

HOUSE BILL NO. 621

INTRODUCED BY MEYER, M. ANDERSON, FABREGA

IN THE HOUSE

|                   |  |
|-------------------|--|
| February 3, 1981  | Introduced and referred to Committee on Judiciary                |
| February 12, 1981 | Committee recommend bill do pass. Report adopted.                |
| February 13, 1981 | Bill printed and placed on members' desks.                       |
| February 14, 1981 | Second reading, do pass.   |
| February 16, 1981 | Considered correctly engrossed.                                  |
| February 17, 1981 | Third reading, passed. Ayes, 98; Noes, 1. Transmitted to Senate. |

IN THE SENATE

|                   |  |
|-------------------|--|
| February 18, 1981 | Introduced and referred to Committee on Judiciary.                   |
| March 17, 1981    | Committee recommend bill be concurred in as amended. Report adopted. |
| March 19, 1981    | Second reading, concurred in.  |
| March 21, 1981    | Third reading, concurred in as amended. Ayes, 48; Noes, 0.           |

IN THE HOUSE

|                |  |
|----------------|--|
| March 23, 1981 | Returned from Senate with amendments.    |
| April 8, 1981  | Second reading, amendments concurred in. |

April 9, 1981

Third reading, amendments  
concurrent in. Ayes, 93;  
Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *621*  
 2 INTRODUCED BY *Meyer Mike Anderson*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE AND PROHIBIT  
 5 COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE  
 6 STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS  
 7 DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103,  
 8 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN  
 9 IMMEDIATE EFFECTIVE DATE."

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

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

18 (1) "Acts" has its usual and ordinary meaning and  
 19 includes any bodily movement, any form of communication, and  
 20 where relevant, a failure or omission to 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) "Computer" means an electronic device that  
 21 performs logical, arithmetic, and memory functions by the  
 22 manipulation of electronic or magnetic impulses and includes  
 23 all input, output, processing, storage, software, or  
 24 communication facilities that are connected or related to  
 25 such a device in a system or network.

1 (9) "Computer network" means the interconnection of  
 2 communication systems between computers or computers and  
 3 remote terminals.

4 (10) "Computer program" means an instruction or  
 5 statement or a series of instructions or statements, in a  
 6 form acceptable to a computer, that in actual or modified  
 7 form permits the functioning of a computer or computer  
 8 system and causes it to perform specified functions.

9 (11) "Computer services" include but are not limited to  
 10 computer time, data processing, and storage functions.

11 (12) "Computer software" means a set of computer  
 12 programs, procedures, and associated documentation concerned  
 13 with the operation of a computer system.

14 (13) "Computer system" means a set of related,  
 15 connected, or unconnected devices, computer software, or  
 16 other related computer equipment.

17 ~~(8)~~(14) "Conduct" means an act or series of acts and  
 18 the accompanying mental state.

19 ~~(9)~~(15) "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)~~(16) "Correctional institution" means the state  
 25 prison, county or city jail, or other institution for the

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

3 ~~(11)~~(17) "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)~~(18) "Defamatory matter" means anything which  
 20 exposes a person or a group, class, or association to  
 21 hatred, contempt, ridicule, degradation, or disgrace in  
 22 society or to injury to his or its business or occupation.

23 ~~(13)~~(19) "Deprive" means to withhold property of  
 24 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)~~(20) "Deviate sexual relations" means sexual  
9 contact or sexual intercourse between two persons of the  
10 same sex or any form of sexual intercourse with an animal.

11 ~~(15)~~(21) "Felony" means an offense in which the  
12 sentence imposed upon conviction is death or imprisonment in  
13 the state prison for any term exceeding 1 year.

14 ~~(16)~~(22) "Forcible felony" means any felony which  
15 involves the use or threat of physical force or violence  
16 against any individual.

17 ~~(17)~~(23) A "frisk" is a search by an external patting  
18 of a person's clothing.

19 ~~(18)~~(24) "Government" includes any branch, subdivision,  
20 or agency of the government of the state or any locality  
21 within it.

22 ~~(19)~~(25) "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)~~(26) A "house of prostitution" means any place  
2 where 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)~~(27) "Human being" means a person who has been born  
6 and is alive.

7 ~~(22)~~(28) An "illegal article" is an article or thing  
8 which is prohibited by statute, rule, or order from being in  
9 the possession of a person subject to official detention.

10 ~~(23)~~(29) "Inmate" means a person who engages in  
11 prostitution in or through the agency of a house of  
12 prostitution.

13 ~~(24)~~(30) "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 does 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)~~(31) 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)~~(32) "Juror" means any person who is a member of  
5 any jury, including a grand jury, impaneled by any court in  
6 this 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)~~(33) "Knowingly"--a person acts knowingly with  
11 respect to conduct or to a circumstance described by a  
12 statute defining an offense when he is aware of his conduct  
13 or that the circumstance exists. A person acts knowingly  
14 with 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)~~(34) "Mentally defective" means that a person  
23 suffers from a mental disease or defect which renders him  
24 incapable of appreciating the nature of his conduct.

25 ~~(29)~~(35) "Mentally incapacitated" means that a person

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

4 ~~(30)~~(36) "Misdemeanor" means an offense in which the  
5 sentence imposed upon conviction is imprisonment in the  
6 county jail for any term or a 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)~~(37) "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 when 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)~~(38) "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)~~(32) "Obtains or exerts control" includes but is  
4 not limited to the taking, carrying away, or sale,  
5 conveyance, or transfer of title to, interest in, or  
6 possession of property.

7 ~~(34)~~(40) "Occupied structure" means any building,  
8 vehicle, or other place suitable for human occupancy or  
9 night lodging of persons or for carrying on business,  
10 whether or not a person is actually present. Each unit of a  
11 building consisting of two or more units separately secured  
12 or occupied is a separate occupied structure.

13 ~~(35)~~(41) "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)~~(42) "Offense" means a crime for which a sentence  
17 of death or of imprisonment or a fine is authorized.  
18 Offenses are classified as felonies or misdemeanors.

19 ~~(37)~~(43) "Official detention" means imprisonment  
20 resulting from a conviction for an offense, confinement for  
21 an 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)~~(44) "Official proceeding" means a proceeding heard  
6 or 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)~~(45) "Other state" means any state or territory of  
13 the United States, the District of Columbia, and the  
14 Commonwealth of Puerto Rico.

15 ~~(40)~~(46) "Owner" means a person other than the offender  
16 who 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)~~(47) "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)~~(48) "Peace officer" means any person who by virtue

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

4 ~~(43)~~(42) "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)~~(50) "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)~~(51) "Physically helpless" means that a person is  
12 unconscious or is otherwise physically unable to communicate  
13 unwillingness to act.

14 ~~(46)~~(52) "Possession" is the knowing control of  
15 anything for a sufficient time to be able to terminate  
16 control.

17 ~~(47)~~(53) "Premises" includes any type of structure or  
18 building and any real property.

19 ~~(48)~~(54) "Property" means anything any tangible or  
20 intangible thing of value. Property includes but is not  
21 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; ~~and~~

20 ~~(k) electronic impulses, electronically processed or~~  
21 ~~produced data or information, commercial instruments,~~  
22 ~~computer software or computer programs, in either machine or~~  
23 ~~human readable form, computer services, any other tangible~~  
24 ~~or intangible item of value relating to a computer, computer~~  
25 ~~system, or computer network, and any copies thereof.~~



1       ~~(49)~~(55) "Property of another" means real or personal  
 2 property in which a person other than the offender has an  
 3 interest which the offender has no authority to defeat or  
 4 impair, even though the offender himself may have an  
 5 interest in the property.

6       ~~(50)~~(56) "Public place" means any place to which the  
 7 public or any substantial group thereof has access.

8       ~~(51)~~(57) "Public servant" means any officer or employee  
 9 of government, including but not limited to legislators,  
 10 judges, and firefighters, and any person participating as a  
 11 juror, advisor, consultant, administrator, executor,  
 12 guardian, or court-appointed fiduciary. The term does not  
 13 include witnesses. The term "public servant" includes one  
 14 who has been elected or designated to become a public  
 15 servant.

16       ~~(52)~~(58) "Purposely"--a person acts purposely with  
 17 respect to a result or to conduct described by a statute  
 18 defining an offense if it is his conscious object to engage  
 19 in that conduct or to cause that result. When a particular  
 20 purpose is an element of an offense, the element is  
 21 established although such purpose is conditional, unless the  
 22 condition negatives the harm or evil sought to be prevented  
 23 by the law defining the offense. Equivalent terms such as  
 24 "purpose" and "with the purpose" have the same meaning.

25       ~~(53)~~(59) "Serious bodily injury" means bodily injury

1       which creates a substantial risk of death or which causes  
 2 serious permanent disfigurement or protracted loss or  
 3 impairment of the function or process of any bodily member  
 4 or organ. It includes serious mental illness or impairment.

5       ~~(54)~~(60) "Sexual contact" means any touching of the  
 6 sexual or other intimate parts of the person of another for  
 7 the purpose of arousing or gratifying the sexual desire of  
 8 either party.

9       ~~(55)~~(61) "Sexual intercourse" means penetration of the  
 10 vulva, anus, or mouth of one person by the penis of another  
 11 person, penetration of the vulva or anus of one person by  
 12 any body member of another person, or penetration of the  
 13 vulva or anus of one person by any foreign instrument or  
 14 object manipulated by another person for the purpose of  
 15 arousing or gratifying the sexual desire of either party.  
 16 Any penetration, however slight, is sufficient.

17       ~~(56)~~(62) "Solicit" or "solicitation" means to command,  
 18 authorize, urge, incite, request, or advise another to  
 19 commit an offense.

20       ~~(57)~~(63) "State" or "this state" means the state of  
 21 Montana, all the land and water in respect to which the  
 22 state of Montana has either exclusive or concurrent  
 23 jurisdiction, and the air space above such land and water.

24       ~~(58)~~(64) "Statute" means any act of the legislature of  
 25 this state.

1       ~~(59)~~(65) "Stolen property" means property over which  
2 control has been obtained by theft.

3       ~~(60)~~(66) A "stop" is the temporary detention of a  
4 person that results when a peace officer orders the person  
5 to remain in his presence.

6       ~~(61)~~(67) "Tamper" means to interfere with something  
7 improperly, meddle with it, make unwarranted alterations in  
8 its existing condition, or deposit refuse upon it.

9       ~~(62)~~(68) "Threat" means a menace, however communicated,  
10 to:

11       (a) inflict physical harm on the person threatened or  
12 any other person or on property;

13       (b) subject any person to physical confinement or  
14 restraint;

15       (c) commit any criminal offense;

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

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

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

20       (g) reveal any information sought to be concealed by  
21 the person threatened;

22       (h) take action as an official against anyone or  
23 anything, withhold official action, or cause such action or  
24 withholding;

25       (i) bring about or continue a strike, boycott, or

1 other similar collective action if the property is not  
2 demanded or received for the benefit of the groups which he  
3 purports to represent; or

4       (j) testify or provide information or withhold  
5 testimony or information with respect to another's legal  
6 claim or defense.

7       ~~(63)~~(69) (a) "Value" means the market value of the  
8 property at the time and place of the crime or, if such  
9 cannot be satisfactorily ascertained, the cost of the  
10 replacement of the property within a reasonable time after  
11 the crime. If the offender appropriates a portion of the  
12 value of the property, the value shall be determined as  
13 follows:

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

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

1 (iii) The value of electronic impulses, electronically  
 2 produced data or information, computer software or programs,  
 3 or any other tangible or intangible item relating to a  
 4 computer, computer system, or computer network shall be  
 5 considered to be the amount of economic loss that the owner  
 6 of the item might reasonably suffer by virtue of the loss of  
 7 the item. The determination of the amount of such economic  
 8 loss includes but is not limited to consideration of the  
 9 value of the owner's right to exclusive use or disposition  
 10 of the item.

11 (b) When it cannot be determined if the value of the  
 12 property is more or less than \$150 by the standards set  
 13 forth in subsection ~~(63)~~ (62)(a) above, its value shall be  
 14 considered to be an amount less than \$150.

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

19 ~~(64)~~ (70) "Vehicle" means any device for transportation  
 20 by land, water, or air or mobile equipment with provision  
 21 for transport of an operator.

22 ~~(65)~~ (71) "Weapon" means any instrument, article, or  
 23 substance which, regardless of its primary function, is  
 24 readily capable of being used to produce death or serious  
 25 bodily injury.

1 ~~(66)~~ (72) "Witness" means a person whose testimony is  
 2 desired in any official proceeding, in any investigation by  
 3 a grand jury, or in a criminal action, prosecution, or  
 4 proceeding."

5 NEW SECTION. Section 2. Definition. As used in  
 6 [section 3], the term "obtain the use of" means to instruct,  
 7 communicate with, store data in, retrieve data from, cause  
 8 input to, cause output from, or otherwise make use of any  
 9 resources of a computer, computer system, or computer  
 10 network, or to cause another to instruct, communicate with,  
 11 store data in, retrieve data from, cause input to, cause  
 12 output from, or otherwise make use of any resources of a  
 13 computer, computer system, or computer network.

14 NEW SECTION. Section 3. Unlawful use of a computer.  
 15 (1) A person commits the offense of unlawful use of a  
 16 computer if he knowingly or purposely:

17 (a) obtains the use of any computer, computer system,  
 18 or computer network without consent of the owner;

19 (b) alters or destroys or causes another to alter or  
 20 destroy a computer program or computer software without  
 21 consent of the owner; or

22 (c) obtains the use of or alters or destroys a  
 23 computer, computer system, computer network, or any part  
 24 thereof as part of a deception for the purpose of obtaining  
 25 money, property, or computer services from the owner of the

1 computer, computer system, computer network, or part  
2 thereof, or from any other person.

3 (2) A person convicted of the offense of unlawful use  
4 of a computer involving property not exceeding \$150 in value  
5 shall be fined not to exceed \$500 or be imprisoned in the  
6 county jail for a term not to exceed 6 months, or both. A  
7 person convicted of the offense of unlawful use of a  
8 computer involving property exceeding \$150 in value shall be  
9 fined not more than 2 1/2 times the value of the property  
10 used, altered, destroyed, or obtained or be imprisoned in  
11 the state prison for a term not to exceed 10 years, or both.

12 Section 4. Section 45-1-205, MCA, is amended to read:  
13 \*45-1-205. General time limitations. (1) A prosecution  
14 for criminal homicide may be commenced at any time.

15 (2) Except as otherwise provided by law, prosecutions  
16 for other offenses are subject to the following periods of  
17 limitation:

18 (a) A prosecution for a felony must be commenced  
19 within 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced  
21 within 1 year after it is committed.

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

25 (a) If the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after  
2 the termination thereof;

3 (b) in any other instance, within 1 year after the  
4 discovery of the offense by the aggrieved person or by a  
5 person who has legal capacity to represent an aggrieved  
6 person or has a legal duty to report the offense and is not  
7 himself a party to the offense or, in the absence of such  
8 discovery, within 1 year after the prosecuting officer  
9 becomes aware of the offense.

10 ~~(4) The period prescribed in subsection (2) may be~~  
11 ~~extended in a prosecution for unlawful use of a computer,~~  
12 ~~and prosecution may be brought within 1 year after the~~  
13 ~~discovery of the offense by the aggrieved person or by a~~  
14 ~~person who has legal capacity to represent an aggrieved~~  
15 ~~person or has a legal duty to report the offense and is not~~  
16 ~~himself a party to the offense or, in the absence of such~~  
17 ~~discovery, within 1 year after the prosecuting officer~~  
18 ~~becomes aware of the offense.~~

19 ~~(4)(5) An offense is committed either when every~~  
20 ~~element occurs or, when the offense is based upon a~~  
21 ~~continuing course of conduct, at the time when the course of~~  
22 ~~conduct is terminated. Time starts to run on the day after~~  
23 ~~the offense is committed.~~

24 ~~(5)(6) A prosecution is commenced either when an~~  
25 ~~indictment is found or an information or complaint is~~

1 filed."

2 Section 5. Section 45-2-103, MCA, is amended to read:

3 "45-2-103. General requirements of criminal act and  
4 mental state. (1) A person is not guilty of an offense,  
5 other than an offense which involves absolute liability,  
6 unless, with respect to each element described by the  
7 statute defining the offense, he acts while having one of  
8 the mental states described in subsections ~~(27)~~ (31), ~~(31)~~  
9 (37), and ~~(52)~~ (58) of 45-2-101. The existence of a mental  
10 state may be inferred from the acts of the accused and the  
11 facts and circumstances connected with the offense.

12 (2) If the statute defining an offense prescribes a  
13 particular mental state with respect to the offense as a  
14 whole without distinguishing among the elements thereof, the  
15 prescribed mental state applies to each such element.

16 (3) Knowledge that certain conduct constitutes an  
17 offense or knowledge of the existence, meaning, or  
18 application of the statute defining an offense is not an  
19 element of the offense unless the statute clearly defines it  
20 as such.

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

23 (a) the offense is defined by an administrative  
24 regulation or order which is not known to him and has not  
25 been published or otherwise made reasonably available to him

1 and he could not have acquired such knowledge by the  
2 exercise of due diligence pursuant to facts known to him;

3 (b) he acts in reliance upon a statute which later is  
4 determined to be invalid;

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

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

12 (5) If a person's reasonable belief is a defense under  
13 subsection (4), nevertheless he may be convicted of an  
14 included offense of which he would be guilty if the law were  
15 as he believed it to be.

16 (6) Any defense based upon this section is an  
17 affirmative defense."

18 Section 6. Section 45-2-104, MCA, is amended to read:

19 "45-2-104. Absolute liability. A person may be guilty  
20 of an offense without having, as to each element thereof,  
21 one of the mental states described in subsections ~~(27)~~ (31),  
22 ~~(31)~~ (37), and ~~(52)~~ (58) of 45-2-101 only if the offense is  
23 punishable by a fine not exceeding \$500 and the statute  
24 defining the offense clearly indicates a legislative purpose  
25 to impose absolute liability for the conduct described."

HB 621

1 Section 7. Section 50-20-109, MCA, is amended to read:

2 \*50-20-109. Control of practice of abortion. (1) No  
3 abortion may be performed within the state of Montana:

4 (a) except by a licensed physician;

5 (b) after the first 3 months of pregnancy, except in a  
6 hospital licensed by the department;

7 (c) after viability of the fetus, unless in  
8 appropriate medical judgment the abortion is necessary to  
9 preserve the life or health of the mother.

10 (2) An abortion under subsection (1)(c) may only be  
11 performed if:

12 (a) the foregoing judgment of the physician who is to  
13 perform the abortion is first certified in writing by him  
14 setting forth in detail the facts upon which he relies in  
15 making such judgment; and

16 (b) two other licensed physicians have first examined  
17 the patient and concurred in writing with such judgment. The  
18 foregoing certification and concurrence is not required if a  
19 licensed physician certifies the abortion is necessary to  
20 preserve the life of the mother.

21 (3) The timing and procedure used in performing an  
22 abortion under subsection (1)(c) of this section must be  
23 such that the viability of the fetus is not intentionally or  
24 negligently endangered, as the term "negligently" is defined  
25 in 45-2-101~~(3)~~(37). The fetus may be intentionally

1 endangered or destroyed only if necessary to preserve the  
2 life or health of the mother.

3 (4) No physician, facility, or other person or agency  
4 shall engage in solicitation, advertising, or other form of  
5 communication having the purpose of inviting, inducing, or  
6 attracting any person to come to such physician, facility,  
7 or other person or agency to have an abortion or to purchase  
8 abortifacients.

9 (5) Violation of subsections (1), (2), and (3) of this  
10 section is a felony. Violation of subsection (4) of this  
11 section is a misdemeanor."

12 Section 8. Section 61-5-405, MCA, is amended to read:

13 \*61-5-405. Offenses furnishing ground for suspension  
14 or revocation of license. (1) Items enumerated in Article  
15 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer  
16 specifically to 45-5-103, 45-5-104, 61-8-401,  
17 45-2-101~~(15)~~(21), and 61-7-103, respectively.

18 (2) In addition to convictions mentioned above the  
19 division, for the purpose of suspension, revocation, or  
20 limitation of the license to operate a motor vehicle, shall  
21 give the same effect to the conduct reported as it would if  
22 such conduct had occurred in this state for:

23 (a) convictions of perjury or the making of a false  
24 affidavit relating to the ownership or operation of a motor  
25 vehicle (61-5-303); and

1 (b) three convictions of reckless driving committed  
2 within a period of 12 months (61-8-301)."

3 Section 9. Codification instruction. Sections 2 and 3  
4 are intended to be codified as an integral part of Title 45,  
5 chapter 6, part 3, and the provisions of Title 45 apply to  
6 sections 2 and 3.

7 Section 10. Effective date. This act is effective on  
8 passage and approval.

-End-

Approved by Committee  
on Judiciary

1 *House* BILL NO. *621*  
2 INTRODUCED BY *Meyer Mike Anderson*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE AND PROHIBIT  
5 COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE  
6 STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS  
7 DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103,  
8 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."

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

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

18 (1) "Acts" has its usual and ordinary meaning and  
19 includes any bodily movement, any form of communication, and  
20 where relevant, a failure or omission to 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) "Computer" means an electronic device that  
21 performs logical, arithmetic, and memory functions by the  
22 manipulation of electronic or magnetic impulses and includes  
23 all input, output, processing, storage, software, or  
24 communication facilities that are connected or related to  
25 such a device in a system or network.



1 (9) "Computer network" means the interconnection of  
 2 communication systems between computers or computers and  
 3 remote terminals.

4 (10) "Computer program" means an instruction or  
 5 statement or a series of instructions or statements, in a  
 6 form acceptable to a computer, that in actual or modified  
 7 form permits the functioning of a computer or computer  
 8 system and causes it to perform specified functions.

9 (11) "Computer services" include but are not limited to  
 10 computer time, data processing, and storage functions.

11 (12) "Computer software" means a set of computer  
 12 programs, procedures, and associated documentation concerned  
 13 with the operation of a computer system.

14 (13) "Computer system" means a set of related,  
 15 connected, or unconnected devices, computer software, or  
 16 other related computer equipment.

17 ~~(8)~~(14) "Conduct" means an act or series of acts and  
 18 the accompanying mental state.

19 ~~(9)~~(15) "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)~~(16) "Correctional institution" means the state  
 25 prison, county or city jail, or other institution for the

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

3 ~~(11)~~(17) "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)~~(18) "Defamatory matter" means anything which  
 20 exposes a person or a group, class, or association to  
 21 hatred, contempt, ridicule, degradation, or disgrace in  
 22 society or to injury to his or its business or occupation.

23 ~~(13)~~(19) "Deprive" means to withhold property of  
 24 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)~~(20) "Deviate sexual relations" means sexual  
9 contact or sexual intercourse between two persons of the  
10 same sex or any form of sexual intercourse with an animal.

11 ~~(15)~~(21) "Felony" means an offense in which the  
12 sentence imposed upon conviction is death or imprisonment in  
13 the state prison for any term exceeding 1 year.

14 ~~(16)~~(22) "Forcible felony" means any felony which  
15 involves the use or threat of physical force or violence  
16 against any individual.

17 ~~(17)~~(23) A "frisk" is a search by an external patting  
18 of a person's clothing.

19 ~~(18)~~(24) "Government" includes any branch, subdivision,  
20 or agency of the government of the state or any locality  
21 within it.

22 ~~(19)~~(25) "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)~~(26) A "house of prostitution" means any place  
2 where 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)~~(27) "Human being" means a person who has been born  
6 and is alive.

7 ~~(22)~~(28) An "illegal article" is an article or thing  
8 which is prohibited by statute, rule, or order from being in  
9 the possession of a person subject to official detention.

10 ~~(23)~~(29) "Inmate" means a person who engages in  
11 prostitution in or through the agency of a house of  
12 prostitution.

13 ~~(24)~~(30) "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 does 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)~~(31) 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)~~(32) "Juror" means any person who is a member of  
5 any jury, including a grand jury, impaneled by any court in  
6 this 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)~~(33) "Knowingly"—a person acts knowingly with  
11 respect to conduct or to a circumstance described by a  
12 statute defining an offense when he is aware of his conduct  
13 or that the circumstance exists. A person acts knowingly  
14 with 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)~~(34) "Mentally defective" means that a person  
23 suffers from a mental disease or defect which renders him  
24 incapable of appreciating the nature of his conduct.

25 ~~(29)~~(35) "Mentally incapacitated" means that a person

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

4 ~~(30)~~(36) "Misdemeanor" means an offense in which the  
5 sentence imposed upon conviction is imprisonment in the  
6 county jail for any term or a 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)~~(37) "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 when 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)~~(38) "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)~~(32) "Obtains or exerts control" includes but is  
4 not limited to the taking, carrying away, or sale,  
5 conveyance, or transfer of title to, interest in, or  
6 possession of property.

7 ~~(34)~~(40) "Occupied structure" means any building,  
8 vehicle, or other place suitable for human occupancy or  
9 night lodging of persons or for carrying on business,  
10 whether or not a person is actually present. Each unit of a  
11 building consisting of two or more units separately secured  
12 or occupied is a separate occupied structure.

13 ~~(35)~~(41) "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)~~(42) "Offense" means a crime for which a sentence  
17 of death or of imprisonment or a fine is authorized.  
18 Offenses are classified as felonies or misdemeanors.

19 ~~(37)~~(43) "Official detention" means imprisonment  
20 resulting from a conviction for an offense, confinement for  
21 an 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)~~(44) "Official proceeding" means a proceeding heard  
6 or 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)~~(45) "Other state" means any state or territory of  
13 the United States, the District of Columbia, and the  
14 Commonwealth of Puerto Rico.

15 ~~(40)~~(46) "Owner" means a person other than the offender  
16 who 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)~~(47) "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)~~(48) "Peace officer" means any person who by virtue

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

4 ~~(43)~~(42) "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)~~(50) "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)~~(51) "Physically helpless" means that a person is  
12 unconscious or is otherwise physically unable to communicate  
13 unwillingness to act.

14 ~~(46)~~(52) "Possession" is the knowing control of  
15 anything for a sufficient time to be able to terminate  
16 control.

17 ~~(47)~~(53) "Premises" includes any type of structure or  
18 building and any real property.

19 ~~(48)~~(54) "Property" means anything any tangible or  
20 intangible thing of value. Property includes but is not  
21 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; and

20 (k) electronic impulses, electronically processed or  
21 produced data or information, commercial instruments,  
22 computer software or computer programs, in either machine or  
23 human readable form, computer services, any other tangible  
24 or intangible item of value relating to a computer, computer  
25 system, or computer network, and any copies thereof.

1       ~~(49)~~~~(55)~~ "Property of another" means real or personal  
2 property in which a person other than the offender has an  
3 interest which the offender has no authority to defeat or  
4 impair, even though the offender himself may have an  
5 interest in the property.

6       ~~(50)~~~~(56)~~ "Public place" means any place to which the  
7 public or any substantial group thereof has access.

8       ~~(51)~~~~(57)~~ "Public servant" means any officer or employee  
9 of government, including but not limited to legislators,  
10 judges, and firefighters, and any person participating as a  
11 juror, advisor, consultant, administrator, executor,  
12 guardian, or court-appointed fiduciary. The term does not  
13 include witnesses. The term "public servant" includes one  
14 who has been elected or designated to become a public  
15 servant.

16       ~~(52)~~~~(58)~~ "Purposely"--a person acts purposely with  
17 respect to a result or to conduct described by a statute  
18 defining an offense if it is his conscious object to engage  
19 in that conduct or to cause that result. When a particular  
20 purpose is an element of an offense, the element is  
21 established although such purpose is conditional, unless the  
22 condition negatives the harm or evil sought to be prevented  
23 by the law defining the offense. Equivalent terms such as  
24 "purpose" and "with the purpose" have the same meaning.

25       ~~(53)~~~~(59)~~ "Serious bodily injury" means bodily injury

1       which creates a substantial risk of death or which causes  
2 serious permanent disfigurement or protracted loss or  
3 impairment of the function or process of any bodily member  
4 or organ. It includes serious mental illness or impairment.

5       ~~(54)~~~~(60)~~ "Sexual contact" means any touching of the  
6 sexual or other intimate parts of the person of another for  
7 the purpose of arousing or gratifying the sexual desire of  
8 either party.

9       ~~(55)~~~~(61)~~ "Sexual intercourse" means penetration of the  
10 vulva, anus, or mouth of one person by the penis of another  
11 person, penetration of the vulva or anus of one person by  
12 any body member of another person, or penetration of the  
13 vulva or anus of one person by any foreign instrument or  
14 object manipulated by another person for the purpose of  
15 arousing or gratifying the sexual desire of either party.  
16 Any penetration, however slight, is sufficient.

17       ~~(56)~~~~(62)~~ "Solicit" or "solicitation" means to command,  
18 authorize, urge, incite, request, or advise another to  
19 commit an offense.

20       ~~(57)~~~~(63)~~ "State" or "this state" means the state of  
21 Montana, all the land and water in respect to which the  
22 state of Montana has either exclusive or concurrent  
23 jurisdiction, and the air space above such land and water.

24       ~~(58)~~~~(64)~~ "Statute" means any act of the legislature of  
25 this state.

1       ~~(59)~~(65) "Stolen property" means property over which  
2 control has been obtained by theft.

3       ~~(60)~~(66) A "stop" is the temporary detention of a  
4 person that results when a peace officer orders the person  
5 to remain in his presence.

6       ~~(61)~~(67) "Tamper" means to interfere with something  
7 improperly, meddle with it, make unwarranted alterations in  
8 its existing condition, or deposit refuse upon it.

9       ~~(62)~~(68) "Threat" means a menace, however communicated,  
10 to:

11       (a) inflict physical harm on the person threatened or  
12 any other person or on property;

13       (b) subject any person to physical confinement or  
14 restraint;

15       (c) commit any criminal offense;

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

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

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

20       (g) reveal any information sought to be concealed by  
21 the person threatened;

22       (h) take action as an official against anyone or  
23 anything, withhold official action, or cause such action or  
24 withholding;

25       (i) bring about or continue a strike, boycott, or

1 other similar collective action if the property is not  
2 demanded or received for the benefit of the groups which he  
3 purports to represent; or

4       (j) testify or provide information or withhold  
5 testimony or information with respect to another's legal  
6 claim or defense.

7       ~~(63)~~(69) (a) "value" means the market value of the  
8 property at the time and place of the crime or, if such  
9 cannot be satisfactorily ascertained, the cost of the  
10 replacement of the property within a reasonable time after  
11 the crime. If the offender appropriates a portion of the  
12 value of the property, the value shall be determined as  
13 follows:

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

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

1 (iii) The value of electronic impulses, electronically  
 2 produced data or information, computer software or programs,  
 3 or any other tangible or intangible item relating to a  
 4 computer, computer system, or computer network shall be  
 5 considered to be the amount of economic loss that the owner  
 6 of the item might reasonably suffer by virtue of the loss of  
 7 the item. The determination of the amount of such economic  
 8 loss includes but is not limited to consideration of the  
 9 value of the owner's right to exclusive use or disposition  
 10 of the item.

11 (b) When it cannot be determined if the value of the  
 12 property is more or less than \$150 by the standards set  
 13 forth in subsection ~~(63)~~ (62)(a) above, its value shall be  
 14 considered to be an amount less than \$150.

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

19 ~~(64)~~ (70) "Vehicle" means any device for transportation  
 20 by land, water, or air or mobile equipment with provision  
 21 for transport of an operator.

22 ~~(65)~~ (71) "Weapon" means any instrument, article, or  
 23 substance which, regardless of its primary function, is  
 24 readily capable of being used to produce death or serious  
 25 bodily injury.

1 ~~(66)~~ (72) "Witness" means a person whose testimony is  
 2 desired in any official proceeding, in any investigation by  
 3 a grand jury, or in a criminal action, prosecution, or  
 4 proceeding."

5 NEW SECTION. Section 2. Definition. As used in  
 6 [section 3], the term "obtain the use of" means to instruct,  
 7 communicate with, store data in, retrieve data from, cause  
 8 input to, cause output from, or otherwise make use of any  
 9 resources of a computer, computer system, or computer  
 10 network, or to cause another to instruct, communicate with,  
 11 store data in, retrieve data from, cause input to, cause  
 12 output from, or otherwise make use of any resources of a  
 13 computer, computer system, or computer network.

14 NEW SECTION. Section 3. Unlawful use of a computer.  
 15 (1) A person commits the offense of unlawful use of a  
 16 computer if he knowingly or purposely:

17 (a) obtains the use of any computer, computer system,  
 18 or computer network without consent of the owner;

19 (b) alters or destroys or causes another to alter or  
 20 destroy a computer program or computer software without  
 21 consent of the owner; or

22 (c) obtains the use of or alters or destroys a  
 23 computer, computer system, computer network, or any part  
 24 thereof as part of a deception for the purpose of obtaining  
 25 money, property, or computer services from the owner of the



1 computer, computer system, computer network, or part  
2 thereof, or from any other person.

3 (2) A person convicted of the offense of unlawful use  
4 of a computer involving property not exceeding \$150 in value  
5 shall be fined not to exceed \$500 or be imprisoned in the  
6 county jail for a term not to exceed 6 months, or both. A  
7 person convicted of the offense of unlawful use of a  
8 computer involving property exceeding \$150 in value shall be  
9 fined not more than 2 1/2 times the value of the property  
10 used, altered, destroyed, or obtained or be imprisoned in  
11 the state prison for a term not to exceed 10 years, or both.

12 Section 4. Section 45-1-205, MCA, is amended to read:

13 "45-1-205. General time limitations. (1) A prosecution  
14 for criminal homicide may be commenced at any time.

15 (2) Except as otherwise provided by law, prosecutions  
16 for other offenses are subject to the following periods of  
17 limitation:

18 (a) A prosecution for a felony must be commenced  
19 within 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced  
21 within 1 year after it is committed.

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

25 (a) If the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after  
2 the termination thereof;

3 (b) in any other instance, within 1 year after the  
4 discovery of the offense by the aggrieved person or by a  
5 person who has legal capacity to represent an aggrieved  
6 person or has a legal duty to report the offense and is not  
7 himself a party to the offense or, in the absence of such  
8 discovery, within 1 year after the prosecuting officer  
9 becomes aware of the offense.

10 ~~(4) The period prescribed in subsection (2) may be~~  
11 ~~extended in a prosecution for unlawful use of a computer,~~  
12 ~~and prosecution may be brought within 1 year after the~~  
13 ~~discovery of the offense by the aggrieved person or by a~~  
14 ~~person who has legal capacity to represent an aggrieved~~  
15 ~~person or has a legal duty to report the offense and is not~~  
16 ~~himself a party to the offense or, in the absence of such~~  
17 ~~discovery, within 1 year after the prosecuting officer~~  
18 ~~becomes aware of the offense.~~

19 ~~(4)(5)~~ An offense is committed either when every  
20 element occurs or, when the offense is based upon a  
21 continuing course of conduct, at the time when the course of  
22 conduct is terminated. Time starts to run on the day after  
23 the offense is committed.

24 ~~(5)(6)~~ A prosecution is commenced either when an  
25 indictment is found or an information or complaint is

1 filed."

2 Section 5. Section 45-2-103, MCA, is amended to read:

3 "45-2-103. General requirements of criminal act and  
4 mental state. (1) A person is not guilty of an offense,  
5 other than an offense which involves absolute liability,  
6 unless, with respect to each element described by the  
7 statute defining the offense, he acts while having one of  
8 the mental states described in subsections ~~(27)~~ ~~(31)~~, ~~(31)~~  
9 ~~(37)~~, and ~~(52)~~ ~~(58)~~ of 45-2-101. The existence of a mental  
10 state may be inferred from the acts of the accused and the  
11 facts and circumstances connected with the offense.

12 (2) If the statute defining an offense prescribes a  
13 particular mental state with respect to the offense as a  
14 whole without distinguishing among the elements thereof, the  
15 prescribed mental state applies to each such element.

16 (3) Knowledge that certain conduct constitutes an  
17 offense or knowledge of the existence, meaning, or  
18 application of the statute defining an offense is not an  
19 element of the offense unless the statute clearly defines it  
20 as such.

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

23 (a) the offense is defined by an administrative  
24 regulation or order which is not known to him and has not  
25 been published or otherwise made reasonably available to him

1 and he could not have acquired such knowledge by the  
2 exercise of due diligence pursuant to facts known to him;

3 (b) he acts in reliance upon a statute which later is  
4 determined to be invalid;

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

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

12 (5) If a person's reasonable belief is a defense under  
13 subsection (4), nevertheless he may be convicted of an  
14 included offense of which he would be guilty if the law were  
15 as he believed it to be.

16 (6) Any defense based upon this section is an  
17 affirmative defense."

18 Section 6. Section 45-2-104, MCA, is amended to read:

19 "45-2-104. Absolute liability. A person may be guilty  
20 of an offense without having, as to each element thereof,  
21 one of the mental states described in subsections ~~(27)~~ ~~(31)~~,  
22 ~~(31)~~ ~~(37)~~, and ~~(52)~~ ~~(58)~~ of 45-2-101 only if the offense is  
23 punishable by a fine not exceeding \$500 and the statute  
24 defining the offense clearly indicates a legislative purpose  
25 to impose absolute liability for the conduct described."

1 Section 7. Section 50-20-109, MCA, is amended to read:

2 \*50-20-109. Control of practice of abortion. (1) No  
3 abortion may be performed within the state of Montana:

4 (a) except by a licensed physician;

5 (b) after the first 3 months of pregnancy, except in a  
6 hospital licensed by the department;

7 (c) after viability of the fetus, unless in  
8 appropriate medical judgment the abortion is necessary to  
9 preserve the life or health of the mother.

10 (2) An abortion under subsection (1)(c) may only be  
11 performed if:

12 (a) the foregoing judgment of the physician who is to  
13 perform the abortion is first certified in writing by him  
14 setting forth in detail the facts upon which he relies in  
15 making such judgment; and

16 (b) two other licensed physicians have first examined  
17 the patient and concurred in writing with such judgment. The  
18 foregoing certification and concurrence is not required if a  
19 licensed physician certifies the abortion is necessary to  
20 preserve the life of the mother.

21 (3) The timing and procedure used in performing an  
22 abortion under subsection (1)(c) of this section must be  
23 such that the viability of the fetus is not intentionally or  
24 negligently endangered, as the term "negligently" is defined  
25 in 45-2-101~~(3)~~(37). The fetus may be intentionally

1 endangered or destroyed only if necessary to preserve the  
2 life or health of the mother.

3 (4) No physician, facility, or other person or agency  
4 shall engage in solicitation, advertising, or other form of  
5 communication having the purpose of inviting, inducing, or  
6 attracting any person to come to such physician, facility,  
7 or other person or agency to have an abortion or to purchase  
8 abortifacients.

9 (5) Violation of subsections (1), (2), and (3) of this  
10 section is a felony. Violation of subsection (4) of this  
11 section is a misdemeanor."

12 Section 8. Section 61-5-405, MCA, is amended to read:

13 \*61-5-405. Offenses furnishing ground for suspension  
14 or revocation of license. (1) Items enumerated in Article  
15 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer  
16 specifically to 45-5-103, 45-5-104, 61-8-401,  
17 45-2-101~~(15)~~(21), and 61-7-103, respectively.

18 (2) In addition to convictions mentioned above the  
19 division, for the purpose of suspension, revocation, or  
20 limitation of the license to operate a motor vehicle, shall  
21 give the same effect to the conduct reported as it would if  
22 such conduct had occurred in this state for:

23 (a) convictions of perjury or the making of a false  
24 affidavit relating to the ownership or operation of a motor  
25 vehicle (61-5-303); and

1 (b) three convictions of reckless driving committed  
2 within a period of 12 months (61-8-301)."

3 Section 9. Codification instruction. Sections 2 and 3  
4 are intended to be codified as an integral part of Title 45,  
5 chapter 6, part 3, and the provisions of Title 45 apply to  
6 sections 2 and 3.

7 Section 10. Effective date. This act is effective on  
8 passage and approval.

-End-

1 *House* BILL NO. *621*  
 2 INTRODUCED BY *Meyer Mike Anderson Zappa*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE AND PROHIBIT  
 5 COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE  
 6 STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS  
 7 DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103,  
 8 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN  
 9 IMMEDIATE EFFECTIVE DATE."

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

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

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

18 (1) "Acts" has its usual and ordinary meaning and  
 19 includes any bodily movement, any form of communication, and  
 20 where relevant, a failure or omission to 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) "Computer" means an electronic device that  
 21 performs logical, arithmetic, and memory functions by the  
 22 manipulation of electronic or magnetic impulses and includes  
 23 all input, output, processing, storage, software, or  
 24 communication facilities that are connected or related to  
 25 such a device in a system or network.

1 ~~(9)~~ "Computer network" means the interconnection of  
2 ~~communication systems between computers or computers and~~  
3 ~~remote terminals.~~

4 ~~(10)~~ "Computer program" means an instruction or  
5 ~~statement or a series of instructions or statements, in a~~  
6 ~~form acceptable to a computer, that in actual or modified~~  
7 ~~form permits the functioning of a computer or computer~~  
8 ~~system and causes it to perform specified functions.~~

9 ~~(11)~~ "Computer services" include but are not limited to  
10 ~~computer time, data processing, and storage functions.~~

11 ~~(12)~~ "Computer software" means a set of computer  
12 ~~programs, procedures, and associated documentation concerned~~  
13 ~~with the operation of a computer system.~~

14 ~~(13)~~ "Computer system" means a set of related,  
15 ~~connected, or unconnected devices, computer software, or~~  
16 ~~other related computer equipment.~~

17 ~~(8)(14)~~ "Conduct" means an act or series of acts and  
18 ~~the accompanying mental state.~~

19 ~~(9)(15)~~ "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)(16)~~ "Correctional institution" means the state  
25 ~~prison, county or city jail, or other institution for the~~

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

3 ~~(11)(17)~~ "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)(18)~~ "Defamatory matter" means anything which  
20 ~~exposes a person or a group, class, or association to~~  
21 ~~hatred, contempt, ridicule, degradation, or disgrace in~~  
22 ~~society or to injury to his or its business or occupation.~~

23 ~~(13)(19)~~ "Deprive" means to withhold property of  
24 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)~~(20) "Deviate sexual relations" means sexual  
9 contact or sexual intercourse between two persons of the  
10 same sex or any form of sexual intercourse with an animal.

11 ~~(15)~~(21) "Felony" means an offense in which the  
12 sentence imposed upon conviction is death or imprisonment in  
13 the state prison for any term exceeding 1 year.

14 ~~(16)~~(22) "Forcible felony" means any felony which  
15 involves the use or threat of physical force or violence  
16 against any individual.

17 ~~(17)~~(23) A "frisk" is a search by an external patting  
18 of a person's clothing.

19 ~~(18)~~(24) "Government" includes any branch, subdivision,  
20 or agency of the government of the state or any locality  
21 within it.

22 ~~(19)~~(25) "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)~~(26) A "house of prostitution" means any place  
2 where 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)~~(27) "Human being" means a person who has been born  
6 and is alive.

7 ~~(22)~~(28) An "illegal article" is an article or thing  
8 which is prohibited by statute, rule, or order from being in  
9 the possession of a person subject to official detention.

10 ~~(23)~~(29) "Inmate" means a person who engages in  
11 prostitution in or through the agency of a house of  
12 prostitution.

13 ~~(24)~~(30) "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 does 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)~~(31) 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†~~~~(32)~~ "Juror" means any person who is a member of  
5 any jury, including a grand jury, impaneled by any court in  
6 this 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†~~~~(33)~~ "Knowingly"--a person acts knowingly with  
11 respect to conduct or to a circumstance described by a  
12 statute defining an offense when he is aware of his conduct  
13 or that the circumstance exists. A person acts knowingly  
14 with 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†~~~~(34)~~ "Mentally defective" means that a person  
23 suffers from a mental disease or defect which renders him  
24 incapable of appreciating the nature of his conduct.

25 ~~†29†~~~~(35)~~ "Mentally incapacitated" means that a person

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

4 ~~†30†~~~~(36)~~ "Misdemeanor" means an offense in which the  
5 sentence imposed upon conviction is imprisonment in the  
6 county jail for any term or a 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†~~~~(37)~~ "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 when 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†~~~~(38)~~ "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)~~(39) "Obtains or exerts control" includes but is  
4 not limited to the taking, carrying away, or sale,  
5 conveyance, or transfer of title to, interest in, or  
6 possession of property.

7 ~~(34)~~(40) "Occupied structure" means any building,  
8 vehicle, or other place suitable for human occupancy or  
9 night lodging of persons or for carrying on business,  
10 whether or not a person is actually present. Each unit of a  
11 building consisting of two or more units separately secured  
12 or occupied is a separate occupied structure.

13 ~~(35)~~(41) "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)~~(42) "Offense" means a crime for which a sentence  
17 of death or of imprisonment or a fine is authorized.  
18 Offenses are classified as felonies or misdemeanors.

19 ~~(37)~~(43) "Official detention" means imprisonment  
20 resulting from a conviction for an offense, confinement for  
21 an 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)~~(44) "Official proceeding" means a proceeding heard  
6 or 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)~~(45) "Other state" means any state or territory of  
13 the United States, the District of Columbia, and the  
14 Commonwealth of Puerto Rico.

15 ~~(40)~~(46) "Owner" means a person other than the offender  
16 who 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)~~(47) "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)~~(48) "Peace officer" means any person who by virtue

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

4 ~~(43)~~(42) "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)~~(50) "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)~~(51) "Physically helpless" means that a person is  
 12 unconscious or is otherwise physically unable to communicate  
 13 unwillingness to act.

14 ~~(46)~~(52) "Possession" is the knowing control of  
 15 anything for a sufficient time to be able to terminate  
 16 control.

17 ~~(47)~~(53) "Premises" includes any type of structure or  
 18 building and any real property.

19 ~~(48)~~(54) "Property" means anything any tangible or  
 20 intangible thing of value. Property includes but is not  
 21 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; and

20 (k) electronic impulses, electronically processed or  
 21 produced data or information, commercial instruments,  
 22 computer software or computer programs, in either machine or  
 23 human readable form, computer services, any other tangible  
 24 or intangible item of value relating to a computer, computer  
 25 system, or computer network, and any copies thereof.

1       ~~(49)~~(55) "Property of another" means real or personal  
2 property in which a person other than the offender has an  
3 interest which the offender has no authority to defeat or  
4 impair, even though the offender himself may have an  
5 interest in the property.

6       ~~(50)~~(56) "Public place" means any place to which the  
7 public or any substantial group thereof has access.

8       ~~(51)~~(57) "Public servant" means any officer or employee  
9 of government, including but not limited to legislators,  
10 judges, and firefighters, and any person participating as a  
11 juror, advisor, consultant, administrator, executor,  
12 guardian, or court-appointed fiduciary. The term does not  
13 include witnesses. The term "public servant" includes one  
14 who has been elected or designated to become a public  
15 servant.

16       ~~(52)~~(58) "Purposely"--a person acts purposely with  
17 respect to a result or to conduct described by a statute  
18 defining an offense if it is his conscious object to engage  
19 in that conduct or to cause that result. When a particular  
20 purpose is an element of an offense, the element is  
21 established although such purpose is conditional, unless the  
22 condition negatives the harm or evil sought to be prevented  
23 by the law defining the offense. Equivalent terms such as  
24 "purpose" and "with the purpose" have the same meaning.

25       ~~(53)~~(59) "Serious bodily injury" means bodily injury

1       which creates a substantial risk of death or which causes  
2 serious permanent disfigurement or protracted loss or  
3 impairment of the function or process of any bodily member  
4 or organ. It includes serious mental illness or impairment.

5       ~~(54)~~(60) "Sexual contact" means any touching of the  
6 sexual or other intimate parts of the person of another for  
7 the purpose of arousing or gratifying the sexual desire of  
8 either party.

9       ~~(55)~~(61) "Sexual intercourse" means penetration of the  
10 vulva, anus, or mouth of one person by the penis of another  
11 person; penetration of the vulva or anus of one person by  
12 any body member of another person, or penetration of the  
13 vulva or anus of one person by any foreign instrument or  
14 object manipulated by another person for the purpose of  
15 arousing or gratifying the sexual desire of either party.  
16 Any penetration, however slight, is sufficient.

17       ~~(56)~~(62) "Solicit" or "solicitation" means to command,  
18 authorize, urge, incite, request, or advise another to  
19 commit an offense.

20       ~~(57)~~(63) "State" or "this state" means the state of  
21 Montana, all the land and water in respect to which the  
22 state of Montana has either exclusive or concurrent  
23 jurisdiction, and the air space above such land and water.

24       ~~(58)~~(64) "Statute" means any act of the legislature of  
25 this state.

1       ~~(59)~~~~(65)~~ "Stolen property" means property over which  
2 control has been obtained by theft.

3       ~~(60)~~~~(66)~~ A "stop" is the temporary detention of a  
4 person that results when a peace officer orders the person  
5 to remain in his presence.

6       ~~(61)~~~~(67)~~ "Tamper" means to interfere with something  
7 improperly, meddle with it, make unwarranted alterations in  
8 its existing condition, or deposit refuse upon it.

9       ~~(62)~~~~(68)~~ "Threat" means a menace, however communicated,  
10 to:

11       (a) inflict physical harm on the person threatened or  
12 any other person or on property;

13       (b) subject any person to physical confinement or  
14 restraint;

15       (c) commit any criminal offense;

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

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

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

20       (g) reveal any information sought to be concealed by  
21 the person threatened;

22       (h) take action as an official against anyone or  
23 anything, withhold official action, or cause such action or  
24 withholding;

25       (i) bring about or continue a strike, boycott, or

1 other similar collective action if the property is not  
2 demanded or received for the benefit of the groups which he  
3 purports to represent; or

4       (j) testify or provide information or withhold  
5 testimony or information with respect to another's legal  
6 claim or defense.

7       ~~(63)~~~~(69)~~ (a) "Value" means the market value of the  
8 property at the time and place of the crime or, if such  
9 cannot be satisfactorily ascertained, the cost of the  
10 replacement of the property within a reasonable time after  
11 the crime. If the offender appropriates a portion of the  
12 value of the property, the value shall be determined as  
13 follows:

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

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

~~(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.~~

(b) When it cannot be determined if the value of the property is more or less than \$150 by the standards set forth in subsection ~~(63)~~ ~~(62)~~(a) above, its value shall be considered to be an amount less than \$150.

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

~~(64)~~(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

~~(65)~~(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(66)~~(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

NEW SECTION. Section 2. Definition. As used in [section 3], the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network, or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

NEW SECTION. Section 3. Unlawful use of a computer.  
(1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the

1 computer, computer system, computer network, or part  
2 thereof, or from any other person.

3 (2) A person convicted of the offense of unlawful use  
4 of a computer involving property not exceeding \$150 in value  
5 shall be fined not to exceed \$500 or be imprisoned in the  
6 county jail for a term not to exceed 6 months, or both. A  
7 person convicted of the offense of unlawful use of a  
8 computer involving property exceeding \$150 in value shall be  
9 fined not more than 2 1/2 times the value of the property  
10 used, altered, destroyed, or obtained or be imprisoned in  
11 the state prison for a term not to exceed 10 years, or both.

12 Section 4. Section 45-1-205, MCA, is amended to read:  
13 "45-1-205. General time limitations. (1) A prosecution  
14 for criminal homicide may be commenced at any time.

15 (2) Except as otherwise provided by law, prosecutions  
16 for other offenses are subject to the following periods of  
17 limitation:

18 (a) A prosecution for a felony must be commenced  
19 within 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced  
21 within 1 year after it is committed.

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

25 (a) If the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after  
2 the termination thereof;

3 (b) in any other instance, within 1 year after the  
4 discovery of the offense by the aggrieved person or by a  
5 person who has legal capacity to represent an aggrieved  
6 person or has a legal duty to report the offense and is not  
7 himself a party to the offense or, in the absence of such  
8 discovery, within 1 year after the prosecuting officer  
9 becomes aware of the offense.

10 ~~(4) The period prescribed in subsection (2) may be~~  
11 ~~extended in a prosecution for unlawful use of a computer,~~  
12 ~~and prosecution may be brought within 1 year after the~~  
13 ~~discovery of the offense by the aggrieved person or by a~~  
14 ~~person who has legal capacity to represent an aggrieved~~  
15 ~~person or has a legal duty to report the offense and is not~~  
16 ~~himself a party to the offense or, in the absence of such~~  
17 ~~discovery, within 1 year after the prosecuting officer~~  
18 ~~becomes aware of the offense.~~

19 ~~(4)(5) An offense is committed either when every~~  
20 ~~element occurs or, when the offense is based upon a~~  
21 ~~continuing course of conduct, at the time when the course of~~  
22 ~~conduct is terminated. Time starts to run on the day after~~  
23 ~~the offense is committed.~~

24 ~~(5)(6) A prosecution is commenced either when an~~  
25 ~~indictment is found or an information or complaint is~~

1 filed."

2 Section 5. Section 45-2-103, MCA, is amended to read:

3 "45-2-103. General requirements of criminal act and  
4 mental state. (1) A person is not guilty of an offense,  
5 other than an offense which involves absolute liability,  
6 unless, with respect to each element described by the  
7 statute defining the offense, he acts while having one of  
8 the mental states described in subsections ~~(27)~~ (31), ~~(31)~~  
9 (37), and ~~(52)~~ (58) of 45-2-101. The existence of a mental  
10 state may be inferred from the acts of the accused and the  
11 facts and circumstances connected with the offense.

12 (2) If the statute defining an offense prescribes a  
13 particular mental state with respect to the offense as a  
14 whole without distinguishing among the elements thereof, the  
15 prescribed mental state applies to each such element.

16 (3) Knowledge that certain conduct constitutes an  
17 offense or knowledge of the existence, meaning, or  
18 application of the statute defining an offense is not an  
19 element of the offense unless the statute clearly defines it  
20 as such.

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

23 (a) the offense is defined by an administrative  
24 regulation or order which is not known to him and has not  
25 been published or otherwise made reasonably available to him

1 and he could not have acquired such knowledge by the  
2 exercise of due diligence pursuant to facts known to him;

3 (b) he acts in reliance upon a statute which later is  
4 determined to be invalid;

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

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

12 (5) If a person's reasonable belief is a defense under  
13 subsection (4), nevertheless he may be convicted of an  
14 included offense of which he would be guilty if the law were  
15 as he believed it to be.

16 (6) Any defense based upon this section is an  
17 affirmative defense."

18 Section 6. Section 45-2-104, MCA, is amended to read:

19 "45-2-104. Absolute liability. A person may be guilty  
20 of an offense without having, as to each element thereof,  
21 one of the mental states described in subsections ~~(27)~~ (31),  
22 ~~(31)~~ (37), and ~~(52)~~ (58) of 45-2-101 only if the offense is  
23 punishable by a fine not exceeding \$500 and the statute  
24 defining the offense clearly indicates a legislative purpose  
25 to impose absolute liability for the conduct described."

1 Section 7. Section 50-20-109, MCA, is amended to read:  
 2 "50-20-109. Control of practice of abortion. (1) No  
 3 abortion may be performed within the state of Montana:  
 4 (a) except by a licensed physician;  
 5 (b) after the first 3 months of pregnancy, except in a  
 6 hospital licensed by the department;  
 7 (c) after viability of the fetus, unless in  
 8 appropriate medical judgment the abortion is necessary to  
 9 preserve the life or health of the mother.  
 10 (2) An abortion under subsection (1)(c) may only be  
 11 performed if:  
 12 (a) the foregoing judgment of the physician who is to  
 13 perform the abortion is first certified in writing by him  
 14 setting forth in detail the facts upon which he relies in  
 15 making such judgment; and  
 16 (b) two other licensed physicians have first examined  
 17 the patient and concurred in writing with such judgment. The  
 18 foregoing certification and concurrence is not required if a  
 19 licensed physician certifies the abortion is necessary to  
 20 preserve the life of the mother.  
 21 ~~(3)~~ (3) The timing and procedure used in performing an  
 22 abortion under subsection (1)(c) of this section must be  
 23 such that the viability of the fetus is not intentionally or  
 24 negligently endangered, as the term "negligently" is defined  
 25 in 45-2-101~~(3)~~(37). The fetus may be intentionally

1 endangered or destroyed only if necessary to preserve the  
 2 life or health of the mother.  
 3 (4) No physician, facility, or other person or agency  
 4 shall engage in solicitation, advertising, or other form of  
 5 communication having the purpose of inviting, inducing, or  
 6 attracting any person to come to such physician, facility,  
 7 or other person or agency to have an abortion or to purchase  
 8 abortifacients.  
 9 (5) Violation of subsections (1), (2), and (3) of this  
 10 section is a felony. Violation of subsection (4) of this  
 11 section is a misdemeanor."  
 12 Section 8. Section 61-5-405, MCA, is amended to read:  
 13 "61-5-405. Offenses furnishing ground for suspension  
 14 or revocation of license. (1) Items enumerated in Article  
 15 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer  
 16 specifically to 45-5-103, 45-5-104, 61-8-401,  
 17 45-2-101~~(15)~~(21), and 61-7-103, respectively.  
 18 (2) In addition to convictions mentioned above the  
 19 division, for the purpose of suspension, revocation, or  
 20 limitation of the license to operate a motor vehicle, shall  
 21 give the same effect to the conduct reported as it would if  
 22 such conduct had occurred in this state for:  
 23 (a) convictions of perjury or the making of a false  
 24 affidavit relating to the ownership or operation of a motor  
 25 vehicle (61-5-303); and



1 (b) three convictions of reckless driving committed  
2 within a period of 12 months (61-8-301).\*

3 Section 9. Codification instruction. Sections 2 and 3  
4 are intended to be codified as an integral part of Title 45,  
5 chapter 6, part 3, and the provisions of Title 45 apply to  
6 sections 2 and 3.

7 Section 10. Effective date. This act is effective on  
8 passage and approval.

-End-

H13621

## 1 HOUSE BILL NO. 621

2 INTRODUCED BY MEYER, M. ANDERSON, FABREGA

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE AND PROHIBIT  
5 COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE  
6 STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS  
7 DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103,  
8 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."

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

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

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

18 (1) "Acts" has its usual and ordinary meaning and  
19 includes any bodily movement, any form of communication, and  
20 where relevant, a failure or omission to 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) "Computer" means an electronic device that  
21 performs logical, arithmetic, and memory functions by the  
22 manipulation of electronic or magnetic impulses and includes  
23 all input, output, processing, storage, software, or  
24 communication facilities that are connected or related to  
25 such a device in a system or network.

1 {9} "Computer network" means the interconnection of  
 2 communication systems between computers or computers and  
 3 remote terminals.

4 {10} "Computer program" means an instruction or  
 5 statement or a series of instructions or statements, in a  
 6 form acceptable to a computer, that in actual or modified  
 7 form permits the functioning of a computer or computer  
 8 system and causes it to perform specified functions.

9 {11} "Computer services" include but are not limited to  
 10 computer time, data processing, and storage functions.

11 {12} "Computer software" means a set of computer  
 12 programs, procedures, and associated documentation concerned  
 13 with the operation of a computer system.

14 {13} "Computer system" means a set of related,  
 15 connected, or unconnected devices, computer software, or  
 16 other related computer equipment.

17 {14} "Conduct" means an act or series of acts and  
 18 the accompanying mental state.

19 {15} "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 {16} "Correctional institution" means the state  
 25 prison, county or city jail, or other institution for the

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

3 {17} "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 {18} "Defamatory matter" means anything which  
 20 exposes a person or a group, class, or association to  
 21 hatred, contempt, ridicule, degradation, or disgrace in  
 22 society or to injury to his or its business or occupation.

23 {19} "Deprive" means to withhold property of  
 24 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 ~~f14~~f20 "Deviate sexual relations" means sexual  
9 contact or sexual intercourse between two persons of the  
10 same sex or any form of sexual intercourse with an animal.

11 ~~f15~~f21 "Felony" means an offense in which the  
12 sentence imposed upon conviction is death or imprisonment in  
13 the state prison for any term exceeding 1 year.

14 ~~f16~~f22 "Forcible felony" means any felony which  
15 involves the use or threat of physical force or violence  
16 against any individual.

17 ~~f17~~f23 A "frisk" is a search by an external patting  
18 of a person's clothing.

19 ~~f18~~f24 "Government" includes any branch, subdivision,  
20 or agency of the government of the state or any locality  
21 within it.

22 ~~f19~~f25 "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 ~~f20~~f26 A "house of prostitution" means any place  
2 where 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 ~~f21~~f27 "Human being" means a person who has been born  
6 and is alive.

7 ~~f22~~f28 An "illegal article" is an article or thing  
8 which is prohibited by statute, rule, or order from being in  
9 the possession of a person subject to official detention.

10 ~~f23~~f29 "Inmate" means a person who engages in  
11 prostitution in or through the agency of a house of  
12 prostitution.

13 ~~f24~~f30 "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 does 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 ~~f25~~f31 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)~~(32) "Juror" means any person who is a member of  
5 any jury, including a grand jury, impaneled by any court in  
6 this 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)~~(33) "Knowingly"--a person acts knowingly with  
11 respect to conduct or to a circumstance described by a  
12 statute defining an offense when he is aware of his conduct  
13 or that the circumstance exists. A person acts knowingly  
14 with 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)~~(34) "Mentally defective" means that a person  
23 suffers from a mental disease or defect which renders him  
24 incapable of appreciating the nature of his conduct.

25 ~~(29)~~(35) "Mentally incapacitated" means that a person

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

4 ~~(30)~~(36) "Misdemeanor" means an offense in which the  
5 sentence imposed upon conviction is imprisonment in the  
6 county jail for any term or a 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)~~(37) "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 when 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)~~(38) "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~~39 "Obtains or exerts control" includes but is  
4 not limited to the taking, carrying away, or sale,  
5 conveyance, or transfer of title to, interest in, or  
6 possession of property.

7 ~~34~~40 "Occupied structure" means any building,  
8 vehicle, or other place suitable for human occupancy or  
9 night lodging of persons or for carrying on business,  
10 whether or not a person is actually present. Each unit of a  
11 building consisting of two or more units separately secured  
12 or occupied is a separate occupied structure.

13 ~~35~~41 "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~~42 "Offense" means a crime for which a sentence  
17 of death or of imprisonment or a fine is authorized.  
18 Offenses are classified as felonies or misdemeanors.

19 ~~37~~43 "Official detention" means imprisonment  
20 resulting from a conviction for an offense, confinement for  
21 an 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~~44 "Official proceeding" means a proceeding heard  
6 or 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~~45 "Other state" means any state or territory of  
13 the United States, the District of Columbia, and the  
14 Commonwealth of Puerto Rico.

15 ~~40~~46 "Owner" means a person other than the offender  
16 who 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~~47 "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~~48 "Peace officer" means any person who by virtue

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

4 ~~{43}~~~~{49}~~ "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}~~~~{50}~~ "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}~~~~{51}~~ "Physically helpless" means that a person is  
 12 unconscious or is otherwise physically unable to communicate  
 13 unwillingness to act.

14 ~~{46}~~~~{52}~~ "Possession" is the knowing control of  
 15 anything for a sufficient time to be able to terminate  
 16 control.

17 ~~{47}~~~~{53}~~ "Premises" includes any type of structure or  
 18 building and any real property.

19 ~~{48}~~~~{54}~~ "Property" means anything any tangible or  
 20 intangible thing of value. Property includes but is not  
 21 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; and

20 (k) electronic impulses, electronically processed or  
 21 produced data or information, commercial instruments,  
 22 computer software or computer programs, in either machine or  
 23 human readable form, computer services, any other tangible  
 24 or intangible item of value relating to a computer, computer  
 25 system, or computer network, and any copies thereof.

1       †49†{55} "Property of another" means real or personal  
2 property in which a person other than the offender has an  
3 interest which the offender has no authority to defeat or  
4 impair, even though the offender himself may have an  
5 interest in the property.

6       †50†{56} "Public place" means any place to which the  
7 public or any substantial group thereof has access.

8       †51†{57} "Public servant" means any officer or employee  
9 of government, including but not limited to legislators,  
10 judges, and firefighters, and any person participating as a  
11 juror, advisor, consultant, administrator, executor,  
12 guardian, or court-appointed fiduciary. The term does not  
13 include witnesses. The term "public servant" includes one  
14 who has been elected or designated to become a public  
15 servant.

16       †52†{58} "Purposely"--a person acts purposely with  
17 respect to a result or to conduct described by a statute  
18 defining an offense if it is his conscious object to engage  
19 in that conduct or to cause that result. When a particular  
20 purpose is an element of an offense, the element is  
21 established although such purpose is conditional, unless the  
22 condition negatives the harm or evil sought to be prevented  
23 by the law defining the offense. Equivalent terms such as  
24 "purpose" and "with the purpose" have the same meaning.

25       †53†{59} "Serious bodily injury" means bodily injury

1 which creates a substantial risk of death or which causes  
2 serious permanent disfigurement or protracted loss or  
3 impairment of the function or process of any bodily member  
4 or organ. It includes serious mental illness or impairment.

5       †54†{60} "Sexual contact" means any touching of the  
6 sexual or other intimate parts of the person of another for  
7 the purpose of arousing or gratifying the sexual desire of  
8 either party.

9       †55†{61} "Sexual intercourse" means penetration of the  
10 vulva, anus, or mouth of one person by the penis of another  
11 person, penetration of the vulva or anus of one person by  
12 any body member of another person, or penetration of the  
13 vulva or anus of one person by any foreign instrument or  
14 object manipulated by another person for the purpose of  
15 arousing or gratifying the sexual desire of either party.  
16 Any penetration, however slight, is sufficient.

17       †56†{62} "Solicit" or "solicitation" means to command,  
18 authorize, urge, incite, request, or advise another to  
19 commit an offense.

20       †57†{63} "State" or "this state" means the state of  
21 Montana, all the land and water in respect to which the  
22 state of Montana has either exclusive or concurrent  
23 jurisdiction, and the air space above such land and water.

24       †58†{64} "Statute" means any act of the legislature of  
25 this state.



1       ~~f59~~{65} "Stolen property" means property over which  
2 control has been obtained by theft.

3       ~~f60~~{66} A "stop" is the temporary detention of a  
4 person that results when a peace officer orders the person  
5 to remain in his presence.

6       ~~f61~~{67} "Tamper" means to interfere with something  
7 improperly, meddle with it, make unwarranted alterations in  
8 its existing condition, or deposit refuse upon it.

9       ~~f62~~{68} "Threat" means a menace, however communicated,  
10 to:

11       (a) inflict physical harm on the person threatened or  
12 any other person or on property;

13       (b) subject any person to physical confinement or  
14 restraint;

15       (c) commit any criminal offense;

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

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

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

20       (g) reveal any information sought to be concealed by  
21 the person threatened;

22       (h) take action as an official against anyone or  
23 anything, withhold official action, or cause such action or  
24 withholding;

25       (i) bring about or continue a strike, boycott, or

1 other similar collective action if the property is not  
2 demanded or received for the benefit of the groups which he  
3 purports to represent; or

4       (j) testify or provide information or withhold  
5 testimony or information with respect to another's legal  
6 claim or defense.

7       ~~f63~~{69} (a) "Value" means the market value of the  
8 property at the time and place of the crime or, if such  
9 cannot be satisfactorily ascertained, the cost of the  
10 replacement of the property within a reasonable time after  
11 the crime. If the offender appropriates a portion of the  
12 value of the property, the value shall be determined as  
13 follows:

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

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

1        (iii) The value of electronic impulses, electronically  
 2 produced data or information, computer software or programs,  
 3 or any other tangible or intangible item relating to a  
 4 computer, computer system, or computer network shall be  
 5 considered to be the amount of economic loss that the owner  
 6 of the item might reasonably suffer by virtue of the loss of  
 7 the item. The determination of the amount of such economic  
 8 loss includes but is not limited to consideration of the  
 9 value of the owner's right to exclusive use or disposition  
 10 of the item.

11        (b) When it cannot be determined if the value of the  
 12 property is more or less than \$150 by the standards set  
 13 forth in subsection ~~(63)~~ ~~(69)~~(a) above, its value shall be  
 14 considered to be an amount less than \$150.

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

19        ~~(64)~~~~(70)~~ "Vehicle" means any device for transportation  
 20 by land, water, or air or mobile equipment with provision  
 21 for transport of an operator.

22        ~~(65)~~~~(71)~~ "Weapon" means any instrument, article, or  
 23 substance which, regardless of its primary function, is  
 24 readily capable of being used to produce death or serious  
 25 bodily injury.

1        ~~(66)~~~~(72)~~ "Witness" means a person whose testimony is  
 2 desired in any official proceeding, in any investigation by  
 3 a grand jury, or in a criminal action, prosecution, or  
 4 proceeding."

5        NEW SECTION. Section 2. Definition. As used in  
 6 [section 3], the term "obtain the use of" means to instruct,  
 7 communicate with, store data in, retrieve data from, cause  
 8 input to, cause output from, or otherwise make use of any  
 9 resources of a computer, computer system, or computer  
 10 network, or to cause another to instruct, communicate with,  
 11 store data in, retrieve data from, cause input to, cause  
 12 output from, or otherwise make use of any resources of a  
 13 computer, computer system, or computer network.

14        NEW SECTION. Section 3. Unlawful use of a computer.  
 15 (1) A person commits the offense of unlawful use of a  
 16 computer if he knowingly or purposely:

17        (a) obtains the use of any computer, computer system,  
 18 or computer network without consent of the owner;

19        (b) alters or destroys or causes another to alter or  
 20 destroy a computer program or computer software without  
 21 consent of the owner; or

22        (c) obtains the use of or alters or destroys a  
 23 computer, computer system, computer network, or any part  
 24 thereof as part of a deception for the purpose of obtaining  
 25 money, property, or computer services from the owner of the

1 computer, computer system, computer network, or part  
2 thereof, or from any other person.

3 (2) A person convicted of the offense of unlawful use  
4 of a computer involving property not exceeding \$150 in value  
5 shall be fined not to exceed \$500 or be imprisoned in the  
6 county jail for a term not to exceed 6 months, or both. A  
7 person convicted of the offense of unlawful use of a  
8 computer involving property exceeding \$150 in value shall be  
9 fined not more than 2 1/2 times the value of the property  
10 used, altered, destroyed, or obtained or be imprisoned in  
11 the state prison for a term not to exceed 10 years, or both.

12 Section 4. Section 45-1-205, MCA, is amended to read:

13 "45-1-205. General time limitations. (1) A prosecution  
14 for criminal homicide may be commenced at any time.

15 (2) Except as otherwise provided by law, prosecutions  
16 for other offenses are subject to the following periods of  
17 limitation:

18 (a) A prosecution for a felony must be commenced  
19 within 5 years after it is committed.

20 (b) A prosecution for a misdemeanor must be commenced  
21 within 1 year after it is committed.

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

25 (a) if the aggrieved person is a minor or incompetent,

1 during the minority or incompetency or within 1 year after  
2 the termination thereof;

3 (b) in any other instance, within 1 year after the  
4 discovery of the offense by the aggrieved person or by a  
5 person who has legal capacity to represent an aggrieved  
6 person or has a legal duty to report the offense and is not  
7 himself a party to the offense or, in the absence of such  
8 discovery, within 1 year after the prosecuting officer  
9 becomes aware of the offense.

10 (4) The period prescribed in subsection (2) may SHALL  
11 be extended in a prosecution for unlawful use of a computer,  
12 and prosecution may SHALL be brought within 1 year after the  
13 discovery of the offense by the aggrieved person or by a  
14 person who has legal capacity to represent an aggrieved  
15 person or has a legal duty to report the offense and is not  
16 himself a party to the offense or, in the absence of such  
17 discovery, within 1 year after the prosecuting officer  
18 becomes aware of the offense.

19 ~~(4)(5)~~ An offense is committed either when every  
20 element occurs or, when the offense is based upon a  
21 continuing course of conduct, at the time when the course of  
22 conduct is terminated. Time starts to run on the day after  
23 the offense is committed.

24 ~~(5)(6)~~ A prosecution is commenced either when an  
25 indictment is found or an information or complaint is

1 filed."

2 Section 5. Section 45-2-103, MCA, is amended to read:

3 "45-2-103. General requirements of criminal act and  
4 mental state. (1) A person is not guilty of an offense,  
5 other than an offense which involves absolute liability,  
6 unless, with respect to each element described by the  
7 statute defining the offense, he acts while having one of  
8 the mental states described in subsections ~~(27)~~ (33), ~~(31)~~  
9 (37), and ~~(52)~~ (58) of 45-2-101. The existence of a mental  
10 state may be inferred from the acts of the accused and the  
11 facts and circumstances connected with the offense.

12 (2) If the statute defining an offense prescribes a  
13 particular mental state with respect to the offense as a  
14 whole without distinguishing among the elements thereof, the  
15 prescribed mental state applies to each such element.

16 (3) Knowledge that certain conduct constitutes an  
17 offense or knowledge of the existence, meaning, or  
18 application of the statute defining an offense is not an  
19 element of the offense unless the statute clearly defines it  
20 as such.

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

23 (a) the offense is defined by an administrative  
24 regulation or order which is not known to him and has not  
25 been published or otherwise made reasonably available to him

1 and he could not have acquired such knowledge by the  
2 exercise of due diligence pursuant to facts known to him;

3 (b) he acts in reliance upon a statute which later is  
4 determined to be invalid;

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

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

12 (5) If a person's reasonable belief is a defense under  
13 subsection (4), nevertheless he may be convicted of an  
14 included offense of which he would be guilty if the law were  
15 as he believed it to be.

16 (6) Any defense based upon this section is an  
17 affirmative defense."

18 Section 6. Section 45-2-104, MCA, is amended to read:

19 "45-2-104. Absolute liability. A person may be guilty  
20 of an offense without having, as to each element thereof,  
21 one of the mental states described in subsections ~~(27)~~ (33),  
22 ~~(31)~~ (37), and ~~(52)~~ (58) of 45-2-101 only if the offense is  
23 punishable by a fine not exceeding \$500 and the statute  
24 defining the offense clearly indicates a legislative purpose  
25 to impose absolute liability for the conduct described."

1 Section 7. Section 50-20-109, MCA, is amended to read:  
 2 "50-20-109. Control of practice of abortion. (1) No  
 3 abortion may be performed within the state of Montana:  
 4 (a) except by a licensed physician;  
 5 (b) after the first 3 months of pregnancy, except in a  
 6 hospital licensed by the department;  
 7 (c) after viability of the fetus, unless in  
 8 appropriate medical judgment the abortion is necessary to  
 9 preserve the life or health of the mother.  
 10 (2) An abortion under subsection (1)(c) may only be  
 11 performed if:  
 12 (a) the foregoing judgment of the physician who is to  
 13 perform the abortion is first certified in writing by him  
 14 setting forth in detail the facts upon which he relies in  
 15 making such judgment; and  
 16 (b) two other licensed physicians have first examined  
 17 the patient and concurred in writing with such judgment. The  
 18 foregoing certification and concurrence is not required if a  
 19 licensed physician certifies the abortion is necessary to  
 20 preserve the life of the mother.  
 21 (3) The timing and procedure used in performing an  
 22 abortion under subsection (1)(c) of this section must be  
 23 such that the viability of the fetus is not intentionally or  
 24 negligently endangered, as the term "negligently" is defined  
 25 in 45-2-101~~(31)~~(37). The fetus may be intentionally

1 endangered or destroyed only if necessary to preserve the  
 2 life or health of the mother.  
 3 (4) No physician, facility, or other person or agency  
 4 shall engage in solicitation, advertising, or other form of  
 5 communication having the purpose of inviting, inducing, or  
 6 attracting any person to come to such physician, facility,  
 7 or other person or agency to have an abortion or to purchase  
 8 abortifacients.  
 9 (5) Violation of subsections (1), (2), and (3) of this  
 10 section is a felony. Violation of subsection (4) of this  
 11 section is a misdemeanor."  
 12 Section 8. Section 61-5-405, MCA, is amended to read:  
 13 "61-5-405. Offenses furnishing ground for suspension  
 14 or revocation of license. (1) Items enumerated in Article  
 15 IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer  
 16 specifically to 45-5-103, 45-5-104, 61-8-401,  
 17 45-2-101~~(15)~~(21), and 61-7-103, respectively.  
 18 (2) In addition to convictions mentioned above the  
 19 division, for the purpose of suspension, revocation, or  
 20 limitation of the license to operate a motor vehicle, shall  
 21 give the same effect to the conduct reported as it would if  
 22 such conduct had occurred in this state for:  
 23 (a) convictions of perjury or the making of a false  
 24 affidavit relating to the ownership or operation of a motor  
 25 vehicle (61-5-303); and

1 (b) three convictions of reckless driving committed  
2 within a period of 12 months (61-8-301)."

3 Section 9. Codification instruction. Sections 2 and 3  
4 are intended to be codified as an integral part of Title 45,  
5 chapter 6, part 3, and the provisions of Title 45 apply to  
6 sections 2 and 3.

7 Section 10. Effective date. This act is effective on  
8 passage and approval.

-End-

March 17, 1981

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 621 be amended as follows:

1. Page 20, line 10.

Following: "(2)"

Strike: "may"

Insert: "shall"

2. Page 20, line 12.

Following: "prosecution"

Strike: "may"

Insert: "shall"