

House Bill 289

In The House

January 16, 1981

Introduced and referred
to Committee on Judiciary.

January 30, 1981

Committee recommend bill
do not pass.

1 HOUSE BILL NO. 289
 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 meaning and
 16 includes any bodily movement, any form of communication, and
 17 where relevant, a failure or omission to take action.

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

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

25 (4) "Benefit" means gain or advantage or anything

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

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

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

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

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

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

24 (10) "Correctional institution" means the state prison,
 25 county or city jail, or other institution for the

1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

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

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

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

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

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

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

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

24 (a) permanently;

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

1 its value;

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

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

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

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

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

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

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

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

25 (20) A "house of prostitution" means any place where

1 prostitution or promotion of prostitution is regularly
2 carried on by one or more persons under the control,
3 management, or supervision of another.

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

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

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

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

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

- 21 (a) a reflex or convulsion;
22 (b) a bodily movement during unconsciousness or sleep;
23 (c) conduct during hypnosis or resulting from hypnotic
24 suggestion; or
25 (d) a bodily movement that otherwise is not a product

1 of the effort or determination of the actor, either
2 conscious or habitual.

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

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

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

24 (29) "Mentally incapacitated" means that a person is
25 rendered temporarily incapable of appreciating or

1 controlling his conduct as a result of the influence of an
2 intoxicating substance.

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

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

21 (32) "Obtain" means:

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

25 (b) in relation to labor or services, to secure the

1 performance thereof.

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

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

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

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

18 (37) "Official detention" means imprisonment resulting
19 from a conviction for an offense, confinement for an
20 offense, confinement of a person charged with an offense,
21 detention by a peace officer pursuant to arrest, detention
22 for extradition or deportation, or any lawful detention for
23 the purpose of the protection of the welfare of the person
24 detained or for the protection of society. Official
25 detention does not include supervision of probation or

1 parole, constraint incidental to release on bail, or an
2 unlawful arrest unless the person arrested employed physical
3 force, a threat of physical force, or a weapon to escape.

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

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

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

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

24 (42) "Peace officer" means any person who by virtue of
25 his office or public employment is vested by law with a duty

1 to maintain public order or to make arrests for offenses
2 while acting within the scope of his authority.

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

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

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

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

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

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

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

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

3 (g) electricity, gas, and water;

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

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

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

17 (49) "Property of another" means real or personal
18 property in which a person other than the offender has an
19 interest which the offender has no authority to defeat or
20 impair, even though the offender himself may have an
21 interest in the property.

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

24 (51) "Public servant" means any officer or employee of
25 government, including but not limited to legislators,

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

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

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

18 (a) a substantial risk of death; or

19 (b) ~~which causes serious permanent~~ prolonged
20 disfigurement; or

21 (c) ~~protracted loss or~~ prolonged impairment of the
22 function or process use of any bodily member or organ;

23 the need for continued medical treatment or
24 medical correction; or

25 any other grievous harm. It includes including

1 serious mental illness or impairment.

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

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

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

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

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

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

25 (60) A "stop" is the temporary detention of a person

1 that results when a peace officer orders the person to
2 remain in his presence.

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

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

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

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

11 (c) commit any criminal offense;

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

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

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

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

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

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

25 (j) testify or provide information or withhold

1 testimony or information with respect to another's legal
2 claim or defense.

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

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

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

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

25 (c) Amounts involved in thefts committed pursuant to a

1 common scheme or the same transaction, whether from the same
2 person or several persons, may be aggregated in determining
3 the value of the property.

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

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

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

-End-