

HOUSE BILL NO. 4

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Judiciary.
January 8, 1985	Committee recommend bill do pass as amended. Report adopted.
January 9, 1985	Bill printed and placed on members' desks.
January 10, 1985	Second reading, do pass.
January 11, 1985	Considered correctly engrossed.
January 12, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 14, 1985	Introduced and referred to Committee on State Administration.
January 22, 1985	Committee recommend bill be concurred in. Report adopted.
January 23, 1985	Second reading, concurred in.
January 25, 1985	Third reading, concurred in. Ayes, 49; Noes, 0.
	Returned to House

IN THE HOUSE

January 28, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1        HOUSE        BILL NO.        4

2        AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO  
3        GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS,  
4        AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517,  
5        2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505,  
6        13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101,  
7        45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING  
8        SECTIONS 2-7-101 AND 3-5-212, MCA.

9                Section 1. 1-11-204. The provision that the Code  
10        Commissioner must submit a certified report to the  
11        Legislature is an unnecessary formality. The report is  
12        published in the first volume of the annotations to the  
13        Montana Code Annotated and is accessible to anyone. The  
14        amendment would make no change in the required contents of  
15        the report.

16                Section 2. 2-4-611. The two references in subsection  
17        (2) to "the legal assistance program" were inserted in 1979  
18        in anticipation of the 1979 Legislature's passage of a  
19        program by that name. The bill was vetoed. A generic name  
20        change in subsection (2) is made to avoid any construction  
21        of the subsection as referring to or by implication  
22        mandating a specific program.

23                Section 3. 2-7-517. The bill enacting this section  
24        incorrectly referred to "2-15-516". The correct reference,  
25        "2-7-516", was substituted during codification of the act to  
26        the Montana Code Annotated, with brackets to indicate the  
27        substitution. This bill deletes the brackets and legislates  
28        2-7-516 as the correct section reference.

29                Section 4. 2-15-2007. A compiler's comment under this  
30        section of the Montana Code Annotated states:

31                "Commissioner Correction: This section was passed as  
32        subsection (2) of section 8, Ch. 274, L. 1981, and was added  
33        as an amendment. This subsection was substantive law, but  
34        the accompanying subsections are not. In codifying this  
35        section the code commissioner added the bracketed material  
36        to reflect the context in which the subsection was passed."

37                This bill deletes the brackets, thus legislating the  
38        bracketed language.

39                Section 5. 3-1-607. This section is amended to delete  
40        the prohibition on a judge running for a judicial office the  
41        term of which commences earlier than his existing term of  
42        office. The prohibition was declared unconstitutional in a  
43        Montana Supreme Court opinion. The case note for that

1 opinion, contained in the annotations to the Montana Code  
2 Annotated, reads:

3 "Article VII, sec. 10, Mont. Const., providing that one  
4 holding a judicial position forfeits that position by filing  
5 for an elective public office other than a judicial  
6 position, requires a Judge to forfeit his judicial office if  
7 he files for either a legislative or executive office. While  
8 it does not affirmatively declare that a Judge does not  
9 forfeit his judicial office by filing for another judicial  
10 office, that is its intent as shown by the minutes of the  
11 Constitutional Convention and that is what it means.  
12 Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10,  
13 Mont. Const., authorizes and are therefore unconstitutional  
14 as being in direct conflict with Art. VII, sec. 10, Mont.  
15 Const. The Comm. for an Effective Judiciary v. St., M,  
16 679 P2d 1223, 41 St. Rep. 581 (1984)."

17 Section 6. 3-2-104. The deleted material (as well as  
18 section 3-5-212, MCA, containing similar language) was found  
19 unconstitutional in Coate v. Omholt, M, 662 P2d 591, 40  
20 St. Rep. 586 (1983), as violating the separation of powers  
21 doctrine, and the impairment of contract and diminution of  
22 salaries provisions of the Montana Constitution.

23 Section 7. 5-4-306. Language was added to subsections  
24 (2) and (3) to conform them to Article VI, section 10, of  
25 the Montana Constitution, as amended in 1982. That amendment  
26 provided for a veto override by poll of the Legislature if a  
27 bill is vetoed after the end of the session.

28 Section 8. 5-7-203. The exception at the beginning of  
29 the section is deleted because 5-7-304 was repealed in 1980.  
30 That section read: "5-7-304. Exemption from license and  
31 registration requirement. Any person who limits his  
32 lobbying solely to appearances before legislative committees  
33 of either house and registers his appearance on the records  
34 of such committees in writing shall not be required to be  
35 licensed as a lobbyist, pay a license fee, or register with  
36 the secretary of state."

37 Section 9. 13-10-505. The added words simply clarify  
38 that the exception relates to filling of vacancies and not  
39 to nominations in nonpartisan elections.

40 Section 10. 13-27-312. The brackets at the beginning  
41 and end of subsection (3) are deleted. In preparation of  
42 the composite of Chapter 336 and Chapter 488, Laws of 1983,  
43 amendments to this section, the Code Commissioner set out in  
44 a separate bracketed subsection (3), the amendatory language  
45 in Chapter 336 pertaining to the preparation by the Attorney

1 General of a fiscal statement, although the language had  
 2 been inserted in former subsection (2), which was entirely  
 3 deleted by Chapter 488. The language was included because  
 4 it appeared to reflect a separable concept not in conflict  
 5 with Chapter 488 and the apparent intent was to incorporate  
 6 the concept into the law. By deleting the brackets, this  
 7 bill legislates the bracketed language.

8 Sections 11 and 12. 25-7-204 and 25-7-206. A 1983  
 9 amendment to 25-7-202 provided that the judge or the jury  
 10 commissioner draw the ballots. Formerly, only the judge drew  
 11 them. Sections 25-7-204 and 25-7-206 were not, but should  
 12 have been, correspondingly amended. This bill makes those  
 13 amendments.

14 Section 13. 25-35-602. The 40-day time period in the  
 15 next-to-last paragraph of this form is changed to 10 days to  
 16 be consistent with 25-35-605(1), which fixes the time  
 17 period.

18 Section 14. 27-27-101. This amendment is made because  
 19 St. v. Montana Livestock Sanitary Board, 135 M 202, 339 P2d  
 20 487 (1959), held this section unconstitutional under Montana  
 21 Constitution, Article VII, sections 2 and 4, to the extent  
 22 that it authorizes a Writ of Prohibition in regard to  
 23 ministerial functions.

24 Section 15. 45-2-101. In subsection (69)(b), "\$150" is  
 25 changed to "\$300". Subsection (69) defines "value". Chapter  
 26 581, Laws of 1983, raised from \$150 to \$300 the "value" of  
 27 what is taken in theft and fraud offenses before the offense  
 28 becomes a felony. If "value" is over \$300, the offense is a  
 29 felony. If "value" is \$300 or less, the offense is a  
 30 misdemeanor. Chapter 581 should have raised "\$150" to "\$300"  
 31 in 45-2-101(69)(b) to conform to what Chapter 581 did.

32 Sections 16 through 18. 45-9-101 through  
 33 45-9-103. The reference in each section to "an opiate, as  
 34 defined in 50-32-101(18)" is incorrect. "Opiate" is defined  
 35 in subsection (19) of 50-32-101, not subsection (18). Prior  
 36 to 1983, "opiate" was defined in subsection (18), but the  
 37 1983 Legislature inserted a new subsection (14) in 50-32-101  
 38 and renumbered the following subsections. Thus, the  
 39 subsection defining "opiate" was renumbered from (18) to  
 40 (19). Inadvertently, the three references, in 45-9-101  
 41 through 45-9-103, to 50-32-101(18) were not changed to  
 42 50-32-101(19).

43 Sections 19 and 20. 45-9-111 and 45-9-116. One word  
 44 defined in 45-9-111 is also used in the text of that

1 section; therefore, this bill makes the definitions in  
2 45-9-111 apply to that section. Section 45-9-116 is amended  
3 for clarity and to be consistent with the amendment made in  
4 section 16. If operative provisions do not apply to the  
5 persons listed in 45-9-116(1), it was certainly intended  
6 that related definitions also do not apply.

7 Section 21. Repealer.  
8 2-7-101. These definitions were used only in 2-7-102,  
9 which was repealed in 1983. The section is thus obsolete  
10 and unnecessary.  
11 3-5-212. See explanation for section 6.

1                                    HOUSE    BILL NO.    4  
 2    INTRODUCED BY    MANUEL  
 3                                    BY REQUEST OF THE CODE COMMISSIONER  
 4

5    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6    CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS,  
 7    PUBLIC RETIREMENT SYSTEMS, AND CRIMES; AMENDING SECTIONS  
 8    1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104,  
 9    5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206,  
 10    25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103,  
 11    45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101  
 12    AND 3-5-212, MCA."  
 13

14    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15            Section 1. Section 1-11-204, MCA, is amended to read:  
 16            "1-11-204. Duties of code commissioner. (1) Prior to  
 17    January 1, 1979, the code commissioner shall recodify all  
 18    the laws of a general and permanent nature appearing in the  
 19    codes and session laws and prepare them for publication.  
 20            (2) Prior to January 1, 1979, the commissioner shall  
 21    prepare and submit to the legislature a report which is  
 22    certified by the commissioner as the "Official Report of the  
 23    Montana Code Commissioner", together with a bill enacting  
 24    the Montana Code Annotated. A copy of the report and bill  
 25    shall be deposited with the secretary of state. The report

1    shall explain and indicate, in tabular or other form, all  
 2    changes made during recodification, other than punctuation  
 3    and capitalization, to clearly indicate the character of  
 4    each change.

5            (3) Prior to the November 1 immediately preceding each  
 6    regular legislative session, the commissioner shall prepare  
 7    and submit to the legislative council a report, in tabular  
 8    or other form, indicating the commissioner's recommendations  
 9    for legislation which will:

- 10            (a) eliminate archaic or outdated laws;
- 11            (b) eliminate obsolete or redundant wording of laws;
- 12            (c) eliminate any duplications in law and any laws
- 13            repealed directly or by implication;
- 14            (d) clarify existing laws;
- 15            (e) correct errors and inconsistencies within the
- 16            laws.

17            (4) The commissioner shall cause to be prepared for  
 18    publication with the Montana Code Annotated the following  
 19    material:

- 20            (a) Statutory history of each code section;
- 21            (b) Annotations of state and federal court decisions
- 22            relating to the subject matter of the code;
- 23            (c) Such editorial notes, cross-references, and other
- 24            matter as the commissioner considers desirable or
- 25            advantageous;



- 1 (d) The Declaration of Independence;
- 2 (e) The Constitution of the United States of America  
3 and amendments thereto;
- 4 (f) Acts of congress relating to the authentication of  
5 laws and records;
- 6 (g) The Organic Act of the Territory of Montana;
- 7 (h) The Enabling Act;
- 8 (i) The 1972 Constitution of the State of Montana and  
9 any amendments thereto;
- 10 (j) The Ordinances relating to federal relations and  
11 elections;
- 12 (k) Rules of civil, criminal, and appellate procedure  
13 and such other rules of procedure as the Montana supreme  
14 court may adopt; and
- 15 (l) A complete subject index, a popular name index,  
16 and comparative disposition tables or cross-reference  
17 indexes relating sections of the Montana Code Annotated to  
18 prior compilations and session laws.
- 19 (5) After publication of the Montana Code Annotated,  
20 the code commissioner shall:
- 21 (a) annotate, arrange, and prepare for publication all  
22 laws of a general and permanent nature enacted at each  
23 legislative session and assign catchlines and code section  
24 numbers to each new section;
- 25 (b) continue to codify, index, arrange, rearrange, and

- 1 generally update the Montana Code Annotated to maintain an  
2 orderly and logical arrangement of the laws in order to  
3 avoid future need for bulk revision;
- 4 (c) prepare and ~~submit-to-each-legislature~~ publish a  
5 report ~~certified--as--the~~ entitled "Official Report of the  
6 Montana Code Commissioner--(year)" which indicates, in  
7 tabular or other form, all changes made during the  
8 continuous recodification, other than punctuation, spelling,  
9 and capitalization, to clearly indicate the character of  
10 each change made since the last such report.
- 11 (6) From time to time the commissioner shall confer  
12 with members of the judiciary and the state bar relative to  
13 recodification procedures."
- 14 Section 2. Section 2-4-611, MCA, is amended to read:  
15 "2-4-611. Hearing examiners -- legal services unit --  
16 conduct of hearings -- disqualification of hearing examiners  
17 and agency members. (1) An agency may appoint hearing  
18 examiners for the conduct of hearings in contested cases. A  
19 hearing examiner must be assigned with due regard to the  
20 expertise required for the particular matter.
- 21 (2) An agency may elect to request a hearing examiner  
22 from the an agency legal assistance program, if any, within  
23 the attorney general's office or from another agency. If the  
24 request is honored, the time, date, and place of the hearing  
25 must be set by the agency, with the concurrence of the legal

1 assistance program or the other agency.

2 (3) Agency members or hearing examiners presiding over  
3 hearings may administer oaths or affirmations; issue  
4 subpoenas pursuant to 2-4-104; provide for the taking of  
5 testimony by deposition; regulate the course of hearings,  
6 including setting the time and place for continued hearings  
7 and fixing the time for filing of briefs or other documents;  
8 and direct parties to appear and confer to consider  
9 simplification of the issues by consent of the parties.

10 (4) On the filing by a party, hearing examiner, or  
11 agency member in good faith of a timely and sufficient  
12 affidavit of personal bias, lack of independence,  
13 disqualification by law, or other disqualification of a  
14 hearing examiner or agency member, the agency shall  
15 determine the matter as a part of the record and decision in  
16 the case. The agency may disqualify the hearing examiner or  
17 agency member and request another hearing examiner pursuant  
18 to subsection (2) or assign another hearing examiner from  
19 within the agency. The affidavit must state the facts and  
20 the reasons for the belief that the hearing examiner should  
21 be disqualified and must be filed not less than 10 days  
22 before the original date set for the hearing."

23 Section 3. Section 2-7-517, MCA, is amended to read:

24 "2-7-517. Penalty. When a governmental entity has  
25 failed to make payment as required by {2-7-516} within 60

1 days of receiving a bill for an audit, the department may  
2 issue an order stopping payment of any state financial aid  
3 to the governmental entity. Upon payment for the audit, all  
4 financial aid that was withheld because of failure to make  
5 payment shall be released and paid to the governmental  
6 entity."

7 Section 4. Section 2-15-2007, MCA, is amended to read:

8 "2-15-2007. Highway traffic safety program. The  
9 {highway traffic safety} program {provided for in 61-2-102}  
10 is attached {to the department of justice} for  
11 administrative purposes only as prescribed in 2-15-121.  
12 However, the program may hire its own personnel, and  
13 2-15-121(2)(d) does not apply."

14 Section 5. Section 3-1-607, MCA, is amended to read:

15 "3-1-607. Supreme court justice or district court  
16 judge ~~not-to-run-for~~ candidacy for nonjudicial office --  
17 resignation required. (1) If a person occupying the office  
18 of chief justice or associate justice of the supreme court  
19 or judge of a district court of the state of Montana becomes  
20 a candidate for election to any elective office under the  
21 laws of the state of Montana other than a judicial position,  
22 he shall immediately, and in any event at or before the time  
23 when he must file as a candidate for such office in any  
24 primary or special or general election, resign from his  
25 office of chief justice, associate justice, or district

1 judge.

2 (2) The resignation becomes effective immediately upon  
3 its delivery to the proper officer or superior.

4 (3) The resignation requirement applies except when  
5 the person is a bona fide candidate for reelection to the  
6 identical office then occupied by him or for another  
7 nonpartisan judicial office--the--term--of--which--does--not  
8 commence earlier than the end of the term of the office then  
9 occupied by him position."

10 Section 6. Section 3-2-104, MCA, is amended to read:

11 "3-2-104. Salaries -- expenses. (1) The salaries of  
12 justices of the supreme court are provided for in 2-16-405.

13 {2}--If any cause, motion, or other proceeding remains  
14 pending--and--undecided--for--a--period--of--90--days--after  
15 submission for decision, the justice of the supreme court  
16 who has been assigned to write the opinion, order, or  
17 decision of the court shall submit an affidavit on or before  
18 the 90th day to the chief justice setting forth the case  
19 name, cause number, and the reason the matter has not been  
20 decided. Copies of the affidavit must be furnished to all  
21 parties to the matter pending. A cause, motion, or other  
22 proceeding is considered submitted for decision when all  
23 hearings have been held and final briefs have been submitted  
24 by all parties to the matter pending. Upon the filing of the  
25 affidavit, the justice shall have an additional 30 days to

1 decide the matter which has been submitted, No cause,  
2 motion, or other proceeding may remain undecided for more  
3 than 120 days after submission for decision without the  
4 approval of a majority of the other members of the supreme  
5 court for good cause shown in an affidavit requesting  
6 additional time. If a justice of the supreme court violates  
7 the provisions of this section, any party to a matter  
8 pending in violation of this section or, by a majority vote,  
9 the other members of the supreme court may refer the matter  
10 to the judicial standards commission. If the court, acting  
11 upon the recommendation of the commission, determines the  
12 justice is not in compliance with this section, it shall  
13 order that the state auditor not issue a warrant for payment  
14 of services for 1 month, which pay is forfeited by the  
15 justice.

16 {3}(2) Actual and necessary travel expenses of the  
17 justices of the supreme court shall be the travel expenses,  
18 as defined and provided in 2-18-501 through 2-18-503,  
19 incurred in the performance of their official duties."

20 Section 7. Section 5-4-306, MCA, is amended to read:

21 "5-4-306. Return when legislature not in session. (1)  
22 If, on the day the governor desires to return a bill without  
23 his approval and with his objections thereto to the house in  
24 which it originated, that house has adjourned for the day  
25 (but not for the session), he may deliver the bill with his

1 message to the presiding officer, secretary, clerk, or any  
 2 member of such house. Such delivery is as effectual as  
 3 though returned in open session if the governor, on the  
 4 first day the house is again in session, by message,  
 5 notifies it of such delivery and of the time when and the  
 6 person to whom such delivery was made.

7 (2) If the legislature is not in session when the  
 8 governor vetoes a bill, he shall return the bill with his  
 9 reasons for the veto to the secretary of state. The  
 10 secretary of state shall immediately mail a copy of the bill  
 11 and the veto message to each member of the legislature. If  
 12 the bill was approved by two-thirds of the members of each  
 13 house present, the secretary of state shall poll the members  
 14 of the legislature, and if two-thirds or more of the members  
 15 of each house vote to override the veto, the bill shall  
 16 become law.

17 (3) The legislature may reconvene to reconsider any  
 18 bill so vetoed by the governor when the legislature is not  
 19 in session by using the statutory procedure provided for  
 20 convening in special session."

21 Section 8. Section 5-7-203, MCA, is amended to read:

22 "5-7-203. Principal -- name of lobbyist on docket.  
 23 ~~Except--as--provided--in--5-7-304,--every~~ Every principal who  
 24 employs any lobbyist shall within 1 week after such  
 25 employment cause the name of said lobbyist to be entered

1 upon the docket. It shall also be the duty of the lobbyist  
 2 to enter his name upon the docket. Upon the termination of  
 3 such employment, such fact may be entered opposite the name  
 4 of the lobbyist either by the lobbyist or the principal."

5 Section 9. Section 13-10-505, MCA, is amended to read:

6 "13-10-505. Applicability. The provisions of 13-10-501  
 7 through 13-10-504 shall not be used to fill vacancies or to  
 8 nominate candidates in nonpartisan elections except for  
 9 nominations to fill a vacancy as provided in 13-25-205."

10 Section 10. Section 13-27-312, MCA, is amended to  
 11 read:

12 "13-27-312. Review of petition by attorney general --  
 13 preparation of statements -- fiscal note. (1) Upon receipt  
 14 of a petition from the office of the secretary of state  
 15 pursuant to 13-27-202, the attorney general shall examine  
 16 the petition as to form and, if the proposed ballot issue  
 17 has an effect on the revenues, expenditures, or the fiscal  
 18 liability of the state, shall order a fiscal note  
 19 incorporating an estimate of such effect, the substance of  
 20 which must substantially comply with the provisions of  
 21 5-4-205. The budget director, in cooperation with the agency  
 22 or agencies affected by the petition, is responsible for  
 23 preparing the fiscal note and shall return it within 6 days  
 24 unless the attorney general, for good cause shown, extends  
 25 the time for completing the fiscal note. If the petition

1 form is approved, the attorney general shall endeavor to  
 2 seek out parties on both sides of the issue and obtain their  
 3 advice. The attorney general may, if he deems it necessary,  
 4 appoint a five-member committee to recommend the statement  
 5 of purpose and the statement of the implications of the  
 6 measure. The committee shall consist of two persons  
 7 recommended by the person filing the petition, two persons  
 8 known to oppose the measure, and one representative of the  
 9 attorney general's office, who is the chairman. The  
 10 committee shall, within 14 days of appointment, meet and  
 11 recommend by a vote of a majority of the committee:

12 (a) a statement, not to exceed 100 words, explaining  
 13 the purpose of the measure; and

14 (b) statements, not to exceed 25 words each,  
 15 explaining the implications of a vote for and a vote against  
 16 the measure.

17 (2) The attorney general may accept, reject, or modify  
 18 the statements recommended by the committee. If the  
 19 committee is unable to recommend one or both statements, the  
 20 attorney general shall prepare the statements.

21 f(3) The attorney general shall prepare a fiscal  
 22 statement of no more than 50 words if a fiscal note was  
 23 prepared for the proposed ballot issue, such statement to be  
 24 used on the petition and ballot if the measure is placed on  
 25 the ballot.†

1 (4) The statement of purpose and the statements of  
 2 implication must express the true and impartial explanation  
 3 of the proposed ballot issue in plain, easily understood  
 4 language and may not be arguments or written so as to create  
 5 prejudice for or against the measure.

6 (5) The statement of purpose prepared pursuant to  
 7 subsection (1) or (2), unless altered by a court under  
 8 13-27-316, is the petition title for the measure circulated  
 9 by the petition and the ballot title if the measure is  
 10 placed on the ballot.

11 (6) The statements of implication shall be placed  
 12 beside the diagram provided for marking of the ballot in a  
 13 manner similar to the following example:

14  FOR extending the right to vote to persons 18 years  
 15 of age

16  AGAINST extending the right to vote to persons 18  
 17 years of age

18 (7) If the petition is rejected as to form, the  
 19 attorney general shall forward his comments to the secretary  
 20 of state within 10 days after receipt of the petition by the  
 21 attorney general. If the petition is approved as to form,  
 22 the attorney general shall forward the statement of purpose,  
 23 the statements of implication, and the fiscal statement, if  
 24 applicable, to the secretary of state within 21 days after  
 25 receipt of the petition by the attorney general."

1 Section 11. Section 25-7-204, MCA, is amended to read:

2 "25-7-204. Mode of drawing ballots. Before the first  
3 ballot shall have been drawn, the box must be closed and  
4 well shaken so as to thoroughly mix the ballots therein. The  
5 district judge or the jury commissioner must draw at random  
6 a ballot with the juror's name thereon. Upon stipulation of  
7 counsel, the court may order the clerk to draw ballots."

8 Section 12. Section 25-7-206, MCA, is amended to read:

9 "25-7-206. Procedure when insufficient number attend.

10 (1) If a sufficient number of jurors duly drawn and notified  
11 do not attend to form a jury, the judge or the jury  
12 commissioner shall, pursuant to an order of the court to be  
13 entered in the minutes, shall, in the presence of two  
14 witnesses, draw a sufficient number of ballots from the box  
15 to complete the jury. The sheriff shall notify the persons  
16 thus drawn to attend immediately or at a time fixed by  
17 court. If for any reason a sufficient number of jurors to  
18 try the issue is not obtained from the persons notified  
19 ~~under an order made as prescribed in this section~~, the court  
20 may make ~~another order or successive orders~~ or order further  
21 drawings until a sufficient number is obtained.

22 (2) Each person so notified must attend at the time  
23 required by the notice and, unless excused by the court or  
24 set aside, must serve as a juror upon the trial. For a  
25 neglect or refusal to do so, he may be fined in the same

1 manner as any other trial juror regularly drawn and  
2 notified. He is subject to the same exceptions and  
3 challenges as any other trial juror."

4 Section 13. Section 25-35-602, MCA, is amended to  
5 read:

6 "25-35-602. Form of complaint and order of  
7 court/notice to defendant. The sworn complaint and order of  
8 the court shall be made on a blank substantially in the  
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
11 COURT OF ..... COUNTY, MONTANA  
12 BEFORE ....., JUSTICE OF THE PEACE  
13 .....  
14 .....  
15 Plaintiff, <sub>7</sub>  
16 vs. Complaint  
17 ..... Case No. ....  
18 .....  
19 Defendant(s)  
20 .....

21 Comes now the plaintiff, being first duly sworn, upon  
22 oath, and complains and alleges that defendant is indebted  
23 to plaintiff in the sum of \$....., for.....  
24 .....  
25 .....

1 which sum is now due, owing, and unpaid despite demands for  
2 the payment thereof, together with plaintiff's costs herein  
3 expended.

4 Dated this ..... day of ....., 19....  
5 .....  
6 Plaintiff  
7 .....  
8 Plaintiff's address

9 Subscribed and sworn to before me this ..... day of  
10 ....., 19....

11 .....  
12 Justice of the peace  
13 By:.....  
14 Clerk, small claims  
15 division

16 ORDER OF COURT/

17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within  
20 and foregoing complaint at:

21 .....  
22 .....  
23 on ..... at ....  
24 Reset for ..... at ....  
25 Reset for ..... at ....

1 Reset for ..... at ....  
2 and to have with you, then and there, all books, papers, and  
3 witnesses needed by you to establish your defense to the  
4 claim; and you are further notified that in case you do not  
5 appear, judgment will be taken against you by default for  
6 the relief demanded in the complaint and for costs of this  
7 action, including costs of service of the complaint and  
8 order of the court/notice to defendant.

9 You are hereby further notified that, within ~~40~~ 10 days  
10 of service upon you of this complaint and order, you may  
11 remove this action from the small claims court to justice's  
12 court, and that your failure to remove shall constitute a  
13 waiver of your rights to trial by jury and to representation  
14 by counsel.

15 To the Sheriff, Constable, or Server of process of said  
16 county, greetings:

17 Make legal service and due return thereof on the  
18 defendant at .....  
19 Dated this .... day of ....., 19....

20 .....  
21 Justice of the peace  
22 By:.....  
23 Clerk, small claims  
24 division"

25 Section 14. Section 27-27-101, MCA, is amended to

1 read:

2 "27-27-101. Definition and function of writ of  
3 prohibition. The writ of prohibition is the counterpart of  
4 the writ of mandate. It arrests the proceedings of any  
5 tribunal, corporation, board, or person, ~~whether~~ exercising  
6 ~~functions~~ judicial or ministerial functions when such  
7 proceedings are without or in excess of the jurisdiction of  
8 such tribunal, corporation, board, or person."

9 Section 15. Section 45-2-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

17 (8) "Computer" means an electronic device that  
18 performs logical, arithmetic, and memory functions by the  
19 manipulation of electronic or magnetic impulses and includes  
20 all input, output, processing, storage, software, or  
21 communication facilities that are connected or related to  
22 such a device in a system or network.

23 (9) "Computer network" means the interconnection of  
24 communication systems between computers or computers and  
25 remote terminals.

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

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

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

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

14 (14) "Conduct" means an act or series of acts and the  
 15 accompanying mental state.

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

21 (16) "Correctional institution" means the state prison,  
 22 county or city jail, or other institution for the  
 23 incarceration or custody of persons under sentence for  
 24 offenses or awaiting trial or sentence for offenses.

25 (17) "Deception" means knowingly to:

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

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

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

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

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

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

20 (19) "Deprive" means to withhold property of another:

21 (a) permanently;

22 (b) for such a period as to appropriate a portion of  
 23 its value;

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

1 (d) to dispose of the property and use or deal with  
2 the property so as to make it unlikely that the owner will  
3 recover it.

4 (20) "Deviate sexual relations" means sexual contact or  
5 sexual intercourse between two persons of the same sex or  
6 any form of sexual intercourse with an animal.

7 (21) "Felony" means an offense in which the sentence  
8 imposed upon conviction is death or imprisonment in the  
9 state prison for any term exceeding 1 year.

10 (22) "Forcible felony" means any felony which involves  
11 the use or threat of physical force or violence against any  
12 individual.

13 (23) A "frisk" is a search by an external patting of a  
14 person's clothing.

15 (24) "Government" includes any branch, subdivision, or  
16 agency of the government of the state or any locality within  
17 it.

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

22 (26) A "house of prostitution" means any place where  
23 prostitution or promotion of prostitution is regularly  
24 carried on by one or more persons under the control,  
25 management, or supervision of another.

1 (27) "Human being" means a person who has been born and  
2 is alive.

3 (28) An "illegal article" is an article or thing which  
4 is prohibited by statute, rule, or order from being in the  
5 possession of a person subject to official detention.

6 (29) "Inmate" means a person who engages in  
7 prostitution in or through the agency of a house of  
8 prostitution.

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

17 (31) An "involuntary act" means any act which is:

- 18 (a) a reflex or convulsion;
- 19 (b) a bodily movement during unconsciousness or sleep;
- 20 (c) conduct during hypnosis or resulting from hypnotic  
21 suggestion; or
- 22 (d) a bodily movement that otherwise is not a product  
23 of the effort or determination of the actor, either  
24 conscious or habitual.

25 (32) "Juror" means any person who is a member of any

1 jury, including a grand jury, impaneled by any court in this  
 2 state in any action or proceeding or by any officer  
 3 authorized by law to impanel a jury in any action or  
 4 proceeding. The term "juror" also includes a person who has  
 5 been drawn or summoned to attend as a prospective juror.

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

18 (34) "Mentally defective" means that a person suffers  
 19 from a mental disease or defect which renders him incapable  
 20 of appreciating the nature of his conduct.

21 (35) "Mentally incapacitated" means that a person is  
 22 rendered temporarily incapable of appreciating or  
 23 controlling his conduct as a result of the influence of an  
 24 intoxicating substance.

25 (36) "Misdemeanor" means an offense in which the

1 sentence imposed upon conviction is imprisonment in the  
 2 county jail for any term or a fine, or both, or the sentence  
 3 imposed is imprisonment in the state prison for any term of  
 4 1 year or less.

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

18 (38) "Obtain" means:

19 (a) in relation to property, to bring about a transfer  
 20 of interest or possession, whether to the offender or to  
 21 another; and

22 (b) in relation to labor or services, to secure the  
 23 performance thereof.

24 (39) "Obtains or exerts control" includes but is not  
 25 limited to the taking, carrying away, or sale, conveyance,

1 or transfer of title to, interest in, or possession of  
2 property.

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

9 (41) "Offender" means a person who has been or is  
10 liable to be arrested, charged, convicted, or punished for a  
11 public offense.

12 (42) "Offense" means a crime for which a sentence of  
13 death or of imprisonment or a fine is authorized. Offenses  
14 are classified as felonies or misdemeanors.

15 (43) "Official detention" means imprisonment resulting  
16 from a conviction for an offense, confinement for an  
17 offense, confinement of a person charged with an offense,  
18 detention by a peace officer pursuant to arrest, detention  
19 for extradition or deportation, or any lawful detention for  
20 the purpose of the protection of the welfare of the person  
21 detained or for the protection of society. Official  
22 detention does not include supervision of probation or  
23 parole, constraint incidental to release on bail, or an  
24 unlawful arrest unless the person arrested employed physical  
25 force, a threat of physical force, or a weapon to escape.

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

8 (45) "Other state" means any state or territory of the  
9 United States, the District of Columbia, and the  
10 Commonwealth of Puerto Rico.

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

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

21 (48) "Peace officer" means any person who by virtue of  
22 his office or public employment is vested by law with a duty  
23 to maintain public order or to make arrests for offenses  
24 while acting within the scope of his authority.

25 (49) "Pecuniary benefit" is benefit in the form of

1 money, property, commercial interests, or anything else the  
2 primary significance of which is economic gain.

3 (50) "Person" includes an individual, business  
4 association, partnership, corporation, government, or other  
5 legal entity and an individual acting or purporting to act  
6 for or on behalf of any government or subdivision thereof.

7 (51) "Physically helpless" means that a person is  
8 unconscious or is otherwise physically unable to communicate  
9 unwillingness to act.

10 (52) "Possession" is the knowing control of anything  
11 for a sufficient time to be able to terminate control.

12 (53) "Premises" includes any type of structure or  
13 building and any real property.

14 (54) "Property" means any tangible or intangible thing  
15 of value. Property includes but is not limited to:

16 (a) real estate;

17 (b) money;

18 (c) commercial instruments;

19 (d) admission or transportation tickets;

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

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

25 (g) electricity, gas, and water;

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

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

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

14 (k) electronic impulses, electronically processed or  
15 produced data or information, commercial instruments,  
16 computer software or computer programs, in either machine or  
17 human readable form, computer services, any other tangible  
18 or intangible item of value relating to a computer, computer  
19 system, or computer network, and any copies thereof.

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

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

1 or any substantial group thereof has access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

18 (iii) The value of electronic impulses, electronically  
19 produced data or information, computer software or programs,  
20 or any other tangible or intangible item relating to a  
21 computer, computer system, or computer network shall be  
22 considered to be the amount of economic loss that the owner  
23 of the item might reasonably suffer by virtue of the loss of  
24 the item. The determination of the amount of such economic  
25 loss includes but is not limited to consideration of the

1 value of the owner's right to exclusive use or disposition  
2 of the item.

3 (b) When it cannot be determined if the value of the  
4 property is more or less than ~~\$150~~ \$300 by the standards set  
5 forth in subsection (69)(a) above, its value shall be  
6 considered to be an amount less than \$150.

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

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

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

22 Section 16. Section 45-9-101, MCA, is amended to read:

23 "45-9-101. Criminal sale of dangerous drugs. (1) A  
24 person commits the offense of criminal sale of dangerous  
25 drugs if he sells, barter, exchanges, gives away, or offers

1 to sell, barter, exchange, or give away or manufactures,  
2 prepares, cultivates, compounds, or processes any dangerous  
3 drug, as defined in 50-32-101.

4 (2) A person convicted of criminal sale of an opiate,  
5 as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the  
6 state prison for a term of not less than 2 years or more  
7 than life and may be fined not more than \$50,000, except as  
8 provided in 46-18-222.

9 (3) A person convicted of criminal sale of a dangerous  
10 drug included in Schedule I or Schedule II pursuant to  
11 50-32-222 or 50-32-224, except marijuana or  
12 tetrahydrocannabinols, who has a prior conviction for  
13 criminal sale of such a drug shall be imprisoned in the  
14 state prison for a term of not less than 10 years or more  
15 than life and may be fined not more than \$50,000, except as  
16 provided in 46-18-222. Upon a third or subsequent conviction  
17 for criminal sale of such a drug, he shall be imprisoned in  
18 the state prison for a term of not less than 20 years or  
19 more than life and may be fined not more than \$50,000,  
20 except as provided in 46-18-222. Whenever a conviction under  
21 this subsection is for criminal sale of such a drug to a  
22 minor, the sentence shall include the restriction that the  
23 defendant be ineligible for parole and participation in the  
24 supervised release program while serving his term.

25 (4) A person convicted of criminal sale of dangerous

1 drugs not otherwise provided for in subsection (2) or (3)  
2 shall be imprisoned in the state prison for a term of not  
3 less than 1 year or more than life or be fined an amount of  
4 not more than \$50,000, or both.

5 (5) Practitioners and agents under their supervision  
6 acting in the course of a professional practice, as defined  
7 by 50-32-101, are exempt from this section."

8 Section 17. Section 45-9-102, MCA, is amended to read:

9 "45-9-102. Criminal possession of dangerous drugs. (1)  
10 A person commits the offense of criminal possession of  
11 dangerous drugs if he possesses any dangerous drug, as  
12 defined in 50-32-101.

13 (2) Any person convicted of criminal possession of  
14 marijuana or its derivatives in an amount the aggregate  
15 weight of which does not exceed 60 grams of marijuana or 1  
16 gram of hashish is, for the first offense, guilty of a  
17 misdemeanor and shall be punished by a fine of not less than  
18 \$100 or more than \$500 and by imprisonment in the county  
19 jail for not more than 6 months. The minimum fine must be  
20 imposed as a condition of a suspended or deferred sentence.  
21 A person convicted of a second or subsequent offense under  
22 this subsection is punishable by a fine not to exceed \$1,000  
23 or imprisonment in the county jail for a term not to exceed  
24 1 year or in the state prison for a term not to exceed 3  
25 years or both such fine and imprisonment.

1 (3) A person convicted of criminal possession of an  
2 opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned  
3 in the state prison for a term of not less than 2 years or  
4 more than 5 years and may be fined not more than \$50,000,  
5 except as provided in 46-18-222.

6 (4) A person convicted of criminal possession of  
7 dangerous drugs not otherwise provided for in subsection (2)  
8 or (3) shall be imprisoned in the state prison for a term  
9 not to exceed 5 years or be fined an amount not to exceed  
10 \$50,000, or both.

11 (5) A person of the age of 21 years or under convicted  
12 of a first violation under this section shall be presumed to  
13 be entitled to a deferred imposition of sentence of  
14 imprisonment.

15 (6) Ultimate users and practitioners and agents under  
16 their supervision acting in the course of a professional  
17 practice, as defined by 50-32-101, are exempt from this  
18 section."

19 Section 18. Section 45-9-103, MCA, is amended to read:

20 "45-9-103. Criminal possession with intent to sell.

21 (1) A person commits the offense of criminal possession with  
22 intent to sell if he possesses with intent to sell any  
23 dangerous drug as defined in 50-32-101. No person commits  
24 the offense of criminal possession with intent to sell  
25 marijuana unless he possesses 1 kilogram or more.

1 (2) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell  
 3 shall be imprisoned in the state prison for a term of not  
 4 less than 2 years or more than 20 years and may be fined not  
 5 more than \$50,000, except as provided in 46-18-222.

6 (3) A person convicted of criminal possession with  
 7 intent to sell not otherwise provided for in subsection (2)  
 8 shall be imprisoned in the state prison for a term of not  
 9 more than 20 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (4) Practitioners and agents under their supervision  
 12 acting in the course of a professional practice as defined  
 13 by 50-32-101 are exempt from this section."

14 Section 19. Section 45-9-111, MCA, is amended to read:

15 "45-9-111. Imitation dangerous drugs -- definitions.  
 16 As used in ~~45-9-112~~ 45-9-111 through 45-9-116 and 45-9-202,  
 17 the following definitions apply:

18 (1) "Dangerous drug" has the meaning given to that  
 19 term in 50-32-101.

20 (2) "Imitation dangerous drug" means a substance that  
 21 is not a dangerous drug but that is expressly or impliedly  
 22 represented to be a dangerous drug or to simulate the effect  
 23 of a dangerous drug and the appearance of which, including  
 24 the color, shape, size, and markings, would lead a  
 25 reasonable person to believe that the substance is a

1 dangerous drug.

2 (3) "Person" includes any individual, business  
 3 association, partnership, or corporation."

4 Section 20. Section 45-9-116, MCA, is amended to read:  
 5 "45-9-116. Imitation dangerous drugs -- exemptions --  
 6 rules. (1) Sections ~~45-9-112~~ 45-9-111 through 45-9-115 do  
 7 not apply to:

8 (a) a person authorized by rules adopted by the board  
 9 of pharmacy to possess with purpose to sell or sell  
 10 imitation dangerous drugs;

11 (b) law enforcement personnel selling or possessing  
 12 with purpose to sell imitation dangerous drugs while acting  
 13 within the scope of their employment; and

14 (c) a person registered under the provisions of Title  
 15 50, chapter 32, part 3, who sells, or possesses with purpose  
 16 to sell an imitation dangerous drug for use as a placebo, by  
 17 that person or any other person so registered, in the course  
 18 of professional practice or research.

19 (2) The board of pharmacy shall adopt, amend, or  
 20 repeal rules in accordance with the Montana Administrative  
 21 Procedure Act to authorize the possession with purpose to  
 22 sell or sale of imitation dangerous drugs whenever it  
 23 determines that there is a legitimate need and that the  
 24 drugs ~~will be used for a lawful purpose.~~

25 NEW SECTION. Section 21. Repealer. Sections 2-7-101

LC 0126/01

1 and 3-5-212, MCA, are repealed.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1        HOUSE        BILL NO.        4

2        AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO  
3        GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS,  
4        AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517,  
5        2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505,  
6        13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101,  
7        45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING  
8        SECTIONS 2-7-101 AND 3-5-212, MCA.

9                Section 1. 1-11-204. The provision that the Code  
10        Commissioner must submit a certified report to the  
11        Legislature is an unnecessary formality. The report is  
12        published in the first volume of the annotations to the  
13        Montana Code Annotated and is accessible to anyone. The  
14        amendment would make no change in the required contents of  
15        the report.

16                Section 2. 2-4-611. The two references in subsection  
17        (2) to "the legal assistance program" were inserted in 1979  
18        in anticipation of the 1979 Legislature's passage of a  
19        program by that name. The bill was vetoed. A generic name  
20        change in subsection (2) is made to avoid any construction  
21        of the subsection as referring to or by implication  
22        mandating a specific program.

23                Section 3. 2-7-517. The bill enacting this section  
24        incorrectly referred to "2-15-516". The correct reference,  
25        "2-7-516", was substituted during codification of the act to  
26        the Montana Code Annotated, with brackets to indicate the  
27        substitution. This bill deletes the brackets and legislates  
28        2-7-516 as the correct section reference.

29                Section 4. 2-15-2007. A compiler's comment under this  
30        section of the Montana Code Annotated states:  
31        "Commissioner Correction: This section was passed as  
32        subsection (2) of section 8, Ch. 274, L. 1981, and was added  
33        as an amendment. This subsection was substantive law, but  
34        the accompanying subsections are not. In codifying this  
35        section the code commissioner added the bracketed material  
36        to reflect the context in which the subsection was passed."  
37        This bill deletes the brackets, thus legislating the  
38        bracketed language.

39                Section 5. 3-1-607. This section is amended to delete  
40        the prohibition on a judge running for a judicial office the  
41        term of which commences earlier than his existing term of  
42        office. The prohibition was declared unconstitutional in a  
43        Montana Supreme Court opinion. The case note for that

1 opinion, contained in the annotations to the Montana Code  
2 Annotated, reads:

3 "Article VII, sec. 10, Mont. Const., providing that one  
4 holding a judicial position forfeits that position by filing  
5 for an elective public office other than a judicial  
6 position, requires a Judge to forfeit his judicial office if  
7 he files for either a legislative or executive office. While  
8 it does not affirmatively declare that a Judge does not  
9 forfeit his judicial office by filing for another judicial  
10 office, that is its intent as shown by the minutes of the  
11 Constitutional Convention and that is what it means.  
12 Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10,  
13 Mont. Const., authorizes and are therefore unconstitutional  
14 as being in direct conflict with Art. VII, sec. 10, Mont.  
15 Const. The Comm. for an Effective Judiciary v. St., M,  
16 679 P2d 1223, 41 St. Rep. 581 (1984)."

17 Section 6. 3-2-104. The deleted material (as well as  
18 section 3-5-212, MCA, containing similar language) was found  
19 unconstitutional in Coate v. Omholt, M, 662 P2d 591, 40  
20 St. Rep. 586 (1983), as violating the separation of powers  
21 doctrine, and the impairment of contract and diminution of  
22 salaries provisions of the Montana Constitution.

23 Section 7. 5-4-306. Language was added to subsections  
24 (2) and (3) to conform them to Article VI, section 10, of  
25 the Montana Constitution, as amended in 1982. That amendment  
26 provided for a veto override by poll of the Legislature if a  
27 bill is vetoed after the end of the session.

28 Section 8. 5-7-203. The exception at the beginning of  
29 the section is deleted because 5-7-304 was repealed in 1980.  
30 That section read: "5-7-304. Exemption from license and  
31 registration requirement. Any person who limits his  
32 lobbying solely to appearances before legislative committees  
33 of either house and registers his appearance on the records  
34 of such committees in writing shall not be required to be  
35 licensed as a lobbyist, pay a license fee, or register with  
36 the secretary of state."

37 Section 9. 13-10-505. The added words simply clarify  
38 that the exception relates to filling of vacancies and not  
39 to nominations in nonpartisan elections.

40 Section 10. 13-27-312. The brackets at the beginning  
41 and end of subsection (3) are deleted. In preparation of  
42 the composite of Chapter 336 and Chapter 488, Laws of 1983,  
43 amendments to this section, the Code Commissioner set out in  
44 a separate bracketed subsection (3), the amendatory language  
45 in Chapter 336 pertaining to the preparation by the Attorney

1 General of a fiscal statement, although the language had  
 2 been inserted in former subsection (2), which was entirely  
 3 deleted by Chapter 488. The language was included because  
 4 it appeared to reflect a separable concept not in conflict  
 5 with Chapter 488 and the apparent intent was to incorporate  
 6 the concept into the law. By deleting the brackets, this  
 7 bill legislates the bracketed language.

8 Sections 11 and 12. 25-7-204 and 25-7-206. A 1983  
 9 amendment to 25-7-202 provided that the judge or the jury  
 10 commissioner draw the ballots. Formerly, only the judge drew  
 11 them. Sections 25-7-204 and 25-7-206 were not, but should  
 12 have been, correspondingly amended. This bill makes those  
 13 amendments.

14 Section 13. 25-35-602. The 40-day time period in the  
 15 next-to-last paragraph of this form is changed to 10 days to  
 16 be consistent with 25-35-605(1), which fixes the time  
 17 period.

18 Section 14. 27-27-101. This amendment is made because  
 19 St. v. Montana Livestock Sanitary Board, 135 M 202, 339 P2d  
 20 487 (1959), held this section unconstitutional under Montana  
 21 Constitution, Article VII, sections 2 and 4, to the extent  
 22 that it authorizes a Writ of Prohibition in regard to  
 23 ministerial functions.

24 Section 15. 45-2-101. In subsection (69)(b), "\$150" is  
 25 changed to "\$300". Subsection (69) defines "value". Chapter  
 26 581, Laws of 1983, raised from \$150 to \$300 the "value" of  
 27 what is taken in theft and fraud offenses before the offense  
 28 becomes a felony. If "value" is over \$300, the offense is a  
 29 felony. If "value" is \$300 or less, the offense is a  
 30 misdemeanor. Chapter 581 should have raised "\$150" to "\$300"  
 31 in 45-2-101(69)(b) to conform to what Chapter 581 did.

32 Sections 16 through 18. 45-9-101 through  
 33 45-9-103. The reference in each section to "an opiate, as  
 34 defined in 50-32-101(18)" is incorrect. "Opiate" is defined  
 35 in subsection (19) of 50-32-101, not subsection (18). Prior  
 36 to 1983, "opiate" was defined in subsection (18), but the  
 37 1983 Legislature inserted a new subsection (14) in 50-32-101  
 38 and renumbered the following subsections. Thus, the  
 39 subsection defining "opiate" was renumbered from (18) to  
 40 (19). Inadvertently, the three references, in 45-9-101  
 41 through 45-9-103, to 50-32-101(18) were not changed to  
 42 50-32 101(19).

43 Sections 19 and 20. 45-9-111 and 45-9-116. One word  
 44 defined in 45-9-111 is also used in the text of that

1 section; therefore, this bill makes the definitions in  
2 45-9-111 apply to that section. Section 45-9-116 is amended  
3 for clarity and to be consistent with the amendment made in  
4 section 16. If operative provisions do not apply to the  
5 persons listed in 45-9-116(1), it was certainly intended  
6 that related definitions also do not apply.

7           Section 21. Repealer.  
8           2-7-101. These definitions were used only in 2-7-102,  
9 which was repealed in 1983. The section is thus obsolete  
10 and unnecessary.  
11           3-5-212. See explanation for section 6.

APPROVED BY COMMITTEE  
ON JUDICIARY

1 HOUSE BILL NO. 4  
2 INTRODUCED BY MANUEL  
3 BY REQUEST OF THE CODE COMMISSIONER  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS,  
7 PUBLIC--RETIREMENT--SYSTEMS, AND CRIMES; AMENDING SECTIONS  
8 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104,  
9 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206,  
10 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103,  
11 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101  
12 AND 3-5-212, MCA."  
13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
15 Section 1. Section 1-11-204, MCA, is amended to read:  
16 "1-11-204. Duties of code commissioner. (1) Prior to  
17 January 1, 1979, the code commissioner shall recodify all  
18 the laws of a general and permanent nature appearing in the  
19 codes and session laws and prepare them for publication.  
20 (2) Prior to January 1, 1979, the commissioner shall  
21 prepare and submit to the legislature a report which is  
22 certified by the commissioner as the "Official Report of the  
23 Montana Code Commissioner", together with a bill enacting  
24 the Montana Code Annotated. A copy of the report and bill  
25 shall be deposited with the secretary of state. The report

1 shall explain and indicate, in tabular or other form, all  
2 changes made during recodification, other than punctuation  
3 and capitalization, to clearly indicate the character of  
4 each change.  
5 (3) Prior to the November 1 immediately preceding each  
6 regular legislative session, the commissioner shall prepare  
7 and submit to the legislative council a report, in tabular  
8 or other form, indicating the commissioner's recommendations  
9 for legislation which will:  
10 (a) eliminate archaic or outdated laws;  
11 (b) eliminate obsolete or redundant wording of laws;  
12 (c) eliminate any duplications in law and any laws  
13 repealed directly or by implication;  
14 (d) clarify existing laws;  
15 (e) correct errors and inconsistencies within the  
16 laws.  
17 (4) The commissioner shall cause to be prepared for  
18 publication with the Montana Code Annotated the following  
19 material:  
20 (a) Statutory history of each code section;  
21 (b) Annotations of state and federal court decisions  
22 relating to the subject matter of the code;  
23 (c) Such editorial notes, cross-references, and other  
24 matter as the commissioner considers desirable or  
25 advantageous;

- 1 (d) The Declaration of Independence;
- 2 (e) The Constitution of the United States of America  
3 and amendments thereto;
- 4 (f) Acts of congress relating to the authentication of  
5 laws and records;
- 6 (g) The Organic Act of the Territory of Montana;
- 7 (h) The Enabling Act;
- 8 (i) The 1972 Constitution of the State of Montana and  
9 any amendments thereto;
- 10 (j) The Ordinances relating to federal relations and  
11 elections;
- 12 (k) Rules of civil, criminal, and appellate procedure  
13 and such other rules of procedure as the Montana supreme  
14 court may adopt; and
- 15 (l) A complete subject index, a popular name index,  
16 and comparative disposition tables or cross-reference  
17 indexes relating sections of the Montana Code Annotated to  
18 prior compilations and session laws.
- 19 (5) After publication of the Montana Code Annotated,  
20 the code commissioner shall:
- 21 (a) annotate, arrange, and prepare for publication all  
22 laws of a general and permanent nature enacted at each  
23 legislative session and assign catchlines and code section  
24 numbers to each new section;
- 25 (b) continue to codify, index, arrange, rearrange, and

1 generally update the Montana Code Annotated to maintain an  
2 orderly and logical arrangement of the laws in order to  
3 avoid future need for bulk revision;

4 (c) prepare and ~~submit-to-each-legislature~~ publish a  
5 report ~~certified--as--the~~ entitled "Official Report of the  
6 Montana Code Commissioner--(year)" which indicates, in  
7 tabular or other form, all changes made during the  
8 continuous recodification, other than punctuation, spelling,  
9 and capitalization, to clearly indicate the character of  
10 each change made since the last such report.

11 (6) From time to time the commissioner shall confer  
12 with members of the judiciary and the state bar relative to  
13 recodification procedures."

14 Section 2. Section 2-4-611, MCA, is amended to read:

15 "2-4-611. Hearing examiners -- legal services unit --  
16 conduct of hearings -- disqualification of hearing examiners  
17 and agency members. (1) An agency may appoint hearing  
18 examiners for the conduct of hearings in contested cases. A  
19 hearing examiner must be assigned with due regard to the  
20 expertise required for the particular matter.

21 (2) An agency may elect to request a hearing examiner  
22 from the an agency legal assistance program, if any, within  
23 the attorney general's office or from another agency. If the  
24 request is honored, the time, date, and place of the hearing  
25 must be set by the agency, with the concurrence of the legal

1 assistance program or the other agency.

2 (3) Agency members or hearing examiners presiding over  
3 hearings may administer oaths or affirmations; issue  
4 subpoenas pursuant to 2-4-104; provide for the taking of  
5 testimony by deposition; regulate the course of hearings,  
6 including setting the time and place for continued hearings  
7 and fixing the time for filing of briefs or other documents;  
8 and direct parties to appear and confer to consider  
9 simplification of the issues by consent of the parties.

10 (4) On the filing by a party, hearing examiner, or  
11 agency member in good faith of a timely and sufficient  
12 affidavit of personal bias, lack of independence,  
13 disqualification by law, or other disqualification of a  
14 hearing examiner or agency member, the agency shall  
15 determine the matter as a part of the record and decision in  
16 the case. The agency may disqualify the hearing examiner or  
17 agency member and request another hearing examiner pursuant  
18 to subsection (2) or assign another hearing examiner from  
19 within the agency. The affidavit must state the facts and  
20 the reasons for the belief that the hearing examiner should  
21 be disqualified and must be filed not less than 10 days  
22 before the original date set for the hearing."

23 Section 3. Section 2-7-517, MCA, is amended to read:

24 "2-7-517. Penalty. When a governmental entity has  
25 failed to make payment as required by {2-7-516} within 60

1 days of receiving a bill for an audit, the department may  
2 issue an order stopping payment of any state financial aid  
3 to the governmental entity. Upon payment for the audit, all  
4 financial aid that was withheld because of failure to make  
5 payment shall be released and paid to the governmental  
6 entity."

7 Section 4. Section 2-15-2007, MCA, is amended to read:

8 "2-15-2007. Highway traffic safety program. The  
9 {highway traffic safety} program {provided for in 61-2-102}  
10 is attached {to the department of justice} for  
11 administrative purposes only as prescribed in 2-15-121.  
12 However, the program may hire its own personnel, and  
13 2-15-121(2)(d) does not apply."

14 Section 5. Section 3-1-607, MCA, is amended to read:

15 "3-1-607. Supreme court justice or district court  
16 judge ~~not-to-run-for~~ candidacy for nonjudicial office --  
17 resignation required. (1) If a person occupying the office  
18 of chief justice or associate justice of the supreme court  
19 or judge of a district court of the state of Montana becomes  
20 a candidate for election to any elective office under the  
21 laws of the state of Montana other than a judicial position,  
22 he shall immediately, and in any event at or before the time  
23 when he must file as a candidate for such office in any  
24 primary or special or general election, resign from his  
25 office of chief justice, associate justice, or district

1 judge.

2 (2) The resignation becomes effective immediately upon  
3 its delivery to the proper officer or superior.

4 (3) The resignation requirement applies except when  
5 the person is a bona fide candidate for reelection to the  
6 identical office then occupied by him or for another  
7 nonpartisan judicial office--the--term--of--which--does--not  
8 commence--earlier--than--the--end--of--the--term--of--the--office--then  
9 occupied--by--him position."

10 Section 6. Section 3-2-104, MCA, is amended to read:

11 "3-2-104. Salaries -- expenses. (1) The salaries of  
12 justices of the supreme court are provided for in 2-16-405.

13 (2) ~~If any cause, motion, or other proceeding remains~~  
14 ~~pending and undecided for a period of 90 days after~~  
15 ~~submission for decision, the justice of the supreme court~~  
16 ~~who has been assigned to write the opinion, order, or~~  
17 ~~decision of the court shall submit an affidavit on or before~~  
18 ~~the 90th day to the chief justice setting forth the case~~  
19 ~~name, cause number, and the reason the matter has not been~~  
20 ~~decided. Copies of the affidavit must be furnished to all~~  
21 ~~parties to the matter pending. A cause, motion, or other~~  
22 ~~proceeding is considered submitted for decision when all~~  
23 ~~hearings have been held and final briefs have been submitted~~  
24 ~~by all parties to the matter pending. Upon the filing of the~~  
25 ~~affidavit, the justice shall have an additional 30 days to~~

1 ~~decide the matter which has been submitted. No cause,~~  
2 ~~motion, or other proceeding may remain undecided for more~~  
3 ~~than 120 days after submission for decision without the~~  
4 ~~approval of a majority of the other members of the supreme~~  
5 ~~court for good cause shown in an affidavit requesting~~  
6 ~~additional time. If a justice of the supreme court violates~~  
7 ~~the provisions of this section, any party to a matter~~  
8 ~~pending in violation of this section or, by a majority vote,~~  
9 ~~the other members of the supreme court may refer the matter~~  
10 ~~to the judicial standards commission. If the court, acting~~  
11 ~~upon the recommendation of the commission, determines the~~  
12 ~~justice is not in compliance with this section, it shall~~  
13 ~~order that the state auditor not issue a warrant for payment~~  
14 ~~of services for 1 month, which pay is forfeited by the~~  
15 ~~justice.~~

16 (3) (2) Actual and necessary travel expenses of the  
17 justices of the supreme court shall be the travel expenses,  
18 as defined and provided in 2-18-501 through 2-18-503,  
19 incurred in the performance of their official duties."

20 Section 7. Section 5-4-306, MCA, is amended to read:

21 "5-4-306. Return when legislature not in session. (1)  
22 If, on the day the governor desires to return a bill without  
23 his approval and with his objections thereto to the house in  
24 which it originated, that house has adjourned for the day  
25 (but not for the session), he may deliver the bill with his

1 message to the presiding officer, secretary, clerk, or any  
 2 member of such house. Such delivery is as effectual as  
 3 though returned in open session if the governor, on the  
 4 first day the house is again in session, by message,  
 5 notifies it of such delivery and of the time when and the  
 6 person to whom such delivery was made.

7 (2) If the legislature is not in session when the  
 8 governor vetoes a bill, he shall return the bill with his  
 9 reasons for the veto to the secretary of state. The  
 10 secretary of state shall immediately mail a copy of the bill  
 11 and the veto message to each member of the legislature. If  
 12 the bill was approved by two-thirds of the members of each  
 13 house present, the secretary of state shall poll the members  
 14 of the legislature, and if two-thirds or more of the members  
 15 of each house vote to override the veto, the bill shall  
 16 become law.

17 (3) The legislature may reconvene to reconsider any  
 18 bill so vetoed by the governor when the legislature is not  
 19 in session by using the statutory procedure provided for  
 20 convening in special session."

21 Section 8. Section 5-7-203, MCA, is amended to read:  
 22 "5-7-203. Principal -- name of lobbyist on docket.  
 23 ~~Except--as--provided--in--5-7-3047--every~~ Every principal who  
 24 employs any lobbyist shall within 1 week after such  
 25 employment cause the name of said lobbyist to be entered

1 upon the docket. It shall also be the duty of the lobbyist  
 2 to enter his name upon the docket. Upon the termination of  
 3 such employment, such fact may be entered opposite the name  
 4 of the lobbyist either by the lobbyist or the principal."

5 Section 9. Section 13-10-505, MCA, is amended to read:  
 6 "13-10-505. Applicability. The provisions of 13-10-501  
 7 through 13-10-504 shall not be used to fill vacancies or to  
 8 nominate candidates in nonpartisan elections except for  
 9 nominations to fill a vacancy as provided in 13-25-205."

10 Section 10. Section 13-27-312, MCA, is amended to  
 11 read:

12 "13-27-312. Review of petition by attorney general --  
 13 preparation of statements -- fiscal note. (1) Upon receipt  
 14 of a petition from the office of the secretary of state  
 15 pursuant to 13-27-202, the attorney general shall examine  
 16 the petition as to form and, if the proposed ballot issue  
 17 has an effect on the revenues, expenditures, or the fiscal  
 18 liability of the state, shall order a fiscal note  
 19 incorporating an estimate of such effect, the substance of  
 20 which must substantially comply with the provisions of  
 21 5-4-205. The budget director, in cooperation with the agency  
 22 or agencies affected by the petition, is responsible for  
 23 preparing the fiscal note and shall return it within 6 days  
 24 unless the attorney general, for good cause shown, extends  
 25 the time for completing the fiscal note. If the petition

1 form is approved, the attorney general shall endeavor to  
 2 seek out parties on both sides of the issue and obtain their  
 3 advice. The attorney general may, if he deems it necessary,  
 4 appoint a five-member committee to recommend the statement  
 5 of purpose and the statement of the implications of the  
 6 measure. The committee shall consist of two persons  
 7 recommended by the person filing the petition, two persons  
 8 known to oppose the measure, and one representative of the  
 9 attorney general's office, who is the chairman. The  
 10 committee shall, within 14 days of appointment, meet and  
 11 recommend by a vote of a majority of the committee:

12 (a) a statement, not to exceed 100 words, explaining  
 13 the purpose of the measure; and

14 (b) statements, not to exceed 25 words each,  
 15 explaining the implications of a vote for and a vote against  
 16 the measure.

17 (2) The attorney general may accept, reject, or modify  
 18 the statements recommended by the committee. If the  
 19 committee is unable to recommend one or both statements, the  
 20 attorney general shall prepare the statements.

21 f(3) The attorney general shall prepare a fiscal  
 22 statement of no more than 50 words if a fiscal note was  
 23 prepared for the proposed ballot issue, such statement to be  
 24 used on the petition and ballot if the measure is placed on  
 25 the ballot.†

1 (4) The statement of purpose and the statements of  
 2 implication must express the true and impartial explanation  
 3 of the proposed ballot issue in plain, easily understood  
 4 language and may not be arguments or written so as to create  
 5 prejudice for or against the measure.

6 (5) The statement of purpose prepared pursuant to  
 7 subsection (1) or (2), unless altered by a court under  
 8 13-27-316, is the petition title for the measure circulated  
 9 by the petition and the ballot title if the measure is  
 10 placed on the ballot.

11 (6) The statements of implication shall be placed  
 12 beside the diagram provided for marking of the ballot in a  
 13 manner similar to the following example:

14  FOR extending the right to vote to persons 18 years  
 15 of age

16  AGAINST extending the right to vote to persons 18  
 17 years of age

18 (7) If the petition is rejected as to form, the  
 19 attorney general shall forward his comments to the secretary  
 20 of state within 10 days after receipt of the petition by the  
 21 attorney general. If the petition is approved as to form,  
 22 the attorney general shall forward the statement of purpose,  
 23 the statements of implication, and the fiscal statement, if  
 24 applicable, to the secretary of state within 21 days after  
 25 receipt of the petition by the attorney general."

1 Section 11. Section 25-7-204, MCA, is amended to read:  
 2 "25-7-204. Mode of drawing ballots. Before the first  
 3 ballot shall have been drawn, the box must be closed and  
 4 well shaken so as to thoroughly mix the ballots therein. The  
 5 district judge or the jury commissioner must draw at random  
 6 a ballot with the juror's name thereon. Upon stipulation of  
 7 counsel, the court may order the clerk to draw ballots."

8 Section 12. Section 25-7-206, MCA, is amended to read:

9 "25-7-206. Procedure when insufficient number attend.  
 10 (1) If a sufficient number of jurors duly drawn and notified  
 11 do not attend to form a jury, the judge or the jury  
 12 commissioner shall, pursuant to an order of the court to be  
 13 entered in the minutes, shall, in the presence of two  
 14 witnesses, draw a sufficient number of ballots from the box  
 15 to complete the jury. The sheriff shall notify the persons  
 16 thus drawn to attend immediately or at a time fixed by  
 17 court. If for any reason a sufficient number of jurors to  
 18 try the issue is not obtained from the persons notified  
 19 ~~under-an-order-made-as-prescribed-in-this-section~~, the court  
 20 may make ~~another-order-or-successive-orders~~ or order further  
 21 drawings until a sufficient number is obtained.

22 (2) Each person so notified must attend at the time  
 23 required by the notice and, unless excused by the court or  
 24 set aside, must serve as a juror upon the trial. For a  
 25 neglect or refusal to do so, he may be fined in the same

1 manner as any other trial juror regularly drawn and  
 2 notified. He is subject to the same exceptions and  
 3 challenges as any other trial juror."

4 Section 13. Section 25-35-602, MCA, is amended to  
 5 read:

6 "25-35-602. Form of complaint and order of  
 7 court/notice to defendant. The sworn complaint and order of  
 8 the court shall be made on a blank substantially in the  
 9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
 11 COURT OF ..... COUNTY, MONTANA  
 12 BEFORE ....., JUSTICE OF THE PEACE  
 13 .....  
 14 .....  
 15 Plaintiff,  
 16 vs. Complaint  
 17 ..... Case No. ....  
 18 .....  
 19 Defendant(s)  
 20 .....

21 Comes now the plaintiff, being first duly sworn, upon  
 22 oath, and complains and alleges that defendant is indebted  
 23 to plaintiff in the sum of \$....., for.....  
 24 .....  
 25 .....

1 which sum is now due, owing, and unpaid despite demands for  
2 the payment thereof, together with plaintiff's costs herein  
3 expended.

4 Dated this ..... day of ....., 19....  
5 .....  
6 Plaintiff  
7 .....  
8 Plaintiff's address

9 Subscribed and sworn to before me this ..... day of  
10 ....., 19....  
11 .....  
12 Justice of the peace  
13 By:.....  
14 Clerk, small claims  
15 division

16 ORDER OF COURT/

17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within  
20 and foregoing complaint at:

21 .....  
22 .....  
23 on ..... at ....  
24 Reset for ..... at ....  
25 Reset for ..... at ....

1 Reset for ..... at ....  
2 and to have with you, then and there, all books, papers, and  
3 witnesses needed by you to establish your defense to the  
4 claim; and you are further notified that in case you do not  
5 appear, judgment will be taken against you by default for  
6 the relief demanded in the complaint and for costs of this  
7 action, including costs of service of the complaint and  
8 order of the court/notice to defendant.

9 You are hereby further notified that, within ~~40~~ 10 days  
10 of service upon you of this complaint and order, you may  
11 remove this action from the small claims court to justice's  
12 court, and that your failure to remove shall constitute a  
13 waiver of your rights to trial by jury and to representation  
14 by counsel.

15 To the Sheriff, Constable, or Server of process of said  
16 county, greetings:

17 Make legal service and due return thereof on the  
18 defendant at .....

19 Dated this .... day of ....., 19....  
20 .....  
21 Justice of the peace  
22 By:.....  
23 Clerk, small claims  
24 division"

25 Section 14. Section 27-27-101, MCA, is amended to

1 read:

2 "27-27-101. Definition and function of writ of  
3 prohibition. The writ of prohibition is the counterpart of  
4 the writ of mandate. It arrests the proceedings of any  
5 tribunal, corporation, board, or person, whether exercising  
6 functions judicial or ministerial; functions when such  
7 proceedings are without or in excess of the jurisdiction of  
8 such tribunal, corporation, board, or person."

9 Section 15. Section 45-2-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

17 (8) "Computer" means an electronic device that  
18 performs logical, arithmetic, and memory functions by the  
19 manipulation of electronic or magnetic impulses and includes  
20 all input, output, processing, storage, software, or  
21 communication facilities that are connected or related to  
22 such a device in a system or network.

23 (9) "Computer network" means the interconnection of  
24 communication systems between computers or computers and  
25 remote terminals.

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

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

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

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

14 (14) "Conduct" means an act or series of acts and the  
 15 accompanying mental state.

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

21 (16) "Correctional institution" means the state prison,  
 22 county or city jail, or other institution for the  
 23 incarceration or custody of persons under sentence for  
 24 offenses or awaiting trial or sentence for offenses.

25 (17) "Deception" means knowingly to:

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

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

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

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

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

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

20 (19) "Deprive" means to withhold property of another:

21 (a) permanently;

22 (b) for such a period as to appropriate a portion of  
 23 its value;

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

1 (d) to dispose of the property and use or deal with  
 2 the property so as to make it unlikely that the owner will  
 3 recover it.

4 (20) "Deviate sexual relations" means sexual contact or  
 5 sexual intercourse between two persons of the same sex or  
 6 any form of sexual intercourse with an animal.

7 (21) "Felony" means an offense in which the sentence  
 8 imposed upon conviction is death or imprisonment in the  
 9 state prison for any term exceeding 1 year.

10 (22) "Forcible felony" means any felony which involves  
 11 the use or threat of physical force or violence against any  
 12 individual.

13 (23) A "frisk" is a search by an external patting of a  
 14 person's clothing.

15 (24) "Government" includes any branch, subdivision, or  
 16 agency of the government of the state or any locality within  
 17 it.

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

22 (26) A "house of prostitution" means any place where  
 23 prostitution or promotion of prostitution is regularly  
 24 carried on by one or more persons under the control,  
 25 management, or supervision of another.

1 (27) "Human being" means a person who has been born and  
 2 is alive.

3 (28) An "illegal article" is an article or thing which  
 4 is prohibited by statute, rule, or order from being in the  
 5 possession of a person subject to official detention.

6 (29) "Inmate" means a person who engages in  
 7 prostitution in or through the agency of a house of  
 8 prostitution.

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

17 (31) An "involuntary act" means any act which is:

- 18 (a) a reflex or convulsion;
- 19 (b) a bodily movement during unconsciousness or sleep;
- 20 (c) conduct during hypnosis or resulting from hypnotic  
 21 suggestion; or

22 (d) a bodily movement that otherwise is not a product  
 23 of the effort or determination of the actor, either  
 24 conscious or habitual.

25 (32) "Juror" means any person who is a member of any

1 jury, including a grand jury, impaneled by any court in this  
 2 state in any action or proceeding or by any officer  
 3 authorized by law to impanel a jury in any action or  
 4 proceeding. The term "juror" also includes a person who has  
 5 been drawn or summoned to attend as a prospective juror.

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

18 (34) "Mentally defective" means that a person suffers  
 19 from a mental disease or defect which renders him incapable  
 20 of appreciating the nature of his conduct.

21 (35) "Mentally incapacitated" means that a person is  
 22 rendered temporarily incapable of appreciating or  
 23 controlling his conduct as a result of the influence of an  
 24 intoxicating substance.

25 (36) "Misdemeanor" means an offense in which the

1 sentence imposed upon conviction is imprisonment in the  
 2 county jail for any term or a fine, or both, or the sentence  
 3 imposed is imprisonment in the state prison for any term of  
 4 1 year or less.

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

18 (38) "Obtain" means:

19 (a) in relation to property, to bring about a transfer  
 20 of interest or possession, whether to the offender or to  
 21 another; and

22 (b) in relation to labor or services, to secure the  
 23 performance thereof.

24 (39) "Obtains or exerts control" includes but is not  
 25 limited to the taking, carrying away, or sale, conveyance,

1 or transfer of title to, interest in, or possession of  
2 property.

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

9 (41) "Offender" means a person who has been or is  
10 liable to be arrested, charged, convicted, or punished for a  
11 public offense.

12 (42) "Offense" means a crime for which a sentence of  
13 death or of imprisonment or a fine is authorized. Offenses  
14 are classified as felonies or misdemeanors.

15 (43) "Official detention" means imprisonment resulting  
16 from a conviction for an offense, confinement for an  
17 offense, confinement of a person charged with an offense,  
18 detention by a peace officer pursuant to arrest, detention  
19 for extradition or deportation, or any lawful detention for  
20 the purpose of the protection of the welfare of the person  
21 detained or for the protection of society. Official  
22 detention does not include supervision of probation or  
23 parole, constraint incidental to release on bail, or an  
24 unlawful arrest unless the person arrested employed physical  
25 force, a threat of physical force, or a weapon to escape.

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

8 (45) "Other state" means any state or territory of the  
9 United States, the District of Columbia, and the  
10 Commonwealth of Puerto Rico.

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

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

21 (48) "Peace officer" means any person who by virtue of  
22 his office or public employment is vested by law with a duty  
23 to maintain public order or to make arrests for offenses  
24 while acting within the scope of his authority.

25 (49) "Pecuniary benefit" is benefit in the form of

1 money, property, commercial interests, or anything else the  
2 primary significance of which is economic gain.

3 (50) "Person" includes an individual, business  
4 association, partnership, corporation, government, or other  
5 legal entity and an individual acting or purporting to act  
6 for or on behalf of any government or subdivision thereof.

7 (51) "Physically helpless" means that a person is  
8 unconscious or is otherwise physically unable to communicate  
9 unwillingness to act.

10 (52) "Possession" is the knowing control of anything  
11 for a sufficient time to be able to terminate control.

12 (53) "Premises" includes any type of structure or  
13 building and any real property.

14 (54) "Property" means any tangible or intangible thing  
15 of value. Property includes but is not limited to:

16 (a) real estate;

17 (b) money;

18 (c) commercial instruments;

19 (d) admission or transportation tickets;

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

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

25 (g) electricity, gas, and water;

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

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

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

14 (k) electronic impulses, electronically processed or  
15 produced data or information, commercial instruments,  
16 computer software or computer programs, in either machine or  
17 human readable form, computer services, any other tangible  
18 or intangible item of value relating to a computer, computer  
19 system, or computer network, and any copies thereof.

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

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

1 or any substantial group thereof has access.

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

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

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

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

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

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

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

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

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

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

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

25 (67) "Tamper:" means to interfere with something

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

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

18 (iii) The value of electronic impulses, electronically  
19 produced data or information, computer software or programs,  
20 or any other tangible or intangible item relating to a  
21 computer, computer system, or computer network shall be  
22 considered to be the amount of economic loss that the owner  
23 of the item might reasonably suffer by virtue of the loss of  
24 the item. The determination of the amount of such economic  
25 loss includes but is not limited to consideration of the

1 value of the owner's right to exclusive use or disposition  
2 of the item.

3 (b) When it cannot be determined if the value of the  
4 property is more or less than ~~§150~~ §300 by the standards set  
5 forth in subsection (69)(a) above, its value shall be  
6 considered to be an amount less than ~~§150~~ §300.

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

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

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

22 Section 16. Section 45-9-101, MCA, is amended to read:

23 "45-9-101. Criminal sale of dangerous drugs. (1) A  
24 person commits the offense of criminal sale of dangerous  
25 drugs if he sells, barter, exchanges, gives away, or offers

1 to sell, barter, exchange, or give away or manufactures,  
2 prepares, cultivates, compounds, or processes any dangerous  
3 drug, as defined in 50-32-101.

4 (2) A person convicted of criminal sale of an opiate,  
5 as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the  
6 state prison for a term of not less than 2 years or more  
7 than life and may be fined not more than \$50,000, except as  
8 provided in 46-18-222.

9 (3) A person convicted of criminal sale of a dangerous  
10 drug included in Schedule I or Schedule II pursuant to  
11 50-32-222 or 50-32-224, except marijuana or  
12 tetrahydrocannabinols, who has a prior conviction for  
13 criminal sale of such a drug shall be imprisoned in the  
14 state prison for a term of not less than 10 years or more  
15 than life and may be fined not more than \$50,000, except as  
16 provided in 46-18-222. Upon a third or subsequent conviction  
17 for criminal sale of such a drug, he shall be imprisoned in  
18 the state prison for a term of not less than 20 years or  
19 more than life and may be fined not more than \$50,000,  
20 except as provided in 46-18-222. Whenever a conviction under  
21 this subsection is for criminal sale of such a drug to a  
22 minor, the sentence shall include the restriction that the  
23 defendant be ineligible for parole and participation in the  
24 supervised release program while serving his term.

25 (4) A person convicted of criminal sale of dangerous

1 drugs not otherwise provided for in subsection (2) or (3)  
2 shall be imprisoned in the state prison for a term of not  
3 less than 1 year or more than life or be fined an amount of  
4 not more than \$50,000, or both.

5 (5) Practitioners and agents under their supervision  
6 acting in the course of a professional practice, as defined  
7 by 50-32-101, are exempt from this section."

8 Section 17. Section 45-9-102, MCA, is amended to read:

9 "45-9-102. Criminal possession of dangerous drugs. (1)  
10 A person commits the offense of criminal possession of  
11 dangerous drugs if he possesses any dangerous drug, as  
12 defined in 50-32-101.

13 (2) Any person convicted of criminal possession of  
14 marijuana or its derivatives in an amount the aggregate  
15 weight of which does not exceed 60 grams of marijuana or 1  
16 gram of hashish is, for the first offense, guilty of a  
17 misdemeanor and shall be punished by a fine of not less than  
18 \$100 or more than \$500 and by imprisonment in the county  
19 jail for not more than 6 months. The minimum fine must be  
20 imposed as a condition of a suspended or deferred sentence.  
21 A person convicted of a second or subsequent offense under  
22 this subsection is punishable by a fine not to exceed \$1,000  
23 or imprisonment in the county jail for a term not to exceed  
24 1 year or in the state prison for a term not to exceed 3  
25 years or both such fine and imprisonment.

1 (3) A person convicted of criminal possession of an  
2 opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned  
3 in the state prison for a term of not less than 2 years or  
4 more than 5 years and may be fined not more than \$50,000,  
5 except as provided in 46-18-222.

6 (4) A person convicted of criminal possession of  
7 dangerous drugs not otherwise provided for in subsection (2)  
8 or (3) shall be imprisoned in the state prison for a term  
9 not to exceed 5 years or be fined an amount not to exceed  
10 \$50,000, or both.

11 (5) A person of the age of 21 years or under convicted  
12 of a first violation under this section shall be presumed to  
13 be entitled to a deferred imposition of sentence of  
14 imprisonment.

15 (6) Ultimate users and practitioners and agents under  
16 their supervision acting in the course of a professional  
17 practice, as defined by 50-32-101, are exempt from this  
18 section."

19 Section 18. Section 45-9-103, MCA, is amended to read:

20 "45-9-103. Criminal possession with intent to sell.  
21 (1) A person commits the offense of criminal possession with  
22 intent to sell if he possesses with intent to sell any  
23 dangerous drug as defined in 50-32-101. No person commits  
24 the offense of criminal possession with intent to sell  
25 marijuana unless he possesses 1 kilogram or more.

1 (2) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell  
 3 shall be imprisoned in the state prison for a term of not  
 4 less than 2 years or more than 20 years and may be fined not  
 5 more than \$50,000, except as provided in 46-18-222.

6 (3) A person convicted of criminal possession with  
 7 intent to sell not otherwise provided for in subsection (2)  
 8 shall be imprisoned in the state prison for a term of not  
 9 more than 20 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (4) Practitioners and agents under their supervision  
 12 acting in the course of a professional practice as defined  
 13 by 50-32-101 are exempt from this section."

14 Section 19. Section 45-9-111, MCA, is amended to read:  
 15 "45-9-111. Imitation dangerous drugs -- definitions.  
 16 As used in 45-9-~~112~~ 45-9-111 through 45-9-116 and 45-9-202,  
 17 the following definitions apply:

18 (1) "Dangerous drug" has the meaning given to that  
 19 term in 50-32-101.

20 (2) "Imitation dangerous drug" means a substance that  
 21 is not a dangerous drug but that is expressly or impliedly  
 22 represented to be a dangerous drug or to simulate the effect  
 23 of a dangerous drug and the appearance of which, including  
 24 the color, shape, size, and markings, would lead a  
 25 reasonable person to believe that the substance is a

1 dangerous drug.

2 (3) "Person" includes any individual, business  
 3 association, partnership, or corporation."

4 Section 20. Section 45-9-116, MCA, is amended to read:  
 5 "45-9-116. Imitation dangerous drugs -- exemptions --  
 6 rules. (1) Sections ~~45-9-112~~ 45-9-111 through 45-9-115 do  
 7 not apply to:

8 (a) a person authorized by rules adopted by the board  
 9 of pharmacy to possess with purpose to sell or sell  
 10 imitation dangerous drugs;

11 (b) law enforcement personnel selling or possessing  
 12 with purpose to sell imitation dangerous drugs while acting  
 13 within the scope of their employment; and

14 (c) a person registered under the provisions of Title  
 15 50, chapter 32, part 3, who sells, or possesses with purpose  
 16 to sell an imitation dangerous drug for use as a placebo, by  
 17 that person or any other person so registered, in the course  
 18 of professional practice or research.

19 (2) The board of pharmacy shall adopt, amend, or  
 20 repeal rules in accordance with the Montana Administrative  
 21 Procedure Act to authorize the possession with purpose to  
 22 sell or sale of imitation dangerous drugs whenever it  
 23 determines that there is a legitimate need and that the  
 24 drugs will be used for a lawful purpose."

25 NEW SECTION. Section 21. Repealer. Sections 2-7-101

HB 0004/02

1 and 3-5-212, MCA, are repealed.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1        HOUSE        BILL NO.        4

2        AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO  
3        GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS,  
4        AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517,  
5        2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505,  
6        13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101,  
7        45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING  
8        SECTIONS 2-7-101 AND 3-5-212, MCA.

9                Section 1. 1-11-204. The provision that the Code  
10        Commissioner must submit a certified report to the  
11        Legislature is an unnecessary formality. The report is  
12        published in the first volume of the annotations to the  
13        Montana Code Annotated and is accessible to anyone. The  
14        amendment would make no change in the required contents of  
15        the report.

16                Section 2. 2-4-611. The two references in subsection  
17        (2) to "the legal assistance program" were inserted in 1979  
18        in anticipation of the 1979 Legislature's passage of a  
19        program by that name. The bill was vetoed. A generic name  
20        change in subsection (2) is made to avoid any construction  
21        of the subsection as referring to or by implication  
22        mandating a specific program.

23                Section 3. 2-7-517. The bill enacting this section  
24        incorrectly referred to "2-15-516". The correct reference,  
25        "2-7-516", was substituted during codification of the act to  
26        the Montana Code Annotated, with brackets to indicate the  
27        substitution. This bill deletes the brackets and legislates  
28        2-7-516 as the correct section reference.

29                Section 4. 2-15-2007. A compiler's comment under this  
30        section of the Montana Code Annotated states:

31                "Commissioner Correction: This section was passed as  
32        subsection (2) of section 8, Ch. 274, L. 1981, and was added  
33        as an amendment. This subsection was substantive law, but  
34        the accompanying subsections are not. In codifying this  
35        section the code commissioner added the bracketed material  
36        to reflect the context in which the subsection was passed."

37                This bill deletes the brackets, thus legislating the  
38        bracketed language.

39                Section 5. 3-1-607. This section is amended to delete  
40        the prohibition on a judge running for a judicial office the  
41        term of which commences earlier than his existing term of  
42        office. The prohibition was declared unconstitutional in a  
43        Montana Supreme Court opinion. The case note for that

THIRD READING

1 opinion, contained in the annotations to the Montana Code  
2 Annotated, reads:

3 "Article VII, sec. 10, Mont. Const., providing that one  
4 holding a judicial position forfeits that position by filing  
5 for an elective public office other than a judicial  
6 position, requires a Judge to forfeit his judicial office if  
7 he files for either a legislative or executive office. While  
8 it does not affirmatively declare that a Judge does not  
9 forfeit his judicial office by filing for another judicial  
10 office, that is its intent as shown by the minutes of the  
11 Constitutional Convention and that is what it means.  
12 Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10,  
13 Mont. Const., authorizes and are therefore unconstitutional  
14 as being in direct conflict with Art. VII, sec. 10, Mont.  
15 Const. The Comm. for an Effective Judiciary v. St., M,  
16 679 P2d 1223, 41 St. Rep. 581 (1984)."

17 Section 6. 3-2-104. The deleted material (as well as  
18 section 3-5-212, MCA, containing similar language) was found  
19 unconstitutional in Coate v. Omholt, M, 662 P2d 591, 40  
20 St. Rep. 586 (1983), as violating the separation of powers  
21 doctrine, and the impairment of contract and diminution of  
22 salaries provisions of the Montana Constitution.

23 Section 7. 5-4-306. Language was added to subsections  
24 (2) and (3) to conform them to Article VI, section 10, of  
25 the Montana Constitution, as amended in 1982. That amendment  
26 provided for a veto override by poll of the Legislature if a  
27 bill is vetoed after the end of the session.

28 Section 8. 5-7-203. The exception at the beginning of  
29 the section is deleted because 5-7-304 was repealed in 1980.  
30 That section read: "5-7-304. Exemption from license and  
31 registration requirement. Any person who limits his  
32 lobbying solely to appearances before legislative committees  
33 of either house and registers his appearance on the records  
34 of such committees in writing shall not be required to be  
35 licensed as a lobbyist, pay a license fee, or register with  
36 the secretary of state."

37 Section 9. 13-10-505. The added words simply clarify  
38 that the exception relates to filling of vacancies and not  
39 to nominations in nonpartisan elections.

40 Section 10. 13-27-312. The brackets at the beginning  
41 and end of subsection (3) are deleted. In preparation of  
42 the composite of Chapter 336 and Chapter 488, Laws of 1983,  
43 amendments to this section, the Code Commissioner set out in  
44 a separate bracketed subsection (3), the amendatory language  
45 in Chapter 336 pertaining to the preparation by the Attorney

1 General of a fiscal statement, although the language had  
 2 been inserted in former subsection (2), which was entirely  
 3 deleted by Chapter 488. The language was included because  
 4 it appeared to reflect a separable concept not in conflict  
 5 with Chapter 488 and the apparent intent was to incorporate  
 6 the concept into the law. By deleting the brackets, this  
 7 bill legislates the bracketed language.

8 Sections 11 and 12. 25-7-204 and 25-7-206. A 1983  
 9 amendment to 25-7-202 provided that the judge or the jury  
 10 commissioner draw the ballots. Formerly, only the judge drew  
 11 them. Sections 25-7-204 and 25-7-206 were not, but should  
 12 have been, correspondingly amended. This bill makes those  
 13 amendments.

14 Section 13. 25-35-602. The 40-day time period in the  
 15 next-to-last paragraph of this form is changed to 10 days to  
 16 be consistent with 25-35-605(1), which fixes the time  
 17 period.

18 Section 14. 27-27-101. This amendment is made because  
 19 *St. v. Montana Livestock Sanitary Board*, 135 M 202, 339 P2d  
 20 487 (1959), held this section unconstitutional under Montana  
 21 Constitution, Article VII, sections 2 and 4, to the extent  
 22 that it authorizes a Writ of Prohibition in regard to  
 23 ministerial functions.

24 Section 15. 45-2-101. In subsection (69)(b), "\$150" is  
 25 changed to "\$300". Subsection (69) defines "value". Chapter  
 26 581, Laws of 1983, raised from \$150 to \$300 the "value" of  
 27 what is taken in theft and fraud offenses before the offense  
 28 becomes a felony. If "value" is over \$300, the offense is a  
 29 felony. If "value" is \$300 or less, the offense is a  
 30 misdemeanor. Chapter 581 should have raised "\$150" to "\$300"  
 31 in 45-2-101(69)(b) to conform to what Chapter 581 did.

32 Sections 16 through 18. 45-9-101 through  
 33 45-9-103. The reference in each section to "an opiate, as  
 34 defined in 50-32-101(18)" is incorrect. "Opiate" is defined  
 35 in subsection (19) of 50-32-101, not subsection (18). Prior  
 36 to 1983, "opiate" was defined in subsection (18), but the  
 37 1983 Legislature inserted a new subsection (14) in 50-32-101  
 38 and renumbered the following subsections. Thus, the  
 39 subsection defining "opiate" was renumbered from (18) to  
 40 (19). Inadvertently, the three references, in 45-9-101  
 41 through 45-9-103, to 50-32-101(18) were not changed to  
 42 50-32 101(19).

43 Sections 19 and 20. 45-9-111 and 45-9-116. One word  
 44 defined in 45-9-111 is also used in the text of that

1 section; therefore, this bill makes the definitions in  
2 45-9-111 apply to that section. Section 45-9-116 is amended  
3 for clarity and to be consistent with the amendment made in  
4 section 16. If operative provisions do not apply to the  
5 persons listed in 45-9-116(1), it was certainly intended  
6 that related definitions also do not apply.

7 Section 21. Repealer.  
8 2-7-101. These definitions were used only in 2-7-102,  
9 which was repealed in 1983. The section is thus obsolete  
10 and unnecessary.  
11 3-5-212. See explanation for section 6.

## 1 HOUSE BILL NO. 4

2 INTRODUCED BY MANUEL

3 BY REQUEST OF THE CODE COMMISSIONER

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS,  
7 ~~PUBLIC--RETIREMENT--SYSTEMS~~, AND CRIMES; AMENDING SECTIONS  
8 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104,  
9 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206,  
10 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103,  
11 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101  
12 AND 3-5-212, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 1-11-204, MCA, is amended to read:

16 "1-11-204. Duties of code commissioner. (1) Prior to  
17 January 1, 1979, the code commissioner shall recodify all  
18 the laws of a general and permanent nature appearing in the  
19 codes and session laws and prepare them for publication.

20 (2) Prior to January 1, 1979, the commissioner shall  
21 prepare and submit to the legislature a report which is  
22 certified by the commissioner as the "Official Report of the  
23 Montana Code Commissioner", together with a bill enacting  
24 the Montana Code Annotated. A copy of the report and bill  
25 shall be deposited with the secretary of state. The report

1 shall explain and indicate, in tabular or other form, all  
2 changes made during recodification, other than punctuation  
3 and capitalization, to clearly indicate the character of  
4 each change.

5 (3) Prior to the November 1 immediately preceding each  
6 regular legislative session, the commissioner shall prepare  
7 and submit to the legislative council a report, in tabular  
8 or other form, indicating the commissioner's recommendations  
9 for legislation which will:

10 (a) eliminate archaic or outdated laws;

11 (b) eliminate obsolete or redundant wording of laws;

12 (c) eliminate any duplications in law and any laws  
13 repealed directly or by implication;

14 (d) clarify existing laws;

15 (e) correct errors and inconsistencies within the  
16 laws.

17 (4) The commissioner shall cause to be prepared for  
18 publication with the Montana Code Annotated the following  
19 material:

20 (a) Statutory history of each code section;

21 (b) Annotations of state and federal court decisions  
22 relating to the subject matter of the code;23 (c) Such editorial notes, cross-references, and other  
24 matter as the commissioner considers desirable or  
25 advantageous;

1 (d) The Declaration of Independence;

2 (e) The Constitution of the United States of America  
3 and amendments thereto;

4 (f) Acts of congress relating to the authentication of  
5 laws and records;

6 (g) The Organic Act of the Territory of Montana;

7 (h) The Enabling Act;

8 (i) The 1972 Constitution of the State of Montana and  
9 any amendments thereto;

10 (j) The Ordinances relating to federal relations and  
11 elections;

12 (k) Rules of civil, criminal, and appellate procedure  
13 and such other rules of procedure as the Montana supreme  
14 court may adopt; and

15 (l) A complete subject index, a popular name index,  
16 and comparative disposition tables or cross-reference  
17 indexes relating sections of the Montana Code Annotated to  
18 prior compilations and session laws.

19 (5) After publication of the Montana Code Annotated,  
20 the code commissioner shall:

21 (a) annotate, arrange, and prepare for publication all  
22 laws of a general and permanent nature enacted at each  
23 legislative session and assign catchlines and code section  
24 numbers to each new section;

25 (b) continue to codify, index, arrange, rearrange, and

1 generally update the Montana Code Annotated to maintain an  
2 orderly and logical arrangement of the laws in order to  
3 avoid future need for bulk revision;

4 (c) prepare and submit-to-each-legislature publish a  
5 report ~~certified--as--the~~ entitled "Official Report of the  
6 Montana Code Commissioner--(year)" which indicates, in  
7 tabular or other form, all changes made during the  
8 continuous recodification, other than punctuation, spelling,  
9 and capitalization, to clearly indicate the character of  
10 each change made since the last such report.

11 (6) From time to time the commissioner shall confer  
12 with members of the judiciary and the state bar relative to  
13 recodification procedures."

14 Section 2. Section 2-4-611, MCA, is amended to read:  
15 "2-4-611. Hearing examiners -- legal services unit --  
16 conduct of hearings -- disqualification of hearing examiners  
17 and agency members. (1) An agency may appoint hearing  
18 examiners for the conduct of hearings in contested cases. A  
19 hearing examiner must be assigned with due regard to the  
20 expertise required for the particular matter.

21 (2) An agency may elect to request a hearing examiner  
22 from the an agency legal assistance program, if any, within  
23 the attorney general's office or from another agency. If the  
24 request is honored, the time, date, and place of the hearing  
25 must be set by the agency, with the concurrence of the legal

1 assistance program or the other agency.

2 (3) Agency members or hearing examiners presiding over  
3 hearings may administer oaths or affirmations; issue  
4 subpoenas pursuant to 2-4-104; provide for the taking of  
5 testimony by deposition; regulate the course of hearings,  
6 including setting the time and place for continued hearings  
7 and fixing the time for filing of briefs or other documents;  
8 and direct parties to appear and confer to consider  
9 simplification of the issues by consent of the parties.

10 (4) On the filing by a party, hearing examiner, or  
11 agency member in good faith of a timely and sufficient  
12 affidavit of personal bias, lack of independence,  
13 disqualification by law, or other disqualification of a  
14 hearing examiner or agency member, the agency shall  
15 determine the matter as a part of the record and decision in  
16 the case. The agency may disqualify the hearing examiner or  
17 agency member and request another hearing examiner pursuant  
18 to subsection (2) or assign another hearing examiner from  
19 within the agency. The affidavit must state the facts and  
20 the reasons for the belief that the hearing examiner should  
21 be disqualified and must be filed not less than 10 days  
22 before the original date set for the hearing."

23 Section 3. Section 2-7-517, MCA, is amended to read:  
24 "2-7-517. Penalty. When a governmental entity has  
25 failed to make payment as required by {2-7-516} within 60

1 days of receiving a bill for an audit, the department may  
2 issue an order stopping payment of any state financial aid  
3 to the governmental entity. Upon payment for the audit, all  
4 financial aid that was withheld because of failure to make  
5 payment shall be released and paid to the governmental  
6 entity."

7 Section 4. Section 2-15-2007, MCA, is amended to read:  
8 "2-15-2007. Highway traffic safety program. The  
9 {highway traffic safety} program {provided for in 61-2-102}  
10 is attached {to the department of justice} for  
11 administrative purposes only as prescribed in 2-15-121.  
12 However, the program may hire its own personnel, and  
13 2-15-121(2)(d) does not apply."

14 Section 5. Section 3-1-607, MCA, is amended to read:  
15 "3-1-607. Supreme court justice or district court  
16 judge not-to-run-for candidacy for nonjudicial office --  
17 resignation required. (1) If a person occupying the office  
18 of chief justice or associate justice of the supreme court  
19 or judge of a district court of the state of Montana becomes  
20 a candidate for election to any elective office under the  
21 laws of the state of Montana other than a judicial position,  
22 he shall immediately, and in any event at or before the time  
23 when he must file as a candidate for such office in any  
24 primary or special or general election, resign from his  
25 office of chief justice, associate justice, or district

1 judge.

2 (2) The resignation becomes effective immediately upon  
3 its delivery to the proper officer or superior.

4 (3) The resignation requirement applies except when  
5 the person is a bona fide candidate for reelection to the  
6 identical office then occupied by him or for another  
7 nonpartisan judicial office--the--term--of--which--does--not  
8 commence earlier than the end of the term of the office then  
9 occupied by him position."

10 Section 6. Section 3-2-104, MCA, is amended to read:

11 "3-2-104. Salaries -- expenses. (1) The salaries of  
12 justices of the supreme court are provided for in 2-16-405.

13 (2) ~~If any cause, motion, or other proceeding remains~~  
14 ~~pending and undecided for a period of 90 days after~~  
15 ~~submission for decision, the justice of the supreme court~~  
16 ~~who has been assigned to write the opinion, order, or~~  
17 ~~decision of the court shall submit an affidavit on or before~~  
18 ~~the 90th day to the chief justice setting forth the case~~  
19 ~~name, cause number, and the reason the matter has not been~~  
20 ~~decided. Copies of the affidavit must be furnished to all~~  
21 ~~parties to the matter pending. A cause, motion, or other~~  
22 ~~proceeding is considered submitted for decision when all~~  
23 ~~hearings have been held and final briefs have been submitted~~  
24 ~~by all parties to the matter pending. Upon the filing of the~~  
25 ~~affidavit, the justice shall have an additional 30 days to~~

1 ~~decide the matter which has been submitted. No cause,~~  
2 ~~motion, or other proceeding may remain undecided for more~~  
3 ~~than 120 days after submission for decision without the~~  
4 ~~approval of a majority of the other members of the supreme~~  
5 ~~court for good cause shown in an affidavit requesting~~  
6 ~~additional time. If a justice of the supreme court violates~~  
7 ~~the provisions of this section, any party to a matter~~  
8 ~~pending in violation of this section or, by a majority vote~~  
9 ~~of the other members of the supreme court may refer the matter~~  
10 ~~to the judicial standards commission. If the court, acting~~  
11 ~~upon the recommendation of the commission, determines the~~  
12 ~~justice is not in compliance with this section, it shall~~  
13 ~~order that the state auditor not issue a warrant for payment~~  
14 ~~of services for 1 month, which pay is forfeited by the~~  
15 ~~justice.~~

16 (3) (2) Actual and necessary travel expenses of the  
17 justices of the supreme court shall be the travel expenses,  
18 as defined and provided in 2-18-501 through 2-18-503,  
19 incurred in the performance of their official duties."

20 Section 7. Section 5-4-306, MCA, is amended to read:

21 "5-4-306. Return when legislature not in session. (1)  
22 If, on the day the governor desires to return a bill without  
23 his approval and with his objections thereto to the house in  
24 which it originated, that house has adjourned for the day  
25 (but not for the session), he may deliver the bill with his

1 message to the presiding officer, secretary, clerk, or any  
 2 member of such house. Such delivery is as effectual as  
 3 though returned in open session if the governor, on the  
 4 first day the house is again in session, by message,  
 5 notifies it of such delivery and of the time when and the  
 6 person to whom such delivery was made.

7 (2) If the legislature is not in session when the  
 8 governor vetoes a bill, he shall return the bill with his  
 9 reasons for the veto to the secretary of state. The  
 10 secretary of state shall immediately mail a copy of the bill  
 11 and the veto message to each member of the legislature. If  
 12 the bill was approved by two-thirds of the members of each  
 13 house present, the secretary of state shall poll the members  
 14 of the legislature, and if two-thirds or more of the members  
 15 of each house vote to override the veto, the bill shall  
 16 become law.

17 (3) The legislature may reconvene to reconsider any  
 18 bill so vetoed by the governor when the legislature is not  
 19 in session by using the statutory procedure provided for  
 20 convening in special session."

21 Section 8. Section 5-7-203, MCA, is amended to read:

22 "5-7-203. Principal -- name of lobbyist on docket.  
 23 ~~Except--as--provided--in--5-7-304, every~~ Every principal who  
 24 employs any lobbyist shall within 1 week after such  
 25 employment cause the name of said lobbyist to be entered

1 upon the docket. It shall also be the duty of the lobbyist  
 2 to enter his name upon the docket. Upon the termination of  
 3 such employment, such fact may be entered opposite the name  
 4 of the lobbyist either by the lobbyist or the principal."

5 Section 9. Section 13-10-505, MCA, is amended to read:

6 "13-10-505. Applicability. The provisions of 13-10-501  
 7 through 13-10-504 shall not be used to fill vacancies or to  
 8 nominate candidates in nonpartisan elections except for  
 9 nominations to fill a vacancy as provided in 13-25-205."

10 Section 10. Section 13-27-312, MCA, is amended to  
 11 read:

12 "13-27-312. Review of petition by attorney general --  
 13 preparation of statements -- fiscal note. (1) Upon receipt  
 14 of a petition from the office of the secretary of state  
 15 pursuant to 13-27-202, the attorney general shall examine  
 16 the petition as to form and, if the proposed ballot issue  
 17 has an effect on the revenues, expenditures, or the fiscal  
 18 liability of the state, shall order a fiscal note  
 19 incorporating an estimate of such effect, the substance of  
 20 which must substantially comply with the provisions of  
 21 5-4-205. The budget director, in cooperation with the agency  
 22 or agencies affected by the petition, is responsible for  
 23 preparing the fiscal note and shall return it within 6 days  
 24 unless the attorney general, for good cause shown, extends  
 25 the time for completing the fiscal note. If the petition

1 form is approved, the attorney general shall endeavor to  
 2 seek out parties on both sides of the issue and obtain their  
 3 advice. The attorney general may, if he deems it necessary,  
 4 appoint a five-member committee to recommend the statement  
 5 of purpose and the statement of the implications of the  
 6 measure. The committee shall consist of two persons  
 7 recommended by the person filing the petition, two persons  
 8 known to oppose the measure, and one representative of the  
 9 attorney general's office, who is the chairman. The  
 10 committee shall, within 14 days of appointment, meet and  
 11 recommend by a vote of a majority of the committee:

12 (a) a statement, not to exceed 100 words, explaining  
 13 the purpose of the measure; and

14 (b) statements, not to exceed 25 words each,  
 15 explaining the implications of a vote for and a vote against  
 16 the measure.

17 (2) The attorney general may accept, reject, or modify  
 18 the statements recommended by the committee. If the  
 19 committee is unable to recommend one or both statements, the  
 20 attorney general shall prepare the statements.

21 (3) The attorney general shall prepare a fiscal  
 22 statement of no more than 50 words if a fiscal note was  
 23 prepared for the proposed ballot issue, such statement to be  
 24 used on the petition and ballot if the measure is placed on  
 25 the ballot.

1 (4) The statement of purpose and the statements of  
 2 implication must express the true and impartial explanation  
 3 of the proposed ballot issue in plain, easily understood  
 4 language and may not be arguments or written so as to create  
 5 prejudice for or against the measure.

6 (5) The statement of purpose prepared pursuant to  
 7 subsection (1) or (2), unless altered by a court under  
 8 13-27-316, is the petition title for the measure circulated  
 9 by the petition and the ballot title if the measure is  
 10 placed on the ballot.

11 (6) The statements of implication shall be placed  
 12 beside the diagram provided for marking of the ballot in a  
 13 manner similar to the following example:

14  FOR extending the right to vote to persons 18 years  
 15 of age

16  AGAINST extending the right to vote to persons 18  
 17 years of age

18 (7) If the petition is rejected as to form, the  
 19 attorney general shall forward his comments to the secretary  
 20 of state within 10 days after receipt of the petition by the  
 21 attorney general. If the petition is approved as to form,  
 22 the attorney general shall forward the statement of purpose,  
 23 the statements of implication, and the fiscal statement, if  
 24 applicable, to the secretary of state within 21 days after  
 25 receipt of the petition by the attorney general."

1 Section 11. Section 25-7-204, MCA, is amended to read:  
 2 "25-7-204. Mode of drawing ballots. Before the first  
 3 ballot shall have been drawn, the box must be closed and  
 4 well shaken so as to thoroughly mix the ballots therein. The  
 5 district judge or the jury commissioner must draw at random  
 6 a ballot with the juror's name thereon. Upon stipulation of  
 7 counsel, the court may order the clerk to draw ballots."

8 Section 12. Section 25-7-206, MCA, is amended to read:  
 9 "25-7-206. Procedure when insufficient number attend.

10 (1) If a sufficient number of jurors duly drawn and notified  
 11 do not attend to form a jury, the judge or the jury  
 12 commissioner shall, pursuant to an order of the court to be  
 13 entered in the minutes, shall, in the presence of two  
 14 witnesses, draw a sufficient number of ballots from the box  
 15 to complete the jury. The sheriff shall notify the persons  
 16 thus drawn to attend immediately or at a time fixed by  
 17 court. If for any reason a sufficient number of jurors to  
 18 try the issue is not obtained from the persons notified  
 19 ~~under an order made as prescribed in this section~~, the court  
 20 may make ~~another order or successive orders~~ or order further  
 21 drawings until a sufficient number is obtained.

22 (2) Each person so notified must attend at the time  
 23 required by the notice and, unless excused by the court or  
 24 set aside, must serve as a juror upon the trial. For a  
 25 neglect or refusal to do so, he may be fined in the same

1 manner as any other trial juror regularly drawn and  
 2 notified. He is subject to the same exceptions and  
 3 challenges as any other trial juror."

4 Section 13. Section 25-35-602, MCA, is amended to  
 5 read:

6 "25-35-602. Form of complaint and order of  
 7 court/notice to defendant. The sworn complaint and order of  
 8 the court shall be made on a blank substantially in the  
 9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
 11 COURT OF ..... COUNTY, MONTANA  
 12 BEFORE ....., JUSTICE OF THE PEACE  
 13 .....  
 14 .....  
 15 Plaintiff,  
 16 vs. Complaint  
 17 ..... Case No. ....  
 18 .....  
 19 Defendant(s)  
 20 .....  
 21 Comes now the plaintiff, being first duly sworn, upon  
 22 oath, and complains and alleges that defendant is indebted  
 23 to plaintiff in the sum of \$....., for.....  
 24 .....  
 25 .....

1 which sum is now due, owing, and unpaid despite demands for  
2 the payment thereof, together with plaintiff's costs herein  
3 expended.

4 Dated this ..... day of ....., 19....  
5 .....  
6 Plaintiff  
7 .....  
8 Plaintiff's address

9 Subscribed and sworn to before me this ..... day of  
10 ....., 19....  
11 .....  
12 Justice of the peace  
13 By:.....  
14 Clerk, small claims  
15 division

16 ORDER OF COURT/

17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within  
20 and foregoing complaint at:

21 .....  
22 .....  
23 on ..... at ....  
24 Reset for ..... at ....  
25 Reset for ..... at ....

1 Reset for ..... at ....  
2 and to have with you, then and there, all books, papers, and  
3 witnesses needed by you to establish your defense to the  
4 claim; and you are further notified that in case you do not  
5 appear, judgment will be taken against you by default for  
6 the relief demanded in the complaint and for costs of this  
7 action, including costs of service of the complaint and  
8 order of the court/notice to defendant.

9 You are hereby further notified that, within ~~40~~ 10 days  
10 of service upon you of this complaint and order, you may  
11 remove this action from the small claims court to justice's  
12 court, and that your failure to remove shall constitute a  
13 waiver of your rights to trial by jury and to representation  
14 by counsel.

15 To the Sheriff, Constable, or Server of process of said  
16 county, greetings:

17 Make legal service and due return thereof on the  
18 defendant at .....  
19 Dated this .... day of ....., 19....

20 .....  
21 Justice of the peace  
22 By:.....  
23 Clerk, small claims  
24 division"

25 Section 14. Section 27-27-101, MCA, is amended to

1 read:

2 "27-27-101. Definition and function of writ of  
3 prohibition. The writ of prohibition is the counterpart of  
4 the writ of mandate. It arrests the proceedings of any  
5 tribunal, corporation, board, or person, whether exercising  
6 functions judicial or ministerial, functions when such  
7 proceedings are without or in excess of the jurisdiction of  
8 such tribunal, corporation, board, or person."

9 Section 15. Section 45-2-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

17 (8) "Computer" means an electronic device that  
18 performs logical, arithmetic, and memory functions by the  
19 manipulation of electronic or magnetic impulses and includes  
20 all input, output, processing, storage, software, or  
21 communication facilities that are connected or related to  
22 such a device in a system or network.

23 (9) "Computer network" means the interconnection of  
24 communication systems between computers or computers and  
25 remote terminals.

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

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

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

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

14 (14) "Conduct" means an act or series of acts and the  
 15 accompanying mental state.

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

21 (16) "Correctional institution" means the state prison,  
 22 county or city jail, or other institution for the  
 23 incarceration or custody of persons under sentence for  
 24 offenses or awaiting trial or sentence for offenses.

25 (17) "Deception" means knowingly to:

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

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

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

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

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

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

20 (19) "Deprive" means to withhold property of another:

21 (a) permanently;

22 (b) for such a period as to appropriate a portion of  
 23 its value;

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

1 (d) to dispose of the property and use or deal with  
 2 the property so as to make it unlikely that the owner will  
 3 recover it.

4 (20) "Deviate sexual relations" means sexual contact or  
 5 sexual intercourse between two persons of the same sex or  
 6 any form of sexual intercourse with an animal.

7 (21) "Felony" means an offense in which the sentence  
 8 imposed upon conviction is death or imprisonment in the  
 9 state prison for any term exceeding 1 year.

10 (22) "Forcible felony" means any felony which involves  
 11 the use or threat of physical force or violence against any  
 12 individual.

13 (23) A "frisk" is a search by an external patting of a  
 14 person's clothing.

15 (24) "Government" includes any branch, subdivision, or  
 16 agency of the government of the state or any locality within  
 17 it.

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

22 (26) A "house of prostitution" means any place where  
 23 prostitution or promotion of prostitution is regularly  
 24 carried on by one or more persons under the control,  
 25 management, or supervision of another.

1 (27) "Human being" means a person who has been born and  
 2 is alive.

3 (28) An "illegal article" is an article or thing which  
 4 is prohibited by statute, rule, or order from being in the  
 5 possession of a person subject to official detention.

6 (29) "Inmate" means a person who engages in  
 7 prostitution in or through the agency of a house of  
 8 prostitution.

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

17 (31) An "involuntary act" means any act which is:

- 18 (a) a reflex or convulsion;
- 19 (b) a bodily movement during unconsciousness or sleep;
- 20 (c) conduct during hypnosis or resulting from hypnotic  
 21 suggestion; or

22 (d) a bodily movement that otherwise is not a product  
 23 of the effort or determination of the actor, either  
 24 conscious or habitual.

25 (32) "Juror" means any person who is a member of any

1 jury, including a grand jury, impaneled by any court in this  
 2 state in any action or proceeding or by any officer  
 3 authorized by law to impanel a jury in any action or  
 4 proceeding. The term "juror" also includes a person who has  
 5 been drawn or summoned to attend as a prospective juror.

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

18 (34) "Mentally defective" means that a person suffers  
 19 from a mental disease or defect which renders him incapable  
 20 of appreciating the nature of his conduct.

21 (35) "Mentally incapacitated" means that a person is  
 22 rendered temporarily incapable of appreciating or  
 23 controlling his conduct as a result of the influence of an  
 24 intoxicating substance.

25 (36) "Misdemeanor" means an offense in which the

1 sentence imposed upon conviction is imprisonment in the  
 2 county jail for any term or a fine, or both, or the sentence  
 3 imposed is imprisonment in the state prison for any term of  
 4 1 year or less.

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

18 (38) "Obtain" means:

19 (a) in relation to property, to bring about a transfer  
 20 of interest or possession, whether to the offender or to  
 21 another; and

22 (b) in relation to labor or services, to secure the  
 23 performance thereof.

24 (39) "Obtains or exerts control" includes but is not  
 25 limited to the taking, carrying away, or sale, conveyance,

1 or transfer of title to, interest in, or possession of  
 2 property.

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

9 (41) "Offender" means a person who has been or is  
 10 liable to be arrested, charged, convicted, or punished for a  
 11 public offense.

12 (42) "Offense" means a crime for which a sentence of  
 13 death or of imprisonment or a fine is authorized. Offenses  
 14 are classified as felonies or misdemeanors.

15 (43) "Official detention" means imprisonment resulting  
 16 from a conviction for an offense, confinement for an  
 17 offense, confinement of a person charged with an offense,  
 18 detention by a peace officer pursuant to arrest, detention  
 19 for extradition or deportation, or any lawful detention for  
 20 the purpose of the protection of the welfare of the person  
 21 detained or for the protection of society. Official  
 22 detention does not include supervision of probation or  
 23 parole, constraint incidental to release on bail, or an  
 24 unlawful arrest unless the person arrested employed physical  
 25 force, a threat of physical force, or a weapon to escape.

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

8 (45) "Other state" means any state or territory of the  
 9 United States, the District of Columbia, and the  
 10 Commonwealth of Puerto Rico.

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

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

21 (48) "Peace officer" means any person who by virtue of  
 22 his office or public employment is vested by law with a duty  
 23 to maintain public order or to make arrests for offenses  
 24 while acting within the scope of his authority.

25 (49) "Pecuniary benefit" is benefit in the form of

1 money, property, commercial interests, or anything else the  
2 primary significance of which is economic gain.

3 (50) "Person" includes an individual, business  
4 association, partnership, corporation, government, or other  
5 legal entity and an individual acting or purporting to act  
6 for or on behalf of any government or subdivision thereof.

7 (51) "Physically helpless" means that a person is  
8 unconscious or is otherwise physically unable to communicate  
9 unwillingness to act.

10 (52) "Possession" is the knowing control of anything  
11 for a sufficient time to be able to terminate control.

12 (53) "Premises" includes any type of structure or  
13 building and any real property.

14 (54) "Property" means any tangible or intangible thing  
15 of value. Property includes but is not limited to:

16 (a) real estate;

17 (b) money;

18 (c) commercial instruments;

19 (d) admission or transportation tickets;

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

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

25 (g) electricity, gas, and water;

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

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

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

14 (k) electronic impulses, electronically processed or  
15 produced data or information, commercial instruments,  
16 computer software or computer programs, in either machine or  
17 human readable form, computer services, any other tangible  
18 or intangible item of value relating to a computer, computer  
19 system, or computer network, and any copies thereof.

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

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

1 or any substantial group thereof has access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

18 (iii) The value of electronic impulses, electronically  
19 produced data or information, computer software or programs,  
20 or any other tangible or intangible item relating to a  
21 computer, computer system, or computer network shall be  
22 considered to be the amount of economic loss that the owner  
23 of the item might reasonably suffer by virtue of the loss of  
24 the item. The determination of the amount of such economic  
25 loss includes but is not limited to consideration of the

1 value of the owner's right to exclusive use or disposition  
2 of the item.

3 (b) When it cannot be determined if the value of the  
4 property is more or less than ~~\$150~~ \$300 by the standards set  
5 forth in subsection (69)(a) above, its value shall be  
6 considered to be an amount less than ~~\$150~~ \$300.

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

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

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

22 Section 16. Section 45-9-101, MCA, is amended to read:

23 "45-9-101. Criminal sale of dangerous drugs. (1) A  
24 person commits the offense of criminal sale of dangerous  
25 drugs if he sells, barter, exchanges, gives away, or offers

1 to sell, barter, exchange, or give away or manufactures,  
2 prepares, cultivates, compounds, or processes any dangerous  
3 drug, as defined in 50-32-101.

4 (2) A person convicted of criminal sale of an opiate,  
5 as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the  
6 state prison for a term of not less than 2 years or more  
7 than life and may be fined not more than \$50,000, except as  
8 provided in 46-18-222.

9 (3) A person convicted of criminal sale of a dangerous  
10 drug included in Schedule I or Schedule II pursuant to  
11 50-32-222 or 50-32-224, except marijuana or  
12 tetrahydrocannabinols, who has a prior conviction for  
13 criminal sale of such a drug shall be imprisoned in the  
14 state prison for a term of not less than 10 years or more  
15 than life and may be fined not more than \$50,000, except as  
16 provided in 46-18-222. Upon a third or subsequent conviction  
17 for criminal sale of such a drug, he shall be imprisoned in  
18 the state prison for a term of not less than 20 years or  
19 more than life and may be fined not more than \$50,000,  
20 except as provided in 46-18-222. Whenever a conviction under  
21 this subsection is for criminal sale of such a drug to a  
22 minor, the sentence shall include the restriction that the  
23 defendant be ineligible for parole and participation in the  
24 supervised release program while serving his term.

25 (4) A person convicted of criminal sale of dangerous

1 drugs not otherwise provided for in subsection (2) or (3)  
 2 shall be imprisoned in the state prison for a term of not  
 3 less than 1 year or more than life or be fined an amount of  
 4 not more than \$50,000, or both.

5 (5) Practitioners and agents under their supervision  
 6 acting in the course of a professional practice, as defined  
 7 by 50-32-101, are exempt from this section."

8 Section 17. Section 45-9-102, MCA, is amended to read:

9 "45-9-102. Criminal possession of dangerous drugs. (1)  
 10 A person commits the offense of criminal possession of  
 11 dangerous drugs if he possesses any dangerous drug, as  
 12 defined in 50-32-101.

13 (2) Any person convicted of criminal possession of  
 14 marijuana or its derivatives in an amount the aggregate  
 15 weight of which does not exceed 60 grams of marijuana or 1  
 16 gram of hashish is, for the first offense, guilty of a  
 17 misdemeanor and shall be punished by a fine of not less than  
 18 \$100 or more than \$500 and by imprisonment in the county  
 19 jail for not more than 6 months. The minimum fine must be  
 20 imposed as a condition of a suspended or deferred sentence.  
 21 A person convicted of a second or subsequent offense under  
 22 this subsection is punishable by a fine not to exceed \$1,000  
 23 or imprisonment in the county jail for a term not to exceed  
 24 1 year or in the state prison for a term not to exceed 3  
 25 years or both such fine and imprisonment.

1 (3) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned  
 3 in the state prison for a term of not less than 2 years or  
 4 more than 5 years and may be fined not more than \$50,000,  
 5 except as provided in 46-18-222.

6 (4) A person convicted of criminal possession of  
 7 dangerous drugs not otherwise provided for in subsection (2)  
 8 or (3) shall be imprisoned in the state prison for a term  
 9 not to exceed 5 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (5) A person of the age of 21 years or under convicted  
 12 of a first violation under this section shall be presumed to  
 13 be entitled to a deferred imposition of sentence of  
 14 imprisonment.

15 (6) Ultimate users and practitioners and agents under  
 16 their supervision acting in the course of a professional  
 17 practice, as defined by 50-32-101, are exempt from this  
 18 section."

19 Section 18. Section 45-9-103, MCA, is amended to read:

20 "45-9-103. Criminal possession with intent to sell.  
 21 (1) A person commits the offense of criminal possession with  
 22 intent to sell if he possesses with intent to sell any  
 23 dangerous drug as defined in 50-32-101. No person commits  
 24 the offense of criminal possession with intent to sell  
 25 marijuana unless he possesses 1 kilogram or more.

1 (2) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell  
 3 shall be imprisoned in the state prison for a term of not  
 4 less than 2 years or more than 20 years and may be fined not  
 5 more than \$50,000, except as provided in 46-18-222.

6 (3) A person convicted of criminal possession with  
 7 intent to sell not otherwise provided for in subsection (2)  
 8 shall be imprisoned in the state prison for a term of not  
 9 more than 20 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (4) Practitioners and agents under their supervision  
 12 acting in the course of a professional practice as defined  
 13 by 50-32-101 are exempt from this section."

14 Section 19. Section 45-9-111, MCA, is amended to read:  
 15 "45-9-111. Imitation dangerous drugs -- definitions.  
 16 As used in 45-9-~~112~~ 45-9-111 through 45-9-116 and 45-9-202,  
 17 the following definitions apply:

18 (1) "Dangerous drug" has the meaning given to that  
 19 term in 50-32-101.

20 (2) "Imitation dangerous drug" means a substance that  
 21 is not a dangerous drug but that is expressly or impliedly  
 22 represented to be a dangerous drug or to simulate the effect  
 23 of a dangerous drug and the appearance of which, including  
 24 the color, shape, size, and markings, would lead a  
 25 reasonable person to believe that the substance is a

1 dangerous drug.

2 (3) "Person" includes any individual, business  
 3 association, partnership, or corporation."

4 Section 20. Section 45-9-116, MCA, is amended to read:  
 5 "45-9-116. Imitation dangerous drugs -- exemptions --  
 6 rules. (1) Sections 45-9-~~112~~ 45-9-111 through 45-9-115 do  
 7 not apply to:

8 (a) a person authorized by rules adopted by the board  
 9 of pharmacy to possess with purpose to sell or sell  
 10 imitation dangerous drugs;

11 (b) law enforcement personnel selling or possessing  
 12 with purpose to sell imitation dangerous drugs while acting  
 13 within the scope of their employment; and

14 (c) a person registered under the provisions of Title  
 15 50, chapter 32, part 3, who sells, or possesses with purpose  
 16 to sell an imitation dangerous drug for use as a placebo, by  
 17 that person or any other person so registered, in the course  
 18 of professional practice or research.

19 (2) The board of pharmacy shall adopt, amend, or  
 20 repeal rules in accordance with the Montana Administrative  
 21 Procedure Act to authorize the possession with purpose to  
 22 sell or sale of imitation dangerous drugs whenever it  
 23 determines that there is a legitimate need and that the  
 24 drugs will be used for a lawful purpose."

25 NEW SECTION. Section 21. Repealer. Sections 2-7-101

HB 0004/02

1 and 3-5-212, MCA, are repealed.

-End-

1        HOUSE        BILL NO.        4

2        AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO  
3        GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS,  
4        AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517,  
5        2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505,  
6        13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101,  
7        45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING  
8        SECTIONS 2-7-101 AND 3-5-212, MCA.

9                Section 1. 1-11-204. The provision that the Code  
10        Commissioner must submit a certified report to the  
11        Legislature is an unnecessary formality. The report is  
12        published in the first volume of the annotations to the  
13        Montana Code Annotated and is accessible to anyone. The  
14        amendment would make no change in the required contents of  
15        the report.

16                Section 2. 2-4-611. The two references in subsection  
17        (2) to "the legal assistance program" were inserted in 1979  
18        in anticipation of the 1979 Legislature's passage of a  
19        program by that name. The bill was vetoed. A generic name  
20        change in subsection (2) is made to avoid any construction  
21        of the subsection as referring to or by implication  
22        mandating a specific program.

23                Section 3. 2-7-517. The bill enacting this section  
24        incorrectly referred to "2-15-516". The correct reference,  
25        "2-7-516", was substituted during codification of the act to  
26        the Montana Code Annotated, with brackets to indicate the  
27        substitution. This bill deletes the brackets and legislates  
28        2-7-516 as the correct section reference.

29                Section 4. 2-15-2007. A compiler's comment under this  
30        section of the Montana Code Annotated states:  
31        "Commissioner Correction: This section was passed as  
32        subsection (2) of section 8, Ch. 274, L. 1981, and was added  
33        as an amendment. This subsection was substantive law, but  
34        the accompanying subsections are not. In codifying this  
35        section the code commissioner added the bracketed material  
36        to reflect the context in which the subsection was passed."  
37        This bill deletes the brackets, thus legislating the  
38        bracketed language.

39                Section 5. 3-1-607. This section is amended to delete  
40        the prohibition on a judge running for a judicial office the  
41        term of which commences earlier than his existing term of  
42        office. The prohibition was declared unconstitutional in a  
43        Montana Supreme Court opinion. The case note for that

1 opinion, contained in the annotations to the Montana Code  
2 Annotated, reads:

3 "Article VII, sec. 10, Mont. Const., providing that one  
4 holding a judicial position forfeits that position by filing  
5 for an elective public office other than a judicial  
6 position, requires a Judge to forfeit his judicial office if  
7 he files for either a legislative or executive office. While  
8 it does not affirmatively declare that a Judge does not  
9 forfeit his judicial office by filing for another judicial  
10 office, that is its intent as shown by the minutes of the  
11 Constitutional Convention and that is what it means.  
12 Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10,  
13 Mont. Const., authorizes and are therefore unconstitutional  
14 as being in direct conflict with Art. VII, sec. 10, Mont.  
15 Const. The Comm. for an Effective Judiciary v. St., M,  
16 679 P2d 1223, 41 St. Rep. 581 (1984)."

17 Section 6. 3-2-104. The deleted material (as well as  
18 section 3-5-212, MCA, containing similar language) was found  
19 unconstitutional in Coate v. Omholt, M, 662 P2d 591, 40  
20 St. Rep. 586 (1983), as violating the separation of powers  
21 doctrine, and the impairment of contract and diminution of  
22 salaries provisions of the Montana Constitution.

23 Section 7. 5-4-306. Language was added to subsections  
24 (2) and (3) to conform them to Article VI, section 10, of  
25 the Montana Constitution, as amended in 1982. That amendment  
26 provided for a veto override by poll of the Legislature if a  
27 bill is vetoed after the end of the session.

28 Section 8. 5-7-203. The exception at the beginning of  
29 the section is deleted because 5-7-304 was repealed in 1980.  
30 That section read: "5-7-304. Exemption from license and  
31 registration requirement. Any person who limits his  
32 lobbying solely to appearances before legislative committees  
33 of either house and registers his appearance on the records  
34 of such committees in writing shall not be required to be  
35 licensed as a lobbyist, pay a license fee, or register with  
36 the secretary of state."

37 Section 9. 13-10-505. The added words simply clarify  
38 that the exception relates to filling of vacancies and not  
39 to nominations in nonpartisan elections.

40 Section 10. 13-27-312. The brackets at the beginning  
41 and end of subsection (3) are deleted. In preparation of  
42 the composite of Chapter 336 and Chapter 488, Laws of 1983,  
43 amendments to this section, the Code Commissioner set out in  
44 a separate bracketed subsection (3), the amendatory language  
45 in Chapter 336 pertaining to the preparation by the Attorney

1 General of a fiscal statement, although the language had  
 2 been inserted in former subsection (2), which was entirely  
 3 deleted by Chapter 488. The language was included because  
 4 it appeared to reflect a separable concept not in conflict  
 5 with Chapter 488 and the apparent intent was to incorporate  
 6 the concept into the law. By deleting the brackets, this  
 7 bill legislates the bracketed language.

8 Sections 11 and 12. 25-7-204 and 25-7-206. A 1983  
 9 amendment to 25-7-202 provided that the judge or the jury  
 10 commissioner draw the ballots. Formerly, only the judge drew  
 11 them. Sections 25-7-204 and 25-7-206 were not, but should  
 12 have been, correspondingly amended. This bill makes those  
 13 amendments.

14 Section 13. 25-35-602. The 40-day time period in the  
 15 next-to-last paragraph of this form is changed to 10 days to  
 16 be consistent with 25-35-605(1), which fixes the time  
 17 period.

18 Section 14. 27-27-101. This amendment is made because  
 19 St. v. Montana Livestock Sanitary Board, 135 M 202, 339 P2d  
 20 487 (1959), held this section unconstitutional under Montana  
 21 Constitution, Article VII, sections 2 and 4, to the extent  
 22 that it authorizes a Writ of Prohibition in regard to  
 23 ministerial functions.

24 Section 15. 45-2-101. In subsection (69)(b), "\$150" is  
 25 changed to "\$300". Subsection (69) defines "value". Chapter  
 26 581, Laws of 1983, raised from \$150 to \$300 the "value" of  
 27 what is taken in theft and fraud offenses before the offense  
 28 becomes a felony. If "value" is over \$300, the offense is a  
 29 felony. If "value" is \$300 or less, the offense is a  
 30 misdemeanor. Chapter 581 should have raised "\$150" to "\$300"  
 31 in 45-2-101(69)(b) to conform to what Chapter 581 did.

32 Sections 16 through 18. 45-9-101 through  
 33 45-9-103. The reference in each section to "an opiate, as  
 34 defined in 50-32-101(18)" is incorrect. "Opiate" is defined  
 35 in subsection (19) of 50-32-101, not subsection (18). Prior  
 36 to 1983, "opiate" was defined in subsection (18), but the  
 37 1983 Legislature inserted a new subsection (14) in 50-32-101  
 38 and renumbered the following subsections. Thus, the  
 39 subsection defining "opiate" was renumbered from (18) to  
 40 (19). Inadvertently, the three references, in 45-9-101  
 41 through 45-9-103, to 50-32-101(18) were not changed to  
 42 50-32-101(19).

43 Sections 19 and 20. 45-9-111 and 45-9-116. One word  
 44 defined in 45-9-111 is also used in the text of that

1 section; therefore, this bill makes the definitions in  
2 45-9-111 apply to that section. Section 45-9-116 is amended  
3 for clarity and to be consistent with the amendment made in  
4 section 16. If operative provisions do not apply to the  
5 persons listed in 45-9-116(1), it was certainly intended  
6 that related definitions also do not apply.

7           Section 21. Repealer.  
8           2-7-101. These definitions were used only in 2-7-102,  
9 which was repealed in 1983. The section is thus obsolete  
10 and unnecessary.  
11           3-5-212. See explanation for section 6.

1                   HOUSE BILL NO. 4  
 2                   INTRODUCED BY MANUEL  
 3                   BY REQUEST OF THE CODE COMMISSIONER  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS,  
 7 PUBLIC--RETIREMENT--SYSTEMS, AND CRIMES; AMENDING SECTIONS  
 8 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104,  
 9 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206,  
 10 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103,  
 11 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101  
 12 AND 3-5-212, MCA."  
 13

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

15       Section 1. Section 1-11-204, MCA, is amended to read:  
 16       "1-11-204. Duties of code commissioner. (1) Prior to  
 17 January 1, 1979, the code commissioner shall recodify all  
 18 the laws of a general and permanent nature appearing in the  
 19 codes and session laws and prepare them for publication.

20       (2) Prior to January 1, 1979, the commissioner shall  
 21 prepare and submit to the legislature a report which is  
 22 certified by the commissioner as the "Official Report of the  
 23 Montana Code Commissioner", together with a bill enacting  
 24 the Montana Code Annotated. A copy of the report and bill  
 25 shall be deposited with the secretary of state. The report

1 shall explain and indicate, in tabular or other form, all  
 2 changes made during recodification, other than punctuation  
 3 and capitalization, to clearly indicate the character of  
 4 each change.

5       (3) Prior to the November 1 immediately preceding each  
 6 regular legislative session, the commissioner shall prepare  
 7 and submit to the legislative council a report, in tabular  
 8 or other form, indicating the commissioner's recommendations  
 9 for legislation which will:

- 10       (a) eliminate archaic or outdated laws;
- 11       (b) eliminate obsolete or redundant wording of laws;
- 12       (c) eliminate any duplications in law and any laws  
 13 repealed directly or by implication;
- 14       (d) clarify existing laws;
- 15       (e) correct errors and inconsistencies within the  
 16 laws.

17       (4) The commissioner shall cause to be prepared for  
 18 publication with the Montana Code Annotated the following  
 19 material:

- 20       (a) Statutory history of each code section;
- 21       (b) Annotations of state and federal court decisions  
 22 relating to the subject matter of the code;
- 23       (c) Such editorial notes, cross-references, and other  
 24 matter as the commissioner considers desirable or  
 25 advantageous;

1 (d) The Declaration of Independence;

2 (e) The Constitution of the United States of America  
3 and amendments thereto;

4 (f) Acts of congress relating to the authentication of  
5 laws and records;

6 (g) The Organic Act of the Territory of Montana;

7 (h) The Enabling Act;

8 (i) The 1972 Constitution of the State of Montana and  
9 any amendments thereto;

10 (j) The Ordinances relating to federal relations and  
11 elections;

12 (k) Rules of civil, criminal, and appellate procedure  
13 and such other rules of procedure as the Montana supreme  
14 court may adopt; and

15 (l) A complete subject index, a popular name index,  
16 and comparative disposition tables or cross-reference  
17 indexes relating sections of the Montana Code Annotated to  
18 prior compilations and session laws.

19 (5) After publication of the Montana Code Annotated,  
20 the code commissioner shall:

21 (a) annotate, arrange, and prepare for publication all  
22 laws of a general and permanent nature enacted at each  
23 legislative session and assign catchlines and code section  
24 numbers to each new section;

25 (b) continue to codify, index, arrange, rearrange, and

1 generally update the Montana Code Annotated to maintain an  
2 orderly and logical arrangement of the laws in order to  
3 avoid future need for bulk revision;

4 (c) prepare and ~~submit to each legislature~~ publish a  
5 report ~~certified--as--the~~ entitled "Official Report of the  
6 Montana Code Commissioner--(year)" which indicates, in  
7 tabular or other form, all changes made during the  
8 continuous recodification, other than punctuation, spelling,  
9 and capitalization, to clearly indicate the character of  
10 each change made since the last such report.

11 (6) From time to time the commissioner shall confer  
12 with members of the judiciary and the state bar relative to  
13 recodification procedures."

14 Section 2. Section 2-4-611, MCA, is amended to read:  
15 "2-4-611. Hearing examiners -- legal services unit --  
16 conduct of hearings -- disqualification of hearing examiners  
17 and agency members. (1) An agency may appoint hearing  
18 examiners for the conduct of hearings in contested cases. A  
19 hearing examiner must be assigned with due regard to the  
20 expertise required for the particular matter.

21 (2) An agency may elect to request a hearing examiner  
22 from the an agency legal assistance program, if any, within  
23 the attorney general's office or from another agency. If the  
24 request is honored, the time, date, and place of the hearing  
25 must be set by the agency, with the concurrence of the legal

1 assistance program or the other agency.

2 (3) Agency members or hearing examiners presiding over  
 3 hearings may administer oaths or affirmations; issue  
 4 subpoenas pursuant to 2-4-104; provide for the taking of  
 5 testimony by deposition; regulate the course of hearings,  
 6 including setting the time and place for continued hearings  
 7 and fixing the time for filing of briefs or other documents;  
 8 and direct parties to appear and confer to consider  
 9 simplification of the issues by consent of the parties.

10 (4) On the filing by a party, hearing examiner, or  
 11 agency member in good faith of a timely and sufficient  
 12 affidavit of personal bias, lack of independence,  
 13 disqualification by law, or other disqualification of a  
 14 hearing examiner or agency member, the agency shall  
 15 determine the matter as a part of the record and decision in  
 16 the case. The agency may disqualify the hearing examiner or  
 17 agency member and request another hearing examiner pursuant  
 18 to subsection (2) or assign another hearing examiner from  
 19 within the agency. The affidavit must state the facts and  
 20 the reasons for the belief that the hearing examiner should  
 21 be disqualified and must be filed not less than 10 days  
 22 before the original date set for the hearing."

23 Section 3. Section 2-7-517, MCA, is amended to read:  
 24 "2-7-517. Penalty. When a governmental entity has  
 25 failed to make payment as required by {2-7-516} within 60

1 days of receiving a bill for an audit, the department may  
 2 issue an order stopping payment of any state financial aid  
 3 to the governmental entity. Upon payment for the audit, all  
 4 financial aid that was withheld because of failure to make  
 5 payment shall be released and paid to the governmental  
 6 entity."

7 Section 4. Section 2-15-2007, MCA, is amended to read:  
 8 "2-15-2007. Highway traffic safety program. The  
 9 {highway traffic safety} program {provided for in 61-2-102}  
 10 is attached {to the department of justice} for  
 11 administrative purposes only as prescribed in 2-15-121.  
 12 However, the program may hire its own personnel, and  
 13 2-15-121(2)(d) does not apply."

14 Section 5. Section 3-1-607, MCA, is amended to read:  
 15 "3-1-607. Supreme court justice or district court  
 16 judge ~~not-to-run-for~~ candidacy for nonjudicial office --  
 17 resignation required. (1) If a person occupying the office  
 18 of chief justice or associate justice of the supreme court  
 19 or judge of a district court of the state of Montana becomes  
 20 a candidate for election to any elective office under the  
 21 laws of the state of Montana other than a judicial position,  
 22 he shall immediately, and in any event at or before the time  
 23 when he must file as a candidate for such office in any  
 24 primary or special or general election, resign from his  
 25 office of chief justice, associate justice, or district

1 judge.

2 (2) The resignation becomes effective immediately upon  
3 its delivery to the proper officer or superior.

4 (3) The resignation requirement applies except when  
5 the person is a bona fide candidate for reelection to the  
6 identical office then occupied by him or for another  
7 nonpartisan judicial office--the--term--of--which--does--not  
8 commence earlier than the end of the term of the office then  
9 occupied by him position."

10 Section 6. Section 3-2-104, MCA, is amended to read:

11 "3-2-104. Salaries -- expenses. (1) The salaries of  
12 justices of the supreme court are provided for in 2-16-405.

13 ~~(2) If any cause, motion, or other proceeding remains~~  
14 ~~pending and undecided for a period of 90 days after~~  
15 ~~submission for decision, the justice of the supreme court~~  
16 ~~who has been assigned to write the opinion, order, or~~  
17 ~~decision of the court shall submit an affidavit on or before~~  
18 ~~the 90th day to the chief justice setting forth the case~~  
19 ~~name, cause number, and the reason the matter has not been~~  
20 ~~decided. Copies of the affidavit must be furnished to all~~  
21 ~~parties to the matter pending. A cause, motion, or other~~  
22 ~~proceeding is considered submitted for decision when all~~  
23 ~~hearings have been held and final briefs have been submitted~~  
24 ~~by all parties to the matter pending. Upon the filing of the~~  
25 ~~affidavit, the justice shall have an additional 30 days to~~

1 ~~decide the matter which has been submitted. No cause,~~  
2 ~~motion, or other proceeding may remain undecided for more~~  
3 ~~than 120 days after submission for decision without the~~  
4 ~~approval of a majority of the other members of the supreme~~  
5 ~~court for good cause shown in an affidavit requesting~~  
6 ~~additional time. If a justice of the supreme court violates~~  
7 ~~the provisions of this section, any party to a matter~~  
8 ~~pending in violation of this section or, by a majority voter~~  
9 ~~the other members of the supreme court may refer the matter~~  
10 ~~to the judicial standards commission. If the court, acting~~  
11 ~~upon the recommendation of the commission, determines the~~  
12 ~~justice is not in compliance with this section, it shall~~  
13 ~~order that the state auditor not issue a warrant for payment~~  
14 ~~of services for one month, which pay is forfeited by the~~  
15 ~~justice.~~

16 ~~(3)(2) Actual and necessary travel expenses of the~~  
17 ~~justices of the supreme court shall be the travel expenses,~~  
18 ~~as defined and provided in 2-18-501 through 2-18-503,~~  
19 ~~incurred in the performance of their official duties."~~

20 Section 7. Section 5-4-306, MCA, is amended to read:

21 "5-4-306. Return when legislature not in session. (  
22 If, on the day the governor desires to return a bill without  
23 his approval and with his objections thereto to the house in  
24 which it originated, that house has adjourned for the day  
25 (but not for the session), he may deliver the bill with his

1 message to the presiding officer, secretary, clerk, or any  
2 member of such house. Such delivery is as effectual as  
3 though returned in open session if the governor, on the  
4 first day the house is again in session, by message,  
5 notifies it of such delivery and of the time when and the  
6 person to whom such delivery was made.

7 (2) If the legislature is not in session when the  
8 governor vetoes a bill, he shall return the bill with his  
9 reasons for the veto to the secretary of state. The  
10 secretary of state shall immediately mail a copy of the bill  
11 and the veto message to each member of the legislature. If  
12 the bill was approved by two-thirds of the members of each  
13 house present, the secretary of state shall poll the members  
14 of the legislature, and if two-thirds or more of the members  
15 of each house vote to override the veto, the bill shall  
16 become law.

17 (3) The legislature may reconvene to reconsider any  
18 bill so vetoed by the governor when the legislature is not  
19 in session by using the statutory procedure provided for  
20 convening in special session."

21 Section 8. Section 5-7-203, MCA, is amended to read:

22 "5-7-203. Principal -- name of lobbyist on docket.  
23 ~~Except--as--provided--in--5-7-204, every~~ Every principal who  
24 employs any lobbyist shall within 1 week after such  
25 employment cause the name of said lobbyist to be entered

1 upon the docket. It shall also be the duty of the lobbyist  
2 to enter his name upon the docket. Upon the termination of  
3 such employment, such fact may be entered opposite the name  
4 of the lobbyist either by the lobbyist or the principal."

5 Section 9. Section 13-10-505, MCA, is amended to read:

6 "13-10-505. Applicability. The provisions of 13-10-501  
7 through 13-10-504 shall not be used to fill vacancies or to  
8 nominate candidates in nonpartisan elections except for  
9 nominations to fill a vacancy as provided in 13-25-205."

10 Section 10. Section 13-27-312, MCA, is amended to  
11 read:

12 "13-27-312. Review of petition by attorney general --  
13 preparation of statements -- fiscal note. (1) Upon receipt  
14 of a petition from the office of the secretary of state  
15 pursuant to 13-27-202, the attorney general shall examine  
16 the petition as to form and, if the proposed ballot issue  
17 has an effect on the revenues, expenditures, or the fiscal  
18 liability of the state, shall order a fiscal note  
19 incorporating an estimate of such effect, the substance of  
20 which must substantially comply with the provisions of  
21 5-4-205. The budget director, in cooperation with the agency  
22 or agencies affected by the petition, is responsible for  
23 preparing the fiscal note and shall return it within 6 days  
24 unless the attorney general, for good cause shown, extends  
25 the time for completing the fiscal note. If the petition

1 form is approved, the attorney general shall endeavor to  
 2 seek out parties on both sides of the issue and obtain their  
 3 advice. The attorney general may, if he deems it necessary,  
 4 appoint a five-member committee to recommend the statement  
 5 of purpose and the statement of the implications of the  
 6 measure. The committee shall consist of two persons  
 7 recommended by the person filing the petition, two persons  
 8 known to oppose the measure, and one representative of the  
 9 attorney general's office, who is the chairman. The  
 10 committee shall, within 14 days of appointment, meet and  
 11 recommend by a vote of a majority of the committee:

12 (a) a statement, not to exceed 100 words, explaining  
 13 the purpose of the measure; and

14 (b) statements, not to exceed 25 words each,  
 15 explaining the implications of a vote for and a vote against  
 16 the measure.

17 (2) The attorney general may accept, reject, or modify  
 18 the statements recommended by the committee. If the  
 19 committee is unable to recommend one or both statements, the  
 20 attorney general shall prepare the statements.

21 (3) The attorney general shall prepare a fiscal  
 22 statement of no more than 50 words if a fiscal note was  
 23 prepared for the proposed ballot issue, such statement to be  
 24 used on the petition and ballot if the measure is placed on  
 25 the ballot.†

1 (4) The statement of purpose and the statements of  
 2 implication must express the true and impartial explanation  
 3 of the proposed ballot issue in plain, easily understood  
 4 language and may not be arguments or written so as to create  
 5 prejudice for or against the measure.

6 (5) The statement of purpose prepared pursuant to  
 7 subsection (1) or (2), unless altered by a court under  
 8 13-27-316, is the petition title for the measure circulated  
 9 by the petition and the ballot title if the measure is  
 10 placed on the ballot.

11 (6) The statements of implication shall be placed  
 12 beside the diagram provided for marking of the ballot in a  
 13 manner similar to the following example:

14  FOR extending the right to vote to persons 18 years  
 15 of age  
 16  AGAINST extending the right to vote to persons 18  
 17 years of age

18 (7) If the petition is rejected as to form, the  
 19 attorney general shall forward his comments to the secretary  
 20 of state within 10 days after receipt of the petition by the  
 21 attorney general. If the petition is approved as to form,  
 22 the attorney general shall forward the statement of purpose,  
 23 the statements of implication, and the fiscal statement, if  
 24 applicable, to the secretary of state within 21 days after  
 25 receipt of the petition by the attorney general."

1 Section 11. Section 25-7-204, MCA, is amended to read:

2 "25-7-204. Mode of drawing ballots. Before the first  
3 ballot shall have been drawn, the box must be closed and  
4 well shaken so as to thoroughly mix the ballots therein. The  
5 district judge or the jury commissioner must draw at random  
6 a ballot with the juror's name thereon. Upon stipulation of  
7 counsel, the court may order the clerk to draw ballots."

8 Section 12. Section 25-7-206, MCA, is amended to read:

9 "25-7-206. Procedure when insufficient number attend.

10 (1) If a sufficient number of jurors duly drawn and notified  
11 do not attend to form a jury, the judge or the jury  
12 commissioner shall, pursuant to an order of the court to be  
13 entered in the minutes, shall, in the presence of two  
14 witnesses, draw a sufficient number of ballots from the box  
15 to complete the jury. The sheriff shall notify the persons  
16 thus drawn to attend immediately or at a time fixed by  
17 court. If for any reason a sufficient number of jurors to  
18 try the issue is not obtained from the persons notified  
19 ~~under-an-order-made-as-prescribed-in-this-section~~, the court  
20 may make ~~another-order-or-successive-orders~~ or order further  
21 drawings until a sufficient number is obtained.

22 (2) Each person so notified must attend at the time  
23 required by the notice and, unless excused by the court or  
24 set aside, must serve as a juror upon the trial. For a  
25 neglect or refusal to do so, he may be fined in the same

1 manner as any other trial juror regularly drawn and  
2 notified. He is subject to the same exceptions and  
3 challenges as any other trial juror."

4 Section 13. Section 25-35-602, MCA, is amended to  
5 read:

6 "25-35-602. Form of complaint and order of  
7 court/notice to defendant. The sworn complaint and order of  
8 the court shall be made on a blank substantially in the  
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
11 COURT OF ..... COUNTY, MONTANA  
12 BEFORE ....., JUSTICE OF THE PEACE  
13 .....  
14 .....  
15 Plaintiff,  
16 vs. Complaint  
17 ..... Case No. ....  
18 .....  
19 Defendant(s)  
20 .....

21 Comes now the plaintiff, being first duly sworn, upon  
22 oath, and complains and alleges that defendant is indebted  
23 to plaintiff in the sum of \$....., for.....  
24 .....  
25 .....

1 which sum is now due, owing, and unpaid despite demands for  
2 the payment thereof, together with plaintiff's costs herein  
3 expended.

4 Dated this ..... day of ....., 19....  
5 .....  
6 Plaintiff  
7 .....  
8 Plaintiff's address

9 Subscribed and sworn to before me this ..... day of  
10 ....., 19....

11 .....  
12 Justice of the peace  
13 By:.....  
14 Clerk, small claims  
15 division

16 ORDER OF COURT/  
17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within  
20 and foregoing complaint at:

21 .....  
22 .....  
23 on ..... at ....  
24 Reset for ..... at ....  
25 Reset for ..... at ....

1 Reset for ..... at ....  
2 and to have with you, then and there, all books, papers, and  
3 witnesses needed by you to establish your defense to the  
4 claim; and you are further notified that in case you do not  
5 appear, judgment will be taken against you by default for  
6 the relief demanded in the complaint and for costs of this  
7 action, including costs of service of the complaint and  
8 order of the court/notice to defendant.

9 You are hereby further notified that, within ~~40~~ 10 days  
10 of service upon you of this complaint and order, you may  
11 remove this action from the small claims court to justice's  
12 court, and that your failure to remove shall constitute a  
13 waiver of your rights to trial by jury and to representation  
14 by counsel.

15 To the Sheriff, Constable, or Server of process of said  
16 county, greetings:

17 Make legal service and due return thereof on the  
18 defendant at .....  
19 Dated this .... day of ....., 19....

20 .....  
21 Justice of the peace  
22 By:.....  
23 Clerk, small claims  
24 division"

25 Section 14. Section 27-27-101, MCA, is amended to

1 read:

2 "27-27-101. Definition and function of writ of  
3 prohibition. The writ of prohibition is the counterpart of  
4 the writ of mandate. It arrests the proceedings of any  
5 tribunal, corporation, board, or person, ~~whether~~ exercising  
6 ~~functions~~ judicial or ministerial functions when such  
7 proceedings are without or in excess of the jurisdiction of  
8 such tribunal, corporation, board, or person."

9 Section 15. Section 45-2-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

17 (8) "Computer" means an electronic device that  
18 performs logical, arithmetic, and memory functions by the  
19 manipulation of electronic or magnetic impulses and includes  
20 all input, output, processing, storage, software, or  
21 communication facilities that are connected or related to  
22 such a device in a system or network.

23 (9) "Computer network" means the interconnection of  
24 communication systems between computers or computers and  
25 remote terminals.

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

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

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

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

14 (14) "Conduct" means an act or series of acts and the  
15 accompanying mental state.

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

21 (16) "Correctional institution" means the state prison,  
22 county or city jail, or other institution for the  
23 incarceration or custody of persons under sentence for  
24 offenses or awaiting trial or sentence for offenses.

25 (17) "Deception" means knowingly to:

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

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

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

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

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

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

20 (19) "Deprive" means to withhold property of another:

21 (a) permanently;

22 (b) for such a period as to appropriate a portion of  
23 its value;

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

1 (d) to dispose of the property and use or deal with  
 2 the property so as to make it unlikely that the owner will  
 3 recover it.

4 (20) "Deviate sexual relations" means sexual contact or  
 5 sexual intercourse between two persons of the same sex or  
 6 any form of sexual intercourse with an animal.

7 (21) "Felony" means an offense in which the sentence  
 8 imposed upon conviction is death or imprisonment in the  
 9 state prison for any term exceeding 1 year.

10 (22) "Forcible felony" means any felony which involves  
 11 the use or threat of physical force or violence against any  
 12 individual.

13 (23) A "frisk" is a search by an external patting of a  
 14 person's clothing.

15 (24) "Government" includes any branch, subdivision, or  
 16 agency of the government of the state or any locality within  
 17 it.

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

22 (26) A "house of prostitution" means any place where  
 23 prostitution or promotion of prostitution is regularly  
 24 carried on by one or more persons under the control,  
 25 management, or supervision of another.

1 (27) "Human being" means a person who has been born and  
 2 is alive.

3 (28) An "illegal article" is an article or thing which  
 4 is prohibited by statute, rule, or order from being in the  
 5 possession of a person subject to official detention.

6 (29) "Inmate" means a person who engages in  
 7 prostitution in or through the agency of a house of  
 8 prostitution.

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

17 (31) An "involuntary act" means any act which is:

- 18 (a) a reflex or convulsion;
- 19 (b) a bodily movement during unconsciousness or sleep;
- 20 (c) conduct during hypnosis or resulting from hypnotic  
 21 suggestion; or

22 (d) a bodily movement that otherwise is not a product  
 23 of the effort or determination of the actor, either  
 24 conscious or habitual.

25 (32) "Juror" means any person who is a member of any

1 jury, including a grand jury, impaneled by any court in this  
 2 state in any action or proceeding or by any officer  
 3 authorized by law to impanel a jury in any action or  
 4 proceeding. The term "juror" also includes a person who has  
 5 been drawn or summoned to attend as a prospective juror.

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

18 (34) "Mentally defective" means that a person suffers  
 19 from a mental disease or defect which renders him incapable  
 20 of appreciating the nature of his conduct.

21 (35) "Mentally incapacitated" means that a person is  
 22 rendered temporarily incapable of appreciating or  
 23 controlling his conduct as a result of the influence of an  
 24 intoxicating substance.

25 (36) "Misdemeanor" means an offense in which the

1 sentence imposed upon conviction is imprisonment in the  
 2 county jail for any term or a fine, or both, or the sentence  
 3 imposed is imprisonment in the state prison for any term of  
 4 1 year or less.

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

18 (38) "Obtain" means:

19 (a) in relation to property, to bring about a transfer  
 20 of interest or possession whether to the offender or to  
 21 another; and

22 (b) in relation to labor or services, to secure the  
 23 performance thereof.

24 (39) "Obtains or exerts control" includes but is not  
 25 limited to the taking, carrying away, or sale, conveyance,

1 or transfer of title to, interest in, or possession of  
2 property.

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

9 (41) "Offender" means a person who has been or is  
10 liable to be arrested, charged, convicted, or punished for a  
11 public offense.

12 (42) "Offense" means a crime for which a sentence of  
13 death or of imprisonment or a fine is authorized. Offenses  
14 are classified as felonies or misdemeanors.

15 (43) "Official detention" means imprisonment resulting  
16 from a conviction for an offense, confinement for an  
17 offense, confinement of a person charged with an offense,  
18 detention by a peace officer pursuant to arrest, detention  
19 for extradition or deportation, or any lawful detention for  
20 the purpose of the protection of the welfare of the person  
21 detained or for the protection of society. Official  
22 detention does not include supervision of probation or  
23 parole, constraint incidental to release on bail, or an  
24 unlawful arrest unless the person arrested employed physical  
25 force, a threat of physical force, or a weapon to escape.

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

8 (45) "Other state" means any state or territory of the  
9 United States, the District of Columbia, and the  
10 Commonwealth of Puerto Rico.

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

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

21 (48) "Peace officer" means any person who by virtue of  
22 his office or public employment is vested by law with a duty  
23 to maintain public order or to make arrests for offenses  
24 while acting within the scope of his authority.

25 (49) "Pecuniary benefit" is benefit in the form of

1 money, property, commercial interests, or anything else the  
2 primary significance of which is economic gain.

3 (50) "Person" includes an individual, business  
4 association, partnership, corporation, government, or other  
5 legal entity and an individual acting or purporting to act  
6 for or on behalf of any government or subdivision thereof.

7 (51) "Physically helpless" means that a person is  
8 unconscious or is otherwise physically unable to communicate  
9 unwillingness to act.

10 (52) "Possession" is the knowing control of anything  
11 for a sufficient time to be able to terminate control.

12 (53) "Premises" includes any type of structure or  
13 building and any real property.

14 (54) "Property" means any tangible or intangible thing  
15 of value. Property includes but is not limited to:

16 (a) real estate;

17 (b) money;

18 (c) commercial instruments;

19 (d) admission or transportation tickets;

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

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

25 (g) electricity, gas, and water;

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

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

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

14 (k) electronic impulses, electronically processed or  
15 produced data or information, commercial instruments,  
16 computer software or computer programs, in either machine or  
17 human readable form, computer services, any other tangible  
18 or intangible item of value relating to a computer, computer  
19 system, or computer network, and any copies thereof.

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

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

1 or any substantial group thereof has access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

18 (iii) The value of electronic impulses, electronically  
19 produced data or information, computer software or programs,  
20 or any other tangible or intangible item relating to a  
21 computer, computer system, or computer network shall be  
22 considered to be the amount of economic loss that the owner  
23 of the item might reasonably suffer by virtue of the loss of  
24 the item. The determination of the amount of such economic  
25 loss includes but is not limited to consideration of the

1 value of the owner's right to exclusive use or disposition  
2 of the item.

3 (b) When it cannot be determined if the value of the  
4 property is more or less than ~~\$150~~ \$300 by the standards set  
5 forth in subsection (69)(a) above, its value shall be  
6 considered to be an amount less than ~~\$150~~ \$300.

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

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

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

22 Section 16. Section 45-9-101, MCA, is amended to read:

23 "45-9-101. Criminal sale of dangerous drugs. (1) A  
24 person commits the offense of criminal sale of dangerous  
25 drugs if he sells, barter, exchanges, gives away, or offers

1 to sell, barter, exchange, or give away or manufactures,  
2 prepares, cultivates, compounds, or processes any dangerous  
3 drug, as defined in 50-32-101.

4 (2) A person convicted of criminal sale of an opiate,  
5 as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the  
6 state prison for a term of not less than 2 years or more  
7 than life and may be fined not more than \$50,000, except as  
8 provided in 46-18-222.

9 (3) A person convicted of criminal sale of a dangerous  
10 drug included in Schedule I or Schedule II pursuant to  
11 50-32-222 or 50-32-224, except marijuana or  
12 tetrahydrocannabinols, who has a prior conviction for  
13 criminal sale of such a drug shall be imprisoned in the  
14 state prison for a term of not less than 10 years or more  
15 than life and may be fined not more than \$50,000, except as  
16 provided in 46-18-222. Upon a third or subsequent conviction  
17 for criminal sale of such a drug, he shall be imprisoned in  
18 the state prison for a term of not less than 20 years or  
19 more than life and may be fined not more than \$50,000,  
20 except as provided in 46-18-222. Whenever a conviction under  
21 this subsection is for criminal sale of such a drug to a  
22 minor, the sentence shall include the restriction that the  
23 defendant be ineligible for parole and participation in the  
24 supervised release program while serving his term.

25 (4) A person convicted of criminal sale of dangerous

1 drugs not otherwise provided for in subsection (2) or (3)  
 2 shall be imprisoned in the state prison for a term of not  
 3 less than 1 year or more than life or be fined an amount of  
 4 not more than \$50,000, or both.

5 (5) Practitioners and agents under their supervision  
 6 acting in the course of a professional practice, as defined  
 7 by 50-32-101, are exempt from this section."

8 Section 17. Section 45-9-102, MCA, is amended to read:

9 "45-9-102. Criminal possession of dangerous drugs. (1)  
 10 A person commits the offense of criminal possession of  
 11 dangerous drugs if he possesses any dangerous drug, as  
 12 defined in 50-32-101.

13 (2) Any person convicted of criminal possession of  
 14 marijuana or its derivatives in an amount the aggregate  
 15 weight of which does not exceed 60 grams of marijuana or 1  
 16 gram of hashish is, for the first offense, guilty of a  
 17 misdemeanor and shall be punished by a fine of not less than  
 18 \$100 or more than \$500 and by imprisonment in the county  
 19 jail for not more than 6 months. The minimum fine must be  
 20 imposed as a condition of a suspended or deferred sentence.  
 21 A person convicted of a second or subsequent offense under  
 22 this subsection is punishable by a fine not to exceed \$1,000  
 23 or imprisonment in the county jail for a term not to exceed  
 24 1 year or in the state prison for a term not to exceed 3  
 25 years or both such fine and imprisonment.

1 (3) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned  
 3 in the state prison for a term of not less than 2 years or  
 4 more than 5 years and may be fined not more than \$50,000,  
 5 except as provided in 46-18-222.

6 (4) A person convicted of criminal possession of  
 7 dangerous drugs not otherwise provided for in subsection (2)  
 8 or (3) shall be imprisoned in the state prison for a term  
 9 not to exceed 5 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (5) A person of the age of 21 years or under convicted  
 12 of a first violation under this section shall be presumed to  
 13 be entitled to a deferred imposition of sentence of  
 14 imprisonment.

15 (6) Ultimate users and practitioners and agents under  
 16 their supervision acting in the course of a professional  
 17 practice, as defined by 50-32-101, are exempt from this  
 18 section."

19 Section 18. Section 45-9-103, MCA, is amended to read:

20 "45-9-103. Criminal possession with intent to sell.  
 21 (1) A person commits the offense of criminal possession wi  
 22 intent to sell if he possesses with intent to sell any  
 23 dangerous drug as defined in 50-32-101. No person commits  
 24 the offense of criminal possession with intent to sell  
 25 marijuana unless he possesses 1 kilogram or more.

1 (2) A person convicted of criminal possession of an  
 2 opiate, as defined in 50-32-101~~(10)~~(19), with intent to sell  
 3 shall be imprisoned in the state prison for a term of not  
 4 less than 2 years or more than 20 years and may be fined not  
 5 more than \$50,000, except as provided in 46-18-222.

6 (3) A person convicted of criminal possession with  
 7 intent to sell not otherwise provided for in subsection (2)  
 8 shall be imprisoned in the state prison for a term of not  
 9 more than 20 years or be fined an amount not to exceed  
 10 \$50,000, or both.

11 (4) Practitioners and agents under their supervision  
 12 acting in the course of a professional practice as defined  
 13 by 50-32-101 are exempt from this section."

14 Section 19. Section 45-9-111, MCA, is amended to read:

15 "45-9-111. Imitation dangerous drugs -- definitions.  
 16 As used in 45-9-~~112~~ 45-9-111 through 45-9-116 and 45-9-202,  
 17 the following definitions apply:

18 (1) "Dangerous drug" has the meaning given to that  
 19 term in 50-32-101.

20 (2) "Imitation dangerous drug" means a substance that  
 21 is not a dangerous drug but that is expressly or impliedly  
 22 represented to be a dangerous drug or to simulate the effect  
 23 of a dangerous drug and the appearance of which, including  
 24 the color, shape, size, and markings, would lead a  
 25 reasonable person to believe that the substance is a

1 dangerous drug.

2 (3) "Person" includes any individual, business  
 3 association, partnership, or corporation."

4 Section 20. Section 45-9-116, MCA, is amended to read:

5 "45-9-116. Imitation dangerous drugs -- exemptions --  
 6 rules. (1) Sections 45-9-~~112~~ 45-9-111 through 45-9-115 do  
 7 not apply to:

8 (a) a person authorized by rules adopted by the board  
 9 of pharmacy to possess with purpose to sell or sell  
 10 imitation dangerous drugs;

11 (b) law enforcement personnel selling or possessing  
 12 with purpose to sell imitation dangerous drugs while acting  
 13 within the scope of their employment; and

14 (c) a person registered under the provisions of Title  
 15 50, chapter 32, part 3, who sells, or possesses with purpose  
 16 to sell an imitation dangerous drug for use as a placebo, by  
 17 that person or any other person so registered, in the course  
 18 of professional practice or research.

19 (2) The board of pharmacy shall adopt, amend, or  
 20 repeal rules in accordance with the Montana Administrative  
 21 Procedure Act to authorize the possession with purpose to  
 22 sell or sale of imitation dangerous drugs whenever it  
 23 determines that there is a legitimate need and that the  
 24 drugs will be used for a lawful purpose."

25 NEW SECTION. Section 21. Repealer. Sections 2-7-101

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1 and 3-5-212, MCA, are repealed.

-End-