

SENATE BILL NO. 391

INTRODUCED BY ECK, HALLIGAN, VAN VALKENBURG

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Judiciary.
February 11, 1983	Fiscal Note requested.
February 16, 1983	Fiscal Note returned.
	Committee recommend bill do pass as amended. Report adopted.
February 17, 1983	Bill printed and placed on members' desks.
February 18, 1983	Second reading, do pass.
February 19, 1983	Correctly engrossed.
February 21, 1983	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Judiciary.
March 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in.

IN THE SENATE

March 28, 1983	Returned to Senate with amendments.
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April 6, 1983

Second reading, amendments
concurred in.

April 7, 1983

Third reading, amendments
concurred in. Ayes, 47;
Noes, 3.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *391*
2 INTRODUCED BY *Sen. Hollen - Van Vleet*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO
6 BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE
7 INCREASED; PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF
8 CERTAIN COSTS OF CONFINEMENT; REQUIRING MANDATORY
9 RESTITUTION, PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL,
10 AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY
11 THE STATE TO THE COUNTIES; AMENDING SECTIONS 45-6-101,
12 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325,
13 45-7-210, 46-8-112, 46-8-113, AND 46-18-201, MCA; REPEALING
14 SECTIONS 46-8-114 AND 46-8-115, MCA; AND PROVIDING AN
15 EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 45-6-101, MCA, is amended to read:

19 "45-6-101. Criminal mischief. (1) A person commits the
20 offense of criminal mischief if he knowingly or purposely:

21 (a) injures, damages, or destroys any property of
22 another or public property without consent;

23 (b) without consent tampers with property of another
24 or public property so as to endanger or interfere with
25 persons or property or its use;

1 (c) damages or destroys property with the purpose to
2 defraud an insurer; or

3 (d) fails to close a gate previously unopened which he
4 has opened, leading in or out of any enclosed premises. This
5 does not apply to gates located in cities or towns.

6 (2) A person convicted of criminal mischief shall be
7 ordered to make restitution in an amount and manner to be
8 set by the court. The court shall determine the manner and
9 amount of restitution after full consideration of the
10 convicted person's ability to pay the same. Upon good cause
11 shown by the convicted person, the court may modify any
12 previous order specifying the amount and manner of
13 restitution. Full payment of the amount of restitution
14 ordered shall be made prior to the release of state
15 jurisdiction over the person convicted.

16 (3) A person convicted of the offense of criminal
17 mischief shall be fined not to exceed \$500 or be imprisoned
18 in the county jail for any term not to exceed 6 months, or
19 both. If the offender commits the offense of criminal
20 mischief and causes pecuniary loss in excess of ~~\$150~~ \$500,
21 injures or kills a commonly domesticated hoofed animal, or
22 causes a substantial interruption or impairment of public
23 communication, transportation, supply of water, gas, or
24 power, or other public services, he shall be fined an amount
25 not to exceed \$50,000 or be imprisoned in the state prison

1 for any term not to exceed 10 years, or both."

2 Section 2. Section 45-6-301, MCA, is amended to read:

3 "45-6-301. Theft. (1) A person commits the offense of

4 theft when he purposely or knowingly obtains or exerts

5 unauthorized control over property of the owner and:

6 (a) has the purpose of depriving the owner of the

7 property;

8 (b) purposely or knowingly uses, conceals, or abandons

9 the property in such manner as to deprive the owner of the

10 property; or

11 (c) uses, conceals, or abandons the property knowing

12 such use, concealment, or abandonment probably will deprive

13 the owner of the property.

14 (2) A person commits the offense of theft when he

15 purposely or knowingly obtains by threat or deception

16 control over property of the owner and:

17 (a) has the purpose of depriving the owner of the

18 property;

19 (b) purposely or knowingly uses, conceals, or abandons

20 the property in such manner as to deprive the owner of the

21 property; or

22 (c) uses, conceals, or abandons the property knowing

23 such use, concealment, or abandonment probably will deprive

24 the owner of the property.

25 (3) A person commits the offense of theft when he

1 purposely or knowingly obtains control over stolen property

2 knowing the property to have been stolen by another and:

3 (a) has the purpose of depriving the owner of the

4 property;

5 (b) purposely or knowingly uses, conceals, or abandons

6 the property in such manner as to deprive the owner of the

7 property; or

8 (c) uses, conceals, or abandons the property knowing

9 such use, concealment, or abandonment probably will deprive

10 the owner of the property.

11 (4) A person commits the offense of theft when he

12 purposely or knowingly obtains or exerts unauthorized

13 control over any part of any public assistance, as defined

14 in 53-3-101, by means of:

15 (a) a knowingly false statement, representation, or

16 impersonation; or

17 (b) a fraudulent scheme or device.

18 (5) A person convicted of the offense of theft of

19 property not exceeding ~~\$150~~ \$500 in value shall be fined not

20 to exceed \$500 or be imprisoned in the county jail for any

21 term not to exceed 6 months, or both. A person convicted of

22 the offense of theft of property exceeding ~~\$150~~ \$500 in

23 value or theft of any commonly domesticated hoofed animal

24 shall be fined not to exceed \$50,000 or be imprisoned in the

25 state prison for any term not to exceed 10 years, or both.

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

5 Section 3. Section 45-6-309, MCA, is amended to read:

6 "45-6-309. Failure to return rented or leased personal
7 property. (1) A person commits the offense of failure to
8 return rented or leased personal property if, without notice
9 to and permission of the lessor, he purposely and knowingly
10 fails to return such property within 48 hours after the time
11 provided for such return in the rental agreement, provided
12 that clear written notice, in bold print, of the date and
13 time when return of the property is required and of the
14 penalty prescribed in this section is stated in the rental
15 or lease agreement.

16 (2) Presentation to the lessor by the lessee of
17 identification that is false for the purpose of obtaining a
18 rental or lease agreement constitutes prima facie evidence
19 of commission of the offense.

20 (3) After the rental or lease period specified in the
21 rental or lease agreement has expired, failure to return
22 rented or leased personal property within 72 hours of
23 written demand by the lessor, sent by certified mail to the
24 renter or lessee at the address given at the time of
25 entering the rental or lease agreement, constitutes prima

1 facie evidence of commission of the offense.

2 (4) (a) A person convicted of failure to return rented
3 or leased personal property not exceeding ~~\$150~~ \$500 in value
4 shall be fined not to exceed \$500 or be imprisoned in the
5 county jail for a term not to exceed 6 months, or both.

6 (b) A person convicted of failure to return rented or
7 leased personal property exceeding ~~\$150~~ \$500 in value shall
8 be imprisoned in the state prison for a term not to exceed
9 10 years."

10 Section 4. Section 45-6-311, MCA, is amended to read:

11 "45-6-311. Unlawful use of a computer. (1) A person
12 commits the offense of unlawful use of a computer if he
13 knowingly or purposely:

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

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

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

25 (2) A person convicted of the offense of unlawful use

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

10 Section 5. Section 45-6-316, MCA, is amended to read:

11 "45-6-316. Issuing a bad check. (1) A person commits
 12 the offense of issuing a bad check when, with the purpose of
 13 obtaining control over property or to secure property,
 14 labor, or services of another, he issues or delivers a check
 15 or other order upon a real or fictitious depository for the
 16 payment of money knowing that it will not be paid by the
 17 depository.

18 (2) If the offender has an account with the
 19 depository, failure to make good the check or other order
 20 within 5 days after written notice of nonpayment has been
 21 received by the issuer is prima facie evidence that he knew
 22 that it would not be paid by the depository.

23 (3) A person convicted of issuing a bad check shall be
 24 fined not to exceed \$500 or be imprisoned in the county jail
 25 for any term not to exceed 6 months, or both. If the

1 offender has engaged in issuing bad checks which are part of
 2 a common scheme or if the value of any property, labor, or
 3 services obtained or attempted to be obtained exceeds ~~\$150~~
 4 \$500, he shall be fined not to exceed \$50,000 or be
 5 imprisoned in the state prison for any term not to exceed 10
 6 years, or both."

7 Section 6. Section 45-6-317, MCA, is amended to read:

8 "45-6-317. Deceptive practices. (1) A person commits
 9 the offense of deceptive practices when he purposely or
 10 knowingly:

11 (a) causes another, by deception or threat, to execute
 12 a document disposing of property or a document by which a
 13 pecuniary obligation is incurred;

14 (b) makes or directs another to make a false or
 15 deceptive statement addressed to the public or any person
 16 for the purpose of promoting or procuring the sale of
 17 property or services;

18 (c) makes or directs another to make a false or
 19 deceptive statement to any person respecting his financial
 20 condition for the purpose of procuring a loan or credit or
 21 accepts a false or deceptive statement from any person who
 22 is attempting to procure a loan or credit regarding that
 23 person's financial condition; or

24 (d) obtains or attempts to obtain property, labor, or
 25 services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ \$500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 7. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or

of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ \$500, the offender shall be fined not

to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 20 years; or both."

Section 8. Section 45-7-210, MCA, is amended to read:

"45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds \$150,000, a person convicted of an offense under this section shall be fined not to exceed \$10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that ~~must~~ and may be imposed.

(1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court ~~shall require~~

~~restitution, repayment of costs of court-appointed counsel, and repayment of any costs of confinement under [section 10]~~ and may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 ~~180~~ days;

(iii) conditions for probation;

~~(iv)-restitution;~~

~~(v)-(ix)~~ payment of a fine as provided in 46-18-231;

~~(vi)-(x)~~ payment of costs as provided in 46-18-232 and 46-18-233;

~~(vii)-payment--of--costs--of-court-appointed-counsel--as provided-in-46-8-113;~~

~~(viii)-(xii)~~ community service;

~~(ix)-(xiii)~~ any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(x)-(xviii)~~ any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(x)(viii).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or ~~payment of costs of court-appointed counsel as provided in 46-8-113~~;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

NEW SECTION. Section 10. Restitution and repayment of costs of confinement and counsel mandatory. (1) If a person has been found guilty of an offense upon a verdict or plea of guilty, the court must, in addition to any other sentence or punishment ordered and either as a condition of a deferred or suspended sentence under subsection (1)(a) or (1)(b) of 46-18-201 or as part of the sentence actually imposed upon the offender, order the offender to:

(a) make restitution in accordance with this section to any innocent person who has suffered direct, tangible, out-of-pocket expenses as a result of the acts constituting the offense;

(b) repay any costs of court-appointed counsel whose services were received under Title 46, chapter 8, part 1; and

(c) repay to the state any costs of confinement reimbursed to the county under [section 15].

(2) If restitution or repayment is ordered under this section as a condition of a deferred or suspended sentence under subsection (1)(a) or (1)(b) of 46-18-201, the sentence may be deferred or suspended for a period not exceeding 2 years for any misdemeanor and a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) Payments required under this section must be ordered by the court, made by the defendant, and applied by the clerk of the district court as provided in [sections 11 and 12].

NEW SECTION. Section 11. Determination and application of mandatory payments. (1) The court may not sentence a defendant to make restitution, pay the costs of court-appointed counsel, or repay to the state any costs of confinement unless the defendant is or will be able to pay the same in the manner provided in this section. In determining the amount and method of payment, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of any restitution and costs will impose.

(2) If the court determines that the defendant is or will be able to make restitution or payments as required by

[section 10], it must order that any restitution required under [section 10] be paid first, then that payment of costs of any court-appointed counsel be made, and that any remaining funds be applied to repay the state any costs of his confinement reimbursed to the county under [section 15].

(3) A copy of any order requiring the defendant to repay the state any money reimbursed to the county under [section 15] must be sent to the department of administration.

NEW SECTION. Section 12. Time and method of payment of restitution and costs. When a defendant is sentenced to make restitution or pay costs under [sections 10 and 11], the court may order payment to be made within a specified period of time or in specified installments. Such payments must be made to the clerk of the court in which the defendant was sentenced to make the payments. The clerk shall disburse the payments to the county, city, or town responsible for the expenses of court-appointed counsel as provided for in 46-8-201, to the state agency responsible for the costs of confinement under [section 15], or to the person entitled to restitution as ordered by the court.

NEW SECTION. Section 13. Release of obligation. A defendant who has been sentenced to make restitution or to pay costs of counsel or confinement and who is not in contumacious default in the payment thereof may at any time

petition the court that sentenced him for release from the obligation of restitution or payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may release the defendant from his obligation to pay all or part of the amounts due or modify the method of payment.

NEW SECTION. Section 14. Effect of nonpayment of restitution or costs. (1) When a defendant who is sentenced to make restitution or pay the costs of court-appointed counsel or confinement under [section 11] defaults in payment thereof or of any installment, the court, on its own motion or the motion of the prosecuting attorney, or as to restitution, on the motion of the person entitled to restitution:

(a) may require him to show cause why a sentence should not be imposed or why a suspended sentence should not be revoked or his default should not be treated as contempt of court; and

(b) may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good

faith effort to make the payment, the court may:

(a) revoke a suspended sentence or impose a sentence in accordance with 45-18-203; or

(b) find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for failure to make any required payments shall be set forth in the judgment and may not exceed 1 day for each \$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of restitution or costs must be given credit toward payment for each day of imprisonment, at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of restitution or costs is not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of restitution or costs or any installment thereof may also be collected by any means authorized by law for the enforcement of a judgment.

The writ of execution for the collection of restitution or costs does not discharge a defendant committed to imprisonment for contempt until the amount of the payment for restitution or costs has actually been collected.

NEW SECTION. Section 15. State to pay jail expenses upon deferred imposition or suspended sentence. If a person has been found guilty of an offense upon a verdict or a plea of guilty and is required to serve time in jail under 46-18-201(1)(a)(ii) as a condition of deferred imposition of sentence or under 46-18-201(1)(b) as a condition of suspended execution of sentence, the department of administration shall, from an appropriation for that purpose, reimburse the county or city in which the person is confined for its costs in confining such person. Such reimbursement is limited to a maximum of 90 days' confinement and to a maximum of \$35 per day for each day of confinement. Reimbursement must be made upon request of the county or city in such form as the department prescribes. The department shall certify the reimbursed amount to the clerk of the court in which the defendant was sentenced.

Section 16. Section 46-8-112, MCA, is amended to read:

"46-8-112. Informing defendant regarding false swearing of oath on financial statement -- repayment of costs of counsel. The court shall inform the defendant that:

(1) if he makes a false statement under oath regarding

his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) ~~if it is determined that he has or will have the ability to pay,~~ he ~~may~~ will be required to pay all or a portion of the compensation and expenses incurred by his court-appointed counsel as a part of or a condition under his sentence should he be convicted of an offense."

Section 17. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment of costs of court-appointed counsel by defendant -- condition of sentence. ~~{1}~~ Under the provisions of ~~46-18-201~~ [section 10], the court ~~may~~ shall require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his sentence.

~~{2}~~ Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

~~{3}--The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them--in determining the amount and method of payment of costs, the court shall take account of~~

1 the-financial-resources-of-the-defendant-and-the-nature-of
2 the-burden-that-payment-of-costs-will-impose

3 {4}-A-defendant-who-has-been-sentenced-to-pay-costs
4 and-who-is-not-in-contumacious-default-in-the-payment
5 thereof-may-at-any-time-petition-the-court-that-sentenced
6 him-for-remission-of-the-payment-of-costs-or-of-any-unpaid
7 portion-thereof-if-it-appears-to-the-satisfaction-of-the
8 court-that-payment-of-the-amount-due-will-impose-manifest
9 hardship-on-the-defendant-or-his-immediate-family-the-court
10 may-remit-all-or-part-of-the-amount-due-in-costs-or-modify
11 the-method-of-payment"

12 NEW_SECTION. Section 18. Repealer. Sections 46-8-114
13 and 46-8-115, MCA, are repealed.

14 NEW_SECTION. Section 19. Codification instruction.
15 Sections 10 through 15 are intended to be codified as an
16 integral part of Title 46, chapter 18, part 2, and the
17 provisions of Title 46, chapter 18, apply to sections 10
18 through 15.

19 NEW_SECTION. Section 20. Effective date. This act is
20 effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 378-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 391 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 391 is an act to generally revise criminal penalties; increases the dollar amount required to be involved in a crime before penalties for that crime are increased; provides for reimbursement to the counties of certain costs of confinement; requires mandatory restitution, payment of costs of court-appointed counsel, and repayment of certain costs of confinement reimbursed by the state to the counties; amends Sections 45-6-101, 45-6-301, 45-6-309, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, 45-7-210, 46-8-112, 46-3-113, and 46-18-201, MCA; repeals Sections 46-8-114 and 46-8-115, MCA; and provides an effective date.

COMMENTS:

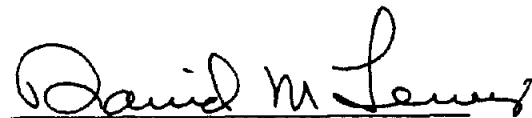
In an analysis of sentencing trends in 1981 and 1982, it is apparent that reimbursement to the victim and to the county is already a very common part of a sentence. Those sentences in which reimbursement is not required are those of indigent defendants. Since those defendants will not be liable under this proposed legislation, it is estimated that any fiscal impact would be minimal.

LOCAL IMPACT:

The impact to local governments is threefold:

- (1) increased fine and forfeiture revenue to county and city general funds;
- (2) increased revenue from "care of prisoner" reimbursements and;
- (3) reduced expenses for court-appointed counsel due to reimbursements.

FISCAL IMPACT: 13:T/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-83

Approved by Committee
on Judiciary

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INTRODUCED BY ECK, HALLIGAN, VAN VALKENBURG

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"45-6-101. Criminal mischief. (1) A person commits the
offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of
another or public property without consent;

(b) without consent tampers with property of another
or public property so as to endanger or interfere with
persons or property or its use;

(c) damages or destroys property with the purpose to
defraud an insurer; or

(d) fails to close a gate previously unopened which he
has opened, leading in or out of any enclosed premises. This
does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be
ordered to make restitution in an amount and manner to be
set by the court. The court shall determine the manner and
amount of restitution after full consideration of the
convicted person's ability to pay the same. Upon good cause
shown by the convicted person, the court may modify any
previous order specifying the amount and manner of
restitution. Full payment of the amount of restitution
ordered shall be made prior to the release of state
jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal
mischief shall be fined not to exceed \$500 or be imprisoned
in the county jail for any term not to exceed 6 months, or
both. If the offender commits the offense of criminal
mischief and causes pecuniary loss in excess of ~~\$150~~ \$500,
injures or kills a commonly domesticated hoofed animal, or
causes a substantial interruption or impairment of public
communication, transportation, supply of water, gas, or
power, or other public services, he shall be fined an amount
not to exceed \$50,000 or be imprisoned in the state prison

1 for any term not to exceed 10 years, or both."

2 Section 2. Section 45-6-301, MCA, is amended to read:

3 "45-6-301. Theft. (1) A person commits the offense of
4 theft when he purposely or knowingly obtains or exerts
5 unauthorized control over property of the owner and:

6 (a) has the purpose of depriving the owner of the
7 property;

8 (b) purposely or knowingly uses, conceals, or abandons
9 the property in such manner as to deprive the owner of the
10 property; or

11 (c) uses, conceals, or abandons the property knowing
12 such use, concealment, or abandonment probably will deprive
13 the owner of the property.

14 (2) A person commits the offense of theft when he
15 purposely or knowingly obtains by threat or deception
16 control over property of the owner and:

17 (a) has the purpose of depriving the owner of the
18 property;

19 (b) purposely or knowingly uses, conceals, or abandons
20 the property in such manner as to deprive the owner of the
21 property; or

22 (c) uses, conceals, or abandons the property knowing
23 such use, concealment, or abandonment probably will deprive
24 the owner of the property.

25 (3) A person commits the offense of theft when he

1 purposely or knowingly obtains control over stolen property
2 knowing the property to have been stolen by another and:

3 (a) has the purpose of depriving the owner of the
4 property;

5 (b) purposely or knowingly uses, conceals, or abandons
6 the property in such manner as to deprive the owner of the
7 property; or

8 (c) uses, conceals, or abandons the property knowing
9 such use, concealment, or abandonment probably will deprive
10 the owner of the property.

11 (4) A person commits the offense of theft when he
12 purposely or knowingly obtains or exerts unauthorized
13 control over any part of any public assistance, as defined
14 in 53-3-101, by means of:

15 (a) a knowingly false statement, representation, or
16 impersonation; or

17 (b) a fraudulent scheme or device.

18 (5) A person convicted of the offense of theft of
19 property not exceeding ~~\$150~~ \$500 in value shall be fined not
20 to exceed \$500 or be imprisoned in the county jail for any
21 term not to exceed 6 months, or both. A person convicted of
22 the offense of theft of property exceeding ~~\$150~~ \$500 in
23 value or theft of any commonly domesticated hoofed animal
24 shall be fined not to exceed \$50,000 or be imprisoned in the
25 state prison for any term not to exceed 10 years, or both.

(6) 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."

Section 3. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima

facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding ~~\$150~~ \$500 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding ~~\$150~~ \$500 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 4. Section 45-6-311, MCA, is amended to read:

"45-6-311. 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 computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use

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

10 Section 5. Section 45-6-316, MCA, is amended to read:

11 "45-6-316. Issuing a bad check. (1) A person commits
 12 the offense of issuing a bad check when, with the purpose of
 13 obtaining control over property or to secure property,
 14 labor, or services of another, he issues or delivers a check
 15 or other order upon a real or fictitious depository for the
 16 payment of money knowing that it will not be paid by the
 17 depository.

18 (2) If the offender has an account with the
 19 depository, failure to make good the check or other order
 20 within 5 days after written notice of nonpayment has been
 21 received by the issuer is prima facie evidence that he knew
 22 that it would not be paid by the depository.

23 (3) A person convicted of issuing a bad check shall be
 24 fined not to exceed \$500 or be imprisoned in the county jail
 25 for any term not to exceed 6 months, or both. If the

1 offender has engaged in issuing bad checks which are part of
 2 a common scheme or if the value of any property, labor, or
 3 services obtained or attempted to be obtained exceeds ~~\$150~~
 4 \$500, he shall be fined not to exceed \$50,000 or be
 5 imprisoned in the state prison for any term not to exceed 10
 6 years, or both."

7 Section 6. Section 45-6-317, MCA, is amended to read:

8 "45-6-317. Deceptive practices. (1) A person commits
 9 the offense of deceptive practices when he purposely or
 10 knowingly:

11 (a) causes another, by deception or threat, to execute
 12 a document disposing of property or a document by which a
 13 pecuniary obligation is incurred;

14 (b) makes or directs another to make a false or
 15 deceptive statement addressed to the public or any person
 16 for the purpose of promoting or procuring the sale of
 17 property or services;

18 (c) makes or directs another to make a false or
 19 deceptive statement to any person respecting his financial
 20 condition for the purpose of procuring a loan or credit or
 21 accepts a false or deceptive statement from any person who
 22 is attempting to procure a loan or credit regarding that
 23 person's financial condition; or

24 (d) obtains or attempts to obtain property, labor, or
 25 services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ \$500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 7. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or

of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ \$500, the offender shall be fined not

1 to exceed \$50,000 or be imprisoned in the state prison for
2 any term not to exceed 20 years, or both."

3 Section 8. Section 45-7-210, MCA, is amended to read:

4 "45-7-210. False claims to public agencies. (1) A
5 person commits an offense under this section if he purposely
6 and knowingly presents for allowance or for payment any
7 false or fraudulent claim, bill, account, voucher, or
8 writing to any public agency, public servant, or contractor
9 authorized to allow or pay claims presented to public
10 agencies if genuine.

11 (2) (a) Except as provided in subsection (2)(b), a
12 person convicted of an offense under this section shall be
13 fined not to exceed \$500 or imprisoned in the county jail
14 for a term not to exceed 6 months, or both.

15 (b) If false or fraudulent claims are submitted
16 purposely and knowingly as part of a common scheme or if the
17 value of the claim or the aggregate value of all claims
18 exceeds ~~\$150~~ \$500, a person convicted of an offense under
19 this section shall be fined not to exceed \$10,000 or
20 imprisoned in the state prison for a term not to exceed 10
21 years, or both."

22 Section 9. Section 46-18-201, MCA, is amended to read:

23 "46-18-201. Sentences that ~~must and~~ may be imposed:
24 (1) Whenever a person has been found guilty of an offense
25 upon a verdict or a plea of guilty, the court shall require

1 ~~restitution; repayment of costs of court-appointed counsel;~~
2 ~~and repayment of any costs of confinement under [section 19]~~
3 ~~and may:~~

4 (a) defer imposition of sentence, excepting sentences
5 for driving under the influence of alcohol or drugs for a
6 period not exceeding 1 year for any misdemeanor or for a
7 period not exceeding 3 years for any felony; the sentencing
8 judge may impose upon the defendant any reasonable
9 restrictions or conditions during the period of the deferred
10 impositions. Such reasonable restrictions or conditions may
11 include:

12 (i) jail-house release;
13 (ii) jail time not exceeding 90 ~~180~~ days;
14 (iii) conditions for probation;
15 (iv) restitution;
16 (v) ~~ix~~ payment of a fine as provided in 46-18-231;
17 (vi) ~~ix~~ payment of costs as provided in 46-18-232 and
18 46-18-233;

19 (vii) payment of costs of court-appointed counsel as
20 provided in 46-8-113;

21 (viii) ~~ix~~ community service;
22 (ix) ~~x~~ any other reasonable conditions considered
23 necessary for rehabilitation or for the protection of
24 society; or

25 (x) ~~ix~~ any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense; the sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a) through (1)(e)(x)(viii);

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e);

(2) if any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time except jail time is not a credit against the sentence unless the court orders otherwise;

(3) except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3) and 45-9-103(2);

(4) except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended;

(5) except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed; imposition of the sentence was deferred; or execution of the sentence was suspended;

~~NEW SECTION~~ Section 10. Restitution and repayment of costs of confinement and counsel mandatory. (1) If a person has been found guilty of an offense upon a verdict or plea of guilty, the court must, in addition to any other sentence or punishment ordered and either as a condition of a deferred or suspended sentence under subsection (1)(a) or (1)(b) of 46-18-201 or as part of the sentence actually imposed upon the offender, order the offender to:

(a) make restitution in accordance with this section to any innocent person who has suffered directly, tangibly, out-of-pocket expenses as a result of the acts constituting the offense;

(b) repay any costs of court-appointed counsel whose services were received under Title 46, Chapter 8, part 1, and

1 (c)--repay--to--the--state--any--costs--of--confinement
2 reimbursed--to--the--county--under--[section--15]s

3 (2)--if--restitution--or--repayment--is--ordered--under--this
4 section--as--a--condition--of--a--deferred--or--suspended--sentence
5 under--subsection--(1)(a)--or--(1)(b)--of--46-10-201s--the--sentence
6 may--be--deferred--or--suspended--for--a--period--not--exceeding--2
7 years--for--any--misdemeanor--and--a--period--not--exceeding--6--years
8 for--any--felony--regardless--of--whether--any--other--conditions
9 are--imposeds

10 (3)--Payments--required--under--this--section--must--be
11 ordered--by--the--court--made--by--the--defendant--and--applied--by
12 the--clerk--of--the--district--court--as--provided--in--[sections--11
13 and--12]s

14 ~~NEW-SECTIONs~~ Section--11s--Determination-----and
15 application--of--mandatory--payments--(1)--The--court--may--not
16 sentence--a--defendant--to--make--restitution--pay--the--costs--of
17 court--appointed--counsel--or--repay--to--the--state--any--costs--of
18 confinement--unless--the--defendant--is--or--will--be--able--to--pay
19 the--same--in--the--manner--provided--in--this--section--in
20 determining--the--amount--and--method--of--payment--the--court
21 shall--take--account--of--the--financial--resources--of--the
22 defendant--and--the--nature--of--the--burden--that--payment--of--any
23 restitution--and--costs--will--impose

24 (2)--if--the--court--determines--that--the--defendant--is--or
25 will--be--able--to--make--restitution--or--payments--as--required--by

1 [section--10]s--it--must--order--that--any--restitution--required
2 under--[section--10]--be--paid--first--then--that--payment--of--costs
3 of--any--court--appointed--counsel--be--made--and--that--any
4 remaining--funds--be--applied--to--repay--the--state--any--costs--of
5 his--confinement--reimbursed--to--the--county--under--[section--15]s

6 (3)--A--copy--of--any--order--requiring--the--defendant--to
7 repay--the--state--any--money--reimbursed--to--the--county--under
8 [section--15]s--must--be--sent--to--the--department--of
9 administration

10 ~~NEW-SECTIONs~~ Section--12s--Time--and--method--of--payment
11 of--restitution--and--costs--When--a--defendant--is--sentenced--to
12 make--restitution--or--pay--costs--under--[sections--10--and--11]s
13 the--court--may--order--payment--to--be--made--within--a--specified
14 period--of--time--or--in--specified--installments--Such--payments
15 must--be--made--to--the--clerk--of--the--court--in--which--the
16 defendant--was--sentenced--to--make--the--payments--The--clerk
17 shall--disburse--the--payments--to--the--county--city--or--town
18 responsible--for--the--expenses--of--court--appointed--counsel--as
19 provided--for--in--46-8-201s--to--the--state--agency--responsible
20 for--the--costs--of--confinement--under--[section--15]s--or--to--the
21 person--entitled--to--restitution--as--ordered--by--the--court

22 ~~NEW-SECTIONs~~ Section--13s--Release--of--obligations--A
23 defendant--who--has--been--sentenced--to--make--restitution--or--to
24 pay--costs--of--counsel--or--confinement--and--who--is--not--in
25 contumacious--default--in--the--payment--thereof--may--at--any--time

petition the court that sentenced him for release from the obligation of restitution or payment of costs or of any unpaid portion thereof if it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family the court may release the defendant from his obligation to pay all or part of the amounts due or modify the method of payments

NEW SECTION. Section 14. Effect of nonpayment of restitution or costs. (1) When a defendant who is sentenced to make restitution or pay the costs of court-appointed counsel or confinement under [section 11] defaults in payment thereof or of any installment the court on its own motion or the motion of the prosecuting attorney or as to restitution on the motion of the person entitled to restitution:

(a) may require him to show cause why a sentence should not be imposed or why a suspended sentence should not be revoked or his default should not be treated as contempt of court; and

(b) may issue a show cause citation or a warrant of arrest for his appearance;

(2) unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good

faith effort to make the payment the court may:

(a) revoke a suspended sentence or impose a sentence in accordance with 46-18-203; or

(b) find that his default constitutes civil contempt;

(3) The term of imprisonment for contempt for failure to make any required payments shall be set forth in the judgment and may not exceed 1 day for each \$25 of the payment 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor or 1 year in any other case whichever is the shorter period. A person committed for nonpayment of restitution or costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment;

(4) If it appears to the satisfaction of the court that the default in the payment of restitution or costs is not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment the court may enter an order allowing the defendant additional time for payment reducing the amount of the payment or of each installment or revoking the order for payment or the unpaid portion thereof in whole or in part;

(5) A default in the payment of restitution or costs or any installment thereof may also be collected by any means authorized by law for the enforcement of a judgment.

1 The writ of execution for the collection of--restitution--or
 2 costs---does---not---discharge---a--defendant--committed--to
 3 imprisonment--for--contempt--until--the--amount--of--the--payment
 4 for--restitution--or--costs--has--actually--been--collected.

5 ~~NEW SECTION~~--Section--15--State--to--pay--jail--expenses
 6 upon--deferred--imposition--or--suspended--sentencev--if--a--person
 7 has--been--found--guilty--of--an--offense--upon--a--verdict--or--a--plea
 8 of--guilty--and--is--required--to--serve--time--in--jail--under
 9 46-18-201(1)(a)(ii)--as--a--condition--of--deferred--imposition--of
 10 sentence---or---under--46-18-201(1)(b)--as--a--condition--of
 11 suspended--execution--of--sentencev--the--department---of
 12 administration---shallv---from--an--appropriation--for--that
 13 purposev--reimburse--the--county--or--city--in--which--the--person--is
 14 confined--for--its--costs--in--confining--such--personv--Such
 15 reimbursement---is---limited---to--a--maximum--of--90--days¹
 16 confinement--and--to--a--maximum--of--\$35--per--day--for--each--day--of
 17 confinementv--Reimbursement--must--be--made--upon--request--of--the
 18 county--or--city--in--such--form--as--the--department--prescribes
 19 The--department--shall--certify--the--reimbursed--amount--to--the
 20 clerk--of--the--court--in--which--the--defendant--was--sentencedv

21 Section--16v--Section--46-8-112v--HEAV--is--amended--to--read:
 22 "46-8-112v--Informing---defendant---regarding---false
 23 swearing--of--oath--on--financial--statement---repayment--of
 24 costs--of--counselv--The--court--shall--inform--the--defendant
 25 that:

1 (1)--if--he--makes--a--false--statement--under--oath--regarding
 2 his--financial--inability--to--obtain--counselv--he--may--be--charged
 3 with--the--additional--offense--of--false--swearingv

4 (2)--if--it--is--determined--that--he--has--or--will--have--the
 5 ability--to--payv--he--may--will--be--required--to--pay--all--or--a
 6 portion--of--the--compensation--and--expenses--incurred--by--his
 7 court--appointed--counsel--as--a--part--of--or--a--condition--under
 8 his--sentence--should--he--be--convicted--of--an--offensev

9 Section--17v--Section--46-8-113v--HEAV--is--amended--to--read:
 10 "46-8-113v--Payment--of--costs--of--court--appointed--counsel
 11 by--defendant-----condition--of--sentencev--(1)--Under--the
 12 provisions--of--46-18-201 [section--18]v--the--court--may--shall
 13 require---a---convicted---defendant--to--pay--the--costs--of
 14 court--appointed--counsel--as--a--part--of--or--a--condition--under
 15 his--sentencev

16 (2)--Costs--must--be--limited--to--reasonable--compensation
 17 and--costs--incurred--by--the--court--appointed--counsel--in--the
 18 criminal--proceedingsv--Costs--may--not--include--expenses--inherent
 19 in--providing--a--constitutionally--guaranteed--jury--trial--or
 20 expenditures--in--connection--with--the--maintenance--and
 21 operation--of--government--agencies--that--must--be--made--by--the
 22 public--irrespective--of--specific--violations--of--lawv

23 (3)--The--court--may--not--sentence--a--defendant--to--pay--the
 24 costs--of--court--appointed--counsel--unless--the--defendant--is--or
 25 will--be--able--to--pay--themv--in--determining--the--amount--and

method--of-payment-of-costs--the-court-shall-take-account-of
the-financial-resources-of-the-defendant-and-the-nature--of
the-burden-that-payment-of-costs-will-impose

§§--A--defendant--who--has-been-sentenced-to-pay-costs
and-who-is--not--in--contumacious--default--in--the--payment
thereof--may--at--any-time-petition-the-court-that-sentenced
him-for-remission-of-the-payment-of-costs-or-of--any--unpaid
portion--thereof--if-it-appears-to-the-satisfaction-of-the
court-that-payment-of-the-amount-due-will--impose--manifest
hardship-on-the-defendant-or-his-immediate-family--the-court
may--remit--all-or-part-of-the-amount-due-in-costs-or-modify
the-method-of-payments"

NEW-SECTION--Section-18--Repeaters--Sections-46-8-114
and-46-8-115--MGAs--are-repeated

NEW-SECTION--Section-19--Codification---instructions
Sections--10--through--15--are-intended-to-be-codified-as-an
integral-part-of-Title-46--chapter--18--part--2--and--the
provisions--of--Title--46--chapter--18--apply-to-sections-10
through-15

NEW-SECTION. Section 9. Effective date. This act is
effective July-17-1983 ON-PASSAGE-AND-APPROVAL.

-End-

SENATE BILL NO. 391

INTRODUCED BY ECK, HALLIGAN, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; ~~PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF CERTAIN COSTS OF CONFINEMENT, REQUIRING MANDATORY RESTITUTION, PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL, AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY THE STATE TO THE COUNTIES~~; AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, 46-8-112, 46-8-113, AND 46-10-201, MCA; ~~REPEALING SECTIONS 46-8-114 AND 46-8-115, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$150 ~~\$500~~, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison

1 for any term not to exceed 10 years, or both."

2 Section 2. Section 45-6-301, MCA, is amended to read:

3 "45-6-301. Theft. (1) A person commits the offense of

4 theft when he purposely or knowingly obtains or exerts

5 unauthorized control over property of the owner and:

6 (a) has the purpose of depriving the owner of the

7 property;

8 (b) purposely or knowingly uses, conceals, or abandons

9 the property in such manner as to deprive the owner of the

10 property; or

11 (c) uses, conceals, or abandons the property knowing

12 such use, concealment, or abandonment probably will deprive

13 the owner of the property.

14 (2) A person commits the offense of theft when he

15 purposely or knowingly obtains by threat or deception

16 control over property of the owner and:

17 (a) has the purpose of depriving the owner of the

18 property;

19 (b) purposely or knowingly uses, conceals, or abandons

20 the property in such manner as to deprive the owner of the

21 property; or

22 (c) uses, conceals, or abandons the property knowing

23 such use, concealment, or abandonment probably will deprive

24 the owner of the property.

25 (3) A person commits the offense of theft when he

1 purposely or knowingly obtains control over stolen property

2 knowing the property to have been stolen by another and:

3 (a) has the purpose of depriving the owner of the

4 property;

5 (b) purposely or knowingly uses, conceals, or abandons

6 the property in such manner as to deprive the owner of the

7 property; or

8 (c) uses, conceals, or abandons the property knowing

9 such use, concealment, or abandonment probably will deprive

10 the owner of the property.

11 (4) A person commits the offense of theft when he

12 purposely or knowingly obtains or exerts unauthorized

13 control over any part of any public assistance, as defined

14 in 53-3-101, by means of:

15 (a) a knowingly false statement, representation, or

16 impersonation; or

17 (b) a fraudulent scheme or device.

18 (5) A person convicted of the offense of theft of

19 property not exceeding ~~\$150~~ \$500 in value shall be fined not

20 to exceed \$500 or be imprisoned in the county jail for any

21 term not to exceed 6 months, or both. A person convicted of

22 the offense of theft of property exceeding ~~\$150~~ \$500 in

23 value or theft of any commonly domesticated hoofed animal

24 shall be fined not to exceed \$50,000 or be imprisoned in the

25 state prison for any term not to exceed 10 years, or both.

(6) 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."

Section 3. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima

facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding ~~\$150~~ \$500 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding ~~\$150~~ \$500 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 4. Section 45-6-311, MCA, is amended to read:

"45-6-311. 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 computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use

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

10 Section 5. Section 45-6-316, MCA, is amended to read:

11 "45-6-316. Issuing a bad check. (1) A person commits
 12 the offense of issuing a bad check when, with the purpose of
 13 obtaining control over property or to secure property,
 14 labor, or services of another, he issues or delivers a check
 15 or other order upon a real or fictitious depository for the
 16 payment of money knowing that it will not be paid by the
 17 depository.

18 (2) If the offender has an account with the
 19 depository, failure to make good the check or other order
 20 within 5 days after written notice of nonpayment has been
 21 received by the issuer is prima facie evidence that he knew
 22 that it would not be paid by the depository.

23 (3) A person convicted of issuing a bad check shall be
 24 fined not to exceed \$500 or be imprisoned in the county jail
 25 for any term not to exceed 6 months, or both. If the

1 offender has engaged in issuing bad checks which are part of
 2 a common scheme or if the value of any property, labor, or
 3 services obtained or attempted to be obtained exceeds ~~\$150~~
 4 \$500, he shall be fined not to exceed \$50,000 or be
 5 imprisoned in the state prison for any term not to exceed 10
 6 years, or both."

7 Section 6. Section 45-6-317, MCA, is amended to read:

8 "45-6-317. Deceptive practices. (1) A person commits
 9 the offense of deceptive practices when he purposely or
 10 knowingly:

11 (a) causes another, by deception or threat, to execute
 12 a document disposing of property or a document by which a
 13 pecuniary obligation is incurred;

14 (b) makes or directs another to make a false or
 15 deceptive statement addressed to the public or any person
 16 for the purpose of promoting or procuring the sale of
 17 property or services;

18 (c) makes or directs another to make a false or
 19 deceptive statement to any person respecting his financial
 20 condition for the purpose of procuring a loan or credit or
 21 accepts a false or deceptive statement from any person who
 22 is attempting to procure a loan or credit regarding that
 23 person's financial condition; or

24 (d) obtains or attempts to obtain property, labor, or
 25 services by any of the following means:

1 (i) using a credit card which was issued to another
2 without the other's consent;

3 (ii) using a credit card that has been revoked or
4 canceled;

5 (iii) using a credit card that has been falsely made,
6 counterfeited, or altered in any material respect;

7 (iv) using the pretended number or description of a
8 fictitious credit card;

9 (v) using a credit card which has expired provided the
10 credit card clearly indicates the expiration date.

11 (2) A person convicted of the offense of deceptive
12 practices shall be fined not to exceed \$500 or imprisoned in
13 the county jail for a term not to exceed 6 months, or both.
14 If the deceptive practices are part of a common scheme or
15 the value of any property, labor, or services obtained or
16 attempted to be obtained exceeds ~~\$150~~ \$500, the offender
17 shall be fined not to exceed \$50,000 or be imprisoned in the
18 state prison for a term not to exceed 10 years, or both."

19 Section 7. Section 45-6-325, MCA, is amended to read:

20 "45-6-325. Forgery. (1) A person commits the offense
21 of forgery when with purpose to defraud he knowingly:

22 (a) without authority makes or alters any document or
23 other object apparently capable of being used to defraud
24 another in such manner that it purports to have been made by
25 another or at another time or with different provisions or

1 of different composition;

2 (b) issues or delivers such document or other object
3 knowing it to have been thus made or altered;

4 (c) possesses with the purpose of issuing or
5 delivering any such document or other object knowing it to
6 have been thus made or altered; or

7 (d) possesses with knowledge of its character any
8 plate, die, or other device, apparatus, equipment, or
9 article specifically designed for use in counterfeiting or
10 otherwise forging written instruments.

11 (2) A purpose to defraud means the purpose of causing
12 another to assume, create, transfer, alter, or terminate any
13 right, obligation, or power with reference to any person or
14 property.

15 (3) A document or other object capable of being used
16 to defraud another includes but is not limited to one by
17 which any right, obligation, or power with reference to any
18 person or property may be created, transferred, altered, or
19 terminated.

20 (4) A person convicted of the offense of forgery shall
21 be fined not to exceed \$500 or be imprisoned in the county
22 jail for any term not to exceed 6 months, or both. If the
23 forgery is part of a common scheme or if the value of the
24 property, labor, or services obtained or attempted to be
25 obtained exceeds ~~\$150~~ \$500, the offender shall be fined not

1 to exceed \$50,000 or be imprisoned in the state prison for
2 any term not to exceed 20 years, or both."

3 Section 8. Section 45-7-210, MCA, is amended to read:

4 "45-7-210. False claims to public agencies. (1) A
5 person commits an offense under this section if he purposely
6 and knowingly presents for allowance or for payment any
7 false or fraudulent claim, bill, account, voucher, or
8 writing to any public agency, public servant, or contractor
9 authorized to allow or pay claims presented to public
10 agencies if genuine.

11 (2) (a) Except as provided in subsection (2)(b), a
12 person convicted of an offense under this section shall be
13 fined not to exceed \$500 or imprisoned in the county jail
14 for a term not to exceed 6 months, or both.

15 (b) If false or fraudulent claims are submitted
16 purposely and knowingly as part of a common scheme or if the
17 value of the claim or the aggregate value of all claims
18 exceeds ~~\$150~~ \$500, a person convicted of an offense under
19 this section shall be fined not to exceed \$10,000 or
20 imprisoned in the state prison for a term not to exceed 10
21 years, or both."

22 Section 9. ~~Section 46-18-201, MCA, is amended to read:~~

23 "46-18-201. ~~Sentences that must and~~ may be imposed:

24 (i) ~~Whenever a person has been found guilty of an offense~~
25 ~~upon a verdict or a plea of guilty, the court shall require~~

1 ~~restitution, repayment of costs of court-appointed counsel,~~
2 ~~and repayment of any costs of confinement under (section 19)~~
3 ~~and may:~~

4 (a) ~~defer imposition of sentence, excepting sentences~~
5 ~~for driving under the influence of alcohol or drugs, for a~~
6 ~~period not exceeding 1 year for any misdemeanor or for a~~
7 ~~period not exceeding 3 years for any felony, the sentencing~~
8 ~~judge may impose upon the defendant any reasonable~~
9 ~~restrictions or conditions during the period of the deferred~~
10 ~~imposition. Such reasonable restrictions or conditions may~~
11 ~~include:~~

12 (i) ~~jail base release;~~
13 (ii) ~~jail time not exceeding 90 180 days;~~
14 (iii) ~~conditions for probation;~~
15 (iv) ~~restitution;~~
16 (v) ~~payment of a fine as provided in 46-18-231;~~
17 (vi) ~~payment of costs as provided in 46-18-232 and~~
18 ~~46-18-233;~~
19 (vii) ~~payment of costs of court-appointed counsel as~~
20 ~~provided in 46-8-113;~~
21 (viii) ~~community service;~~
22 (ix) ~~any other reasonable conditions considered~~
23 ~~necessary for rehabilitation or for the protection of~~
24 ~~society; or~~
25 (x) ~~any combination of the above.~~

1 (b)--suspend execution of sentence up to the maximum
 2 sentence allowed for the particular offense. The sentencing
 3 judge may impose on the defendant any reasonable
 4 restrictions or conditions during the period of suspended
 5 sentences. Such reasonable restrictions or conditions may
 6 include any of those listed in subsections (1)(a) through
 7 (1)(e)(x) ~~(viii)~~.
 8 (c)--impose a fine as provided by law for the offense.
 9 (d)--require payment of costs as provided in 46-18-232
 10 or payment of costs of court appointed counsel as provided
 11 in 46-8-113.
 12 (e)--commit the defendant to a correctional institution
 13 with or without a fine as provided by law for the offense.
 14 (f)--impose any combination of subsections (1)(b)
 15 through (1)(e).
 16 (2)--If any restrictions or conditions imposed under
 17 subsection (1)(a) or (1)(b) are violated, any elapsed time
 18 except jail time is not a credit against the sentence
 19 unless the court orders otherwise.
 20 (3)--Except as provided in 46-18-222, the imposition or
 21 execution of the first 2 years of a sentence of imprisonment
 22 imposed under the following sections may not be deferred or
 23 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
 24 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
 25 and (3), 45-9-102(3) and 45-9-103(2).

1 (4)--Except as provided in 46-18-222, the imposition or
 2 execution of the first 10 years of a sentence of
 3 imprisonment imposed under 45-5-102(2) may not be deferred
 4 or suspended.
 5 (5)--Except as provided in 46-18-222, imposition of
 6 sentence in a felony case may not be deferred in the case of
 7 a defendant who has been convicted of a felony on a prior
 8 occasion whether or not the sentence was imposed, imposition
 9 of the sentence was deferred, or execution of the sentence
 10 was suspended.
 11 NEW SECTION--Section 18--Restitution and repayment of
 12 costs of confinement and counsel mandatory--(1) If a person
 13 has been found guilty of an offense upon a verdict or plea
 14 of guilty, the court must, in addition to any other sentence
 15 or punishment ordered and either as a condition of a
 16 deferred or suspended sentence under subsection (1)(a) or
 17 (1)(b) of 46-18-201 or as part of the sentence actually
 18 imposed upon the offender, order the offender to:
 19 (a)--make restitution in accordance with this section
 20 to any innocent person who has suffered directly, tangibly,
 21 out of pocket expenses as a result of the acts constituting
 22 the offense;
 23 (b)--repay any costs of court appointed counsel whose
 24 services were received under Title 46, chapter 8, part 1,
 25 and

(c) repay to the state any costs of confinement reimbursed to the county under [section 15];

(2) if restitution or repayment is ordered under this section as a condition of a deferred or suspended sentence under subsection (1)(a) or (1)(b) of 46-18-201, the sentence may be deferred or suspended for a period not exceeding 2 years for any misdemeanor and a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed;

(3) Payments required under this section must be ordered by the court, made by the defendant, and applied by the clerk of the district court as provided in [sections 11 and 12];

NEW SECTION Section 11. Determination-----and application of mandatory payments--(1) The court may not sentence a defendant to make restitution, pay the costs of court-appointed counsel, or repay to the state any costs of confinement unless the defendant is or will be able to pay the same in the manner provided in this section in determining the amount and method of payments--the court shall take account of the financial resources of the defendant and the nature of the burden that payment of any restitution and costs will impose;

(2) if the court determines that the defendant is or will be able to make restitution or payments as required by

[section 18] it must order that any restitution required under [section 18] be paid first, then that payment of costs of any court-appointed counsel be made, and that any remaining funds be applied to repay the state any costs of his confinement reimbursed to the county under [section 15];

(3) A copy of any order requiring the defendant to repay the state any money reimbursed to the county under [section 15] must be sent to the department of administration;

NEW SECTION Section 12. Time and method of payment of restitution and costs--When a defendant is sentenced to make restitution or pay costs under [sections 18 and 11], the court may order payment to be made within a specified period of time or in specified installments. Such payments must be made to the clerk of the court in which the defendant was sentenced to make the payments. The clerk shall disburse the payments to the county, city, or town responsible for the expenses of court-appointed counsel as provided for in 46-8-201 to the state agency responsible for the costs of confinement under [section 15] or to the person entitled to restitution as ordered by the court.

NEW SECTION Section 13. Release of obligations--A defendant who has been sentenced to make restitution or to pay costs of counsel or confinement and who is not in contemptuous default in the payment thereof may at any time

petition the court that sentenced him for release from the obligation of restitution or payment of costs or of any unpaid portion thereof if it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family the court may release the defendant from his obligation to pay all or part of the amounts due or modify the method of payment.

~~NEW SECTION~~ Section 14. Effect of nonpayment of restitution or costs. (1) When a defendant who is sentenced to make restitution or pay the costs of court-appointed counsel or confinement under [section 11] defaults in payment thereof or of any installment the court on its own motion or the motion of the prosecuting attorney or as to restitution on the motion of the person entitled to restitution:

(a) may require him to show cause why a sentence should not be imposed or why a suspended sentence should not be revoked or his default should not be treated as contempt of court; and

(b) may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good

faith effort to make the payment, the court may:

(a) revoke a suspended sentence or impose a sentence in accordance with 46-18-203; or

(b) find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for failure to make any required payments shall be set forth in the judgment and may not exceed 1 day for each \$25 of the payments 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor or 1 year in any other case whichever is the shorter period. A person committed for nonpayment of restitution or costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of restitution or costs is not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may enter an order allowing the defendant additional time for payment reducing the amount of the payment or of each installment or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of restitution or costs or any installment thereof may also be collected by any means authorized by law for the enforcement of a judgment.

1 The writ of execution for the collection of--restitution--or
2 costs---does---not---discharge---a--defendant--committed--to
3 imprisonment--for--contempt--until--the--amount--of--the--payment
4 for--restitution--or--costs--has--actually--been--collected.

5 ~~NEW-SECTION~~ Section 15--State--to--pay--jail--expenses
6 upon--deferred--imposition--or--suspended--sentence--If--a--person
7 has--been--found--guilty--of--an--offense--upon--a--verdict--or--a--plea
8 of--guilty--and--is--required--to--serve--time--in--jail--under
9 46-18-201(1)(a)(i)--as--a--condition--of--deferred--imposition--of
10 sentence---or---under--46-18-201(1)(b)--as--a--condition--of
11 suspended--execution--of--sentence--the--department--of
12 administration--shall--from--an--appropriation--for--that
13 purpose--reimburse--the--county--or--city--in--which--the--person--is
14 confined--for--its--costs--in--confining--such--persons--Such
15 reimbursement---is---limited---to---a--maximum--of--90--days
16 confinement--and--to--a--maximum--of--\$35--per--day--for--each--day--of
17 confinement--Reimbursement--must--be--made--upon--request--of--the
18 county--or--city--in--such--form--as--the--department--prescribes
19 The--department--shall--certify--the--reimbursed--amount--to--the
20 clerk--of--the--court--in--which--the--defendant--was--sentenced.

21 Section 16--Section 46-8-112--MCA--is--amended--to--read:
22 "46-8-112--Informing--defendant--regarding--false
23 swearing--of--oath--on--financial--statement--repayment--of
24 costs--of--counsel--The--court--shall--inform--the--defendant
25 that:

1 (1)--if--he--makes--a--false--statement--under--oath--regarding
2 his--financial--inability--to--obtain--counsel--he--may--be--charged
3 with--the--additional--offense--of--false--swearing.

4 (2)--if--it--is--determined--that--he--has--or--will--have--the
5 ability--to--pay--he--may--will--be--required--to--pay--all--or--a
6 portion--of--the--compensation--and--expenses--incurred--by--his
7 court--appointed--counsel--as--a--part--of--or--a--condition--under
8 his--sentence--should--he--be--convicted--of--an--offense."

9 Section 17--Section 46-8-113--MCA--is--amended--to--read:
10 "46-8-113--Payment--of--costs--of--court--appointed--counsel
11 by--defendant---condition--of--sentence--(1)--Under--the
12 provisions--of--46-18-201 [section 10]--the--court--may--shall
13 require--a--convicted--defendant--to--pay--the--costs--of
14 court--appointed--counsel--as--a--part--of--or--a--condition--under
15 his--sentence.

16 (2)--Costs--must--be--limited--to--reasonable--compensation
17 and--costs--incurred--by--the--court--appointed--counsel--in--the
18 criminal--proceedings--Costs--may--not--include--expenses--inherent
19 in--providing--a--constitutionally--guaranteed--jury--trial--or
20 expenditures--in--connection--with--the--maintenance--and
21 operation--of--government--agencies--that--must--be--made--by--the
22 public--irrespective--of--specific--violations--of--laws.

23 (3)--The--court--may--not--sentence--a--defendant--to--pay--the
24 costs--of--court--appointed--counsel--unless--the--defendant--is--or
25 will--be--able--to--pay--them--in--determining--the--amount--and

1 method--of-payment-of-costs, the court shall take account of
2 the financial resources of the defendant and the nature of
3 the burden that payment of costs will impose.

4 {t}--A--defendant--who--has--been--sentenced--to--pay--costs
5 and who is not in contemptuous default in the payment
6 thereof may at any time petition the court that sentenced
7 him for remission of the payment of costs or of any unpaid
8 portion thereof if it appears to the satisfaction of the
9 court that payment of the amount due will impose manifest
10 hardship on the defendant or his immediate family, the court
11 may remit all or part of the amount due in costs or modify
12 the method of payments."

13 NEW-SECTION- Section 18. Repeaters--Sections-46-8-114
14 and-46-8-115-MCA-are-repealed.

15 NEW-SECTION- Section 19. Codification---instructions
16 Sections--18--through--15--are-intended-to-be-codified-as-an
17 integral part of Title 46, chapter 18, part 2, and the
18 provisions of Title 46, chapter 18, apply to sections 18
19 through 15.

20 NEW-SECTION- Section 9. Effective date. This act is
21 effective July 1, 1983 ON-PASSAGE-AND-APPROVAL.

-End-

Third reading (blue) copy,

SB 391 Page 2 of 3

Be amended as follows:

1. Title, line 7.

Following: "INCREASED"

Insert: "INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT;"

2. Title, line 13.

Following: "45-7-210,"

Insert: "46-18-201,"

3. Title, line 13.

Strike: "," and through "DATE" on line 15.

4. Page 2, line 20.

Strike: "\$500"

Insert: "\$300"

5. Page 4, line 19.

Strike: "\$500"

Insert: "\$300"

6. Page 4, line 22.

Strike: "\$500"

Insert: "\$300"

7. Page 6, line 3.

Strike: "\$500"

Insert: "\$300"

8. Page 6, line 7.

Strike: "\$500"

Insert: "\$300"

9. Page 7, line 1.

Strike: "\$500"

Insert: "\$300"

10. Page 7, line 5.

Strike: "\$500"

Insert: "300"

11. Page 8, line 4.

Strike: "\$500"

Insert: "300"

12. Page 9, line 16.

Strike: "\$500"

Insert: "\$300"

13. Page 10, line 25

Strike: "\$500"

Insert: "\$300"

14. Page 11, line 18.

Strike: "\$500"

Insert: "\$300"

15. Page 14, following line 10.

Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

~~(vi)~~ (vi) payment of a fine as provided in 46-18-231;

~~(vii)~~ (vii) payment of costs as provided in 46-18-232 and 46-18-233;

~~(viii)~~ (viii) payment of costs of court appointed counsel as provided in 46-8-113;

~~(ix)~~ (ix) community service;

~~(x)~~ (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(xi)~~ (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)~~(x)~~ (xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or

without a fine as provided by law for the offense;

(f) impose any combination of subsection (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

16. Page 21, lines 20 and 21.

Strike: Section 9 in its entirety.

AND AS AMENDED
BE CONCURRED IN

SENATE BILL NO. 391

INTRODUCED BY ECK, HALLIGAN, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT; PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF CERTAIN COSTS OF CONFINEMENT; REQUIRING MANDATORY RESTITUTION, PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL, AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY THE STATE TO THE COUNTIES; AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, 46-8-112, 46-8-113, AND 46-8-201, AND 46-18-201, MCA; REPEALING SECTIONS 46-8-114 AND 46-8-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$150 ~~2500~~

1 ~~\$300~~, injures or kills a commonly domesticated hoofed
 2 animal, or causes a substantial interruption or impairment
 3 of public communication, transportation, supply of water,
 4 gas, or power, or other public services, he shall be fined
 5 an amount not to exceed \$50,000 or be imprisoned in the
 6 state prison for any term not to exceed 10 years, or both."

7 Section 2. Section 45-6-301, MCA, is amended to read:

8 "45-6-301. Theft. (1) A person commits the offense of
 9 theft when he purposely or knowingly obtains or exerts
 10 unauthorized control over property of the owner and:

11 (a) has the purpose of depriving the owner of the
 12 property;

13 (b) purposely or knowingly uses, conceals, or abandons
 14 the property in such manner as to deprive the owner of the
 15 property; or

16 (c) uses, conceals, or abandons the property knowing
 17 such use, concealment, or abandonment probably will deprive
 18 the owner of the property.

19 (2) A person commits the offense of theft when he
 20 purposely or knowingly obtains by threat or deception
 21 control over property of the owner and:

22 (a) has the purpose of depriving the owner of the
 23 property;

24 (b) purposely or knowingly uses, conceals, or abandons
 25 the property in such manner as to deprive the owner of the

1 property; or

2 (c) uses, conceals, or abandons the property knowing
 3 such use, concealment, or abandonment probably will deprive
 4 the owner of the property.

5 (3) A person commits the offense of theft when he
 6 purposely or knowingly obtains control over stolen property
 7 knowing the property to have been stolen by another and:

8 (a) has the purpose of depriving the owner of the
 9 property;

10 (b) purposely or knowingly uses, conceals, or abandons
 11 the property in such manner as to deprive the owner of the
 12 property; or

13 (c) uses, conceals, or abandons the property knowing
 14 such use, concealment, or abandonment probably will deprive
 15 the owner of the property.

16 (4) A person commits the offense of theft when he
 17 purposely or knowingly obtains or exerts unauthorized
 18 control over any part of any public assistance, as defined
 19 in 53-3-101, by means of:

20 (a) a knowingly false statement, representation, or
 21 impersonation; or

22 (b) a fraudulent scheme or device.

23 (5) A person convicted of the offense of theft of
 24 property not exceeding ~~\$150~~ ~~\$200~~ ~~\$300~~ in value shall be
 25 fined not to exceed \$500 or be imprisoned in the county jail

1 for any term not to exceed 6 months, or both. A person
 2 convicted of the offense of theft of property exceeding ~~\$150~~
 3 ~~\$500~~ ~~\$100~~ in value or theft of any commonly domesticated
 4 hoofed animal shall be fined not to exceed \$50,000 or be
 5 imprisoned in the state prison for any term not to exceed 10
 6 years, or both.

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

11 Section 3. Section 45-6-309, MCA, is amended to read:

12 "45-6-309. Failure to return rented or leased personal
 13 property. (1) A person commits the offense of failure to
 14 return rented or leased personal property if, without notice
 15 to and permission of the lessor, he purposely and knowingly
 16 fails to return such property within 48 hours after the time
 17 provided for such return in the rental agreement, provided
 18 that clear written notice, in bold print, of the date and
 19 time when return of the property is required and of the
 20 penalty prescribed in this section is stated in the rental
 21 or lease agreement.

22 (2) Presentation to the lessor by the lessee of
 23 identification that is false for the purpose of obtaining a
 24 rental or lease agreement constitutes prima facie evidence
 25 of commission of the offense.

1 (3) After the rental or lease period specified in the
 2 rental or lease agreement has expired, failure to return
 3 rented or leased personal property within 72 hours of
 4 written demand by the lessor, sent by certified mail to the
 5 renter or lessee at the address given at the time of
 6 entering the rental or lease agreement, constitutes prima
 7 facie evidence of commission of the offense.

8 (4) (a) A person convicted of failure to return rented
 9 or leased personal property not exceeding ~~\$150~~ ~~\$500~~ ~~\$100~~ in
 10 value shall be fined not to exceed \$500 or be imprisoned in
 11 the county jail for a term not to exceed 6 months, or both.

12 (b) A person convicted of failure to return rented or
 13 leased personal property exceeding ~~\$150~~ ~~\$500~~ ~~\$100~~ in value
 14 shall be imprisoned in the state prison for a term not to
 15 exceed 10 years."

16 Section 4. Section 45-6-311, MCA, is amended to read:

17 "45-6-311. Unlawful use of a computer. (1) A person
 18 commits the offense of unlawful use of a computer if he
 19 knowingly or purposely:

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

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

25 (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 computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding ~~\$150~~ ~~\$2500~~ ~~\$300~~ in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding ~~\$150~~ ~~\$500~~ ~~\$300~~ in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 5. Section 45-6-310, MCA, is amended to read:

"45-6-310. Issuing a bad check. (1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor, or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order

within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ ~~\$2500~~ ~~\$300~~, he shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 6. Section 45-6-317, MCA, is amended to read:

"45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial

condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$150~~ ~~\$500~~ ~~\$100~~, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 7. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or

1 terminated.

2 (4) A person convicted of the offense of forgery shall
3 be fined not to exceed \$500 or be imprisoned in the county
4 jail for any term not to exceed 6 months, or both. If the
5 forgery is part of a common scheme or if the value of the
6 property, labor, or services obtained or attempted to be
7 obtained exceeds ~~\$150~~ ~~\$500~~ ~~\$1000~~, the offender shall be fined
8 not to exceed \$50,000 or be imprisoned in the state prison
9 for any term not to exceed 20 years, or both."

10 Section B. Section 45-7-210, MCA, is amended to read:

11 "45-7-210. False claims to public agencies. (1) A
12 person commits an offense under this section if he purposely
13 and knowingly presents for allowance or for payment any
14 false or fraudulent claim, bill, account, voucher, or
15 writing to any public agency, public servant, or contractor
16 authorized to allow or pay claims presented to public
17 agencies if genuine.

18 (2) (a) Except as provided in subsection (2)(b), a
19 person convicted of an offense under this section shall be
20 fined not to exceed \$500 or imprisoned in the county jail
21 for a term not to exceed 6 months, or both.

22 (b) If false or fraudulent claims are submitted
23 purposely and knowingly as part of a common scheme or if the
24 value of the claim or the aggregate value of all claims
25 exceeds ~~\$150~~ ~~\$500~~ ~~\$1000~~, a person convicted of an offense

1 under this section shall be fined not to exceed \$10,000 or
2 imprisoned in the state prison for a term not to exceed 10
3 years, or both."

4 ~~Section 9. Section 46-18-201, MCA, is amended to read:~~

5 ~~"46-18-201. Sentences--that must--and may be imposed--~~
6 ~~(i) Whenever a person has been found guilty--of--an--offense~~
7 ~~upon--a--verdict--or--a--plea--of--guilty, the court shall require~~
8 ~~restitution; repayment of costs of court-appointed counsel;~~
9 ~~and repayment of any costs of confinement under [section 18]~~
10 ~~and may:~~

11 ~~(a) defer imposition of sentence, excepting sentences~~
12 ~~for driving under the influence of alcohol or drugs;--for--a~~
13 ~~period--not--exceeding--1--year--for--any--misdemeanor--or--for--a~~
14 ~~period--not--exceeding--3--years--for--any--felony; The sentencing~~
15 ~~judge--may--impose--upon--the--defendant--any--reasonable~~
16 ~~restrictions or conditions during the period of the deferred~~
17 ~~imposition. Such reasonable restrictions or conditions may~~
18 ~~include:~~

19 ~~(i) jail base release;~~

20 ~~(ii) jail time not exceeding 90 ~~180~~ days;~~

21 ~~(iii) conditions for probation;~~

22 ~~(iv) restitution;~~

23 ~~(v) ~~(ix)~~ payment of a fine as provided in 46-18-231;~~

24 ~~(vi) ~~(ix)~~ payment of costs as provided in 46-18-232 and~~

25 ~~46-18-233;~~

1 {v+i}-payment-of-costs-of-court--appointed--counsel--as
 2 provided-in-46-8-113+

3 {v+i+i}{xii}-community-services
 4 {ix}{xiii}-any--other--reasonable--conditions-considered
 5 necessary--for--rehabilitation--or--for--the--protection--of
 6 society--or
 7 {x}{xiv}-any-combination-of-the-above
 8 {b}-suspend-execution-of-sentence-up-to-the-maximum
 9 sentence-allowed-for-the-particular-offenses-The--sentencing
 10 judge--may--impose--on--the--defendant--any--reasonable
 11 restrictions-or-conditions-during-the--period--of--suspended
 12 sentences--Such--reasonable--restrictions--or-conditions-may
 13 include-any-of-those-listed-in-subsections-(i){a}{i}-through
 14 {i}{a}{x}{xiii}+

15 {c}-impose-a-fine-as-provided-by-law-for-the--offense
 16 {d}-require-payment-of-costs-as-provided-in-46-18-232
 17 or-payment-of-costs-of-court-appointed-counsel--as--provided
 18 in-46-8-113+

19 {e}-commit-the-defendant-to-a-correctional-institution
 20 with--or--without-a-fine-as-provided-by-law-for-the-offense
 21 {f}-impose--any--combination--of--subsections--{i}{b}
 22 through-{i}{e}+

23 {2}-if-any-restrictions-or-conditions-imposed-under
 24 subsection-{i}{a}-or-{i}{b}-are-violated, any elapsed--time
 25 except--jail--time--is--not--a--credit--against--the--sentence

1 unless-the-court-orders-otherwise

2 {3}-Except-as-provided-in-46-18-222-the-imposition-or
 3 execution-of-the-first-2-years-of-a-sentence-of-imprisonment
 4 imposed-under-the-following-sections-may-not-be-deferred--or
 5 suspended-----45-5-183{2}v-----45-5-202{2}v-----45-5-302{2}v
 6 45-5-303{2}v-45-5-401{2}v-45-5-503{2}-and--{3}v-45-9-181{2}
 7 and-{3}v-45-9-182{3}v-and-45-9-183{2}v

8 {4}-Except-as-provided-in-46-18-222-the-imposition-or
 9 execution--of--the--first--18--years--of--a--sentence--of
 10 imprisonment-imposed-under-45-5-182{2}-may-not--be--deferred
 11 or-suspended

12 {5}-Except-as--provided--in--46-18-222v-imposition-of
 13 sentence-in-a-felony-case-may-not-be-deferred-in-the-case-of
 14 a-defendant-who-has-been-convicted-of-a-felony--on--a--prior
 15 occasion-whether-or-not-the-sentence-was-imposed, imposition
 16 of--the--sentence-was-deferred, or execution-of-the-sentence
 17 was-suspended.

18 NEW-SECTION-Section-18v--Restitution-and-repayment-of
 19 costs-of-confinement-and-counsel-mandatory--{i}-if-a-person
 20 has-been-found-guilty-of-an-offense-upon-a-verdict--or--plea
 21 of-guilty-the-court-must, in-addition-to-any-other-sentence
 22 or-punishment-ordered--and--either--as--a--condition--of--a
 23 deferred-or-suspended-sentence-under--subsection--{i}{a}-or
 24 {i}{b}-of--46-18-201--or--as--part-of-the-sentence-actually
 25 imposed-upon-the-offender, order-the-offender-to+

(a) make restitution in accordance with this section to any innocent person who has suffered directly tangible out-of-pocket expenses as a result of the acts constituting the offense;

(b) repay any costs of court-appointed counsel whose services were received under Title 46, chapter 8, part 11 and

(c) repay to the state any costs of confinement reimbursed to the county under [section 15].

(2) If restitution or repayment is ordered under this section as a condition of a deferred or suspended sentence under subsection (1)(a) or (1)(b) of 46-10-201, the sentence may be deferred or suspended for a period not exceeding 2 years for any misdemeanor and a period not exceeding 6 years for any felony regardless of whether any other conditions are imposed.

(3) Payments required under this section must be ordered by the court made by the defendant and applied by the clerk of the district court as provided in [sections 11 and 12].

~~NEW SECTION~~ Section 11 - Determination ----- and application of mandatory payments -- (1) The court may not sentence a defendant to make restitution, pay the costs of court-appointed counsel, or repay to the state any costs of confinement unless the defendant is or will be able to pay

the same in the manner provided in this section in determining the amount and method of payment; the court shall take account of the financial resources of the defendant and the nature of the burden that payment of any restitution and costs will impose.

(2) If the court determines that the defendant is or will be able to make restitution or payments as required by [section 10] it must order that any restitution required under [section 10] be paid first, then that payment of costs of any court-appointed counsel be made, and that any remaining funds be applied to repay the state any costs of his confinement reimbursed to the county under [section 15].

(3) A copy of any order requiring the defendant to repay the state any money reimbursed to the county under [section 15] must be sent to the department of administration.

~~NEW SECTION~~ Section 12 - Time and method of payment of restitution and costs -- When a defendant is sentenced to make restitution or pay costs under [sections 10 and 11], the court may order payment to be made within a specified period of time or in specified installments. Such payments must be made to the clerk of the court in which the defendant was sentenced to make the payments. The clerk shall disburse the payments to the county, city, or town responsible for the expenses of court-appointed counsel as

1 provided--for--in--46-8-201v-to-the-state-agency-responsible
2 for-the-costs-of-confinement-under-[section-15]v-or--to--the
3 person-entitled-to-restitution-as-ordered-by-the-court.

4 NEW-SECTION-13v-Release-of--obligations--A
5 defendant-who-has-been-sentenced-to-make-restitution--or--to
6 pay--costs--of--counsel--or--confinement--and--who-is-not-in
7 contumacious-default-in-the-payment-thereof-may-at-any--time
8 petition--the--court--that-sentenced-him-for-release-from-the
9 obligation-of-restitution-or-payment--of--costs--or--of--any
10 unpaid-portion-thereof--if-it-appears-to-the-satisfaction-of
11 the--court--that--payment--of--the--amount--due--will-impose
12 manifest-hardship-on-the-defendant-or-his-immediate--family.
13 the--court--may-release-the-defendant-from-his-obligation-to
14 pay-all-or-part-of-the-amounts-due-or-modify-the--method--of
15 payments.

16 NEW-SECTION-14v-Effect--of--nonpayment--of
17 restitution-or-costs--(1)-When-a-defendant-who-is-sentenced
18 to-make-restitution-or-pay--the--costs--of--court-appointed
19 counsel--or--confinement--under--[section--11]-defaults--in
20 payment-thereof-or-of-any-installment--the-court--on-its-own
21 motion-or-the-motion-of-the-prosecuting-attorney--or--as--to
22 restitution--on--the--motion--of--the--person--entitled--to
23 restitution.

24 (a)--may-require-him--to--show--cause--why--a--sentence
25 should-not-be-imposed-or-why-a-suspended-sentence-should-not

1 be--revoked-or-his-default-should-not-be-treated-as-contempt
2 of-court--and

3 (b)--may-issue-a-show-cause-citation-or--a-warrant--of
4 arrest-for-his-appearance.

5 (2)--Unless--the--defendant--shows-that-his-default-was
6 not-attributable-to-an-intentional-refusal-to-obey-the-order
7 of-the-court-or-to-a-failure-on-his--part--to--make--a--good
8 faith-effort-to-make-the-payment--the-court-may:

9 (a)--revoke--a--suspended-sentence-or-impose-a-sentence
10 in-accordance-with-46-18-263f-or

11 (b)--find-that-his-default-constitutes-civil--contempt.

12 (3)--The-term-of-imprisonment-for-contempt-for-failure
13 to-make-any-required-payments-shall--be--set--forth--in--the
14 judgment--and--may--not--exceed--1--day--for--each--\$25--of-the
15 payment--30-days-if-the--order--for--payment--of--costs--was
16 imposed--upon--conviction-of-a-misdemeanor--or--1-year-in-any
17 other-case--whichever--is--the--shorter--period--A--person
18 committed--for--nonpayment--of--restitution-or-costs-must-be
19 given-credit-toward-payment-for-each-day-of-imprisonment--at
20 the-rate-specified-in-the-judgment.

21 (4)--If-it-appears-to-the--satisfaction--of--the--court
22 that--the--default-in-the-payment-of-restitution-or-costs-is
23 not-attributable-to-an-intentional-refusal-to-obey-the-order
24 of-the-court-or-to-a-failure-on-the-defendant's-part-to-make
25 a-good-faith-effort-to-make-the-payment--the-court-may-enter

1 an order allowing the defendant additional time for payments
2 reducing the amount of the payment or of each installment
3 or revoking the order for payment or the unpaid portion
4 thereof in whole or in parts

5 (5) A default in the payment of restitution or costs
6 or any installment thereof may also be collected by any
7 means authorized by law for the enforcement of a judgment
8 The writ of execution for the collection of restitution or
9 costs does not discharge a defendant committed to
10 imprisonment for contempt until the amount of the payment
11 for restitution or costs has actually been collected

12 ~~NEW SECTION~~ Section 15 State to pay jail expenses
13 upon deferred imposition or suspended sentence If a person
14 has been found guilty of an offense upon a verdict or a plea
15 of guilty and is required to serve time in jail under
16 46-18-281(1)(a)(i) as a condition of deferred imposition of
17 sentence or under 46-18-281(1)(b) as a condition of
18 suspended execution of sentence the department of
19 administration shall from an appropriation for that
20 purpose reimburse the county or city in which the person is
21 confined for its costs in confining such person Such
22 reimbursement is limited to a maximum of 90 days
23 confinement and to a maximum of \$35 per day for each day of
24 confinement Reimbursement must be made upon request of the
25 county or city in such form as the department prescribes

1 The department shall certify the reimbursed amount to the
2 clerk of the court in which the defendant was sentenced

3 Section 16 Section 46-8-112 MCA is amended to read:
4 "46-8-112 Informing defendant regarding false
5 swearing of oath on financial statement repayment of
6 costs of counsel The court shall inform the defendant
7 that

8 (1) if he makes a false statement under oath regarding
9 his financial inability to obtain counsel he may be charged
10 with the additional offense of false swearing

11 (2) if it is determined that he has or will have the
12 ability to pay he may still be required to pay all or a
13 portion of the compensation and expenses incurred by his
14 court appointed counsel as a part of or a condition under
15 his sentence should he be convicted of an offense"

16 Section 17 Section 46-8-113 MCA is amended to read:

17 "46-8-113 Payment of costs of court appointed counsel
18 by defendant condition of sentence (1) under the
19 provisions of 46-18-281 ~~Section 18~~ the court may shall
20 require a convicted defendant to pay the costs of
21 court appointed counsel as a part of or a condition under
22 his sentence

23 (2) Costs must be limited to reasonable compensation
24 and costs incurred by the court appointed counsel in the
25 criminal proceedings Costs may not include expenses inherent

1 in providing a constitutionally guaranteed jury trial or
2 expenditures in connection with the maintenance and
3 operation of government agencies that must be made by the
4 public irrespective of specific violations of laws

5 (3) The court may not sentence a defendant to pay the
6 costs of court appointed counsel unless the defendant is or
7 will be able to pay them in determining the amount and
8 method of payment of costs; the court shall take account of
9 the financial resources of the defendant and the nature of
10 the burden that payment of costs will impose

11 (4) A defendant who has been sentenced to pay costs
12 and who is not in contemptuous default in the payment
13 thereof may at any time petition the court that sentenced
14 him for remission of the payment of costs or of any unpaid
15 portion thereof if it appears to the satisfaction of the
16 court that payment of the amount due will impose manifest
17 hardship on the defendant or his immediate family; the court
18 may remit all or part of the amount due in costs or modify
19 the method of payment

20 NEW SECTION--Section 18--Repeater--Sections 46-8-114
21 and 46-8-115--MCA--are repealed

22 NEW SECTION--Section 19--Codification--instructions
23 Sections 18 through 15 are intended to be codified as an
24 integral part of title 46, chapter 18, part 2, and the
25 provisions of title 46, chapter 18, apply to sections 18

1 through 15

2 SECTION 2. SECTION 46-18-201, MCA, IS AMENDED TO READ:

3 "46-18-201. Sentences that may be imposed. (1)
4 Whenever a person has been found guilty of an offense upon a
5 verdict or a plea of guilty, the court may:

6 (a) defer imposition of sentence, excepting sentences
7 for driving under the influence of alcohol or drugs, for a
8 period not exceeding 1 year for any misdemeanor or for a
9 period not exceeding 3 years for any felony. The sentencing
10 judge may impose upon the defendant any reasonable
11 restrictions or conditions during the period of the deferred
12 imposition. Such reasonable restrictions or conditions may
13 include:

14 (i) jail base release;

15 (ii) jail time not exceeding 90 ~~180~~ days;

16 (iii) conditions for probation;

17 (iv) restitution;

18 (v) ~~payment of the costs of confinement;~~

19 (vi) ~~payment of a fine as provided in 46-18-231;~~

20 (vii) ~~payment of costs as provided in 46-18-232 and~~
21 ~~46-18-233;~~

22 (viii) ~~payment of costs of court appointed counsel~~
23 ~~as provided in 46-8-113;~~

24 (ix) ~~community service;~~

25 (x) ~~any other reasonable conditions considered~~

1 necessary for rehabilitation or for the protection of
2 society; or

3 ~~(*)~~(d) any combination of the above.

4 (b) suspend execution of sentence up to the maximum
5 sentence allowed for the particular offense. The sentencing
6 judge may impose on the defendant any reasonable
7 restrictions or conditions during the period of suspended
8 sentence. Such reasonable restrictions or conditions may
9 include any of those listed in subsections (1)(a)(i) through
10 (1)(a)~~(*)~~(d).

11 (c) impose a fine as provided by law for the offense;

12 (d) require payment of costs as provided in 46-18-232
13 or payment of costs of court appointed counsel as provided
14 in 46-8-113;

15 (e) commit the defendant to a correctional institution
16 with or without a fine as provided by law for the offense;

17 (f) impose any combination of subsections (1)(b)
18 through (1)(e).

19 (2) If any restrictions or conditions imposed under
20 subsection (1)(a) or (1)(b) are violated, any elapsed time,
21 except jail time, is not a credit against the sentence
22 unless the court orders otherwise.

23 (3) Except as provided in 46-18-222, the imposition or
24 execution of the first 2 years of a sentence of imprisonment
25 imposed under the following sections may not be deferred or

1 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
2 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
3 and (3), 45-9-102(3), and 45-9-103(2).

4 (4) Except as provided in 46-18-222, the imposition or
5 execution of the first 10 years of a sentence of
6 imprisonment imposed under 45-5-102(2) may not be deferred
7 or suspended.

8 (5) Except as provided in 46-18-222, imposition of
9 sentence in a felony case may not be deferred in the case of
10 a defendant who has been convicted of a felony on a prior
11 occasion whether or not the sentence was imposed, imposition
12 of the sentence was deferred, or execution of the sentence
13 was suspended."

14 ~~NEW-SECTION--Section-9--Effective--date--This-act-is~~
15 ~~effective-July-1, 1983 ON-PASSAGE-AND-APPROVAL~~

-End-