

House Bill 803

In The House

February 18, 1981

Introduced and referred
to Committee on Judiciary.

April 23, 1981

Died in Committee.

1 House BILL NO. 803
2 INTRODUCED BY Brand

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE
5 DEFINITION OF "PEACE OFFICER" TO INCLUDE PERSONS WHO ARE
6 RESPONSIBLE FOR THE CARE OR CUSTODY OF A PRISONER; AMENDING
7 SECTION 45-2-101, MCA."

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (11) "Deception" means knowingly to:

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

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

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

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

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

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

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

25 (a) permanently;

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (24) "Intoxicating substance" means any controlled
 14 substance as defined in Title 50, chapter 32, and any
 15 alcoholic beverage, including but not limited to any
 16 beverage containing 1/2 of 1% or more of alcohol by volume.
 17 The foregoing definition 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) An "involuntary act" means any act which is:

22 (a) a reflex or convulsion;

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

24 (c) conduct during hypnosis or resulting from hypnotic
 25 suggestion; or

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

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

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

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

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

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

4 (30) "Misdemeanor" means an offense in which the
 5 sentence imposed upon conviction is imprisonment in the
 6 county jail for any term or 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) "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) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 his office or public employment is vested by law with a duty
2 to maintain public order or to make arrests for offenses
3 while acting within the scope of his authority, or who by
4 virtue of his employment is responsible for the care or
5 custody of a prisoner.

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

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

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

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

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

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

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

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

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

6 (g) electricity, gas, and water;

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

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

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

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

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

1 or any substantial group thereof has access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-End-