

CHAPTER NO. 10

HOUSE BILL NO. 6

INTRODUCED BY SCULLY

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to Pre-Filed Bills.
January 12, 1979	Committee recommend bill do pass. Report adopted.
January 13, 1979	On motion rules suspended and bill placed on Second Reading this day. Second reading, do pass. On motion rules suspended and bill placed on third reading this day. Third reading, passed. Considered correctly engrossed. Transmitted to Second House.

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill concurred in as amended. Report adopted.
January 20, 1979	Second reading, concurred in.
January 22, 1979	Third reading, concurred in as amended.

IN THE HOUSE

January 22, 1979

Returned from Second House.
Concurred in as amended.

January 23, 1979

Second reading, pass
consideration.

January 24, 1979

Second reading, amendments
adopted.

January 25, 1979

Third reading, amendments
adopted.

Sent to enrolling.

Report correctly enrolled.

1 House BILL NO. 6
 2 INTRODUCED BY _____
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4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 6 RELATING TO CRIMES; AMENDING SECTION 45-2-101, MCA, TO
 7 CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112,
 8 R.C.M. 1947."

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

11 Section 1. Section 45-2-101, MCA, is amended to read:
 12 "45-2-101. General definitions. Unless otherwise
 13 specified in the statute, all words will be taken in the
 14 objective standard rather than in the subjective, and unless
 15 a different meaning plainly is required, the following
 16 definitions apply ~~in this title~~:

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

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

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

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

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

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

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

20 (8) "Conduct" means an act or series of acts and the
 21 accompanying mental state.

22 (9) "Conviction" means a judgment of conviction or
 23 sentence entered upon a plea of guilty or upon a verdict or
 24 finding of guilty of an offense rendered by a legally
 25 constituted jury or by a court of competent jurisdiction

1 authorized to try the case without a jury.

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

6 (11) "Deception" means knowingly to:

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

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

11 (c) prevent another from acquiring information
12 pertinent to the disposition of the property involved;

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

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

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

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

2 (a) permanently;

3 (b) for such a period as to appropriate a portion of
4 its value;

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

7 (d) to dispose of the property and use or deal with
8 the property so as to make it unlikely that the owner will
9 recover it.

10 (14) "Deviate sexual relations" means sexual contact or
11 sexual intercourse between two persons of the same sex or
12 any form of sexual intercourse with an animal.

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

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

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

21 (18) "Government" includes any branch, subdivision, or
22 agency of the government of the state or any locality within
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24 (19) "Harm" means loss, disadvantage, or injury or
25 anything so regarded by the person affected, including loss,

1 disadvantage, or injury to any person or entity in whose
2 welfare he is interested.

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

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

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

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

15 (24) "Intoxicating substance" means any controlled
16 substance as defined in Title 50, chapter 32, and any
17 alcoholic beverage, including but not limited to any
18 beverage containing 1/2 of 1% or more of alcohol by volume.
19 The foregoing definition ~~shall~~ does not extend to
20 dealcoholized wine or to any beverage or liquid produced by
21 the process by which beer, ale, port, or wine is produced if
22 it contains less than 1/2 of 1% of alcohol by volume.

23 (25) An "involuntary act" means any act which is:

24 (a) a reflex or convulsion;

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

1 (c) conduct during hypnosis or resulting from hypnotic
2 suggestion; or

3 (d) a bodily movement that otherwise is not a product
4 of the effort or determination of the actor, either
5 conscious or habitual.

6 (26) "Juror" means any person who is a member of any
7 jury, including a grand jury, impaneled by any court in this
8 state in any action or proceeding or by any officer
9 authorized by law to impanel a jury in any action or
10 proceeding. The term "juror" also includes a person who has
11 been drawn or summoned to attend as a prospective juror.

12 (27) "Knowingly"--a person acts knowingly with respect
13 to conduct or to a circumstance described by a statute
14 defining an offense when he is aware of his conduct or that
15 the circumstance exists. A person acts knowingly with
16 respect to the result of conduct described by a statute
17 defining an offense when he is aware that it is highly
18 probable that such result will be caused by his conduct.
19 When knowledge of the existence of a particular fact is an
20 element of an offense, such knowledge is established if a
21 person is aware of a high probability of its existence.
22 Equivalent terms such as "knowing" or "with knowledge" have
23 the same meaning.

24 (28) "Mentally defective" means that a person suffers
25 from a mental disease or defect which renders him incapable

1 of appreciating the nature of his conduct.

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

6 (30) "Misdemeanor" means an offense in which the
7 sentence imposed upon conviction is imprisonment in the
8 county jail for any term or a fine, or both, or the sentence
9 imposed is imprisonment in the state prison for any term of
10 1 year or less.

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

24 (32) "Obtain" means:

25 (a) in relation to property, to bring about a transfer

1 of interest or possession, whether to the offender or to
2 another; and

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

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

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

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

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

21 (37) "Official detention" means imprisonment resulting
22 from a conviction for an offense, confinement for an
23 offense, confinement of a person charged with an offense,
24 detention by a peace officer pursuant to arrest, detention
25 for extradition or deportation, or any lawful detention for

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

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

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

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

22 (41) "Party official" means a person who holds an
 23 elective or appointive post in a political party in the
 24 United States by virtue of which he directs or conducts or
 25 participates in directing or conducting party affairs at any

1 level of responsibility.

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

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

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

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

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

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

20 (48) "Property" means anything of value. Property
 21 includes but is not limited to:

- 22 (a) real estate;
 23 (b) money;
 24 (c) commercial instruments;
 25 (d) admission or transportation tickets;

1 (e) written instruments which represent or embody
2 rights concerning anything of value, including labor or
3 services, or which are otherwise of value to the owner;

4 (f) things growing on, affixed to, or found on land
5 and things which are part of or affixed to any building;

6 (g) electricity, gas, and water;

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

9 (i) food and drink, samples, cultures, microorganisms,
10 specimens, records, recordings, documents, blueprints,
11 drawings, maps, and whole or partial copies, descriptions,
12 photographs, prototypes, or models thereof; and

13 (j) any other articles, materials, devices,
14 substances, and whole or partial copies, descriptions,
15 photographs, prototypes, or models thereof which constitute,
16 represent, evidence, reflect, or record secret scientific,
17 technical, merchandising, production, or management
18 information or a secret designed process, procedure,
19 formula, invention, or improvement.

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

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

1 or any substantial group thereof has access.

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

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

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

24 (54) "Sexual contact" means any touching of the sexual
25 or other intimate parts of the person of another for the

1 purpose of arousing or gratifying the sexual desire of
2 either party.

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

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

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

18 (58) "Statute" means any act of the legislature of this
19 state.

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

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

25 (61) "Tamper" means to interfere with something

1 improperly, meddle with it, make unwarranted alterations in
2 its existing condition, or deposit refuse upon it.

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

25 (63) (a) "Value" means the market value of the

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

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

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

19 (b) When it cannot be determined if the value of the
20 property is more or less than \$150 by the standards set
21 forth in subsection (63)(a) above, its value shall be deemed
22 ~~considered~~ to be an amount less than \$150.

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

1 the value of the property.

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

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

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

13 Section 2, Repealer. Section 34-112, R.C.M. 1947, is
14 repealed.

-End-

SENATE MEMBERS

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CHAIRMAN

FRANK HAZELBAKER
VICE CHAIRMAN

CHET BLAYLOCK

PAT M. GOODOVER

DIANA S. DOWLING
EXECUTIVE DIRECTOR
CODE COMMISSIONER

ELEANOR ECK
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
DIRECTOR, LEGISLATIVE SERVICES



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H. DAVID COGLEY
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ROBERT PERSON
DIRECTOR, RESEARCH

LC 0025

1979 Legislature
Code Commissioner Bill - Summary

House Bill No. 6

AN ACT TO REVISE THE LAW RELATING TO CRIMES; AMENDING SECTION 45-2-101, M C A , TO CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112, R.C.M. 1947.

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

Section 1. 45-2-101. In lead-in, deleted "in this title". The phrase was added for uniform style by code commissioner bill in 1977. However, the phrase narrowed the application of this definition section and therefore worked an inadvertant substantive change.

In (1), deleted "grammatical" from the term "usual and ordinary grammatical meaning". "Grammatical has nothing to do with meaning and is superfluous in this context. Other grammatical or style changes were made in (12), (24), (30), (31), (34), (36), (49), and (63).

Section 2. 34-112. Repeal. The subject covered by this section, enacted in 1895, is also covered by 45-6-301 of the 1973 Criminal Code relating to theft.

Approved by Committee
on Judiciary

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

24 (32) "Obtain" means:

25 (a) in relation to property, to bring about a transfer

1 of interest or possession, whether to the offender or to
 2 another; and

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

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

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

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

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

21 (37) "Official detention" means imprisonment resulting
 22 from a conviction for an offense, confinement for an
 23 offense, confinement of a person charged with an offense,
 24 detention by a peace officer pursuant to arrest, detention
 25 for extradition or deportation, or any lawful detention for

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

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

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

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

22 (41) "Party official" means a person who holds an
23 elective or appointive post in a political party in the
24 United States by virtue of which he directs or conducts or
25 participates in directing or conducting party affairs at any

1 level of responsibility.

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

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

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

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

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

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

20 (48) "Property" means anything of value. Property
21 includes but is not limited to:

- 22 (a) real estate;
- 23 (b) money;
- 24 (c) commercial instruments;
- 25 (d) admission or transportation tickets;

1 (e) written instruments which represent or embody
 2 rights concerning anything of value, including labor or
 3 services, or which are otherwise of value to the owner;

4 (f) things growing on, affixed to, or found on land
 5 and things which are part of or affixed to any building;

6 (g) electricity, gas, and water;

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

9 (i) food and drink, samples, cultures, microorganisms,
 10 specimens, records, recordings, documents, blueprints,
 11 drawings, maps, and whole or partial copies, descriptions,
 12 photographs, prototypes, or models thereof; and

13 (j) any other articles, materials, devices,
 14 substances, and whole or partial copies, descriptions,
 15 photographs, prototypes, or models thereof which constitute,
 16 represent, evidence, reflect, or record secret scientific,
 17 technical, merchandising, production, or management
 18 information or a secret designed process, procedure,
 19 formula, invention, or improvement.

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

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

1 or any substantial group thereof has access.

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

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

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

24 (54) "Sexual contact" means any touching of the sexual
 25 or other intimate parts of the person of another for the

1 purpose of arousing or gratifying the sexual desire of
2 either party.

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

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

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

18 (58) "Statute" means any act of the legislature of this
19 state.

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

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

25 (61) "Tamper" means to interfere with something

1 improperly, meddle with it, make unwarranted alterations in
2 its existing condition, or deposit refuse upon it.

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

25 (63) (a) "Value" means the market value of the

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

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

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

19 (b) When it cannot be determined if the value of the
20 property is more or less than \$150 by the standards set
21 forth in subsection (63)(a) above, its value shall be deemed
22 ~~considered~~ to be an amount less than \$150.

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

1 the value of the property.

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

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

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

13 Section 2. Repealer. Section 34-112, R.C.M. 1947, is
14 repealed.

-End-

1 purpose of arousing or gratifying the sexual desire of
2 either party.

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

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12 authorize, urge, incite, request, or advise another to
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2 its existing condition, or deposit refuse upon it.

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7 restraint;

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14 the person threatened;

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

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19 other similar collective action if the property is not
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23 testimony or information with respect to another's legal
24 claim or defense.

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1 property at the time and place of the crime or, if such
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 5 value of the property, the value shall be determined as
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 17 the instrument might reasonably suffer by virtue of the loss
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 6 substance which, regardless of its primary function, is
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 8 bodily injury.

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 10 desired in any official proceeding, in any investigation by
 11 a grand jury, or in a criminal action, prosecution, or
 12 proceeding."

13 Section 2. Repealer. Section 34-112, R.C.M. 1947, is
 14 repealed.

-End-

1 HOUSE BILL NO. 6
 2 INTRODUCED BY SCULLY
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 6 RELATING TO CRIMES; AMENDING SECTION 45-2-101, MCA, TO
 7 CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112,
 8 R.C.M. 1947."
 9

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

11 Section 1. Section 45-2-101, MCA, is amended to read:

12 "45-2-101. General definitions. Unless otherwise
 13 specified in the statute, all words will be taken in the
 14 objective standard rather than in the subjective, and unless
 15 a different meaning plainly is required, the following
 16 definitions apply ~~in this title~~ IN THIS TITLE:

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

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

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

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

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

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

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

20 (8) "Conduct" means an act or series of acts and the
 21 accompanying mental state.

22 (9) "Conviction" means a judgment of conviction or
 23 sentence entered upon a plea of guilty or upon a verdict or
 24 finding of guilty of an offense rendered by a legally
 25 constituted jury or by a court of competent jurisdiction

1 authorized to try the case without a jury.

2 (10) "Correctional institution" means the state prison,

3 county or city jail, or other institution for the

4 incarceration or custody of persons under sentence for

5 offenses or awaiting trial or sentence for offenses.

6 (11) "Deception" means knowingly to:

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

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

9 (b) fail to correct a false impression which the

10 offender previously has created or confirmed;

11 (c) prevent another from acquiring information

12 pertinent to the disposition of the property involved;

13 (d) sell or otherwise transfer or encumber property,

14 failing to disclose a lien, adverse claim, or other legal

15 impediment to the enjoyment of the property, whether such

16 impediment is or is not of value or is or is not a matter of

17 official record; or

18 (e) promise performance which the offender does not

19 intend to perform or knows will not be performed. Failure to

20 perform standing alone is not evidence that the offender did

21 not intend to perform.

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

23 person or a group, class, or association to hatred,

24 contempt, ridicule, degradation, or disgrace in society or

25 to injury to his or its business or occupation.

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

2 (a) permanently;

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

4 its value;

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

6 of reward or other compensation; or

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

8 the property so as to make it unlikely that the owner will

9 recover it.

10 (14) "Deviate sexual relations" means sexual contact or

11 sexual intercourse between two persons of the same sex or

12 any form of sexual intercourse with an animal.

13 (15) "Felony" means an offense in which the sentence

14 imposed upon conviction is death or imprisonment in the

15 state prison for any term exceeding 1 year.

16 (16) "Forcible felony" means any felony which involves

17 the use or threat of physical force or violence against an

18 individual.

19 (17) A "frisk" is a search by an external patting of a

20 person's clothing.

21 (18) "Government" includes any branch, subdivision, or

22 agency of the government of the state or any locality within

23 it.

24 (19) "Harm" means loss, disadvantage, or injury or

25 anything so regarded by the person affected, including loss,

1 disadvantage, or injury to any person or entity in whose
2 welfare he is interested.

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

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

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

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

15 (24) "Intoxicating substance" means any controlled
16 substance as defined in Title 50, chapter 32, and any
17 alcoholic beverage, including but not limited to any
18 beverage containing 1/2 of 1% or more of alcohol by volume.
19 The foregoing definition shall ~~not~~ does not extend to
20 dealcoholized wine or to any beverage or liquid produced by
21 the process by which beer, ale, port, or wine is produced if
22 it contains less than 1/2 of 1% of alcohol by volume.

23 (25) An "involuntary act" means any act which is:
24 (a) a reflex or convulsion;
25 (b) a bodily movement during unconsciousness or sleep;

1 (c) conduct during hypnosis or resulting from hypnotic
2 suggestion; or

3 (d) a bodily movement that otherwise is not a product
4 of the effort or determination of the actor, either
5 conscious or habitual.

6 (26) "Juror" means any person who is a member of any
7 jury, including a grand jury, impaneled by any court in this
8 state in any action or proceeding or by any officer
9 authorized by law to impanel a jury in any action or
10 proceeding. The term "juror" also includes a person who has
11 been drawn or summoned to attend as a prospective juror.

12 (27) "Knowingly"--a person acts knowingly with respect
13 to conduct or to a circumstance described by a statute
14 defining an offense when he is aware of his conduct or that
15 the circumstance exists. A person acts knowingly with
16 respect to the result of conduct described by a statute
17 defining an offense when he is aware that it is highly
18 probable that such result will be caused by his conduct.
19 When knowledge of the existence of a particular fact is an
20 element of an offense, such knowledge is established if a
21 person is aware of a high probability of its existence.
22 Equivalent terms such as "knowing" or "with knowledge" have
23 the same meaning.

24 (28) "Mentally defective" means that a person suffers
25 from a mental disease or defect which renders him incapable

1 of appreciating the nature of his conduct.

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

6 (30) "Misdemeanor" means an offense in which the
7 sentence imposed upon conviction is imprisonment in the
8 county jail for any term or a fine, or both, or the sentence
9 imposed is imprisonment in the state prison for any term of
10 1 year or less.

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

24 (32) "Obtain" means:

25 (a) in relation to property, to bring about a transfer

1 of interest or possession, whether to the offender or to
2 another; and

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

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

9 (34) "Occupied structure" means any building, vehicle,
10 or other place suited ~~suitable~~ for human occupancy or night
11 lodging of persons or for carrying on business, whether or
12 not a person is actually present. Each unit of a building
13 consisting of two or more units separately secured or
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16 liable to be arrested, charged, convicted, or punished for a
17 public offense.

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19 death or of imprisonment or a fine is authorized. Offenses
20 are classified as felonies or misdemeanors.

21 (37) "Official detention" means imprisonment resulting
22 from a conviction for an offense, confinement for an
23 offense, confinement of a person charged with an offense,
24 detention by a peace officer pursuant to arrest, detention
25 for extradition or deportation, or any lawful detention for

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

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

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

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

22 (41) "Party official" means a person who holds an
 23 elective or appointive post in a political party in the
 24 United States by virtue of which he directs or conducts or
 25 participates in directing or conducting party affairs at any

1 level of responsibility.

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

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

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

13 (45) "Physically helpless" means that a person is
 14 unconscious or is otherwise physically unable to communicate
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16 (46) "Possession" is the knowing control of anything
 17 for a sufficient time to be able to terminate control.

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

20 (48) "Property" means anything of value. Property
 21 includes but is not limited to:

- 22 (a) real estate;
- 23 (b) money;
- 24 (c) commercial instruments;
- 25 (d) admission or transportation tickets;

1 (e) written instruments which represent or embody
2 rights concerning anything of value, including labor or
3 services, or which are otherwise of value to the owner;

4 (f) things growing on, affixed to, or found on land
5 and things which are part of or affixed to any building;

6 (g) electricity, gas, and water;

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

9 (i) food and drink, samples, cultures, microorganisms,
10 specimens, records, recordings, documents, blueprints,
11 drawings, maps, and whole or partial copies, descriptions,
12 photographs, prototypes, or models thereof; and

13 (j) any other articles, materials, devices,
14 substances, and whole or partial copies, descriptions,
15 photographs, prototypes, or models thereof which constitute,
16 represent, evidence, reflect, or record secret scientific,
17 technical, merchandising, production, or management
18 information or a secret designed process, procedure,
19 formula, invention, or improvement.

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

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

1 or any substantial group thereof has access.

2 (51) "Public servant" means any officer or employee of
3 government, including but not limited to legislators,
4 judges, and firefighters, and any person participating as a
5 juror, advisor, consultant, administrator, executor,
6 guardian, or court-appointed fiduciary. The term does not
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15 although such purpose is conditional, unless the condition
16 negatives the harm or evil sought to be prevented by the law
17 defining the offense. Equivalent terms such as "purpose" and
18 "with the purpose" have the same meaning.

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

24 (54) "Sexual contact" means any touching of the sexual
25 or other intimate parts of the person of another for the

1 purpose of arousing or gratifying the sexual desire of
2 either party.

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

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

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

18 (58) "Statute" means any act of the legislature of this
19 state.

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

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

25 (61) "Tamper" means to interfere with something

1 improperly, meddle with it, make unwarranted alterations in
2 its existing condition, or deposit refuse upon it.

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

25 (63) (a) "Value" means the market value of the

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

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

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

19 (b) When it cannot be determined if the value of the
20 property is more or less than \$150 by the standards set
21 forth in subsection (63)(a) above, its value shall be deemed
22 ~~considered~~ to be an amount less than \$150.

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

1 the value of the property.

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

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

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

13 Section 2. Repealer. Section 34-112, R.C.M. 1947, is
14 repealed.

-End-

January 18, 1979

SENATE STANDING COMMITTEE REPORT

That House Bill No. 6 be amended as follows:

1. Page 1, line 16.
Following: "~~title~~"
Insert: "in this title"