

HOUSE BILL 737

IN THE HOUSE

February 10, 1979	Introduced and referred to Committee on Judiciary.
February 16, 1979	Committee recommend bill, do pass.
February 17, 1979	Second reading, do pass. Second reading, segregated.
February 19, 1979	Second reading, do pass.
February 20, 1979	Considered correctly engrossed.
February 21, 1979	Third reading, passed.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Judiciary.
March 16, 1979	Committee recommend bill, as amended.
March 19, 1979	Motion pass consideration.
March 20, 1979	Second reading, concurred.
March 23, 1979	Third reading, as amended.

IN THE HOUSE

March 24, 1979	Returned from Senate, as amended.
March 26, 1979	On motion, consideration passed until the 71st Legislative day.
March 30, 1979	Second reading amendments rejected.

CONFERENCE COMMITTEE

March 30, 1979	On motion, Conference Committee requested.
March 31, 1979	Conference Committee appointed.

1 House BILL NO. 737  
 2 INTRODUCED BY Kelly

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION  
 5 OF SERIOUS BODILY INJURY IN THE CRIMINAL CODE; AMENDING  
 6 SECTION 45-2-101, MCA."

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

9 Section 1. Section 45-2-101, MCA, is amended to read:  
 10 "45-2-101. General definitions. Unless otherwise  
 11 specified in the statute, all words will be taken in the  
 12 objective standard rather than in the subjective, and unless  
 13 a different meaning plainly is required, the following  
 14 definitions apply in this title:

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

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

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

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

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

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

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

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

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

25 (10) "Correctional institution" means the state prison.

1 county or city jail, or other institution for the  
 2 incarceration or custody of persons under sentence for  
 3 offenses or awaiting trial or sentence for offenses.

4 (11) "Deception" means knowingly to:

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

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

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

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

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

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 21 person or a group, class, or association to hatred,  
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 23 injury to his or its business or occupation.

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

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 2 its value;

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

5 (d) to dispose of the property and use or deal with  
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17 (17) A "frisk" is a search by an external patting of a  
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22 (19) "Harm" means loss, disadvantage, or injury or  
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13 (24) "Intoxicating substance" means any controlled  
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 17 The foregoing definition shall not extend to dealcoholized  
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23 (b) a bodily movement during unconsciousness or sleep;

24 (c) conduct during hypnosis or resulting from hypnotic  
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1 (d) a bodily movement that otherwise is not a product  
 2 of the effort or determination of the actor, either  
 3 conscious or habitual.

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

10 (27) "Knowingly"--a person acts knowingly with respect  
 11 to conduct or to a circumstance described by a statute  
 12 defining an offense when he is aware of his conduct or that  
 13 the circumstance exists. A person acts knowingly with  
 14 respect to the result of conduct described by a statute  
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 16 probable that such result will be caused by his conduct.  
 17 When knowledge of the existence of a particular fact is an  
 18 element of an offense, such knowledge is established if a  
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 20 Equivalent terms such as "knowing" or "with knowledge" have  
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22 (28) "Mentally defective" means that a person suffers  
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 24 of appreciating the nature of his conduct.

25 (29) "Mentally incapacitated" means that a person is

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4 (30) "Misdemeanor" means an offense in which the  
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9 (31) "Negligently"--a person acts negligently with  
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 14 aware that the result will occur or that the circumstance  
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 18 actor's situation. "Gross deviation" means a deviation that  
 19 is considerably greater than lack of ordinary care.  
 20 Relevant terms such as "negligent" and "with negligence"  
 21 have the same meaning.

22 (32) "Obtain" means:

23 (a) in relation to property, to bring about a transfer  
 24 of interest or possession whether to the offender or to  
 25 another; and

1 (b) in relation to labor or services, to secure the  
 2 performance thereof.

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

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

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

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

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

1 detention does not include supervision of probation or  
2 parole, constraint incidental to release on bail, or an  
3 unlawful arrest unless the person arrested employed physical  
4 force, a threat of physical force, or a weapon to escape.

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

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

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

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

25 (42) "Peace officer" means any person who by virtue of

1 his office or public employment is vested by law with a duty  
2 to maintain public order or to make arrests for offenses  
3 while acting within the scope of his authority.

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

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

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

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

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

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

20 (a) real estate;

21 (b) money;

22 (c) commercial instruments;

23 (d) admission or transportation tickets;

24 (e) written instruments which represent or embody  
25 rights concerning anything of value, including labor or

1 services, or which are otherwise of value to the owner;

2 (f) things growing on, affixed to, or found on land

3 and things which are part of or affixed to any building;

4 (g) electricity, gas, and water;

5 (h) birds, animals, and fish which ordinarily are kept

6 in a state of confinement;

7 (i) food and drink, samples, cultures, microorganisms,

8 specimens, records, recordings, documents, blueprints,

9 drawings, maps, and whole or partial copies, descriptions,

10 photographs, prototypes, or models thereof; and

11 (j) any other articles, materials, devices,

12 substances, and whole or partial copies, descriptions,

13 photographs, prototypes, or models thereof which constitute,

14 represent, evidence, reflect, or record secret scientific,

15 technical, merchandising, production, or management

16 information or a secret designed process, procedure,

17 formula, invention, or improvement.

18 (49) "Property of another" means real or personal

19 property in which a person other than the offender has an

20 interest which the offender has not authority to defeat or

21 impair, even though the offender himself may have an

22 interest in the property.

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

24 or any substantial group thereof has access.

25 (51) "Public servant" means any officer or employee of

1 government, including but not limited to legislators,

2 judges, and firefighters, and any person participating as a

3 juror, advisor, consultant, administrator, executor,

4 guardian, or court-appointed fiduciary. The term does not

5 include witnesses. The term "public servant" includes one

6 who has been elected or designated to become a public

7 servant.

8 (52) "Purposely"---a person acts purposely with respect

9 to a result or to conduct described by a statute defining an

10 offense if it is his conscious object to engage in that

11 conduct or to cause that result. When a particular purpose

12 is an element of an offense, the element is established

13 although such purpose is conditional, unless the condition

14 negatives the harm or evil sought to be prevented by the law

15 defining the offense. Equivalent terms such as "purpose" and

16 "with the purpose" have the same meaning.

17 (53) "Serious bodily injury" means bodily injury which

18 ~~creates results in:~~

19 (a) a ~~substantial~~ risk of death; or

20 (b) ~~which---causes---serious---~~permanent prolonged

21 disfigurement; or

22 (c) ~~protracted---loss---or~~ prolonged impairment of the

23 function or process use of any bodily member or organ; or

24 (d) the need for continued medical treatment or

25 medical correction; or

1 ~~(e) any other grievous harm. It includes including~~  
2 serious mental illness or impairment.

3 (54) "Sexual contact" means any touching of the sexual  
4 or other intimate parts of the person of another for the  
5 purpose of arousing or gratifying the sexual desire of  
6 either party.

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

15 (56) "Solicit" or "solicitation" means to command,  
16 authorize, urge, incite, request, or advise another to  
17 commit an offense.

18 (57) "State" or "this state" means the state of  
19 Montana, all the land and water in respect to which the  
20 state of Montana has either exclusive or concurrent  
21 jurisdiction, and the air space above such land and water.

22 (58) "Statute" means any act of the legislature of this  
23 state.

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

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

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

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

10 (b) subject any person to physical confinement or  
11 restraint;

12 (c) commit any criminal offense;

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

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

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

17 (g) reveal any information sought to be concealed by  
18 the person threatened;

19 (h) take action as an official against anyone or  
20 anything, withhold official action, or cause such action or  
21 withholding;

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



1 (j) testify or provide information or withhold  
2 testimony or information with respect to another's legal  
3 claim or defense.

4 (63) (a) "Value" means the market value of the  
5 property at the time and place of the crime or, if such  
6 cannot be satisfactorily ascertained, the cost of the  
7 replacement of the property within a reasonable time after  
8 the crime. If the offender appropriates a portion of the  
9 value of the property, the value shall be determined as  
10 follows:

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

17 (ii) The value of any other instrument which creates,  
18 releases, discharges, or otherwise affects any valuable  
19 legal right, privilege, or obligation shall be deemed the  
20 amount of economic loss which the owner of the instrument  
21 might reasonably suffer by virtue of the loss of the  
22 instrument.

23 (b) When it cannot be determined if the value of the  
24 property is more or less than \$150 by the standards set  
25 forth in subsection (63)(a) above, its value shall be deemed

1 to be an amount less than \$150.

2 (c) Amounts involved in thefts committed pursuant to a  
3 common scheme or the same transaction, whether from the same  
4 person or several persons, may be aggregated in determining  
5 the value of the property.

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

9 (65) "Weapon" means any instrument, article, or  
10 substance which, regardless of its primary function, is  
11 readily capable of being used to produce death or serious  
12 bodily injury.

13 (66) "Witness" means a person whose testimony is  
14 desired in any official proceeding, in any investigation by  
15 a grand jury, or in a criminal action, prosecution, or  
16 proceeding."

-End-

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION  
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2 performance thereof.

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

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

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

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

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

1 detention does not include supervision of probation or  
 2 parole, constraint incidental to release on bail, or an  
 3 unlawful arrest unless the person arrested employed physical  
 4 force, a threat of physical force, or a weapon to escape.

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

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

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

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

25 (42) "Peace officer" means any person who by virtue of

1 his office or public employment is vested by law with a duty  
 2 to maintain public order or to make arrests for offenses  
 3 while acting within the scope of his authority.

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

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

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

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

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

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

- 20 (a) real estate;  
 21 (b) money;  
 22 (c) commercial instruments;  
 23 (d) admission or transportation tickets;  
 24 (e) written instruments which represent or embody  
 25 rights concerning anything of value, including labor or

1 services, or which are otherwise of value to the owner;

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

4 (g) electricity, gas, and water;

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

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

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

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

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

25 (51) "Public servant" means any officer or employee of

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

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

17 (53) "Serious bodily injury" means bodily injury which  
18 creates results in:

19 (a) a substantial risk of death; or  
20 (b) which ~~causes~~ ~~serious~~ ~~permanent~~ prolonged  
21 disfigurement; or  
22 (c) ~~protracted loss~~ or prolonged impairment of the  
23 function or process ~~use~~ of any bodily member or organ; or  
24 (d) the need for continued medical treatment or  
25 medical correction; or

1 ~~(e) any other grievous harm, it includes including~~  
2 serious mental illness or impairment.

3 (54) "Sexual contact" means any touching of the sexual  
4 or other intimate parts of the person of another for the  
5 purpose of arousing or gratifying the sexual desire of  
6 either party.

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

15 (56) "Solicit" or "solicitation" means to command,  
16 authorize, urge, incite, request, or advise another to  
17 commit an offense.

18 (57) "State" or "this state" means the state of  
19 Montana, all the land and water in respect to which the  
20 state of Montana has either exclusive or concurrent  
21 jurisdiction, and the air space above such land and water.

22 (58) "Statute" means any act of the legislature of this  
23 state.

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

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

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

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

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

10 (b) subject any person to physical confinement or  
11 restraint;

12 (c) commit any criminal offense;

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

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

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

17 (g) reveal any information sought to be concealed by  
18 the person threatened;

19 (h) take action as an official against anyone or  
20 anything, withhold official action, or cause such action or  
21 withholding;

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



1 (j) testify or provide information or withhold  
2 testimony or information with respect to another's legal  
3 claim or defense.

4 (63) (a) "Value" means the market value of the  
5 property at the time and place of the crime or, if such  
6 cannot be satisfactorily ascertained, the cost of the  
7 replacement of the property within a reasonable time after  
8 the crime. If the offender appropriates a portion of the  
9 value of the property, the value shall be determined as  
10 follows:

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

17 (ii) The value of any other instrument which creates,  
18 releases, discharges, or otherwise affects any valuable  
19 legal right, privilege, or obligation shall be deemed the  
20 amount of economic loss which the owner of the instrument  
21 might reasonably suffer by virtue of the loss of the  
22 instrument.

23 (b) When it cannot be determined if the value of the  
24 property is more or less than \$150 by the standards set  
25 forth in subsection (63)(a) above, its value shall be deemed

1 to be an amount less than \$150.

2 (c) Amounts involved in thefts committed pursuant to a  
3 common scheme or the same transaction, whether from the same  
4 person or several persons, may be aggregated in determining  
5 the value of the property.

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

9 (65) "Weapon" means any instrument, article, or  
10 substance which, regardless of its primary function, is  
11 readily capable of being used to produce death or serious  
12 bodily injury.

13 (66) "Witness" means a person whose testimony is  
14 desired in any official proceeding, in any investigation by  
15 a grand jury, or in a criminal action, prosecution, or  
16 proceeding."

-End-

1 HOUSE BILL NO. 737  
 2 INTRODUCED BY KEEDY  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION  
 5 OF SERIOUS BODILY INJURY IN THE CRIMINAL CODE; AMENDING  
 6 SECTION 45-2-101, MCA."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 Section 1. Section 45-2-101, MCA, is amended to read:  
 10 "45-2-101. General definitions. Unless otherwise  
 11 specified in the statute, all words will be taken in the  
 12 objective standard rather than in the subjective, and unless  
 13 a different meaning plainly is required, the following  
 14 definitions apply in this title:

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

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

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

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

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

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

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

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

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

25 (10) "Correctional institution" means the state prison.

1 county or city jail, or other institution for the  
 2 incarceration or custody of persons under sentence for  
 3 offenses or awaiting trial or sentence for offenses.

4 (11) "Deception" means knowingly to:

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

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

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

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

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

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

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

25 (a) permanently;

1 (b) for such a period as to appropriate a portion of  
 2 its value;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 22 (a) a reflex or convulsion;  
 23 (b) a bodily movement during unconsciousness or sleep;  
 24 (c) conduct during hypnosis or resulting from hypnotic  
 25 suggestion; or

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

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

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

22 (28) "Mentally defective" means that a person suffers  
 23 from a mental disease or defect which renders him incapable  
 24 of appreciating the nature of his conduct.

25 (29) "Mentally incapacitated" means that a person is

1 rendered temporarily incapable of appreciating or  
 2 controlling his conduct as a result of the influence of an  
 3 intoxicating substance.

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

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

22 (32) "Obtain" means:

23 (a) in relation to property, to bring about a transfer  
 24 of interest or possession whether to the offender or to  
 25 another; and

1 (b) in relation to labor or services, to secure the  
 2 performance thereof.

3 (33) "Obtains or exerts control" includes but is not  
 4 limited to the taking, carrying away, or sale, conveyance,  
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 8 or other place suited for human occupancy or night lodging  
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 21 offense, confinement of a person charged with an offense,  
 22 detention by a peace officer pursuant to arrest, detention  
 23 for extradition or deportation, or any lawful detention for  
 24 the purpose of the protection of the welfare of the person  
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 4 force, a threat of physical force, or a weapon to escape.

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3 and things which are part of or affixed to any building;

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6 in a state of confinement;

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8 specimens, records, recordings, documents, blueprints,

9 drawings, maps, and whole or partial copies, descriptions,

10 photographs, prototypes, or models thereof; and

11 (j) any other articles, materials, devices,

12 substances, and whole or partial copies, descriptions,

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18 which creates ~~results in~~

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21 ~~SERIOUS PERMANENT~~ disfigurement; or

22 ~~fatal~~ ~~protracted~~ ~~loss~~ ~~or~~ ~~prolonged~~ ~~PROTRACTED LOSS~~

23 ~~OR~~ impairment of the function or process ~~use~~ of any bodily

24 member or organ; ~~OR~~

25 ~~fatal~~ ~~the~~ ~~need~~ ~~for~~ ~~continued~~ ~~medical~~ ~~treatment~~ ~~or~~

1 ~~medical-correction-or~~

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 14 note, shall be deemed the amount due or collectible thereon  
 15 or thereby, such figure ordinarily being the face amount of  
 16 the indebtedness less any portion thereof which has been  
 17 satisfied.

18 (ii) The value of any other instrument which creates,  
 19 releases, discharges, or otherwise affects any valuable  
 20 legal right, privilege, or obligation shall be deemed the  
 21 amount of economic loss which the owner of the instrument  
 22 might reasonably suffer by virtue of the loss of the  
 23 instrument.

24 (b) When it cannot be determined if the value of the  
 25 property is more or less than \$150 by the standards set

1 forth in subsection (63)(a) above, its value shall be deemed  
 2 to be an amount less than \$150.

3 (c) Amounts involved in thefts committed pursuant to a  
 4 common scheme or the same transaction, whether from the same  
 5 person or several persons, may be aggregated in determining  
 6 the value of the property.

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

10 (65) "Weapon" means any instrument, article, or  
 11 substance which, regardless of its primary function, is  
 12 readily capable of being used to produce death or serious  
 13 bodily injury.

14 (66) "Witness" means a person whose testimony is  
 15 desired in any official proceeding, in any investigation by  
 16 a grand jury, or in a criminal action, prosecution, or  
 17 proceeding."

-End-

March 15, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 737, third reading bill, be amended as follows:

1. Page 12, line 17.

Following: "(53)"

Insert: "(a)"

2. Page 12, line 19.

Following: line 18

Strike: "(a)"

Insert: "(i)"

3. Page 12, line 20.

Following: line 19

Strike: "(b)"

Insert: "(ii)"

Following: "permanent"

Strike: "prolonged"

Insert: "serious permanent"

4. Page 12, line 22.

Following: line 21

Strike: "(c)"

Insert: "(iii)"

Following: "or"

Strike: "prolonged"

Insert: "protracted loss or"

5. Page 12, line 23 through line 1 on page 13.

Following: "organ" on line 23

Strike: remainder of line 23 through "including" on line 1

Insert: "."

(b) It includes"