

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 concurrent 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
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 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, ₇
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~~(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

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 ~~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-