive purpose. In subsection (2), added "the machine gun is" for clarity; deleted "an unnaturalized foreign born person" as blatantly unconstitutional. Note the section was originally enacted in 1935. Changed "of" to "in" - apparent error.

Section 38. 94-8-210. Carrying concealed weapons in cities or towns prohibited. Minor rewording to clarify. Changed "penitentiary" to "prison" to update terminology.

Section 39. 94-8-212. Exceptions. Clarified application in introductory clause. Simplified list and eliminated redundancies. Former subsections (1), (2), (3), (4), (7), (10), and (15) are contained in new subsection (1). Former subsections (5), (6), (8), (16), and (17) are contained in new subsection (2). The rest of the old subsections are unchanged except for the subsection numbers and minor rewording of subsection (11) (now subsection (4)) to clarify and account for the renumbering. Note "peace officer" is defined in 94-2-101.

Section 40. 94-8-214. Permits to carry concealed weapons - records - revocation. Minor rewording for clarity. In subsection (9), clarified "heretofore" (substituted effective date of act).

Section 41. 94-8-218. Firing firearms. Added "other" to clarify.

Section 42. 94-8-221. Use of firearms by children under age fourteen prohibited. Changed "in the company of such parent or guardian" to "accompanied by a person having charge or custody of the child" to clarify that "other person" is included.

Sections 43 through 73. Updated terminology - names of crimes (see general comments in first part of memo).

In section 48, reworded to clarify.

In section 61, changed "passenger" to "passengers" - apparent error.

Section 74. 94-8-209.1 (formerly 69-1931). Destructive device and explosive defined. Transferred from Title 69 to aid recodification. Definitions needed in Title 94 but not in Title 69 since 69-1932 is also being transferred. Added "similar" in subsections (1)(a) and (d) to clarify.

Section 75. 94-8-209.2 (formerly 69-1932). Possession of a destructive device. Transferred from Title 69 to aid recodification. Changed "intent" to "the purpose" which is defined. Deleted "or an explosive" - contained in 94-6-105 (being transferred to 94-8-209.3). Reworded for consistency with the Criminal Code.

Section 76. 94-8-209.3 (formerly 94-6-105). Possession of explosives. Transferred to aid recodification. Added "buys, or sells" and "flammable material" - taken from 94-8-223 which is being repealed to aid recodification. Added "similar" to cover "any instrument or agency" in 94-8-223. Note that 94-8-223 is archaic and conflicts with 94-6-105 (94-8-209.3).

Section 77. 94-8-209.4. Possession of a silencer. New section containing provisions from 94-8-223 which could not be incorporated elsewhere.

Section 78. 94-8-209.5. Possession prima facie evidence of unlawful purpose. New section to preserve provisions of 94-8-225 and 69-1916 (part), which are being repealed.

Section 79. Repealed sections 94-5-601, 94-6-101, 94-6-301, 94-7-101, and 94-7-201. These sections are unnecessary and by negative implication suggest that the definitions in 94-2-101 do not apply to other parts. For example, part 1 of chapter 5 on homicide does not have a section like these specifically stating that the definitions in 94-2-101 apply. Yet its interpretation depends on such terms as "purposely" and "knowingly" defined in 94-2-101. (See also comment under Section 10 of this bill.)

94-5-611 and 94-5-612. These sections, prohibiting abortion, were declared by the court in Doe v. Woodahl, 360 F. Supp. 20, at 22, to be "...unconstitutional and void in their entirety". This decision was based on the U. S. Supreme Court decision in Roe v. Wade, 410 U. S. 113, which cited 94-5-611 in a footnote on page 118 as an example of an unconstitutional state statute. There is no question that under the current law of the land these two sections have no constitutional application.

94-8-224. This is an outdated "aiding and abetting" statute. The terminology is obsolete and undefined. The section is unnecessary and redundant with 94-2-107, which provides that anyone who assists in any crime is as guilty as the principals.

69-1916 and 94-8-223 deal with the possession of explosives and devices. They overlap and conflict with 94-6-105. Any material in them not contained in 94-6-105 is being incorporated into that section or reenacted as a new section (see Section 76 of this bill).

94-8-225 overlaps with 69-1916. Both are being suggested for repeal. A new section to cover both is being proposed which will be clearer and more up-to-date. They deal with presumptions arising from possession of explosives, silencers, etc.

Approved by Committee on Judiciary

1 SENATE BILL NO. 34
2 INTRODUCED BY HAZELBAKER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
5 REVISION OF THE LAWS CONCERNING CRIMES."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 54-132, R.C.M. 1947, is amended to
9 read as follows:

10 "54-132. Criminal sale of dangerous drugs. ~~(a)~~(1) A
11 person commits the offense of a criminal sale of dangerous
12 drugs if he sells, barter, exchanges, gives away, or offers
13 to sell, barter, exchange, or give away, or manufactures,
14 prepares, cultivates, compounds, or processes any dangerous
15 drug, as defined in ~~this act~~ 54-301.

16 ~~(b)~~(2) A person convicted of criminal sale of
17 dangerous drugs shall be imprisoned in the state prison for
18 a term of not less than ~~one~~(1) year ~~or~~ or more than life.

19 ~~(c)~~(3) Practitioners and agents under their
20 supervision acting in the course of a professional practice,
21 as defined by 54-301, are exempt from this section."

22 Section 2. Section 54-133, R.C.M. 1947, is amended to
23 read as follows:

24 "54-133. Criminal possession of dangerous drugs.
25 ~~(a)~~(1) A person commits the offense of criminal possession

1 of dangerous drugs if he possesses any dangerous drug, as
2 defined in ~~this act~~ 54-301.

3 ~~(b)~~(2) Any person convicted of a criminal possession
4 of ~~marihuana~~ marijuana or its derivatives in an amount, the
5 aggregate weight of which does not exceed ~~sixty~~(60) grams
6 of ~~marihuana~~ marijuana, or ~~one~~(1) gram of hashish, shall
7 is, for the first offense, be guilty of a misdemeanor and is
8 punishable by a fine not to exceed ~~one thousand dollars~~
9 (\$1,000) or by imprisonment in the county jail for a term
10 not to exceed ~~one~~(1) year, or by both such fine and
11 imprisonment. A person convicted of a second, or subsequent,
12 offense under this subsection is punishable by a fine not to
13 exceed ~~one thousand dollars~~(\$1,000) or by imprisonment in
14 the county jail for a term not to exceed ~~one~~(1) year or in
15 the state prison for a term not to exceed ~~three~~(3) years or
16 by both such fine and imprisonment.

17 ~~(c)~~(3) A person convicted of criminal possession of
18 dangerous drugs not otherwise provided for in subsection
19 ~~(b)~~(2) shall be imprisoned by ~~imprisonment~~ in the state
20 prison for a term not to exceed ~~five~~(5) years.

21 ~~(d)~~(4) A person of the age of ~~twenty-one~~(21) years or
22 under, convicted of a first violation under this section
23 shall be presumed to be entitled to a deferred imposition of
24 sentence.

25 ~~Jurisdiction under this section shall be exclusively in~~

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it will not be rerun in its entirety in blue.

SECOND READING

~~the district court.~~

~~(5) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section."~~

Section 3. Section 54-134, R.C.M. 1947, is amended to read as follows:

"54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 54-301, by:

~~(1)~~ fraud, deceit, misrepresentation, or subterfuge;

~~(2)~~ falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other ~~person~~ ~~person~~ authorized to possess dangerous drugs;

~~(3)~~ the use of a forged, altered, or fictitious prescription;

~~(4)~~ the use of a false name or a false address on a prescription; or

~~(5)~~ the concealment of a material fact."

Section 4. Section 54-135, R.C.M. 1947, is amended to read as follows:

"54-135. Altering labels on dangerous drugs. A person

commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to ~~or otherwise misrepresents~~ a package or receptacle containing a dangerous drug, ~~or otherwise misrepresents the package containing a dangerous drug as defined in 54-301."~~

Section 5. Section 54-137, R.C.M. 1947, is amended to read as follows:

"54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 54-301, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than ~~six (6)~~ months ~~or~~ or more than ~~two (2)~~ years."

Section 6. Section 54-138, R.C.M. 1947, is amended to read as follows:

"54-138. Jurisdiction. The district court ~~shall have~~ has exclusive trial jurisdiction over all prosecutions commenced under ~~the Montana Dangerous Drug Act~~ this chapter."

Section 7. Section 94-1-103, R.C.M. 1947, is amended to read as follows:

1 "94-1-103. Application to offenses committed before
2 and after enactment. (1) The provisions of this code shall
3 apply to any offense defined in this code and committed
4 after ~~the effective date thereof~~ January 1, 1974.

5 (2) Unless otherwise expressly provided, or unless the
6 context otherwise requires, the provisions of this ~~code~~
7 shall title and Title 95 govern the construction of and
8 punishment for any offense defined outside of this code and
9 committed after ~~the effective date thereof~~ January 1, 1974,
10 as well as the construction and application of any defense
11 to a prosecution for such an offense.

12 (3) The provisions of this code do not apply to any
13 offense defined outside of this code and committed before
14 ~~the effective date thereof~~ January 1, 1974. Such an offense
15 must be construed and punished according to the provisions
16 of law existing at the time of the commission thereof in the
17 same manner as if this code had not been enacted."

18 Section 8. Section 94-1-105, R.C.M. 1947, is amended
19 to read as follows:

20 "94-1-105. Classification of offenses. (1) For the
21 determination of the court's jurisdiction at the
22 commencement of the action and for the determination of the
23 commencement of the period of limitations, the offense shall
24 be designated a felony or misdemeanor based upon the maximum
25 potential sentence which could be imposed by statute.

1 (2) An offense defined by any statute of this state
2 other than this code shall be classified as provided in this
3 section and the sentence that may be imposed upon conviction
4 thereof shall be governed by this ~~code~~ title and Title 95."

5 Section 9. Section 94-1-106, R.C.M. 1947, is amended
6 to read as follows:

7 "94-1-106. General time limitations. (1) A prosecution
8 for criminal homicide may be commenced at any time.

9 (2) Except as otherwise provided ~~in this code by law~~,
10 prosecutions for other offenses are subject to the following
11 periods of limitation:

12 (a) a prosecution for ~~any~~ a felony must be commenced
13 within ~~five~~ (5) years after it is committed;

14 (b) a prosecution for a misdemeanor must be commenced
15 within ~~one~~ (1) year after it is committed.

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

19 (a) ~~If~~ if the aggrieved person is a minor or
20 incompetent, ~~then~~ during the minority or incompetency or
21 within ~~one~~ (1) year after the termination thereof;

22 (b) ~~In~~ in any other instance, within ~~one~~ (1) year
23 after the discovery of the offense by the aggrieved person,
24 or by a person who has legal capacity to represent an
25 aggrieved person, or has a legal duty to report the offense,

1 and is not himself a party to the offense, or, in the
2 absence of such discovery, within ~~one~~ (1) year after the
3 prosecuting officer becomes aware of the offense.

4 (4) An offense is committed either when every element
5 occurs, or, when the offense is based upon a continuing
6 course of conduct, at the time when the course of conduct is
7 terminated. Time starts to run on the day after the offense
8 is committed.

9 (5) A prosecution is commenced either when an
10 indictment is found or an information or complaint is
11 filed."

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

14 "94-2-101. General definitions. Unless otherwise
15 specified in the statute, all words will be taken in the
16 objective standard rather than in the subjective, and
17 unless a different meaning plainly is required, the
18 following definitions apply in this title:

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

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

25 (3) "Administrative proceeding" means any proceeding

1 the outcome of which is required to be based on a record or
2 documentation prescribed by law, or in which a law or a
3 regulation is particularized in its application to an
4 individual.

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

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

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

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

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

24 (9) "Conviction" means a judgment of conviction or
25 sentence entered upon a plea of guilty or upon a verdict or

1 finding of guilty of an offense, rendered by a legally
2 constituted jury or by a court of competent jurisdiction
3 authorized to try the case without a jury.

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

8 (11) "Deception" means knowingly to:

9 (a) create or confirm in another an impression which
10 is false and which the offender does not believe to be true;
11 ~~or~~

12 (b) fail to correct a false impression which the
13 offender previously has created or confirmed; ~~or~~

14 (c) prevent another from acquiring information
15 pertinent to the disposition of the property involved; ~~or~~

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

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

25 (12) "Defamatory matter" means anything which exposes a

1 person or a group, class, or association to hatred,
2 contempt, ridicule, degradation, or disgrace in society, or
3 injury to his or its business or occupation.

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

5 (a) permanently; ~~or~~

6 (b) for such a period as to appropriate a portion of
7 its value; ~~or~~

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

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

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

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

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

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

24 (18) "Government" includes any branch, subdivision, or
25 agency of the government of the state or any locality within

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

6 ~~(20) "He, she, it." The singular term shall include the~~
 7 ~~plural and the masculine gender the feminine except where a~~
 8 ~~particular context clearly requires a different reading.~~

9 ~~(24) (20)~~ "A house of prostitution" means any place
 10 where prostitution or promotion of prostitution is regularly
 11 carried on by one ~~or more~~ or more persons under the
 12 control, management, or supervision of another.

13 ~~(22) (21)~~ "Human being" means a person who has been born
 14 and is alive.

15 ~~(23) (22)~~ "An illegal article" is an article or thing
 16 which is prohibited by statute, rule, regulation or order
 17 from being in the possession of a person subject to official
 18 detention,

19 ~~(24) (23)~~ "Instate" means a person who engages in
 20 prostitution in or through the agency of a house of
 21 prostitution.

22 ~~(25) (24)~~ "Intoxicating substance" means any controlled
 23 substance as defined in chapter 3 of title 54, ~~S.C.R. 1947,~~
 24 and any alcoholic beverage including but not limited to any
 25 beverage containing ~~one-half-of-one-per-centum (1/2 of 1%)~~

1 or more of alcohol by volume, ~~provided, that the The~~
 2 foregoing definition shall not extend to dealcoholized wine,
 3 ~~or~~ or to any beverage or liquid produced by the process by
 4 which beer, ale, port, or wine is produced, if it contains
 5 less than ~~one-half-of-one-per-centum (1/2 of 1%)~~ of alcohol
 6 by volume.

7 ~~(26) (25)~~ "An involuntary act" means any act which is:

8 (a) a reflex or convulsion; or
 9 (b) a bodily movement during unconsciousness or sleep;
 10 or

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

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

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

22 ~~(28) (27)~~ "Knowingly" ~~is~~ a person acts knowingly with
 23 respect to conduct or to a circumstance described by a
 24 statute defining an offense when he is aware of his conduct
 25 or that the circumstance exists. A person acts knowingly

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

9 ~~(29)~~ (28) "Mentally defective" means that a person
 10 suffers from a mental disease or defect which renders him
 11 incapable of appreciating the nature of his conduct.

12 ~~(30)~~ (29) "Mentally incapacitated" means that a person
 13 is rendered temporarily incapable of appreciating or
 14 controlling his conduct as result of the influence of an
 15 intoxicating substance.

16 ~~(31)~~ (30) "Misdemeanor" means an offense in which the
 17 sentence imposed upon conviction is imprisonment in the
 18 county jail for any term, or fine, or both, or the sentence
 19 imposed is imprisonment in the state prison for any term of
 20 one 1 year or less.

21 ~~(32)~~ (31) "Negligently"—A person acts negligently
 22 with respect to a result or to a circumstance described by a
 23 statute defining an offense when he consciously disregards a
 24 risk that the result will occur or that the circumstance
 25 exists, or if he disregards a risk of which he should be

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

9 ~~(33)~~ (32) "Obtain" means:

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

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

15 ~~(34)~~ (33) "Obtains or exerts control" includes but is
 16 not limited to the taking, carrying away, or the sale,
 17 conveyance, or transfer of title to, or interest in, or
 18 possession of property.

19 ~~(35)~~ (34) "Occupied structure" means any building,
 20 vehicle, or other place suited for human occupancy or night
 21 lodging of persons or for carrying on business, whether or
 22 not a person is actually present. Each unit of a building
 23 consisting of two or more units separately secured or
 24 occupied is a separate occupied structure.

25 ~~(36)~~ (35) "Offender" means a person who has been or is

1 liable to be arrested, charged, convicted, or punished for a
2 public offense.

3 ~~(37)~~ (36) "Offense" means a crime for which a sentence
4 of death or of imprisonment or fine is authorized. Offenses
5 are classified as felonies or misdemeanors.

6 ~~(38)~~ (37) "Official detention" means imprisonment which
7 resulted resulting from a conviction for an offense,
8 confinement for an offense, confinement of a person charged
9 with an offense, detention by a peace officer pursuant to
10 arrest, detention for extradition or deportation, or any
11 lawful detention for the purpose of the protection of the
12 welfare of the person detained or for the protection of
13 society, but ~~official~~ "Official" detention does not
14 include supervision of probation or parole, constraint
15 incidental to release on bail, or an unlawful arrest unless
16 the person arrested employed physical force, a threat of
17 physical force, or a weapon to escape.

18 ~~(39)~~ (38) "Official proceeding" means a proceeding heard
19 or which may be heard before any legislative, judicial,
20 administrative, or other governmental agency or official
21 authorized to take evidence under oath, including any
22 referee, hearing examiner, commissioner, notary, or other
23 person taking testimony or deposition in connection with
24 such proceeding.

25 ~~(40)~~ (39) "Other state" means any state or territory of

1 the United States, the District of Columbia, and the
2 Commonwealth of Puerto Rico.

3 ~~(41)~~ (40) "Owner" means a person, other than the
4 offender, who has possession of or any other interest in the
5 property involved, even though such interest or possession
6 is unlawful, and without whose consent the offender has no
7 authority to exert control over the property.

8 ~~(42)~~ (41) "Party official" means a person who holds an
9 elective or appointive post in a political party in the
10 United States by virtue of which he directs, or conducts, or
11 participates in directing or conducting party affairs at any
12 level of responsibility.

13 ~~(43)~~ (42) "Peace officer" means any person who by virtue
14 of his office or public employment is vested by law with a
15 duty to maintain public order or to make arrests for
16 offenses while acting within the scope of his authority.

17 ~~(44)~~ (43) "Pecuniary benefit" is benefit in the form of
18 money, property, commercial interests, or anything else the
19 primary significance of which is economic gain.

20 ~~(45)~~ (44) "Person" includes an individual, business
21 association, partnership, corporation, government, or other
22 legal entity, and an individual acting or purporting to act
23 for or on behalf of any government or subdivision thereof.

24 ~~(46)~~ (45) "Physically helpless" means that a person is
25 unconscious or is otherwise physically unable to communicate

1 unwillingness to act.

2 ~~(47)~~ (46) "Possession" is the knowing control of
3 anything for a sufficient time to be able to terminate
4 control.

5 ~~(48)~~ (47) "Premises" includes any type of structure or
6 building and any real property.

7 ~~(49)~~ (48) "Property" means anything of value. Property
8 includes, but is not limited to:
9 (a) real estate;
10 (b) money;
11 (c) commercial instruments;
12 (d) admission or transportation tickets;
13 (e) written instruments ~~representing~~ which represent
14 or ~~embodying~~ embody rights concerning anything of value,
15 including labor or services, or which are otherwise of
16 value to the owner;
17 (f) things growing on, ~~or~~ affixed to, or found on
18 land, ~~or~~ and things which are part of or affixed to any
19 building;
20 (g) electricity, gas, and water;
21 (h) birds, animals, and fish, which ordinarily are
22 kept in a state of confinement;
23 (i) food and drink, samples, cultures, microorganisms,
24 specimens, records, recordings, documents, blueprints,
25 drawings, maps, and whole or partial copies, descriptions,

1 photographs, prototypes, or models thereof; ~~or~~ and
2 (j) any other articles, materials, devices,
3 substances, and whole or partial copies, descriptions,
4 photographs, prototypes, or models thereof which constitute,
5 represent, evidence, reflect, or record secret scientific,
6 technical, merchandising, production, or management
7 information, or a secret designed process, procedure,
8 formula, invention, or improvement.

9 ~~(50)~~ (49) "Property of another" means real or personal
10 property in which a person other than the offender has an
11 interest which the offender has not authority to defeat or
12 impair, even though the offender himself may have an
13 interest in the property.

14 ~~(51)~~ (50) "Public place" means any place to which the
15 public or any substantial group thereof has access.

16 ~~(52)~~ (51) "Public servant" means any officer or employee
17 of government, including but not limited to, legislators,
18 judges, and firemen, and any person participating as a
19 juror, advisor, consultant, administrator, executor,
20 guardian, or court-appointed fiduciary, ~~but the~~ The term
21 does not include witnesses. The term public servant includes
22 one who has been elected or designated to become a public
23 servant.

24 ~~(53)~~ (52) "Purposely" ~~is~~ a person acts purposely with
25 respect to a result or to conduct described by a statute

1 defining an offense if it is his conscious object to engage
 2 in that conduct or to cause that result. When a particular
 3 purpose is an element of an offense, the element is
 4 established although such purpose is conditional, unless the
 5 condition negatives the harm or evil sought to be prevented
 6 by the law defining the offense. Equivalent terms such as
 7 "purpose" and "with the purpose" have the same meaning.

8 ~~(54)~~ (53) "Serious bodily injury" means bodily injury
 9 which creates a substantial risk of death or which causes
 10 serious permanent disfigurement, or protracted loss or
 11 impairment of the function or process of any bodily member
 12 or organ, ~~and~~ It includes serious mental illness or
 13 impairment.

14 ~~(55)~~ (54) "Sexual contact" means any touching of the
 15 sexual or other intimate parts of the person of another for
 16 the purpose of arousing or gratifying the sexual desire of
 17 either party.

18 ~~(56)~~ (55) "Sexual intercourse" means penetration of the
 19 vulva, anus, or mouth of one person by the penis of another
 20 person, ~~or~~ penetration of the vulva or anus of one person by
 21 any body member of another person, or penetration of the
 22 vulva, or anus of one person by any foreign instrument or
 23 object manipulated by another person for the purpose of
 24 arousing or gratifying the sexual desire of either party.
 25 Any penetration, however slight, is sufficient.

1 ~~(57)~~ (56) "Solicit" or "solicitation" means to command,
 2 authorize, urge, incite, request, or advise another to
 3 commit an offense.

4 ~~(58)~~ (57) "State" or "this state" means the state of
 5 Montana, ~~and~~ all the land and water in respect to which the
 6 state of Montana has either exclusive or concurrent
 7 jurisdiction, and the air space above such land and water.

8 ~~(59)~~ (58) "Statute" means any act of the legislature of
 9 this state.

10 ~~(60)~~ (59) "Stolen property" means property over which
 11 control has been obtained by theft.

12 ~~(64)~~ (60) "A stop" is the temporary detention of a
 13 person that results when a peace officer orders the person
 14 to remain in his presence.

15 ~~(62)~~ (61) "Tamper" means to interfere with something
 16 improperly, meddle with it, make unwarranted alterations in
 17 its existing condition, or deposit refuse upon it.

18 ~~(63)~~ (62) "Threat" means a menace, however communicated,
 19 to:

- 20 (a) inflict physical harm on the person threatened or
- 21 any other person or on property; ~~or~~
- 22 (b) subject any person to physical confinement or
- 23 restraint; ~~or~~
- 24 (c) commit any criminal offense; ~~or~~
- 25 (d) accuse any person of criminal offense; ~~or~~

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

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

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

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

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

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

17 ~~(64)~~ (63) (a) "Value" means the market value of the
18 property at the time and place of the crime, or, if such
19 cannot be satisfactorily ascertained, the cost of the
20 replacement of the property within a reasonable time after
21 the crime. If the offender appropriates a portion of the
22 value of the property, the value shall be determined as
23 follows:

24 (i) The value of an instrument constituting an
25 evidence of debt, such as a check, draft, or promissory

1 note, shall be deemed the amount due or collectible thereon
2 or thereby, such figure ordinarily being the face amount of
3 the indebtedness less any portion thereof which has been
4 satisfied.

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

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

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

20 ~~(65)~~ (64) "Vehicle" means any device for transportation
21 by land, water, or air, or mobile equipment with provision
22 for transport of an operator.

23 ~~(66)~~ (65) "Weapon" means any instrument, article, or
24 substance which, regardless of its primary function, is
25 readily capable of being used to produce death or serious

1 bodily injury.

2 ~~(67)~~ (66) "Witness" means a person whose testimony is
3 desired in any official proceeding, ~~or~~ in any investigation
4 by a grand jury, or in a criminal action, prosecution, or
5 proceeding."

6 Section 11. Section 94-2-103, R.C.M. 1947, is amended
7 to read as follows:

8 "94-2-103. General requirements of criminal act and
9 mental state. (1) A person is not guilty of an offense,
10 other than an offense which involves absolute liability,
11 unless, with respect to each element described by the
12 statute defining the offense, he acts while having one ~~(4)~~
13 of the mental states described in ~~sections 94-2-101 (28),~~
14 ~~94-2-101(32) and 94-2-101 (52) subsections (27), (31), and~~
15 ~~(52) of 94-2-101.~~

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

21 (3) Knowledge that certain conduct constitutes an
22 offense, or knowledge of the existence, meaning, or
23 application of the statute defining an offense, is not an
24 element of the offense unless the statute clearly defines it
25 as such.

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

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

8 (b) he acts in reliance upon a statute which later is
9 determined to be invalid; ~~or~~

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

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

17 (5) If a person's reasonable belief is a defense under
18 subsection (4) ~~of this section~~, nevertheless he may be
19 convicted of an included offense of which he would be guilty
20 if the law were as he believed it to be.

21 (6) Any defense based upon this section is an
22 affirmative defense."

23 Section 12. Section 94-2-104, R.C.M. 1947, is amended
24 to read as follows:

25 "94-2-104. Absolute liability. A person may be guilty

1 of an offense without having, as to each element thereof,
 2 one of the mental states described in ~~94-2-101(20),~~
 3 ~~94-2-101(32) and 94-2-101(53)~~ subsections (27), (31), and
 4 (52) of 94-2-101 only if the offense is punishable by a fine
 5 not exceeding ~~five hundred dollars (\$500),~~ and the statute
 6 defining the offense clearly indicates a legislative purpose
 7 to impose absolute liability for the conduct described."

8 Section 13. Section 94-2-111, R.C.M. 1947, is amended
 9 to read as follows:

10 "94-2-111. Consent as a defense. (1) The consent of
 11 the victim to conduct charged to constitute an offense or to
 12 the result thereof is a defense.

13 (2) Consent is ineffective if:

14 (a) it is given by a person who is legally incompetent
 15 to authorize the conduct charged to constitute the offense;
 16 ~~or~~

17 (b) it is given by a person who by reason of youth,
 18 mental disease or defect, or intoxication is unable to make
 19 a reasonable judgment as to the nature or harmfulness of the
 20 conduct charged to constitute the offense; ~~or~~

21 (c) it is induced by force, duress, or deception; or

22 (d) it is against public policy to permit the conduct
 23 or the resulting harm, even though consented to."

24 Section 14. Section 94-5-105, R.C.M. 1947, is amended
 25 to read as follows:

1 "94-5-105. Sentence of death for deliberate homicide,
 2 (1) ~~When~~ Unless there are mitigating circumstances, when a
 3 defendant is convicted of the offense of deliberate
 4 homicide, the court shall impose a sentence of death in any
 5 of the following circumstances, unless there are mitigating
 6 circumstances:

7 (a) The deliberate homicide was committed by a person
 8 serving a sentence of imprisonment in the state prison; ~~or~~

9 (b) The defendant was previously convicted of another
 10 deliberate homicide; ~~or~~

11 (c) The deliberate homicide was committed by means of
 12 torture; ~~or~~

13 (d) The deliberate homicide was committed by a person
 14 lying in wait or ambush; ~~or~~

15 (e) The deliberate homicide was committed as a part of
 16 a scheme or operation which, if completed, would result in
 17 the death of more than one person.

18 (2) ~~Notwithstanding~~ Notwithstanding the provisions of
 19 subsection (1) and regardless of circumstances, when a
 20 defendant is convicted of the offense of deliberate homicide
 21 under subsection (1) (a) of ~~section 94-5-102 in which and~~ the
 22 victim was a peace officer killed while performing his duty,
 23 the court shall impose a sentence of death."

24 Section 15. Section 94-5-501, R.C.M. 1947, is amended
 25 to read as follows:

1 "94-5-501. Definitions. ~~(4) In this part, unless a~~
 2 ~~different meaning plainly is required, the definitions given~~
 3 ~~in chapter 2, 94-2-401 apply.~~

4 ~~(2)~~ As used in sections 94-5-503 and 94-5-505, the
 5 term "without consent" means:

6 ~~(a)~~ (1) the victim is compelled to submit by force or
 7 by threat of imminent death, bodily injury, or ~~kidnaping~~
 8 kidnapping to be inflicted on anyone; or

9 ~~(b)~~ (2) the victim is incapable of consent because he
 10 is:

11 ~~(i)~~ (a) mentally defective or incapacitated; or

12 ~~(ii)~~ (b) physically helpless; or

13 ~~(iii)~~ (c) less than ~~sixteen~~ (16) years old."

14 Section 16. Section 94-5-503, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-503. Sexual intercourse without consent. (1) A
 17 person who knowingly has sexual intercourse without consent
 18 with a person of the opposite sex not his spouse commits the
 19 offense of sexual intercourse without consent.

20 (2) A person convicted of sexual intercourse without
 21 consent shall be imprisoned in the state prison for any term
 22 not to exceed ~~twenty~~ (20) years.

23 (3) If the victim is less than ~~sixteen~~ (16) years old
 24 and the offender is ~~three~~ (3) or more years older than the
 25 victim, or if the offender inflicts bodily injury upon

1 anyone in the course of committing sexual intercourse
 2 without consent, he shall be imprisoned in the state prison
 3 for any term not to exceed ~~forty~~ (40) years.

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

8 (5) No evidence concerning the sexual conduct of the
 9 victim is admissible in prosecutions under this section,
 10 except:

11 (a) ~~Evidence~~ evidence of the victim's past sexual
 12 conduct with the offender;

13 (b) ~~Evidence~~ evidence of specific instances of the
 14 victim's sexual activity to show the origin of semen,
 15 pregnancy, or disease which is at issue in the prosecution
 16 under this section.

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

22 ~~(6)~~ (7) If the issue of failure to make a timely
 23 complaint or immediate outcry is raised, the jury shall be
 24 informed that such fact, standing alone, may not bar
 25 conviction."

1 Section 17. Section 94-5-506, R.C.M. 1947, is amended
 2 to read as follows:

3 "94-5-506. Provisions generally applicable to sexual
 4 crimes ~~(94-5-501 to 94-5-505)~~. (1) When criminality depends
 5 on the victim being less than ~~sixteen~~-(16) years old, it is
 6 a defense for the offender to prove that he reasonably
 7 believed the child to be above that age. Such belief shall
 8 not be deemed reasonable if the child is less than ~~fourteen~~
 9 ~~(14)~~ years old.

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

20 (3) In a prosecution under the preceding sections on
 21 sexual crimes (94-5-502 ~~to through~~ 94-5-504) in which the
 22 victim's lack of consent is based solely upon his incapacity
 23 to consent because he was mentally incapacitated, it is a
 24 defense to such prosecution that the victim was a voluntary
 25 social companion of the defendant, and the intoxicating

1 substance was voluntarily and knowingly taken."

2 Section 18. Section 94-5-607, R.C.M. 1947, is amended
 3 to read as follows:

4 "94-5-607. Endangering the welfare of children. (1) A
 5 parent, guardian, or other person supervising the welfare of
 6 a child less than ~~sixteen~~-(16) years old commits the offense
 7 of endangering the welfare of children if he knowingly
 8 endangers the child's welfare by violating a duty of care,
 9 protection, or support.

10 (2) A parent, guardian, or other person commits the
 11 offense of endangering the welfare of children if he
 12 knowingly contributes to the delinquency of a ~~youth~~ child
 13 less than 16 years old by:

14 (a) supplying or encouraging the use of intoxicating
 15 substances by ~~a~~ the child; or

16 (b) assisting, promoting, or encouraging ~~a~~ the child
 17 to leave or abandon his place of residence without the
 18 consent of his parents or guardian, to enter a place of
 19 prostitution, to engage in sexual conduct, or to enter
 20 places exclusively for adults.

21 (3) A person convicted of endangering the welfare of
 22 children shall be fined not to exceed ~~five hundred dollars~~
 23 ~~(\$500)~~ or be imprisoned in the county jail for any term not
 24 to exceed ~~six~~-(6) months, or both. A person convicted of a
 25 second offense of endangering the welfare of children shall

1 be fined not to exceed ~~one thousand dollars~~ (\$1,000) or be
 2 imprisoned in the county jail for any term not to exceed ~~six~~
 3 ~~(6)~~ months, or both.

4 (4) ~~Evidence.~~ On the issue of whether there has been a
 5 violation of the duty of care, protection, and support, the
 6 following, in addition to all other admissible evidence,
 7 ~~shall be is~~ admissible: cruel treatment,; abuse,; infliction
 8 of unnecessary and cruel punishment,; abandonment,;
 9 neglect,; lack of proper medical care, clothing, shelter,
 10 and food; and evidence of past bodily injury.

11 (5) The court may order, in its discretion, any fine
 12 levied or any bond forfeited upon a charge of endangering
 13 the welfare of children paid to or for the benefit of the
 14 person or persons whose welfare the defendant has
 15 endangered."

16 Section 19. Section 94-5-608, R.C.M. 1947, is amended
 17 to read as follows:

18 "94-5-608. Nonsupport. (1) A person commits the
 19 offense of nonsupport if he fails to provide support which
 20 he can provide and which he knows he is legally obliged to
 21 provide to a spouse, child, or other dependent.

22 (2) A person commits the offense of aggravated
 23 nonsupport if:

24 (a) the offender has left the state to avoid the duty
 25 of support; or

1 (b) the offender has been previously convicted of the
 2 offense of nonsupport.

3 (3) A person convicted of nonsupport shall be fined
 4 not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned
 5 in the county jail for any term not to exceed ~~six~~ (6)
 6 months, or both. A person convicted of aggravated nonsupport
 7 shall be imprisoned in the state prison for any term not to
 8 exceed ~~ten~~ (10) years.

9 (4) The court may order, in its discretion, any fine
 10 levied or any bond forfeited upon a charge of nonsupport
 11 paid to or for the benefit of any person ~~or persons~~ that the
 12 defendant has failed to support."

13 Section 20. Section 94-5-618, R.C.M. 1947, is amended
 14 to read as follows:

15 "94-5-618. Control of practice of abortion. (1) No
 16 abortion may be performed within the state of Montana:

17 (a) ~~Except~~ except by a licensed physician,;
 18 (b) ~~After~~ after the first ~~three~~ 3 months of pregnancy,
 19 except in a hospital licensed by the department,;

20 (c) ~~After~~ after viability of the fetus, unless in
 21 appropriate medical judgment, the abortion is necessary to
 22 preserve the life or health of the mother. An abortion under
 23 this subsection (1) (c) may only be performed if:

24 (i) the foregoing judgment of the physician who is to
 25 perform the abortion is first certified in writing by him,

1 setting forth in detail the facts upon which he relies in
2 making such judgment; and

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

8 (2) The timing and procedure used in performing an
9 abortion under subsection (1)(c) of this section must be
10 such that the viability of the fetus is not intentionally or
11 negligently endangered, as the term "negligently" is defined
12 in ~~section 94-2-101(22)~~ (31). The fetus may be intentionally
13 endangered or destroyed only if necessary to preserve the
14 life or health of the mother.

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

21 (4) Violation of subsections (1) and (2) of this
22 section is a felony. Violation of subsection (3) of this
23 section is a misdemeanor."

24 Section 21. Section 94-6-201, R.C.M. 1947, is amended
25 to read as follows:

1 "94-6-201. ~~Definitions~~ Definition. (1) "Enter or
2 remain unlawfully". A person enters or remains unlawfully in
3 or upon any vehicle, ~~or~~ occupied structure, or premises when
4 he is not licensed, invited, or otherwise privileged to do
5 so. A person who enters or remains upon land does so with
6 privilege unless notice is personally communicated to him by
7 an authorized person, or unless such notice is given by
8 posting in a conspicuous manner.

9 (2) In no event shall civil liability be imposed upon
10 the owner or occupier of premises by reason of any privilege
11 created by this ~~act~~ section."

12 SECTION 22. SECTION 94-6-302, R.C.M. 1947, IS AMENDED
13 TO READ AS FOLLOWS:

14 "94-6-302. Theft. (1) A person commits the offense of
15 theft when he purposely or knowingly obtains or exerts
16 unauthorized control over property of the owner, and:

17 (a) has the purpose of depriving the owner of the
18 property; ~~or~~

19 (b) purposely or knowingly uses, conceals, or abandons
20 the property in such manner as to deprive the owner of the
21 property; or

22 (c) uses, conceals, or abandons the property knowing
23 such use, concealment, or abandonment probably will deprive
24 the owner of the property.

25 (2) A person commits the offense of theft when he

1 purposely or knowingly obtains by threat or deception
2 control over property of the owner, and:

3 (a) has the purpose of depriving the owner of the
4 property; ~~or~~

5 (b) purposely or knowingly uses, conceals, or abandons
6 the property in such manner as to deprive the owner of the
7 property; or

8 (c) uses, conceals, or abandons the property knowing
9 such use, concealment, or abandonment probably will deprive
10 the owner of the property.

11 (3) A person commits the offense of theft when he
12 purposely or knowingly obtains control over stolen property
13 knowing the property to have been stolen by another, and:

14 (a) has the purpose of depriving the owner of the
15 property; ~~or~~

16 (b) purposely or knowingly uses, conceals, or abandons
17 the property in such manner as to deprive the owner of the
18 property; or

19 (c) uses, conceals, or abandons the property knowing
20 such use, concealment, or abandonment probably will deprive
21 the owner of the property.

22 (4) A person convicted of the offense of theft of
23 property not exceeding ~~one hundred fifty dollars~~ ~~(\$150)~~ in
24 value shall be fined not to exceed ~~five hundred dollars~~
25 ~~(\$500)~~ or be imprisoned in the county jail for any term not

1 to exceed ~~six~~ ~~(6)~~ months, or both. A person convicted of the
2 offense of theft of property exceeding ~~one hundred fifty~~
3 ~~dollars~~ ~~(\$150)~~ in value or theft of any commonly
4 domesticated hoofed animal shall be imprisoned in the state
5 prison for any term not to exceed ~~ten~~ ~~(10)~~ years.

6 (5) Amounts involved in thefts committed pursuant to a
7 common scheme or the same transaction, whether from the same
8 person or several persons, may be aggregated in determining
9 the value of the property."

10 Section 23. Section 94-6-307, R.C.M. 1947, is amended
11 to read as follows:

12 "94-6-307. Deceptive practices. (1) A person commits
13 the offense of deceptive practices when he purposely or
14 knowingly:

15 (a) causes another, by deception or threat, to execute
16 a document disposing of property or a document by which a
17 pecuniary obligation is incurred; ~~or~~

18 (b) makes or directs another to make a false or
19 deceptive statement addressed to the public or any person
20 for the purpose of promoting or procuring the sale of
21 property or services; ~~or~~

22 (c) makes, ~~or~~ OR directs another to make, ~~or knowingly~~
23 ~~accepts~~ a false or deceptive statement to any person
24 respecting his financial condition for the purpose of
25 procuring a loan or credit OR ACCEPTS A FALSE OR DECEPTIVE

1 STATEMENT FROM ANY PERSON WHO IS ATTEMPTING TO PROCURE A
 2 LOAN OR CREDIT REGARDING THAT PERSON'S FINANCIAL CONDITION;

3 or

4 (d) obtains, or attempts to obtain property, labor, or
 5 services by any of the following means:

6 (i) ~~Using~~ using a credit card which was issued to
 7 another, without the other's consent;

8 (ii) ~~Using~~ using a credit card that has been revoked or
 9 canceled;

10 (iii) ~~Using~~ using a credit card that has been falsely
 11 made, counterfeited, or altered in any material respect;

12 (iv) ~~Using~~ using the pretended number or description of
 13 a fictitious credit card;

14 (v) ~~Using~~ using a credit card which has expired
 15 provided ~~that~~ the credit card clearly indicates the
 16 expiration date.

17 (2) A person convicted of the offense of deceptive
 18 practices shall be fined not to exceed ~~five hundred dollars~~
 19 ~~(\$500)~~ or be imprisoned in the county jail for ~~any~~ a term
 20 not to exceed ~~six~~ ~~(6)~~ months, or both. If the deceptive
 21 practices are part of a common scheme or the value of any
 22 property, labor, or services obtained, or attempted to be
 23 obtained exceeds ~~one hundred fifty dollars~~ ~~(\$150)~~, then the
 24 offender shall be imprisoned in the state prison for ~~any~~ a
 25 term not to exceed ~~ten~~ ~~(10)~~ years.

1 Section 24. Section 94-6-308.1, is amended to read as
 2 follows:

3 "94-6-308.1. Chain distributor schemes. (1) As used in
 4 this ~~act~~ ~~[section]~~:

5 (a) "~~Person~~ person" means a natural person,
 6 corporation, partnership, trust, or other entity; and in the
 7 case of an entity it shall include any other entity which
 8 has a majority interest in such entity or effectively
 9 controls such other entity as well as the individual
 10 officers, directors, and other persons in act of control of
 11 the activities of each entity;

12 (b) "~~Chain~~ chain distributor scheme" means a sales
 13 device whereby a person, under a condition that he make an
 14 investment, is granted a license or right to recruit for
 15 consideration one or more additional persons who are also
 16 granted such license or right upon condition of making an
 17 investment, and may further perpetuate the chain of persons
 18 who are granted such license or right upon such condition.

19 (2) It is unlawful for any person to promote, sell, or
 20 encourage participation in any chain distributor scheme.

21 (3) Any person violating the provisions of this ~~act~~
 22 ~~[section]~~ shall, ~~be deemed guilty of a felony and~~ upon
 23 conviction, shall be imprisoned in the state prison for a
 24 period not to exceed ~~one~~ ~~(1)~~ year, or ~~punishable by a fine~~
 25 fined not to exceed ~~one thousand dollars~~ ~~(\$1,000)~~, or both

1 ~~such fine and imprisonment.~~

2 (4) Any person convicted of a second offense under
3 this ~~act~~ [section] shall be imprisoned in the state prison
4 for a period not to exceed ~~five~~ (5) years or ~~punishable by a~~
5 ~~fine~~ fined not to exceed ~~five thousand dollars (\$5,000)~~, or
6 both ~~such fine and imprisonment.~~"

7 Section 25. Section 94-7-103, R.C.M. 1947, is amended
8 to read as follows:

9 "94-7-103. Threats and other improper influence in
10 official and political matters. (1) A person commits an
11 offense under this section if he purposely or knowingly:

12 (a) threatens unlawful harm to any person with the
13 purpose to influence his decision, opinion, recommendation,
14 vote, or other exercise of discretion as a public servant,
15 party official, or voter; ~~or~~

16 (b) threatens harm to any public servant with the
17 purpose to influence his decision, opinion, recommendation,
18 vote, or other exercise of discretion in a judicial or
19 administrative proceeding; ~~or~~

20 (c) threatens harm to any public servant or party
21 official with the purpose to influence him to violate his
22 duty; ~~or~~

23 (d) privately addresses to any public servant who has
24 or will have ~~an~~ official discretion in a judicial or
25 administrative proceeding any representation, entreaty,

1 argument, or other communication designed to influence the
2 outcome on the basis of considerations other than those
3 authorized by law. ~~It is no defense to prosecution under~~
4 ~~this section that a person whom the offender sought to~~
5 ~~influence was not qualified to act in the desired way,~~
6 ~~whether because he had not yet assumed office, or lacked~~
7 ~~jurisdiction, or for any other reason; or~~

8 (e) as a juror, or officer in charge of a jury,
9 receives or permits to be received any communication
10 relating to any matter pending before such jury, except
11 according to the regular course of proceedings.

12 (2) It is no defense to prosecution under subsections
13 (1)(a) through (1)(d) that a person whom the offender sought
14 to influence was not qualified to act in the desired way,
15 whether because he had not yet assumed office or lacked
16 jurisdiction or for any other reason.

17 ~~(2)(3)~~ (3) A person convicted under this section shall be
18 fined not to exceed ~~five hundred dollars (\$500)~~ or be
19 imprisoned in the county jail for any term not to exceed ~~six~~
20 ~~(6)~~ months, or both, unless the offender threatened to
21 commit an offense or made a threat with the purpose to
22 influence a judicial or administrative proceeding, in which
23 case the offender shall be imprisoned in the state prison
24 for any term not to exceed ~~ten~~ (10) years."

25 Section 26. Section 94-7-104, B.C.M. 1947, is amended

1 to read as follows:

2 "94-7-104. Compensation for past official behavior.

3 (1) A person commits an offense under this section if he
4 knowingly solicits, accepts, or agrees to accept any
5 pecuniary benefit as compensation for having, as a public
6 servant, given a decision, opinion, recommendation, or vote
7 favorable to another, ~~or~~ for having otherwise exercised a
8 discretion in ~~his~~ another's favor, or for having violated
9 his duty. A person commits an offense under this section if
10 he knowingly offers, confers, or agrees to confer
11 compensation, ~~acceptance~~ of which is prohibited by this
12 section.

13 (2) A person convicted under this section shall be
14 fined not to exceed ~~five hundred dollars~~ (\$500) or be
15 imprisoned in the county jail for any term not to exceed ~~six~~
16 (6) months, or both."

17 Section 27. Section 94-7-207, R.C.M. 1947, is amended
18 to read as follows:

19 "94-7-207. Tampering with witnesses and informants.

20 (1) A person commits the offense of tampering with witnesses
21 and informants if, believing that an official proceeding or
22 investigation is pending or about to be instituted, he
23 purposely or knowingly attempts to induce or otherwise cause
24 a witness or informant to:

25 (a) testify or inform falsely; ~~or~~

1 (b) withhold any testimony, information, document, or
2 thing; ~~or~~

3 (c) elude legal process summoning him to testify or
4 supply evidence ~~evidence~~; or

5 (d) absent himself from any proceeding or
6 investigation to which he has been summoned.

7 (2) A person convicted of tampering with witnesses or
8 informants shall be imprisoned in the state prison for any
9 term not to exceed ~~ten~~ (10) years."

10 Section 28. Section 94-7-307, R.C.M. 1947, is amended
11 to read as follows:

12 "94-7-307. Transferring illegal articles or
13 unauthorized communication. (1) ~~Transferring illegal~~
14 ~~articles.~~ (a) A person commits the offense of transferring
15 illegal articles if he knowingly or purposely transfers any
16 illegal article or thing to a person subject to official
17 detention or is transferred any illegal article or thing by
18 a person subject to official detention.

19 (b) A person convicted of transferring illegal
20 articles shall be:

21 (i) imprisoned in the state prison for a term not to
22 exceed ~~twenty~~ (20) years, if he conveys a weapon to a person
23 subject to official detention; or

24 (ii) fined not to exceed ~~one hundred dollars~~ (\$100) if
25 ~~he conveys any other article or thing to a person subject to~~

1 ~~official detention~~ or be imprisoned in the county jail for
 2 any term not to exceed ~~ten~~ (10) days, or both, if he conveys
 3 any other illegal article or thing to a person subject to
 4 official detention.

5 (c) ~~This shall~~ Subsection (1)(b)(iii) does not apply
 6 unless the offender knew or was given sufficient notice so
 7 that he reasonably should have known that the article or
 8 thing he conveyed was an illegal article.

9 ~~(2) Unauthorized Communication.~~

10 (2) (a) A person commits the offense of unauthorized
 11 communication if he knowingly or purposely communicates with
 12 a person subject to official detention without the consent
 13 of the person in charge of such official detention.

14 (b) A person convicted of the offense of unauthorized
 15 communication shall be fined not to exceed ~~one hundred~~
 16 ~~dollars~~ (\$100) or be imprisoned in the county jail for any
 17 term not to exceed ~~ten~~ (10) days, or both."

18 Section 29. Section 94-7-503, R.C.M. 1947, is amended
 19 to read as follows:

20 "94-7-503. Criminal syndicalism. (1) "Criminal
 21 syndicalism" means the advocacy of crime, ~~or~~ malicious
 22 damage or injury to property, ~~or~~ violence, or other unlawful
 23 methods of terrorism as a means of accomplishing industrial
 24 or political ends.

25 (2) A person commits the offense of criminal

1 syndicalism if he purposely or knowingly:

2 (a) orally or by means of writing, advocates or
 3 promotes the doctrine of criminal syndicalism; ~~or~~

4 (b) organizes or becomes a member of any assembly,
 5 group, or organization which he knows is advocating or
 6 promoting the doctrine of criminal syndicalism; or

7 (c) for or on behalf of another ~~who purposely thereby~~
 8 whose purpose is to advocate or promote the doctrine of
 9 criminal syndicalism, distributes, sells, publishes, or
 10 publicly displays, any writing advocating or advertising
 11 such doctrine.

12 (3) A person convicted of the offense of criminal
 13 syndicalism shall be imprisoned in the state prison for a
 14 term not to exceed ~~ten~~ (10) years.

15 (4) Whoever, being the owner or in possession or
 16 control of any premises, knowingly permits any assemblage of
 17 persons to use such ~~premise~~ premises for the purpose of
 18 advocating or promoting the doctrine of criminal syndicalism
 19 shall be fined not to exceed ~~five hundred dollars~~ (\$500) or
 20 ~~be~~ imprisoned in the county jail for a term not to exceed
 21 ~~six~~ (6) months, or both."

22 Section 30. Section 94-8-107, R.C.M. 1947, is amended
 23 to read as follows:

24 "94-8-107. Public nuisance. (1) "Public nuisance"
 25 means:

1 (a) a condition which endangers safety or health, is
 2 offensive to the senses, or obstructs the free use of
 3 property, so as to interfere with the comfortable enjoyment
 4 of life or property by an entire community or neighborhood,
 5 or by any considerable number of persons; ~~or~~

6 (b) any premises where persons gather for the purpose
 7 of engaging in unlawful conduct; or

8 (c) a condition which renders dangerous for passage
 9 any public highway or ~~right-of-way~~, right-of-way or waters
 10 used by the public.

11 (2) A person commits the offense of maintaining a
 12 public nuisance if he knowingly creates, conducts, or
 13 maintains a public nuisance.

14 (3) Any act which affects an entire community or
 15 neighborhood, or any considerable number of persons (as
 16 specified in subsection (1) (a) ~~of this section~~), is no less
 17 a nuisance because the extent of the annoyance or damage
 18 inflicted upon individuals is unequal.

19 (4) A person convicted of maintaining a public
 20 nuisance shall be fined not to exceed ~~five hundred dollars~~
 21 ~~(\$500)~~ or be imprisoned in the county jail for a term not to
 22 exceed ~~six (6)~~ months, or both. Each day of such conduct
 23 constitutes a separate offense.

24 (5) Action to abate a public nuisance.

25 (a) Every ~~premise upon which~~ a public nuisance is

1 ~~being maintained~~ may be abated, and the persons maintaining
 2 such nuisance and the possessor of the premises who permits
 3 the same to be maintained may be enjoined from such conduct
 4 by an action in equity in the name of the state of Montana
 5 by the county attorney, or any resident of the state.

6 (b) Upon the filing of the complaint in such action
 7 the judge may issue a temporary injunction.

8 (c) In such action evidence of the general reputation
 9 of the premises ~~shall be~~ is admissible for the purpose of
 10 proving the existence of ~~such the~~ nuisance.

11 (d) If the existence of the nuisance ~~be~~ is
 12 established, an order of abatement shall be entered as part
 13 of the judgment in the case. The judge issuing ~~such the~~
 14 order may, in his discretion:

15 (i) confiscate all fixtures used on the premises to
 16 maintain the nuisance and either sell them and transmit the
 17 proceeds to the county general fund, ~~or~~ destroy them, or
 18 return them to their rightful ownership; ~~or~~

19 (ii) close the premises for any period not to exceed
 20 ~~one (1)~~ year, and during ~~such~~ which period the premises
 21 shall remain in the custody of the court; ~~or~~

22 (iii) allow the premises to be opened upon posting bond
 23 sufficient in amount to assure compliance with the order of
 24 abatement. The bond shall be forfeited if the nuisance is
 25 continued or resumed. The procedure for forfeiture ~~and/or~~

1 discharge of the bond shall be as provided in ~~section~~
2 95-1116, or

3 (iv) any combination of the above.*

4 Section 31. Section 94-8-108, R.C.M. 1947, is amended
5 to read as follows:

6 "94-8-108. Creating a hazard. (1) A person commits the
7 offense of creating a hazard if he knowingly:

8 (a) discards in any place where it might attract
9 children, a container having a compartment of more than ~~one~~
10 ~~and one-half~~ {1 1/2} cubic feet capacity and a door or lid
11 that locks or fastens automatically when closed and cannot
12 easily be opened from the inside, and fails to remove the
13 door, lid, or locking or fastening device; ~~or~~

14 (b) being the owner ~~of~~ or otherwise having possession
15 of property upon which there is a well, cistern, cesspool,
16 mine shaft, or other hole of a depth of ~~four~~ {4} feet or
17 more and a top width of ~~twelve~~ {12} inches or more, and ~~he~~
18 fails to cover or fence it with a suitable protective
19 construction; ~~or~~

20 (c) tampers with an aircraft without the consent of
21 the owner; ~~or~~

22 (d) being the owner or otherwise ~~have~~ having
23 possession of property upon which there is a steam engine or
24 steam boiler, ~~he~~ continues to use a steam engine or steam
25 boiler which is in an unsafe condition; ~~or~~

1 (e) being a person in the act of game hunting, ~~he~~ acts
2 in a negligent manner or knowingly fails to give all
3 reasonable assistance to any person whom he has injured; or

4 (f) deposits any hard substance upon or between any
5 railroad tracks, which will tend to derail railroad cars or
6 other vehicles.

7 (2) A person convicted of the offense of creating a
8 hazard shall be fined not to exceed ~~five hundred dollars~~
9 ~~{500}~~ or be imprisoned in the county jail for a term not to
10 exceed ~~six~~ {6} months, or both.*

11 Section 32. Section 94-8-110.2, R.C.M. 1947, is
12 amended to read as follows:

13 "94-8-110.2. Contraceptive Sale and advertisement of
14 contraceptive drugs ~~or~~ and devices. (1) It ~~shall be is~~
15 unlawful for any person, firm, corporation, ~~or partnership~~
16 partnership, or association to sell, offer for sale, or give
17 away, ~~through the media~~ by means of vending machines,
18 personal or collective distribution, ~~by~~ solicitation, or
19 peddling or in any other manner whatsoever, contraceptive
20 drugs or devices, prophylactic rubber goods, or other
21 articles for the prevention of venereal diseases. ~~The~~
22 ~~foregoing provisions shall~~ This subsection does not apply to
23 regularly licensed practitioners of medicine, or osteopathy,
24 ~~or~~ other licensed persons practicing other healing arts, and
25 registered pharmacists, ~~or to~~ or wholesale drug jobbers or

1 manufacturers who sell to retail stores only.

2 (2) It ~~shall be~~ is unlawful to:

3 (a) exhibit or display prophylactics or contraceptives
4 in any show window, upon the streets, or in any public
5 place, other than in the place of business of a licensed
6 pharmacist; ~~or~~

7 (b) ~~to~~ advertise such in any magazine, newspaper, or
8 other form of publication, originating in, or published
9 within the state of Montana;

10 (c) ~~to~~ publish, or distribute from house to house or
11 upon the streets, any circular, booklet, or other form of
12 advertising, of prophylactics or contraceptives; or

13 (d) advertise such by other visual means, ~~or by~~
14 auditory method, or ~~by~~ radio broadcast, or by the use of
15 outside signs on stores, billboards, window displays, or
16 other advertising visible to persons upon the streets or
17 public highways, ~~provided, however, that~~

18 (3) ~~nothing~~ Nothing in this ~~act shall prevent~~ section
19 prevents the advertising of prophylactics or contraceptives
20 in the trade press, ~~of~~ those magazines whose principal
21 circulation is to the medical and pharmaceutical
22 professions, ~~or~~ ~~to~~ those magazines and other publications
23 having interstate circulation, or originating outside of the
24 state of Montana where the advertising does not violate any
25 United States law or federal postal regulations.

1 (4) ~~act to~~ Nothing in this section prevents the
2 furnishing within the store or place of business of a
3 licensed pharmacist, to persons qualified to purchase, and
4 then only upon their inquiry, such printed or other
5 information as ~~is~~ is requisite to proper use in relation to
6 any merchandise coming within the provisions of this ~~act~~
7 ~~[section].~~

8 (5) ~~Provided, nothing herein shall prevent~~ Nothing in
9 this section prevents the dissemination of medically
10 acceptable contraceptive information by printed or other
11 methods concerning the availability and use of any
12 merchandise coming within the provisions of this ~~act~~
13 section.

14 (3)(6) Any officer of the law ~~shall have the power to~~
15 may cause the arrest of ~~any~~ a person violating any provision
16 of this ~~act~~ section, ~~to~~ seize stocks illegally held, and ~~to~~
17 ~~take seizure of~~ seize any mechanical device or vending
18 machine containing any merchandise coming within the
19 provisions of this ~~act~~ section, holding the owner of ~~such~~
20 the machine, and the occupier and ~~the~~ owner of the premises
21 where seizure is made to be in violation of this ~~act~~
22 ~~[section].~~

23 (4)(7) Any person, ~~or~~ any member of a firm, or
24 ~~or partnership~~ partnership, or the officers of a corporation
25 or association who ~~or which~~ knowingly ~~violates~~ violate any

1 of the provisions of this ~~act shall be~~ section are guilty of
 2 a misdemeanor, and shall, upon conviction, be punished by a
 3 fine not to exceed ~~five hundred dollars~~ ~~(\$500)~~, or by
 4 imprisonment of not to exceed ~~six~~ ~~(6)~~ months in the county
 5 jail, or both, ~~provided, however, that the~~

6 (8) justice Justice of the peace courts and the
 7 district courts of the state shall have concurrent
 8 jurisdiction in all prosecutions and causes arising under
 9 this ~~act~~ section."

10 ~~Section 22. Section 94-8-111, R.C.M. 1947, is amended~~
 11 ~~to read as follows:~~

12 ~~"94-8-111. Criminal defamation. (1) Defamatory matter~~
 13 ~~is anything which exposes a person or a group, class, or~~
 14 ~~association to hatred, contempt, ridicule, degradation, or~~
 15 ~~disgrace in society, or causes injury to his or its business~~
 16 ~~or occupation.~~

17 ~~(2) Whoever, with knowledge of its defamatory~~
 18 ~~character, orally, in writing, or by any other means,~~
 19 ~~communicates any defamatory matter to a third person without~~
 20 ~~the consent of the person defamed commits the offense of~~
 21 ~~criminal defamation and may be sentenced to imprisonment for~~
 22 ~~not more than six (6) months in the county jail or a fine of~~
 23 ~~not more than five hundred dollars (\$500), or both.~~

24 ~~(3) Violation of subsection (2) is justified if:~~

25 ~~(a) the defamatory matter is true and is communicated~~

1 ~~with good motives and for justifiable ends; or~~

2 ~~(b) the communication is absolutely privileged; or~~

3 ~~(c) the communication consists of fair comment made in~~
 4 ~~good faith with respect to persons participating in matters~~
 5 ~~of public concern; or~~

6 ~~(d) the communication consists of a fair and true~~
 7 ~~report or a fair summary of any judicial, legislative, or~~
 8 ~~other public or official proceedings; or~~

9 ~~(e) the communication is between persons each having~~
 10 ~~an interest or duty with respect to the subject matter of~~
 11 ~~the communication and is made with the purpose to further~~
 12 ~~such interest or duty.~~

13 ~~(4) No person shall may be convicted on the basis of~~
 14 ~~an oral communication of defamatory matter except upon the~~
 15 ~~testimony of at least two (2) other persons that they heard~~
 16 ~~and understood the oral statement as defamatory or upon a~~
 17 ~~plea of guilty."~~

18 ~~Section 33. Section 94-8-114, R.C.M. 1947, is amended~~
 19 ~~to read as follows:~~

20 ~~"94-8-114. Privacy in communications. (1) A person~~
 21 ~~commits the offense of violating privacy in communications~~
 22 ~~if he knowingly or purposely:~~

23 ~~(a) Communicates with any person by telephone with the~~
 24 ~~intent purpose to terrify, intimidate, threaten, harass,~~
 25 ~~annoy, or offend, communicates with any person by telephone~~

1 ~~or see~~ and uses any obscene, lewd, or profane language, ~~or~~
 2 ~~suggest~~ suggests any lewd or lascivious act, or ~~threaten~~
 3 ~~threatens~~ to inflict injury or physical harm to the person
 4 or property of any person, ~~(the use of obscene, lewd, or~~
 5 ~~profane language or the making of a threat or lewd or~~
 6 ~~lascivious suggestions is prima facie evidence of an intent~~
 7 ~~to terrify, intimidate, threaten, harass, annoy, or offend);~~

8 (b) ~~Uses~~ uses a telephone to attempt to extort money
 9 or any other thing of value from any person, or to disturb
 10 by repeated telephone calls the peace, quiet, or right of
 11 privacy of any person at the place where the telephone call
 12 or calls ~~were~~ are received; ~~The use of obscene, lewd or~~
 13 ~~profane language or the making of a threat or lewd or~~
 14 ~~lascivious suggestions shall be prima facie evidence of an~~
 15 ~~intent to terrify, intimidate, threaten, harass, annoy or~~
 16 ~~offend.~~

17 (c) ~~Records~~ records or causes to be recorded any
 18 conversation by use of any a hidden electronic or mechanical
 19 device which reproduces a human conversation without the
 20 knowledge of all parties to the conversation. Subsection (c)
 21 ~~shall~~ does not apply to duly elected or appointed public
 22 officials or employees when ~~such~~ the transcription or
 23 recording is done in the performance of official duty, ~~or~~
 24 to persons speaking at public meetings, or to persons given
 25 warning of ~~such~~ the recording;

1 (d) ~~Attempts~~ by means of any machine, instrument, or
 2 contrivance, or in any other manner;

3 (i) ~~reads, or attempts to read any other manner,~~
 4 ~~reads, or attempts to read~~ any message or learn the contents
 5 thereof, while ~~the same~~ it is being sent over any a
 6 telegraph line;

7 (ii) ~~or~~ learns or attempts to learn the contents of any
 8 message, ~~whilst the same~~ while it is in any a telegraph
 9 office or is being received thereat or sent therefrom; or

10 (iii) ~~who~~ uses, ~~or~~ attempts to use, or ~~communicate~~
 11 communicates to others, any information so obtained;

12 (e) ~~Discloses~~ discloses the contents of a telegraphic
 13 message or any part thereof, addressed to another person
 14 without the permission of such person, unless directed to do
 15 so by the lawful order of a court; or

16 (f) ~~Opens~~ opens or reads or causes to be read any
 17 sealed letter not addressed to himself, without being
 18 authorized to do so by either the writer of ~~such~~ the letter
 19 or ~~by~~ the person to whom it is addressed, ~~and every person~~
 20 ~~who~~ or, without the like authority, publishes any of the
 21 contents of ~~such letters~~ the letter knowing the same to have
 22 been unlawfully opened.

23 (2) A person convicted of the offense of violating ~~the~~
 24 privacy in communications shall be fined not to exceed ~~five~~
 25 ~~hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail

1 for a term not to exceed ~~six (6)~~ months, or both."

2 Section 34. Section 94-8-201, R.C.M. 1947, is amended
3 to read as follows:

4 "94-8-201. ~~Machine gun definitions~~ Definitions. In
5 94-8-202 through 94-8-208 the following definitions apply:

6 (1) "Machine gun" ~~applies to and includes~~ means a
7 weapon of any description by whatever name known, loaded or
8 unloaded, from which more than six shots or bullets may be
9 rapidly, ~~or~~ automatically, or semiautomatically discharged
10 from a magazine, by a single function of the firing device.

11 (2) "Crime of violence" ~~applies to and includes~~ means
12 any of the following crimes or an attempt to commit any of
13 the same; ~~namely, murder, manslaughter, kidnaping, rape,~~
14 ~~mayhem, assault to do great bodily harm, any forcible~~
15 felony, robbery, burglary, ~~housebreaking, breaking and~~
16 entering, and larceny and criminal trespass.

17 (3) "Person" ~~applies to and~~ includes a firm,
18 partnership, association, or corporation."

19 ~~Section 35. Section 94-8-202, R.C.M. 1947, is amended~~
20 ~~to read as follows:~~

21 ~~"94-8-202. Possession or use of machine gun in~~
22 ~~connection with a crime when unlawful. Possession or use~~
23 ~~of a machine gun in the perpetration commission or attempted~~
24 ~~perpetration commission of a crime of violence is hereby~~
25 ~~declared to be a crime an offense punishable by imprisonment~~

1 ~~in the state penitentiary prison for a term of not less than~~
2 ~~twenty 20 years or more than 50 years."~~

3 ~~Section 36. Section 94-8-203, R.C.M. 1947, is amended~~
4 ~~to read as follows:~~

5 ~~"94-8-203. Punishment for possession possession or use~~
6 ~~of machine gun for an offensive purpose. Possession or use~~
7 ~~of a machine gun for an offensive or aggressive purpose is~~
8 ~~hereby declared to be a crime an offense punishable by~~
9 ~~imprisonment in the state penitentiary prison for a term of~~
10 ~~not less than ten 10 years or more than 20 years."~~

11 Section 35. Section 94-8-204, R.C.M. 1947, is amended
12 to read as follows:

13 "94-8-204. Presumption of ~~possession or use for~~
14 offensive or aggressive purpose. Possession or use of a
15 machine gun shall be presumed to be for offensive or
16 aggressive purpose:

17 (a)(1) ~~When~~ when the machine gun is on premises not
18 owned or rented, for bona fide permanent residence or
19 business occupancy, by the person in whose possession the
20 machine gun may be found; ~~or~~

21 (b)(2) ~~When~~ when the machine gun is in the possession
22 of, or used by, ~~an unnaturalized foreign born person, or a~~
23 person who has been convicted of a crime of violence in any
24 court of record, state or federal, ~~or~~ in the United States
25 of America, ~~or~~ or its territories or insular possessions; ~~or~~

1 ~~(c)~~ (3) ~~When when~~ the machine gun is of the kind
 2 described in section 94-8-208 and has not been registered as
 3 required in ~~said that~~ section ~~required~~; or

4 ~~(d)~~ (4) ~~When when~~ empty or loaded pistol shells of 30
 5 (.30 in. or 7.63 mm.) or larger caliber which have been or
 6 are susceptible of use being used in the machine gun are
 7 found in the immediate vicinity thereof."

8 Section 36. Section 94-8-210, R.C.M. 1947, is amended
 9 to read as follows:

10 "94-8-210. Carrying ~~certain~~ concealed weapons in
 11 cities or towns ~~forbidden-punishment~~ prohibited. Every
 12 person who, within the limits of any city or town, carries
 13 or bears concealed upon his person a dirk, dagger, pistol,
 14 revolver, slingshot, ~~everdane~~ sword cane, billy, knuckles
 15 made of any metal or hard substance, knife having a blade
 16 ~~four~~ 4 inches long or longer, razor, not including a safety
 17 razor, or other deadly weapon, shall be punished by a fine
 18 not exceeding ~~five hundred dollars~~ \$500 or by imprisonment
 19 in the county jail for a period not exceeding ~~six~~ 6 months,
 20 or by both ~~such fine and imprisonment~~, or ~~may be punished~~ by
 21 imprisonment in the state ~~penitentiary~~ prison for a period
 22 not exceeding ~~five~~ 5 years."

23 Section 37. Section 94-8-212, R.C.M. 1947, is amended
 24 to read as follows:

25 "94-8-212. ~~Carrying certain concealed weapons outside~~

1 ~~of cities or towns forbidden punishment who excepted from~~
 2 ~~act~~ Exceptions. The preceding sections Sections 94-8-210
 3 and 94-8-211 shall do not apply to:

- 4 ~~1. A sheriff or his deputy;~~
- 5 ~~2. A marshal or his deputy;~~
- 6 ~~3. A constable or his deputy;~~
- 7 ~~4. A police officer or policeman;~~
- 8 ~~5. A United States marshal or his deputy;~~
- 9 ~~6. A person in the secret service of the United~~

10 States;

- 11 ~~7. A game warden or his deputy;~~
- 12 ~~8. A U. S. forest reserve official or his deputy;~~
- 13 (1) any peace officer of the state of Montana;
- 14 (2) any officer of the United States government
- 15 authorized to carry a concealed weapon;

16 ~~9. (3) A a person in actual service as a national~~
 17 ~~guardsman;~~

18 ~~10. A revenue officer or his deputy;~~

19 ~~11. (4) A a person summoned to the aid of either any of~~
 20 ~~the foregoing named persons named in subsections (1) through~~
 21 ~~(3);~~

22 ~~12. (5) A a civil officer or his deputy engaged in the~~
 23 ~~discharge of official business;~~

24 ~~13. (6) A a person authorized by a judge of a district~~
 25 ~~court of this state to carry a weapon; or~~

1 ~~44. (7) The the~~ carrying of arms on one's own premises
2 or at his ~~one's~~ home or place of business,

3 ~~45. Any peace officer of the state of Montana;~~

4 ~~46. United States immigration and naturalization~~
5 ~~service officers;~~

6 ~~47. National park service rangers."~~

7 Section 38. Section 94-8-214, R.C.M. 1947, is amended
8 to read as follows:

9 "94-8-214. ~~Concealed weapons district judge may issue~~
10 ~~permits to carry~~ Permits to carry concealed weapons --
11 records -- revocation. (1) Any judge of a district court of
12 this state may grant permission to carry or bear, concealed
13 or otherwise, a pistol or revolver for a term not exceeding
14 ~~one~~ 1 year.

15 (2) All applications for such permission must be made
16 by petition filed with the clerk of the district court, No
17 charge may be made for the filing of ~~which the~~ petition ~~no~~
18 ~~charge shall be made.~~

19 (3) The applicant shall, if personally unknown to the
20 judge, furnish proof by a credible witness of his good moral
21 character and peaceable disposition.

22 (4) No such permission shall be granted any person who
23 is not a citizen of the United States and who has not been
24 an actual bona fide resident of the state of Montana for ~~six~~
25 6 months immediately next preceding the date of such

1 application.

2 (5) A record of permission granted shall be kept by
3 the clerk of the court, ~~which the~~ record shall state the
4 date of the application, the date of the permission, the
5 name of the person to whom permission is granted, the name
6 of the judge granting the permission, and the name of the
7 person, if any, by whom good moral character and peaceable
8 disposition are proved, ~~and which the~~ record must be signed
9 by the person who is granted such permission.

10 (6) The clerk shall thereupon issue under his hand and
11 the seal of the court a certificate, in a convenient card
12 form so that the same may be carried in the pocket, stating:

13 "Permission to authorizing him to carry or bear,
14 concealed or otherwise, a pistol or revolver for the period
15 of from the date hereof, has been granted by, a
16 judge of the district court of the judicial district of
17 the state of Montana, in and for the county of
18

19 "Witness the hand of the clerk and the seal of said
20 court this day of, 19...

21
22 Clerk."

23 (7) The date of the certificate shall be the date of
24 the granting of such permission. The certificate shall bear
25 upon its face the signature of the person receiving the

1 same.

2 (8) Upon good cause shown the judge granting such
3 permission may, and in his discretion without notice to the
4 person receiving such permission, revoke the same, ~~the~~ The
5 date of the revocation ~~being~~ shall be noted by the clerk
6 upon the record kept by him.

7 (9) All permissions to carry or bear concealed weapons
8 ~~heretofore~~ granted before March 3, 1919, are hereby
9 revoked."

10 Section 39. Section 94-8-218, R.C.M. 1947, is amended
11 to read as follows:

12 "94-8-218. Firing firearms. Every person who willfully
13 shoots or fires off, a gun, pistol, or any other firearm,
14 within the limits of any town or city, or of any private
15 inclosure which contains a dwelling house, is punishable by
16 a fine not exceeding ~~twenty-five dollars~~ \$25."

17 Section 40. Section 94-8-221, R.C.M. 1947, is amended
18 to read as follows:

19 "~~94-8-221. Firearm--use~~ Use of firearms by children
20 under ~~the~~ age of fourteen ~~years~~ prohibited. It ~~shall be~~ is
21 unlawful for ~~any~~ a parent, guardian, or other person, having
22 ~~the~~ charge or custody of ~~any~~ a minor child under the age of
23 ~~fourteen~~ 14 years, to permit ~~such~~ the minor child to carry
24 or use in public any firearms of any description, loaded
25 with powder and lead, ~~in public,~~ except when ~~such~~ the child

1 ~~is in the company of such parent or guardian accompanied by~~
2 a person having charge or custody of the child or under the
3 supervision of a qualified firearms safety instructor, who
4 has been ~~only~~ authorized by ~~such~~ the parent or guardian."

5 Section 41. Section 3-228.3, R.C.M. 1947, is amended
6 to read as follows:

7 "3-228.3. Suspension or revocation of license. (1) The
8 department may, after notice and an opportunity for a
9 hearing in accordance with the Montana Administrative
10 Procedure Act ~~[82-4201 to 82-4225]~~ has ~~have~~ been afforded to
11 the licensee, suspend or revoke a license if the licensee
12 has failed to comply with this act or rules of the
13 department, or if the licensee has:

14 (a) violated this act or ~~section~~ 3-229;

15 (b) been found guilty of ~~fraud, deceit, dishonesty,~~
16 forgery, burglary, or larceny theft, or any other offense
17 defined in Title 94, chapter 6, part 3;

18 (c) failed or refused to furnish information, records,
19 or reports required by statute or rule.

20 (2) The department may, in accordance with the Montana
21 Administrative Procedure Act, summarily suspend a license
22 where the public health, safety, or welfare imperatively
23 requires emergency action."

24 Section 42. Section 5-1040, R.C.M. 1947, is amended to
25 read as follows:

1 "5-1040. Penalty for unlawful hypothecation of
 2 property received. Any officer or employee of any bank doing
 3 business in this state, who, except in the manner authorized
 4 by law or the contract of the parties, hypothecates,
 5 pledges, or in any way alienates any notes, stocks, bonds,
 6 mortgages, securities, or any other property coming into his
 7 hands or into the possession of ~~said the~~ bank as collateral,
 8 for safekeeping or in any other manner, and to which the
 9 bank has not acquired full title, ~~shall be~~ is guilty of
 10 ~~embezzlement, theft~~ and upon conviction thereof shall be
 11 punished as for other felonies."

12 Section 43. Section 5-1044, R.C.M. 1947, is amended to
 13 read as follows:

14 "5-1044. ~~Embezzlement~~ Theft of bank funds by officers
 15 or employees. Any banker, officer, director, or employee of
 16 any bank who ~~embezzles~~ fraudulently appropriates or
 17 abstracts or misapplies any of the moneys, funds, credits,
 18 or property of the bank when owned by it or held in trust,
 19 or ~~he~~ issues or puts forth any certificate of deposit,
 20 draws any order or bill of exchange, makes any acceptance,
 21 assigns any note, bond, draft, bill of exchange, mortgage,
 22 judgment, or decree, with intent, in any case to injure or
 23 defraud the bank or any person or corporation, or to deceive
 24 any officer of the bank, or any other person, or ~~any one~~
 25 anyone appointed to examine the affairs of ~~such the~~ bank, or

1 any person, who with like intent, aids or abets any officer,
 2 clerk, or employee in the violation of this section, ~~shall~~
 3 ~~be~~ is guilty of a ~~felony theft~~ and upon conviction thereof,
 4 shall be imprisoned in the state ~~penitentiary prison~~ for a
 5 period of not exceeding ~~twenty~~ 20 years."

6 Section 44. Section 11-1916, R.C.M. 1947, is amended
 7 to read as follows:

8 "11-1916. ~~Embezzlement of Theft from~~ funds. Any person
 9 who ~~shall embezzle~~ fraudulently appropriates any of the
 10 money or other valuable thing belonging to the disability
 11 and pension fund of any fire department relief association,
 12 or who ~~shall take~~ takes part, in, or in any manner ~~aid~~ aids
 13 in any scheme or plan whereby ~~said the~~ fund or association
 14 ~~shall be~~ is defrauded out of any of the money in ~~said the~~
 15 fund, ~~shall be~~ is guilty of a ~~felony, theft~~ and upon
 16 conviction thereof, shall be punished by imprisonment in the
 17 state prison for not less than ~~one~~ 1 year or more than ~~ten~~
 18 10 years."

19 Section 45. Section 14-631, R.C.M. 1947, is amended to
 20 read as follows:

21 "14-631. Duties of directors. ~~It shall be the duty of~~
 22 ~~the~~ the directors ~~to~~ shall:

- 23 (1) act upon applications for membership; or ~~to~~
 24 appoint one ~~(4)~~ or more membership officers to approve
 25 applications for membership under such conditions as the

1 board prescribes. A record of a membership officer's
 2 approval or denial of membership shall be available to the
 3 board of directors for inspection. A person denied
 4 membership by a membership officer may appeal the denial to
 5 the board.

6 (2) purchase a blanket fidelity bond, in accordance
 7 with any rules ~~and regulations~~ of the director, to protect
 8 the credit union against losses caused by occurrences
 9 covered therein such as fraud, dishonesty, forgery,
 10 ~~embezzlement~~ theft, misappropriation, misapplication, or
 11 unfaithful performance of duty by a director, officer,
 12 employee, member of an official committee, ~~attorney-at-law~~
 13 attorney-at-law, or other agent;

14 (3) determine from time to time the interest rate or
 15 rates consistent with this act, ~~which shall~~ to be charged on
 16 loans and ~~to~~ authorize interest refunds, if any, to members
 17 from income earned and received in proportion to the
 18 interest paid by them on such classes of loans and under
 19 such conditions as the board prescribes;

20 (4) fix from time to time the maximum amount which may
 21 be loaned to any one member;

22 (5) declare dividends on shares in the manner and form
 23 as provided in the bylaws;

24 (6) limit the number of shares which may be owned by a
 25 member, such limitations to apply alike to all members;

1 (7) have charge of the investment of surplus funds,
 2 except that the board of directors may designate an
 3 investment committee or any qualified individual to have
 4 charge of making investments under controls established by
 5 the board of directors;

6 (8) authorize the employment of such persons necessary
 7 to carry on the business of the credit union, including the
 8 credit manager, loan officers, and auditing assistants
 9 requested by the supervisory committee, and fix the
 10 compensation, if any, of the treasurer and the general
 11 manager and provide for compensation for other employees
 12 within guidelines predetermined by the board of directors;

13 (9) authorize the conveyance of property;

14 (10) borrow or lend money to carry on the functions of
 15 the credit union;

16 (11) designate a depository or depositories for the
 17 funds of the credit union;

18 (12) suspend any or all members of the credit or
 19 supervisory committee for failure to perform their duties;

20 (13) appoint any special committees ~~deemed~~ considered
 21 necessary; and

22 (14) perform such other duties as the members from time
 23 to time direct and perform or authorize any action not
 24 inconsistent with this act and not specifically reserved by
 25 the bylaws for the members."

1 Section 46. Section 31-110, R.C.M. 1947, is amended to
2 read as follows:

3 "31-110. Offenses for which arrest may be made by
4 patrolmen ~~— murder, etc. —~~ patrolmen when patrolmen police
5 officers — forbidden to act in labor disputes — temporary
6 control of traffic in cities and towns — investigations of
7 accidents — inspection of livestock. (1) In addition to the
8 above duties, the highway patrol supervisor and all
9 patrolmen ~~are authorized under this act to may~~ make arrests
10 for the following offenses ~~committed~~; if committed in the
11 presence of said the supervisor or any of said the
12 ~~patrolmen, — or;~~ if committed in a rural district, upon the
13 request of a peace officer; or if committed in a city or
14 town of less than ~~twenty-five hundred~~ (2,500) inhabitants,
15 upon the request of any peace officer, or the mayor of said
16 the city or town: ~~The crimes of murder deliberate homicide,~~
17 assault with a deadly weapon, arson, criminal mischief,
18 burglary, ~~larceny~~ theft, ~~kidnaping~~ kidnapping, illegal
19 transportation of narcotics, or violation of the Dyer ~~act~~
20 Act regarding the transportation of stolen automobiles.
21 ~~Provided, that such~~ Such highway patrolmen shall have no
22 authority and are expressly forbidden to make arrests in
23 labor disputes or ~~in preventing to prevent~~ violence in
24 connection with strikes, and ~~shall not be permitted to may~~
25 not perform any duties whatsoever in connection with labor

1 disputes, strikes, or boycotts.

2 (2) Patrolmen ~~shall be deemed~~ are considered police
3 officers ~~in for the purpose of making arrests in for~~ all
4 offenses occurring on the highways ~~and in or involving~~ the
5 use of motor vehicles or the registration thereof, and for
6 the purpose of serving warrants of arrest in connection with
7 such violations.

8 (3) ~~The patrolmen~~ Patrolmen ~~are also hereby empowered~~
9 ~~to may~~ stop any truck or motor vehicle in which livestock or
10 livestock products are being transported and ascertain
11 whether the driver of such truck or vehicle is rightfully in
12 possession of such livestock or livestock products, ~~and~~
13 ~~whenever~~ If the patrolmen have good reason to believe that
14 ~~such~~ livestock or livestock products have been stolen, they
15 ~~are empowered to may~~ take possession of the same until ~~such~~
16 the livestock or livestock products can be delivered into
17 the custody of the sheriff or until such time as the facts
18 as to the actual ownership can be ascertained."

19 Section 47. Section 31-146, R.C.M. 1947, is amended to
20 read as follows:

21 "31-146. Mandatory revocation of license by board or
22 chief upon proper authority. The board or chief upon proper
23 authority shall ~~forthwith~~ revoke the license or operating
24 privilege of any operator or chauffeur upon receiving a
25 record of such operator's or chauffeur's conviction or

1 forfeiture of bail not vacated of any of the following
2 offenses, when such conviction or forfeiture has become
3 final:

4 ~~1.~~ (1) ~~Manslaughter~~ negligent homicide resulting from
5 the operation of a motor vehicle;

6 ~~2.~~ (2) ~~Driving~~ driving a motor vehicle while under the
7 influence of intoxicating liquor or narcotic drug, or
8 willfully or knowingly under the influence of any other drug
9 to a degree which renders him incapable of safely driving a
10 motor vehicle, or a combination thereof;

11 ~~3.~~ (3) ~~Any~~ any felony in the commission of which a
12 motor vehicle is used;

13 ~~4.~~ (4) ~~Failure~~ failure to stop and render aid as
14 required under the laws of this state in the event of a
15 motor vehicle accident resulting in the death or personal
16 injury of another;

17 ~~5.~~ (5) ~~Perjury~~ perjury or the making of a false
18 affidavit or statement under oath to the board under this
19 act or under any other law relating to the ownership or
20 operation of motor vehicles;

21 ~~6.~~ (6) ~~Conviction,~~ conviction or forfeiture of bail not
22 vacated, upon three ~~(3)~~ charges of reckless driving
23 committed within a period of ~~twelve~~ (12) months."

24 Section 48. Section 31-177, R.C.M. 1947, is amended to
25 read as follows:

1 "31-177. Definitions. As used in this act, ~~the~~
2 following definitions apply:

3 (1) "Habitual traffic offender" means any person, who,
4 within a ~~five~~ (5)-year ~~5-year period, from and after passage
5 of this act, accumulates ~~thirty~~ (30) or more conviction
6 points according to the schedule specified in this
7 subsection;~~

8 (a) ~~first or second degree murder~~ deliberate homicide
9 resulting from the operation of a motor vehicle, ~~fifteen~~
10 (15) points;

11 (b) ~~voluntary or involuntary manslaughter~~ mitigated
12 deliberate homicide or negligent homicide resulting from
13 operation of a motor vehicle, ~~twelve~~ (12) points;

14 (c) any offenses punishable as a felony under the
15 motor vehicle laws of Montana, or any felony in the
16 commission of which a motor vehicle is used, ~~twelve~~ (12)
17 points;

18 (d) driving while under the influence of intoxicating
19 liquor or narcotics or drugs of any kind, ~~ten~~ (10) points;

20 (e) operating a motor vehicle while his license to do
21 so has been suspended or revoked, ~~ten~~ (10) points;

22 (f) failure of the driver of a motor vehicle involved
23 in an accident resulting in death or injury to any person to
24 stop at the scene of the accident and give the required
25 information and assistance, ~~eight~~ (8) points;

1 (g) willful failure of the driver involved in an
 2 accident resulting in property damage of ~~two hundred fifty~~
 3 ~~dollars~~ ~~(\$250)~~ to stop at the scene of the accident and give
 4 the required information or to otherwise fail to report an
 5 accident in violation of the law, ~~four~~ ~~(4)~~ points;

6 (h) reckless driving, ~~five~~ ~~(5)~~ points;

7 (i) illegal drag racing or engaging in a speed contest
 8 in violation of the law, ~~six~~ ~~(6)~~ points;

9 (j) operating a motor vehicle without a license to do
 10 so, ~~six~~ ~~(6)~~ points, ~~except as hereafter provided~~ this
 11 subsection (j) does not apply to operating a motor vehicle
 12 whose license has expired within a period of one hundred and
 13 eighty (180) days from the date the license expired;

14 (k) speeding, ~~three~~ ~~(3)~~ points;

15 (l) all other moving violations, including operation
 16 of a motor vehicle without a license to do so ~~where said~~
 17 when the license has expired in the previous one hundred and
 18 eighty (180) days, two (2) points, (2) there There shall
 19 be no multiple application of cumulative points when two ~~(2)~~
 20 or more charges are filed involving a single occurrence. If
 21 there are two ~~(2)~~ or more convictions involving a single
 22 occurrence, only the number of points for the specific
 23 conviction carrying the highest points shall be chargeable
 24 against that defendant.

25 (2) "Conviction" means a finding of guilt by duly

1 constituted judicial authority, ~~or~~ a plea of guilty, or a
 2 forfeiture of bail, bond, or other security deposited to
 3 secure appearance by a person charged with having committed
 4 any offense relating to the use or operation of a motor
 5 vehicle which is prohibited by law, ordinance, or
 6 administrative order.

7 (3) "Administrator" means the Montana highway patrol
 8 chief.

9 (4) "Bureau" means the Montana highway patrol bureau.

10 (5) "License" means any ~~and all types type~~ of licenses
 11 license or permits permit to operate a motor vehicle."

12 Section 49. Section 40-2905, R.C.M. 1947, is amended
 13 to read as follows:

14 "40-2905. "Casualty insurance" defined. (1) Casualty
 15 insurance includes:

16 (a) Vehicle vehicle insurance which is ~~insurance~~
 17 insurance against loss of or damage to any land vehicle or
 18 aircraft or any draft or riding animal or to property while
 19 contained therein or thereon or being loaded or unloaded
 20 therein or therefrom, from any hazard or cause, and against
 21 any loss, liability, or expense resulting from or incidental
 22 to ownership, maintenance, or use of any such vehicle,
 23 aircraft, or animal, together with insurance against
 24 accidental death or accidental injury to individuals,
 25 including the named insured, while in, entering, alighting

1 from, adjusting, repairing, cranking, or caused by being
2 struck by a vehicle, aircraft, or draft or riding animal, if
3 such insurance is issued as an incidental part of insurance
4 on the vehicle, aircraft, or draft or riding animal;

5 (b) ~~Liability~~ liability insurance. ~~Insurance which is~~
6 insurance against legal liability for the death, injury, or
7 disability of any human being, or for damage to property,
8 and provision of medical, hospital, surgical, and disability
9 benefits to injured persons and funeral and death benefits
10 to dependents, beneficiaries, or personal representatives of
11 persons killed, irrespective of legal liability of the
12 insured, when issued as an incidental coverage with or
13 supplemental to liability insurance;

14 (c) ~~Workmen's~~ workers' compensation and employer's
15 liability. ~~Insurance which is insurance~~ of the obligations
16 accepted by, imposed upon, or assumed by employers under law
17 for death, disablement, or injury of employees;

18 (d) ~~Burglary~~ burglary and theft. ~~Insurance which is~~
19 insurance against loss or damage by burglary, theft,
20 ~~larceny~~, robbery, forgery, fraud, deceptive practices,
21 vandalism, ~~malicious~~ criminal mischief, confiscation, or
22 wrongful conversion, disposal, or concealment, or from any
23 attempt at any of the foregoing, including supplemental
24 coverage for medical, hospital, surgical, and funeral
25 expense incurred by the named insured or any other person as

1 a result of bodily injury during the commission of a
2 burglary, robbery, or theft by another; also insurance
3 against loss of or damage to moneys, coins, bullion,
4 securities, notes, drafts, acceptances, or any other
5 valuable papers and documents, resulting from any cause;

6 (e) ~~Personal~~ personal property floater. ~~Insurance~~
7 which is insurance upon personal effects against loss or
8 damage from any cause under a personal property floater;

9 (f) ~~Glass~~. ~~Insurance glass which is insurance~~ against
10 loss or damage to glass, including its lettering,
11 ornamentation, and fittings;

12 (g) ~~Boiler~~ boiler and machinery. ~~Insurance which is~~
13 insurance against any liability and loss or damage to
14 property or interest resulting from accident to or
15 explosions of boilers, pipes, pressure containers,
16 machinery, or apparatus, and ~~to make from making~~ inspection
17 of and ~~issue~~ issuing certificates of inspection upon
18 boilers, machinery, and apparatus of any kind, whether or
19 not insured;

20 (h) ~~Leakage~~ leakage and fire extinguishing equipment.
21 ~~Insurance which is insurance~~ against loss or damage to any
22 property or interest caused by the breakage or leakage of
23 sprinklers, hoses, pumps, and other fire extinguishing
24 equipment or apparatus, water pipes, or containers, or by
25 water entering through leaks or openings in buildings, and

1 insurance against loss or damage to such sprinklers, hoses,
2 pumps, and other fire extinguishing equipment or apparatus;

3 (i) ~~Credit.~~ Insurance credit which is insurance
4 against loss or damage resulting from failure of debtors to
5 pay their obligations to the insured;

6 (j) ~~Malpractice.~~ Insurance malpractice which is
7 insurance against legal liability of the insured, and
8 against loss, damage, or expense incidental to a claim of
9 such liability, and including medical, hospital, surgical,
10 and funeral benefits to injured persons, irrespective of
11 legal liability of the insured, arising out of the death,
12 injury, or disablement of any person, or arising out of
13 damage to the economic interest of any person, as the result
14 of negligence in rendering expert, fiduciary, or
15 professional service;

16 (k) ~~Elevators.~~ Insurance elevator which is insurance
17 against loss of or damage to any property of the insured,
18 resulting from the ownership, maintenance, or use of
19 elevators, except loss or damage by fire, and ~~to make from~~
20 making inspection of and ~~issue~~ issuing certificates of
21 inspection upon elevators;

22 (l) ~~Livestock.~~ Insurance livestock which is insurance
23 against loss or damage to livestock, and for services of a
24 veterinary for such animals;

25 (m) ~~Entertainments.~~ Insurance entertainments which is

1 insurance indemnifying the producer of any motion picture,
2 television, radio, theatrical, sport, spectacle,
3 entertainment, or similar production, event, or exhibition
4 against loss from interruption, postponement, or
5 cancellation thereof due to death, accidental injury, or
6 sickness of performers, participants, directors, or other
7 principals;

8 (n) ~~Miscellaneous.~~ Insurance miscellaneous which is
9 insurance against any other kind of loss, damage, or
10 liability properly a subject of insurance and not within any
11 other kind of insurance as defined in this chapter, if such
12 insurance is not disapproved by the commissioner as being
13 contrary to law or public policy.

14 (2) Provision of medical, hospital, surgical, and
15 funeral benefits, and of coverage against accidental death
16 or injury, as incidental to and part of other insurance as
17 stated under subdivisions (a) (vehicle), (b) (liability),
18 (d) (burglary), and (j) (malpractice) of subsection (1)
19 shall for all purposes be ~~deemed~~ considered to be the same
20 kind of insurance to which it is so incidental, and shall
21 not be subject to provisions of this code applicable to life
22 or disability insurances."

23 Section 50. Section 40-2906, R.C.M. 1947, is amended
24 to read as follows:

25 "40-2906. "Surety insurance" defined. Surety insurance

1 includes:

2 (1) ~~Fidelity~~ fidelity insurance, which is insurance
3 guaranteeing the fidelity of persons holding positions of
4 public or private trust;

5 (2) ~~Insurance~~ insurance guaranteeing the performance
6 of contracts, other than insurance policies, and
7 guaranteeing and executing bonds, undertakings, and
8 contracts of suretyship;

9 (3) ~~Insurance~~ insurance indemnifying banks, bankers,
10 brokers, financial or moneyed corporations or associations
11 against check forgery or alteration, or against loss,
12 resulting from any cause, of bills of exchange, notes,
13 bonds, securities, evidences of debt, deeds, mortgages,
14 warehouse receipts, or other valuable papers, documents,
15 money, precious metals, and articles made therefrom,
16 jewelry, watches, necklaces, bracelets, gems, or precious
17 and semiprecious stones, including any loss while the same
18 are being transported in armored motor vehicles, by mail, or
19 by messenger, but not including any other risks of
20 transportation or navigation; also insurance against loss or
21 damage to such an insured's premises or to his furnishings,
22 fixtures, equipment, safes, and vaults therein, caused by
23 burglary, robbery, theft, vandalism, or malicious criminal
24 mischief, or any attempt thereat."

25 Section 51. Section 40-3324, R.C.M. 1947, is amended

1 to read as follows:

2 "40-3324. Reporting and accounting for premiums. (1)
3 All premiums or return premiums received by an agent or
4 solicitor shall be trust funds so received by the licensee
5 in a fiduciary capacity, and the agent or solicitor shall in
6 the applicable regular course of business account for and
7 pay the same to the insured, insurer, or agent entitled
8 thereto. If the licensee establishes a separate deposit for
9 funds so belonging to others in order to avoid a commingling
10 of such fiduciary funds with his own funds, he may deposit
11 and commingle in the same such separate deposit all such
12 funds belonging to others so long as the amount of such
13 deposit so held for each respective other person is
14 reasonably ascertainable from the records and accounts of
15 the licensee.

16 (2) Any agent or solicitor who, not being lawfully
17 entitled thereto, diverts or appropriates such funds or any
18 portion thereof to his own use, ~~shall be~~ upon conviction,
19 be guilty of ~~larceny~~ theft and shall be punished as provided
20 by law."

21 Section 52. Section 46-104, R.C.M. 1947, is amended to
22 read as follows:

23 "46-104. Duties and powers of department. The
24 department shall exercise general supervision over, and, so
25 far as possible, protect the livestock interests of the

1 state from theft and disease, and recommend legislation
 2 which, in the judgment of the department, fosters this
 3 industry. The department may compel the attendance of
 4 witnesses, employ counsel to assist in the prosecution of
 5 violations of laws made for the protection of the livestock
 6 interests, and assist in the prosecution of persons charged
 7 with ~~feloniously~~ illegal branding or ~~stealing~~ theft of
 8 livestock, or any other crime under the laws of this state
 9 for the protection of stock owners. It may adopt rules
 10 governing the recording and use of livestock brands."

11 Section 53. Section 46-703, R.C.M. 1947, is amended to
 12 read as follows:

13 "46-703. Duties. The stock inspectors and detectives
 14 shall arrest all persons who in their presence violate the
 15 stock laws of this state. Every stock inspector and
 16 detective, on information that a person has committed an
 17 offense against the laws of this state by engaging in
 18 illegal, ~~in feloniously~~ branding or ~~stealing~~ theft of stock
 19 ~~of~~, or an offense against the laws of this state for the
 20 protection of the rights and interests of stock owners, must
 21 make the necessary affidavit for the arrest and examination
 22 of the person, and on a warrant issued for the person,
 23 immediately arrest the person and bring him before the
 24 proper officer and notify the department of his acts."

25 Section 54. Section 66-1602, R.C.M. 1947, is amended

1 to read as follows:

2 "66-1602. Search warrant may issue. Whenever any
 3 person makes oath before a magistrate that any property
 4 belonging to him has been ~~embezzled or taken without his~~
 5 ~~consent~~ taken by theft or otherwise without his consent, and
 6 that he has reason to believe or suspect, and does suspect,
 7 that such property has been pledged with any pawnbroker or
 8 junk dealer, such magistrate, if satisfied, must issue his
 9 warrant to search for the property so taken, and, if found,
 10 to seize and bring the same before him."

11 Section 55. Section 67-2129, R.C.M. 1947, is amended
 12 to read as follows:

13 "67-2129. Revocation. (1) A registration may be
 14 revoked after notice and hearing upon a written finding of
 15 fact that the subdivider has:

16 (a) ~~Failed~~ failed to comply with the terms of a cease
 17 and desist order;

18 (b) ~~Been~~ been convicted in any court subsequent to the
 19 filing of the application for registration of a crime
 20 involving fraud, ~~deceptive~~ deceptive practices, false
 21 pretenses, misrepresentation, false advertising, or
 22 dishonest dealing in real estate transactions;

23 (c) ~~Disposed~~ disposed of, concealed, or diverted any
 24 funds or assets of any person so as to defeat the rights of
 25 subdivision purchasers;

1 (d) ~~Failed~~ failed faithfully to perform any
 2 stipulation or agreement made with the board as an
 3 inducement to grant any registration, to reinstate any
 4 registration, or to approve any promotional plan or public
 5 offering statement; or

6 (e) ~~Made~~ made intentional misrepresentations or
 7 concealed material facts in an application for registration.

8 (2) Findings of fact, if set forth in statutory
 9 language, shall be accompanied by a concise and explicit
 10 statement of the underlying facts supporting the findings.

11 (2)(3) If the board finds after notice and hearing
 12 that the subdivider has been guilty of a violation for which
 13 revocation could be ordered, it may issue a cease and desist
 14 order instead."

15 Section 56. Section 69-1929, R.C.M. 1947, is amended
 16 to read as follows:

17 "69-1929. Penalty when death caused by violation of
 18 this act. When the death of any person is caused by the
 19 explosion of any powder, gunpowder, giant or Hercules
 20 powder, giant caps, or other highly explosive substance that
 21 has been stored, kept, handled, or transported, contrary to
 22 the provisions of the foregoing sections, the person or
 23 persons who have so unlawfully stored, kept, handled, or
 24 transported such explosives, or who may have knowingly or
 25 negligently permitted their agents, servants, or employees

1 to so unlawfully store, keep, handle, or transport the same,
 2 ~~shall be~~ are guilty of ~~manslaughter,~~ negligent homicide and,
 3 on conviction, shall be punished by imprisonment in the
 4 state penitentiary prison for a period not exceeding ~~ten~~ 10
 5 years."

6 Section 57. Section 72-116, R.C.M. 1947, is amended to
 7 read as follows:

8 "72-116. Power of board to fix rates, schedules, and
 9 classifications. ~~The power and authority is hereby vested in~~
 10 ~~the said~~

11 (1) ~~The board, and it is hereby made its duty to shall~~
 12 ~~adopt, as soon as practicable after the organization of the~~
 13 ~~board,~~ all necessary rates, charges, and regulations to
 14 govern and regulate freight and passenger tariffs, to
 15 correct abuses, and prevent unjust discrimination and
 16 ~~extortion~~ intimidation in the rates of freight and passenger
 17 tariffs on the different railroads in this state, and to
 18 make the same effective by enforcing the penalties
 19 prescribed in this act. ~~The said board shall have the power,~~
 20 ~~and it shall be its duty, to~~ fairly and justly classify and
 21 subdivide all freight and merchandise of ~~whatever~~ whatever
 22 character that may be transported over railroads of this
 23 state, into such general and special classes or subdivisions
 24 as may be ~~deemed~~ considered necessary or expedient. ~~The said~~
 25 board may fix different rates for different railroads and

1 for different lines under the same management, or for
 2 different parts of the same lines, if found necessary to do
 3 justice, and may make rates for express companies different
 4 from the rates fixed for railroads. ~~Said The~~ board shall
 5 also ~~have the power, and it shall be its duty, to~~ fix and
 6 establish for all or any connecting lines of railroad in
 7 this state reasonable joint rates of freight charges for the
 8 various classes of freight, and cars that may pass over two
 9 or more lines of such railroads.

10 (2) The rates, tolls, or charges on any property,
 11 which shall for any reason remain unclassified by the board,
 12 shall not in any event exceed the highest rates fixed for
 13 any classification by ~~said the~~ board. ~~and it shall be within~~
 14 ~~the province of the The~~ board to may entertain and hear
 15 complaints made by any shipper to the effect that unjust
 16 discrimination is being made as against the state of
 17 Montana, or any point therein, in the way of rates for the
 18 transportation of freight or passengers from points without
 19 the state to points within the state, and vice versa, and
 20 ~~is~~ In proper cases, where it appears that the United States
 21 interstate commerce commission law has been violated, ~~it is~~
 22 ~~hereby made the duty of said the~~ board ~~to make complaint~~
 23 shall complain to the interstate commerce commission of the
 24 United States, and ~~to~~ aid such commission in any
 25 investigation it may make concerning violations of the

1 United States law, by furnishing evidence, and in any other
 2 manner which may seem best suited to enforce both the United
 3 States and state law, and to protect the interests of the
 4 people."

5 Section 58. Section 72-126, R.C.M. 1947, is amended to
 6 read as follows:

7 "72-126. Prohibition against rebates and
 8 discrimination. If any railroad subject hereto, directly or
 9 indirectly or by any special rate, rebate, drawback, or
 10 other device, ~~shall charge, demand charges, demands,~~ or
 11 ~~receive receives~~ from any person, firm, or corporation, a
 12 greater or less compensation for any service rendered, or to
 13 be rendered, in the transportation of property subject to
 14 the provisions of this act, than that fixed by the ~~said~~
 15 commission for such service, such railroad ~~shall be deemed~~
 16 is guilty of extortion intimidation, and shall forfeit and
 17 pay to the state of Montana not less than ~~five hundred~~
 18 ~~dollars nor \$500 or more than two thousand dollars~~ \$2,000
 19 for each offense, ~~provided, that nothing herein shall be so~~
 20 ~~construed as to prevent.~~ Nothing in this section prevents
 21 any railroad or railroad corporation from giving excursion
 22 rates to or from any point within or without the state."

23 Section 59. Section 72-127, R.C.M. 1947, is amended to
 24 read as follows:

25 "72-127. Discrimination in rates and charges. If any

1 railroad subject to this act, or its agents or officers,
 2 ~~shall hereafter collect, charge, demand, or receive~~
 3 collects, charges, demands, or receives from any person,
 4 company, firm, or corporation, a greater rate, charge, or
 5 compensation than that fixed and established by the said
 6 commission for the transportation of freight, ~~passengers~~
 7 passengers, or cars, or for the use of any car on the line
 8 of its railroad, or any line operated by it, or for
 9 receiving, forwarding, handling, or storing any such freight
 10 car, or for any other service performed, or to be performed
 11 by it, such railroad and its agents and officers ~~shall be~~
 12 deemed are guilty of ~~extortion intimidation~~, and shall
 13 forfeit and pay to the state of Montana a sum not less than
 14 ~~five hundred dollars nor \$500 or more than two thousand~~
 15 dollars \$2,000."

16 Section 60. Section 79-811, R.C.M. 1947, is amended to
 17 read as follows:

18 "79-811. Temporary suspension of treasurer. ~~The If,~~
 19 upon examination, the state board of examiners, ~~if, upon~~
 20 examination, find finds that the books of the state
 21 treasurer do not correspond with the amount of funds on
 22 hand, ~~or~~ do not show the actual condition of the funds, ~~or~~
 23 ~~if it appear to said board~~ that any moneys belonging to the
 24 state have been ~~embezzled, diverted, or in any manner taken~~
 25 diverted or taken by theft or any other means from the

1 treasury, without authority of law, or that the state
 2 treasurer has been guilty of negligence in keeping his
 3 books, or of taking care of the public moneys, the board
 4 must certify the fact to the governor, who, upon receipt of
 5 such certificate, must ~~forthwith~~ immediately take possession
 6 of all books, moneys, papers, and other property belonging
 7 to the state which have come into the possession of such
 8 state treasurer, by virtue of his office or otherwise, and
 9 must temporarily suspend ~~him~~ the treasurer from ~~his~~
 10 ~~of state treasurer.~~"

11 Section 61. Section 79-812, R.C.M. 1947, is amended to
 12 read as follows:

13 "79-812. Appointment in place of suspended treasurer.
 14 (1) The ~~state~~ board of examiners must thereupon procure the
 15 services of an expert to examine the books, papers, and all
 16 matters connected with the office of the state treasurer so
 17 suspended, and if it appears to ~~said~~ the board or such
 18 examination that ~~such~~ the state treasurer has ~~embezzled or~~
 19 converted to his own use or committed theft of the public
 20 moneys, or has been negligent in keeping his books, or in
 21 taking care of the public moneys, the governor, on the
 22 certificate of ~~said~~ the board of that fact, must appoint
 23 another person to fill the place of such suspended state
 24 treasurer, and such person so appointed must execute an
 25 official bond and enter upon the office of state treasurer,

1 as provided by law.

2 (2) The governor must report all his acts done under
3 this section and ~~the next preceding section 79-811~~ to the
4 next succeeding ~~legislative assembly~~ legislature, and the
5 state treasurer so appointed holds his office until the
6 suspended state treasurer is restored or his successor is
7 elected and qualified."

8 Section 62. Section 79-2314, R.C.M. 1947, is amended
9 to read as follows:

10 "79-2314. Information from state agencies. (1) All
11 state agencies shall aid and assist the legislative auditor
12 in the auditing of books, accounts, and records.

13 (2) The legislative auditor may examine at any time
14 the books, accounts, and records, confidential or otherwise,
15 of a state agency, ~~however, this~~ this shall not be
16 construed as authorizing the publication of information
17 which the law prohibits publishing.

18 (3) The head of each state agency shall immediately
19 notify the legislative auditor in writing upon the discovery
20 of any ~~larceny, or embezzlement~~ theft, actual or suspected,
21 involving state moneys or property under his control or for
22 which he is responsible."

23 Section 63. Section 87A-2-403, R.C.M. 1947, is amended
24 to read as follows:

25 "87A-2-403. Power to transfer — good faith purchase

1 of goods — "entrusting". (1) A purchaser of goods acquires
2 all title which his transferor had or had power to transfer
3 except that a purchaser of a limited interest acquires
4 rights only to the extent of the interest purchased. A
5 person with voidable title has power to transfer a good
6 title to a good faith purchaser for value. When goods have
7 been delivered under a transaction of purchase the purchaser
8 has such power even though:

9 (a) the transferor was deceived as to the identity of
10 the purchaser; ~~or~~

11 (b) the delivery was in exchange for a check which is
12 later dishonored; ~~or~~

13 (c) it was agreed that the transaction was to be a
14 "cash sale"; or

15 (d) the delivery was procured through fraud punishable
16 as ~~larcenous~~ theft under the criminal law.

17 (2) Any entrusting of possession of goods to a
18 merchant who deals in goods of that kind gives him power to
19 transfer all rights of the entruster to a buyer in ordinary
20 course of business.

21 (3) "Entrusting" includes any delivery and any
22 acquiescence in retention of possession regardless of any
23 condition expressed between the parties to the delivery or
24 acquiescence and regardless of whether the procurement of
25 the entrusting or the possessor's disposition of the goods

1 ~~have~~ has been such as to ~~be~~ ~~licensee~~ constitute theft under
2 the criminal law.

3 (4) The rights of other purchasers of goods and of
4 lien creditors are governed by the ~~Chapters~~ chapters on
5 ~~secured~~ secured Transactions transactions (~~Chapter~~ chapter
6 9), ~~Bulk~~ bulk Transfers transfers (~~Chapter~~ chapter 6) and
7 ~~documents~~ documents of ~~Title~~ title (~~Chapter~~ chapter 7)."

8 Section 64. Section 89-714, R.C.M. 1947, is amended to
9 read as follows:

10 "89-714. Penalties. Any person violating any of the
11 provisions of this chapter is punishable as provided in
12 ~~section~~ 94-35-105, and if death ~~ensue~~ ensues by reason of
13 any of the acts prohibited by this chapter, the person
14 guilty of the same may be convicted of ~~murder, manslaughter,~~
15 ~~or any other felony, as the case may be~~ homicide."

16 Section 65. Section 91-608, R.C.M. 1947, is amended to
17 read as follows:

18 "91-608. Order to examine party charged with
19 ~~embezzling~~ misappropriating estate. When the public
20 administrator complains to the district court, or a judge
21 thereof, on oath, that any person has concealed, ~~embezzled~~
22 committed theft of, or disposed of, or has in his possession
23 any money, goods, property, or effects, to the possession of
24 which such administrator is entitled in his official
25 capacity, the court or judge may cite such person to appear,

1 and may examine him on oath touching the matter of such
2 complaint."

3 Section 66. Section 91-2301, R.C.M. 1947, is amended
4 to read as follows:

5 "91-2301. ~~Embezzling~~ Mishandling of estate before
6 grant of letters testamentary. If any person, before the
7 granting of letters testamentary or of administration,
8 ~~embezzles~~ commits theft of or alienates any of the moneys,
9 goods, chattels, or effects of a decedent, he is charged
10 therewith and liable to an action by the executor or
11 administrator of the estate for double the value of the
12 property so ~~embezzled or alienated~~ mishandled, to be
13 recovered for the benefit of the estate."

14 Section 67. Section 91-2302, R.C.M. 1947, is amended
15 to read as follows:

16 "91-2302. Citation to person suspected ~~to have~~
17 ~~embezzled~~ of having mishandled estate, ~~etc.~~ If any executor
18 or administrator, or any person interested in the estate of
19 a decedent, complains to the court or judge, on oath, that
20 any person is suspected ~~to have~~ of having concealed,
21 ~~embezzled,~~ smuggled, conveyed away, ~~or~~ disposed of, or
22 committed theft of any moneys, goods, or chattels of the
23 decedent, or has in his possession or knowledge any deeds,
24 conveyances, bonds, contracts, or other writings, which
25 contain evidences of or tend to disclose the right, title,

1 interest, or claim of the decedent to any real or personal
 2 estate, ~~or~~ any claim or demand, or any lost will, the ~~said~~
 3 court or judge may cite such person to appear before ~~such~~
 4 ~~the~~ court, and may examine him on oath upon the matter of
 5 ~~such the~~ complaint. If such person is not in the county
 6 where ~~such the~~ decedent dies, or where letters have been
 7 granted, he may be cited and examined either before the
 8 district' court or judge of the county where the decedent
 9 dies, or where letters have been granted. But if he appears
 10 and is found innocent, his necessary expenses must be
 11 allowed him out of the estate."

12 Section 68. Section 91-2303, R.C.M. 1947, is amended
 13 to read as follows:

14 "91-2303. Refusal to obey citation, ~~penalty for, and~~
 15 ~~for embezzlement may be compelled to disclose by~~
 16 ~~imprisonment liable for double damages -- order for~~
 17 disclosure. If the person so cited refuses to appear and
 18 submit to an examination, or to answer such interrogatories
 19 as may be put to him, touching the matters of the complaint,
 20 the court or judge may, by warrant for that purpose, commit
 21 him to the county jail, there to remain in close custody
 22 until he submits to the order of the court, or is discharged
 23 according to law. If, upon examination, it appears that he
 24 has concealed, ~~embezzled~~, smuggled, conveyed away, ~~or~~
 25 disposed of, or committed theft of any moneys, goods, or

1 chattels of the decedent, or that he has in his possession
 2 or knowledge any deeds, conveyances, bonds, contracts, or
 3 other writings containing evidence of or tending to disclose
 4 the right, title, interest, or claim of the decedent to any
 5 real or personal estate, claim, or demand, or any lost will
 6 of the decedent, the court or judge may make an order
 7 requiring such person to disclose his knowledge thereof to
 8 the executor or administrator, and may commit him to the
 9 county jail, there to remain until the order is complied
 10 with, or he is discharged according to law; and all such
 11 interrogatories and answers must be in writing, signed by
 12 the party examined, and filed in the court. The order for
 13 such disclosure made upon such examination shall be prima
 14 facie evidence of the right of the executor or administrator
 15 to such property in any action brought for the recovery
 16 thereof, and any judgment recovered therein must be for
 17 double the value of the property as assessed by the court or
 18 jury, or for the return of the property and damages in
 19 addition thereto, equal to the value of such property. In
 20 addition to the examination of the party, witnesses may be
 21 produced and examined on either side."

22 Section 69. Section 93-4002, R.C.M. 1947, is amended
 23 to read as follows:

24 "93-4002. When defendant may be arrested in a civil
 25 action. The defendant may be arrested in the following

1 cases:

2 ~~4-111~~ ~~In~~ in an action for the recovery of money or
3 damages, on a cause of action arising upon contract, express
4 or implied, when the defendant is about to depart from the
5 state, with intent to defraud his creditors; or when the
6 action is for willful injury to person, to character, or to
7 property, knowing the property to belong to another;

8 ~~2-121~~ ~~In~~ in an action for a fine or penalty, or for
9 money or property ~~embezzled, or~~ fraudulently misapplied, or
10 converted to his own use, by a public officer, ~~or~~ an officer
11 of a corporation, or an attorney, factor, broker, agent, or
12 clerk, in the course of his employment as such, or by any
13 other person in a fiduciary capacity; ~~or~~ for misconduct or
14 neglect in office, or in a professional employment; or for
15 a willful violation of duty;

16 ~~3-131~~ ~~In~~ in an action to recover possession of
17 personal property unjustly obtained, when the property, or
18 any part thereof, has been concealed, removed, or disposed
19 of so that it cannot be found, or taken by the sheriff;

20 ~~4-141~~ ~~When~~ when the defendant has been guilty of fraud
21 in contracting the debt, incurring the obligation for which
22 the action is brought, or in concealing or disposing of the
23 property, or for taking, detention, or conversion of which
24 the action is brought;

25 ~~5-151~~ ~~When~~ when the defendant has removed or disposed

1 of his property, or is about to do so, with intent to
2 defraud his creditors."

3 Section 70. Section 94-8-405, R.C.M. 1947, is amended
4 to read as follows:

5 "94-8-405. Obtaining money by means of gambling games
6 or tricks ~~deemed to be larceny~~ considered theft. Every
7 person who, by means of any game, device, sleight-of-hand
8 trick, or other means whatever, by the use of cards or other
9 implements other than those mentioned in ~~the following~~
10 ~~section hereof 94-8-406~~, or while betting on sides, or
11 hands, of any such game or play, fraudulently obtains from
12 another person money or property of any description, ~~shall~~
13 ~~be deemed is~~ guilty of larceny theft of property of like
14 value."

15 Section 71. Section 95-408, R.C.M. 1947, is amended to
16 read as follows:

17 "95-408. Stolen property. ~~Where~~ When a person obtains
18 property by larceny theft, robbery, ~~false pretences or~~
19 ~~embezzlement or deceptive practices~~, he may be tried in any
20 county in which he exerted control over such property."

21 Section 72. Section 69-1931, R.C.M. 1947, is
22 renumbered 94-8-209.1 and is amended to read as follows:

23 "~~69-1931~~ 94-8-209.1. Destructive device — and
24 explosive defined. (1) "Destructive device", as used in this
25 chapter, ~~shall include~~ includes, but is not limited to, the

1 following weapons:

2 (a) ~~any~~ a projectile containing ~~any~~ an explosive or
3 incendiary material or any other similar chemical substance,
4 including, but not limited to, that which is commonly known
5 as tracer or incendiary ammunition, except tracer ammunition
6 manufactured for use in shotguns;

7 (b) ~~any~~ a bomb, grenade, explosive missile, or similar
8 device or ~~any~~ a launching device therefor;

9 (c) ~~any~~ a weapon of a caliber greater than .60 caliber
10 which fires fired ammunition, or any ammunition therefor,
11 other than a shotgun or shotgun ammunition;

12 (d) ~~any~~ a rocket, rocket-propelled projectile, or
13 similar device of a diameter greater than 0.60 inch, or ~~any~~
14 a launching device therefor, and ~~any~~ a rocket,
15 rocket-propelled projectile, or similar device containing
16 ~~any~~ an explosive or incendiary material or any other similar
17 chemical substance, other than the propellant for ~~such~~ the
18 device, except ~~such~~ devices ~~as are~~ designed primarily for
19 emergency or distress signaling purposes;

20 (e) ~~any~~ a breakable container which contains a
21 flammable liquid with a flashpoint of 150 degrees Fahrenheit
22 or less and which has a wick or similar device capable of
23 being ignited, other than a device which is commercially
24 manufactured primarily for the purpose of illumination.

25 (2) "Explosive", as used in this chapter, ~~shall mean~~

1 means any explosive defined in ~~section~~ 69-1901, ~~R.C.M.~~
2 ~~4947.~~"

3 Section 73. Section 69-1932, R.C.M. 1947, is
4 renumbered 94-8-209.2 and is amended to read as follows:

5 "~~69-1932~~ 94-8-209.2. Possession of a destructive
6 device ~~or explosive with felonious intent~~ penalty. (1)
7 ~~Every~~ A person who, with intent the purpose to commit a
8 felony, has in his possession any destructive device ~~or~~ ~~any~~
9 ~~explosive~~ on a public street or highway, in or near any
10 theater, hall, school, college, church, hotel, other public
11 building, or private habitation, in, on, or near any
12 aircraft, railway passenger train, car, vessel engaged in
13 carrying passengers for hire, or other public place
14 ordinarily passed by human beings is guilty of ~~a felony, the~~
15 offense of possession of a destructive device.

16 (2) and A person convicted of the offense of possession
17 of a destructive device shall be punishable by imprisonment
18 imprisoned in the state prison for a period of not more than
19 ~~ten~~ (10) years."

20 Section 74. Section 94-6-105, R.C.M. 1947, is
21 renumbered 94-8-209.3 and is amended to read as follows:

22 "~~94-6-105~~ 94-8-209.3. Possession of explosives. (1) A
23 person commits the offense of possession of explosives if he
24 possesses, manufactures, ~~or~~ transports, buys, or sells ~~any~~
25 an explosive compound, flammable material, or timing, ~~or~~

1 detonating, ~~or similar~~ device for use with ~~any an~~ explosive
2 compound or incendiary device, and:

3 (a) has the purpose to use such explosive, ~~material,~~
4 or device to commit ~~any an~~ offense; or

5 (b) knows that another has the purpose to use such
6 explosive, ~~material,~~ or device to commit ~~any an~~ offense.

7 (2) A person convicted of the offense of possession of
8 explosives shall be imprisoned in the state prison for any
9 term not to exceed ~~twenty (20)~~ years."

10 Section 75. There is a new R.C.M. section numbered
11 94-8-209.4 that reads as follows:

12 94-8-209.4. Possession of a silencer. (1) A person
13 commits the offense of possession of a silencer if he
14 possesses, manufactures, transports, buys, or sells a
15 silencer and has the purpose to use it to commit an offense
16 or knows that another person has such a purpose.

17 (2) A person convicted of the offense of possession of
18 a silencer is punishable by imprisonment in the state prison
19 for a term of not less than 5 years or more than 30 years or
20 a fine of not less than \$1,000 or more than \$20,000 or by
21 both such fine and imprisonment.

22 Section 76. There is a new R.C.M. section numbered
23 94-8-209.5 that reads as follows:

24 94-8-209.5. Possession prima facie evidence of
25 unlawful purpose. Possession of a silencer or of ~~an~~

1 ~~explosive compound, flammable material, or timing,~~
2 ~~detonating, or similar device for use with an explosive~~
3 ~~compound or incendiary device~~ A BOMB OR SIMILAR DEVICE
4 CHARGED OR FILLED WITH ONE OR MORE EXPLOSIVES is prima facie
5 evidence of a purpose to use the same to commit an offense.

6 SECTION 77. REPEALED. SECTIONS 69-1916, 94-5-601,
7 94-5-611, 94-5-612, 94-6-101, 94-6-301, 94-7-101, 94-7-201,
8 94-8-223, 94-8-224, AND 94-8-225, R.C.M. 1947, ARE REPEALED.

-End-

SENATE BILL NO. 34
INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF THE LAWS CONCERNING CRIMES."

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

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"54-132. Criminal sale of dangerous drugs. ~~(a)~~ (1) A person commits the offense of a criminal sale of dangerous drugs if he sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away, or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in ~~this act~~ 54-301.

~~(b)~~ (2) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term of not less than ~~one~~ (1) year ~~or~~ or more than life.

~~(c)~~ (3) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"54-133. Criminal possession of dangerous drugs. ~~(a)~~ (1) A person commits the offense of criminal possession

of dangerous drugs if he possesses any dangerous drug, as defined in ~~this act~~ 54-301.

~~(b)~~ (2) Any person convicted of a criminal possession of ~~marihuana~~ marijuana or its derivatives in an amount, the aggregate weight of which does not exceed ~~sixty~~ (60) grams of ~~marihuana~~ marijuana, or ~~one~~ (1) gram of hashish, shall ~~is~~, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed ~~one thousand dollars~~ (\$1,000) or by imprisonment in the county jail for a term not to exceed ~~one~~ (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed ~~one thousand dollars~~ (\$1,000) or by imprisonment in the county jail for a term not to exceed ~~one~~ (1) year or in the state prison for a term not to exceed ~~three~~ (3) years or by both such fine and imprisonment.

~~(c)~~ (3) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection ~~(b)~~ (2) shall be imprisoned by ~~imprisonment~~ in the state prison for a term not to exceed ~~five~~ (5) years.

~~(d)~~ (4) A person of the age of ~~twenty-one~~ (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

~~Jurisdiction under this section shall be exclusively in~~

*There are no changes in SB34
Please refer to previous copy* THIRD READING

1 ~~the district court.~~

2 (5) Ultimate users and practitioners and agents under
3 their supervision acting in the course of a professional
4 practice, as defined by 54-301, are exempt from this
5 section."

6 Section 3. Section 54-134, R.C.M. 1947, is amended to
7 read as follows:

8 "54-134. Fraudulently obtaining dangerous drugs. A
9 person commits the offense of fraudulently obtaining
10 dangerous drugs if he obtains or attempts to obtain a
11 dangerous drug, as defined in 54-301, by:

12 ~~(*)~~ (1) fraud, deceit, misrepresentation, or
13 subterfuge;

14 ~~(*)~~ (2) falsely assuming the title of, or representing
15 himself to be a manufacturer, wholesaler, practitioner,
16 pharmacist, owner of a pharmacy, or other ~~person~~ person
17 authorized to possess dangerous drugs;

18 ~~(*)~~ (3) the use of a forged, altered, or fictitious
19 prescription;

20 ~~(*)~~ (4) the use of a false name or a false address on a
21 prescription; or

22 ~~(*)~~ (5) the concealment of a material fact."

23 Section 4. Section 54-135, R.C.M. 1947, is amended to
24 read as follows:

25 "54-135. Altering labels on dangerous drugs. A person

1 commits the offense of altering labels on dangerous drugs if
2 he affixes a false, forged, or altered label to or otherwise
3 misrepresents a package or receptacle containing a dangerous
4 drug, ~~or otherwise misrepresents the package containing a~~
5 ~~dangerous drug as defined in 54-301."~~

6 Section 5. Section 54-137, R.C.M. 1947, is amended to
7 read as follows:

8 "54-137. Alternative sentencing authority. A person
9 convicted of criminal possession of dangerous drugs,
10 fraudulently obtaining dangerous drugs, or altering labels
11 on dangerous drugs, if he is shown to be an excessive or
12 habitual user of dangerous drugs, as defined in 54-301,
13 either from the face of the record or by a presentence
14 investigation, may, in lieu of imprisonment, be committed to
15 the custody of any institution for rehabilitative treatment
16 for not less than ~~six~~ ~~(6)~~ months ~~or~~ or more than ~~two~~ ~~(2)~~
17 years."

18 Section 6. Section 54-138, R.C.M. 1947, is amended to
19 read as follows:

20 "54-138. Jurisdiction. The district court ~~shall have~~
21 has exclusive trial jurisdiction over all prosecutions
22 commenced under ~~the Montana Dangerous Drug Act~~ this
23 chapter."

24 Section 7. Section 94-1-103, R.C.M. 1947, is amended
25 to read as follows:

SENATE BILL NO. 34

INTRODUCED BY HAZELBAKER

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~~(b)(2)~~ A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term ~~of~~ not less than ~~one-(1)~~ year ~~nor~~ ~~or~~ more than life.

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~~(c)(1)~~ A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection ~~(b)(2)~~ shall be imprisoned ~~by--imprisonment~~ in the state prison ~~for a term~~ not to exceed ~~five-(5)~~ years.

~~(d)(4)~~ A person of the age of ~~twenty-one-(21)~~ years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

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There are no changes in SB 94, and due to length will not be rerun. Please refer to yellow copy for complete text.

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