

HOUSE BILL NO. 393

INTRODUCED BY DARKO, STRIZICH, PETERSON, VAUGHN

IN THE HOUSE

JANUARY 24, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 25, 1989	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 68; NOES, 28.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 48; NOES, 1.
	RETURNED TO HOUSE.

MARCH 22, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 393  
2 INTRODUCED BY Marko Peterson  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO POSSESSION  
5 OF AN INTOXICATING SUBSTANCE; CLARIFYING THAT POSSESSION OF  
6 AN INTOXICATING SUBSTANCE INCLUDES CONSUMPTION OF THE  
7 SUBSTANCE; PROVIDING THAT COSTS OF PARTICIPATION IN A  
8 COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE MAY BE  
9 PAID INDIRECTLY THROUGH COURT-ORDERED COMMUNITY SERVICE; AND  
10 AMENDING SECTIONS 45-2-101 AND 45-5-624, MCA."  
11

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

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

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

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

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

1 individual.

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

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

10 (5) "Bodily injury" means physical pain, illness, or  
11 any impairment of physical condition and includes mental  
12 illness or impairment.

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

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

21 (8) "Computer" means an electronic device that  
22 performs logical, arithmetic, and memory functions by the  
23 manipulation of electronic or magnetic impulses and includes  
24 all input, output, processing, storage, software, or  
25 communication facilities that are connected or related to

1 such a device in a system or network.

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

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

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

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

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

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

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

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

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

4 (17) "Deception" means knowingly to:

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

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

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

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

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

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

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

25 (a) permanently;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) a reflex or convulsion;

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

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

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

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

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

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

(35) "Mentally incapacitated" means that a person is

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

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

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

(38) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (51) "Physically helpless" means that a person is  
12 unconscious or is otherwise physically unable to communicate  
13 unwillingness to act.

14 (52) "Possession" is the knowing control of anything  
15 for a sufficient time to be able to terminate control and,  
16 for the purposes of possession of intoxicating substances,  
17 includes consumption.

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

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

22 (a) real estate;

23 (b) money;

24 (c) commercial instruments;

25 (d) admission or transportation tickets;

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

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

6 (g) electricity, gas, and water;

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

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

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

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



1 thereof.

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

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

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

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

1 (59) "Serious bodily injury" means bodily injury which  
2 creates a substantial risk of death or which causes serious  
3 permanent disfigurement or protracted loss or impairment of  
4 the function or process of any bodily member or organ. It  
5 includes serious mental illness or impairment.

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

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

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

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

25 (64) "Statute" means any act of the legislature of this

1 state.

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

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

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

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

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

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

15 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

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

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

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

25 (iii) The value of electronic impulses, electronically

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

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

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

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

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

(72) "Witness" means a person whose testimony is

desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

**Section 2.** Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance -- interference with sentence or court order. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) if the person:

(i) is less than 18 years of age, be fined not to exceed \$50; or

(ii) is 18 years or older, be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both; and

(b) be ordered to complete and, if financially able, pay, either directly with money or indirectly through

1 court-ordered community service, all costs of his  
2 participation in a community-based substance abuse  
3 information course;

4 (c) have his driver's license confiscated by the court  
5 for not more than 90 days and be ordered not to drive during  
6 that period if he was driving or otherwise in actual  
7 physical control of a motor vehicle when the offense  
8 occurred; or

9 (d) be sentenced to any combination of these  
10 penalties.

11 (3) A defendant who fails to comply with a sentence  
12 and is under 21 years of age and was under 18 years of age  
13 when he failed to comply must be transferred to the youth  
14 court. If proceedings for violation of subsection (1) are  
15 held in the youth court, the penalties in subsection (2) do  
16 not apply. If proceedings for violation of subsection (1) or  
17 for failure to comply with a sentence are held in the youth  
18 court, the offender shall be treated as an alleged youth in  
19 need of supervision as defined in 41-5-103. In such case,  
20 the youth court may enter its judgment under 41-5-523.

21 (4) A person commits the offense of interference with  
22 a sentence or court order if he purposely or knowingly  
23 causes his child or ward to fail to comply with a sentence  
24 imposed under this section or a youth court disposition  
25 order for a youth found to have violated this section and

1 upon conviction shall be fined \$100 or imprisoned in the  
2 county jail for 10 days, or both."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB393, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to possession of an intoxicating substance; clarifying that possession of an intoxicating substance includes consumption of the substance; providing that costs of participation in a community-based substance abuse information course may be paid indirectly through court-ordered community service; and amending sections 45-2-101 and 45-5-624, MCA.

FISCAL IMPACT:

Impossible to determine. There is no data available on court fines by offense.

*Ray Shackelford*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

*1/31/89*

DATE

*Paula A. Darko*

PAULA A. DARKO, PRIMARY SPONSOR

*3/1/89*

DATE

Fiscal Note for HB393, as introduced

**HB 393**

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 393

INTRODUCED BY DARKO, STRIZICH, PETERSON, VAUGHN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO POSSESSION OF AN INTOXICATING SUBSTANCE; ~~ELABORATING THAT POSSESSION OF AN INTOXICATING SUBSTANCE INCLUDES CONSUMPTION OF THE~~ SUBSTANCE; INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE; PROVIDING THAT COSTS OF PARTICIPATION IN A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE MAY BE PAID INDIRECTLY THROUGH COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTIONS 45-2-101 AND SECTION 45-5-624, MCA."

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

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

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

~~{1}--"Acts"--has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action;~~

~~{2}--"Administrative proceeding"--means any proceeding the outcome of which is required to be based on a record or~~

~~documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual;~~

~~{3}--"Another"--means a person or persons, as defined in this code, other than the offender;~~

~~{4}--"Benefit"--means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;~~

~~{5}--"Bodily injury"--means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment;~~

~~{6}--"Cohabit"--means to live together under the representation of being married;~~

~~{7}--"Common scheme"--means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof;~~

~~{8}--"Computer"--means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes~~

1 all--input,--output,--processing,--storage,--software,--or  
 2 communication--facilities--that--are--connected--or--related--to  
 3 such--a--device--in--a--system--or--network;  
 4 {9}--"Computer-network"--means--the--interconnection--of  
 5 communication--systems--between--computers--or--computers--and  
 6 remote--terminals;  
 7 {10}--"Computer--program"--means---an---instruction---or  
 8 statement--or--a--series--of--instructions--or--statements,--in--a  
 9 form--acceptable--to--a--computer,--that--in--actual--or--modified  
 10 form--permits--the--functioning--of--a--computer--or--computer  
 11 system--and--causes--it--to--perform--specified--functions;  
 12 {11}--"Computer-services"--include--but--are--not--limited--to  
 13 computer--time,--data--processing,--and--storage--functions;  
 14 {12}--"Computer--software"--means--a--set--of---computer  
 15 programs,--procedures,--and--associated--documentation--concerned  
 16 with--the--operation--of--a--computer--system;  
 17 {13}--"Computer---system"---means---a--set--of--related,  
 18 connected,--or--unconnected--devices,--computer--software,--or  
 19 other--related--computer--equipment;  
 20 {14}--"Conduct"--means--an--act--or--series--of--acts--and--the  
 21 accompanying--mental--state;  
 22 {15}--"Conviction"--means--a--judgment--of--conviction--or  
 23 sentence--entered--upon--a--plea--of--guilty--or--upon--a--verdict--or  
 24 finding--of--guilty--of--an--offense--rendered--by--a--legally  
 25 constituted--jury--or--by--a--court--of--competent--jurisdiction

1 authorized--to--try--the--case--without--a--jury;  
 2 {16}--"Correctional-institution"--means--the--state--prison,  
 3 county--or--city--jail,--or--other---institution---for---the  
 4 incarceration--or--custody--of--persons--under--sentence--for  
 5 offenses--or--awaiting--trial--or--sentence--for--offenses;  
 6 {17}--"Deception"--means--knowingly--to:  
 7 (a)--create--or--confirm--in--another--an--impression--which  
 8 is--false--and--which--the--offender--does--not--believe--to--be--true;  
 9 (b)--fail--to--correct--a--false--impression--which--the  
 10 offender--previously--has--created--or--confirmed;  
 11 (c)--prevent---another---from---acquiring---information  
 12 pertinent--to--the--disposition--of--the--property--involved;  
 13 (d)--sell--or--otherwise--transfer--or--encumber--property,  
 14 failing--to--disclose--a--lien,--adverse--claim,--or--other--legal  
 15 impediment--to--the--enjoyment--of--the--property,--whether--such  
 16 impediment--is--or--is--not--of--value--or--is--or--is--not--a--matter--of  
 17 official--record;--or  
 18 (e)--promise--performance--which--the--offender--does--not  
 19 intend--to--perform--or--knows--will--not--be--performed;--Failure--to  
 20 perform--standing--alone--is--not--evidence--that--the--offender--did  
 21 not--intend--to--perform;  
 22 {18}--"Defamatory-matter"--means--anything--which--exposes--a  
 23 person---or--a--group,--class,--or--association--to--hatred,  
 24 contempt,--ridicule,--degradation,--or--disgrace--in--society--or  
 25 to--injury--to--his--or--its--business--or--occupation;

1 {19}-"Deprive"--means--to-withhold-property-of-another:  
 2 {a)--permanently;  
 3 {b)--for-such-a-period-as-to-appropriate-a--portion-of  
 4 its-value;  
 5 {c)--with--the--purpose-to-restore-it-only-upon-payment  
 6 of-reward-or-other-compensation; or  
 7 {d)--to-dispose-of-the-property-and-use--or--deal--with  
 8 the--property--so-as-to-make-it-unlikely-that-the-owner-will  
 9 recover-it;  
 10 {20}-"Deviate-sexual-relations"--means-sexual-contact-or  
 11 sexual-intercourse-between-two-persons-of-the--same--sex--or  
 12 any-form-of-sexual-intercourse-with-an-animal;  
 13 {21}-"Felony"--means--an--offense-in-which-the-sentence  
 14 imposed-upon-conviction-is--death--or--imprisonment--in--the  
 15 state-prison-for-any-term-exceeding-1-year;  
 16 {22}-"Forcible--felony"--means-any-felony-which-involves  
 17 the-use-or-threat-of-physical-force-or-violence-against--any  
 18 individual;  
 19 {23}-A--"frisk"--is-a-search-by-an-external-patting-of-a  
 20 person's-clothing;  
 21 {24}-"Government"--includes-any-branch, subdivision, or  
 22 agency-of-the-government-of-the-state-or-any-locality-within  
 23 it;  
 24 {25}-"Harm"--means--loss,--disadvantage,--or--injury-or  
 25 anything-so-regarded-by-the-person-affected,--including-loss;

1 disadvantage, or injury to any person or entity in whose  
 2 welfare he is interested;  
 3 {26}-A--"house--of--prostitution"--means-any-place-where  
 4 prostitution--or--promotion--of--prostitution--is--regularly  
 5 carried--on--by--one--or--more--persons--under--the-control,  
 6 management, or supervision-of-another;  
 7 {27}-"Human-being"--means-a-person-who-has-been-born-and  
 8 is-alive;  
 9 {28}-An--"illegal-article"--is-an-article-or-thing--which  
 10 is--prohibited--by-statute, rule, or order-from-being-in-the  
 11 possession-of-a-person-subject-to-official-detention;  
 12 {29}-"Inmate"--means--a--person--who--engages--in  
 13 prostitution--in--or--through--the--agency--of--a--house--of  
 14 prostitution;  
 15 {30}-"Intoxicating--substance"--means--any--controlled  
 16 substance--as--defined--in--Title--50,--chapter--32,--and-any  
 17 alcoholic-beverage,--including--but--not--limited--to--any  
 18 beverage--containing-1/2-of-1%--or--more--of-alcohol-by-volume.  
 19 The-foregoing-definition-does-not--extend--to--dealcoholized  
 20 wine-or-to-any-beverage-or-liquid-produced-by-the-process-by  
 21 which--beer,--ale,--port,--or-wine-is-produced-if-it-contains  
 22 less-than-1/2-of-1%--of-alcohol-by-volume;  
 23 {31}-An--"involuntary-act"--means-any-act-which-is:  
 24 {a)--a-reflex-or-convulsion;  
 25 {b)--a-bodily-movement-during-unconsciousness-or-sleep;



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

(d)--a-bodily-movement-that-otherwise-is-not-a--product of---the--effort--or--determination--of--the--actor;-either conscious-or-habitual;

(32)-"Juror"--means-any-person-who-is-a--member--of--any jury,-including-a-grand-jury,-impaneled-by-any-court-in-this state--in--any--action--or--proceeding--or--by--any--officer authorized-by-law--to--impanel--a--jury--in--any--action--or proceeding;-The-term-"juror"--also-includes-a-person-who-has been-drawn-or-summoned-to-attend-as-a-prospective-juror;

(33)-"Knowingly"--a-person-acts-knowingly-with--respect to--conduct--or--to--a--circumstance--described-by-a-statute defining-an-offense-when-he-is-aware-of-his-conduct-or--that the--circumstance--exists;-A--person--acts--knowingly--with respect-to-the-result-of--conduct--described--by--a--statute defining--an--offense--when--he--is--aware-that-it-is-highly probable-that-such-result-will-be--caused--by--his--conduct;- When--knowledge--of-the-existence-of-a-particular-fact-is-an element-of-an-offense;-such-knowledge-is--established--if--a person--is--aware--of--a--high-probability-of-its-existence;- Equivalent-terms-such-as-"knowing" or-"with-knowledge"--have the-same-meaning;

(34)-"Mentally--defective"--means-that-a-person-suffers from-a-mental-disease-or-defect-which-renders-him--incapable

of-appreciating-the-nature-of-his-conduct;

(35)-"Mentally--incapacitated"--means--that-a-person-is rendered---temporarily---incapable---of---appreciating---or controlling--his--conduct-as-a-result-of-the-influence-of-an intoxicating-substance;

(36)-"Misdemeanor"--means--an--offense--in--which--the sentence--imposed--upon--conviction--is--imprisonment-in-the county-jail-for-any-term-or-a-fine;-or-both;-or-the-sentence imposed-is-imprisonment-in-the-state-prison-for-any-term--of 1-year-or-less;

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

(38)-"Obtain"--means;

(a)--in-relation-to-property;-to-bring-about-a-transfer

1 of interest or possession, whether to the offender or to  
2 another; and

3 (b) in relation to labor or services, to secure the  
4 performance thereof.

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

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

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

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

21 (43) "Official detention" means imprisonment resulting  
22 from a conviction for an offense, confinement for an  
23 offense, confinement of a person charged with an offense,  
24 detention by a peace officer pursuant to arrest, detention  
25 for extradition or deportation, or any lawful detention for

1 the purpose of the protection of the welfare of the person  
2 detained or for the protection of society. Official  
3 detention does not include supervision of probation or  
4 parole, constraint incidental to release on bail, or an  
5 unlawful arrest unless the person arrested employed physical  
6 force, a threat of physical force, or a weapon to escape.

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

14 (45) "Other state" means any state or territory of the  
15 United States, the District of Columbia, and the  
16 Commonwealth of Puerto Rico.

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

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

1 level-of-responsibility;  
 2 {48}-"Peace--officer"--means-any-person-who-by-virtue-of  
 3 his-office-or-public-employment-is-vested-by-law-with-a-duty  
 4 to-maintain-public-order-or-to-make-arrests-for-offenses  
 5 while-acting-within-the-scope-of-his-authority;  
 6 {49}-"Pecuniary--benefit"--is--benefit--in--the-form-of  
 7 money,-property,-commercial-interests,-or-anything-else--the  
 8 primary-significance-of-which-is-economic-gain;  
 9 {50}-"Person"----includes--an---individual,-business  
 10 association,-partnership,-corporation,-government,-or--other  
 11 legal--entity--and-an-individual-acting-or-purporting-to-act  
 12 for-or-on-behalf-of-any-government-or--subdivision--thereof;  
 13 {51}-"Physically--helpless"--means--that--a--person--is  
 14 unconscious-or-is-otherwise-physically-unable-to-communicate  
 15 unwillingness-to-act;  
 16 {52}-"Possession"--is-the-knowing--control--of--anything  
 17 for--a--sufficient-time-to-be-able-to-terminate-control and,  
 18 for-the-purposes-of-possession-of--intoxicating--substances,  
 19 includes-consumption;  
 20 {53}-"Premises"---includes--any--type--of--structure--or  
 21 building-and-any-real-property;  
 22 {54}-"Property"--means-any-tangible-or-intangible--thing  
 23 of-value;-Property-includes-but-is-not-limited-to:  
 24 {a)--real-estate;  
 25 {b)--money;

1 {c)--commercial-instruments;  
 2 {d)--admission-or-transportation-tickets;  
 3 {e)--written--instruments--which--represent--or--embody  
 4 rights-concerning-anything--of--value,-including--labor--or  
 5 services,-or-which-are-otherwise-of-value-to-the-owner;  
 6 {f)--things-growing-on,-affixed-to,-or-found-on-land  
 7 and-things-which-are-part-of-or-affixed-to-any-building;  
 8 {g)--electricity,-gas,-and-water;  
 9 {h)--birds,-animals,-and-fish-which-ordinarily-are-kept  
 10 in-a-state-of-confinement;  
 11 {i)--food-and-drink,-samples,-cultures,-microorganisms,  
 12 specimens,-records,-recordings,-documents,-blueprints,  
 13 drawings,-maps,-and-whole-or-partial-copies,-descriptions,  
 14 photographs,-prototypes,-or-models-thereof;  
 15 {j)--any--other---articles,-materials,-devices,  
 16 substances,-and-whole--or--partial--copies,-descriptions,  
 17 photographs,-prototypes,-or-models-thereof-which-constitute,  
 18 represent,-evidence,-reflect,-or-record--secret--scientific,  
 19 technical,-merchandising,-production,-or--management  
 20 information--or--a--secret--designed--process,-procedure,  
 21 formula,-invention,-or-improvement;-and  
 22 {k)--electronic--impulses,-electronically-processed-or  
 23 produced--data--or--information,-commercial--instruments,  
 24 computer--software--or-computer-programs,-in-either-machine-  
 25 or--human-readable--form,-computer-services,-any--other

1 tangible-or-intangible-item-of-value-relating-to-a-computer,  
2 computer---system;--or--computer--network;--and--any--copies  
3 thereof.

4 {55}-"Property--of--another"--means--real--or--personal  
5 property--in--which--a-person-other-than-the-offender-has-an  
6 interest-which-the-offender-has-no-authority--to--defeat--or  
7 impair;--even--though--the--offender--himself--may--have--an  
8 interest-in-the-property.

9 {56}-"Public-place"--means-any-place-to-which-the-public  
10 or-any-substantial-group-thereof-has-access.

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

19 {58}-"Purposely"--a--person-acts-purposely-with-respect  
20 to-a-result-or-to-conduct-described-by-a-statute-defining-an  
21 offense-if-it-is-his-conscious--object--to--engage--in--that  
22 conduct--or--to-cause-that-result.--When-a-particular-purpose  
23 is-an-element-of-an--offense;--the--element--is--established  
24 although--such--purpose-is-conditional;--unless-the-condition  
25 negatives-the-harm-or-evil-sought-to-be-prevented-by-the-law

1 defining-the-offense.--Equivalent-terms-such-as--"purpose"--and  
2 "with-the-purpose"--have-the-same-meaning.

3 {59}-"Serious-bodily-injury"--means-bodily-injury--which  
4 creates--a-substantial-risk-of-death-or-which-causes-serious  
5 permanent-disfigurement-or-protracted-loss-or-impairment--of  
6 the--function--or--process-of-any-bodily-member-or-organ;--It  
7 includes-serious-mental-illness-or-impairment.

8 {60}-"Sexual-contact"--means-any-touching-of-the--sexual  
9 or--other--intimate--parts--of-the-person-of-another-for-the  
10 purpose-of-arousing--or--gratifying--the--sexual--desire--of  
11 either-party.

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

20 {62}-"Solicit"--or--"solicitation"--means--to--command;  
21 authorize;--urge;--incite;--request;--or--advise--another-to  
22 commit-an-offense.

23 {63}-"State"--or--"this--state"--means--the--state--of  
24 Montana;--all--the--land--and--water-in-respect-to-which-the  
25 state--of--Montana--has--either--exclusive--or--concurrent

1 jurisdiction,--and--the--air--space--above--such--land--and--water;  
 2 {64}--"Statute"--means--any--act--of--the--legislature--of--this  
 3 state;  
 4 {65}--"Stolen--property"--means--property---over---which  
 5 control--has--been--obtained--by--theft;  
 6 {66}--A--"stop"--is--the--temporary--detention--of--a--person  
 7 that--results--when--a--peace--officer--orders--the--person--to  
 8 remain--in--his--presence;  
 9 {67}--"Tamper"---means---to---interfere---with---something  
 10 improperly,--meddle--with--it,--make--unwarranted--alterations--in  
 11 its--existing--condition,--or--deposit--refuse--upon--it;  
 12 {68}--"Threat"--means--a--menace,--however--communicated,--to:  
 13 (a)--inflict--physical--harm--on--the--person--threatened--or  
 14 any--other--person--or--on--property;  
 15 (b)--subject--any--person--to--physical--confinement--or  
 16 restraint;  
 17 (c)--commit--any--criminal--offense;  
 18 (d)--accuse--any--person--of--a--criminal--offense;  
 19 (e)--expose---any---person---to--hatred,--contempt,--or  
 20 ridicule;  
 21 (f)--harm--the--credit--or--business--repute--of--any--person;  
 22 (g)--reveal--any--information--sought--to--be--concealed--by  
 23 the--person--threatened;  
 24 (h)--take--action--as--an--official--against--anyone--or  
 25 anything,--withhold--official--action,--or--cause--such--action--or

1 withholding;  
 2 (i)--bring--about--or--continue--a--strike,--boycott,--or  
 3 other--similar--collective--action--if--the--property--is--not  
 4 demanded--or--received--for--the--benefit--of--the--groups--which--he  
 5 purports--to--represent;--or  
 6 (j)--testify---or---provide---information---or---withhold  
 7 testimony--or--information--with--respect--to--another's--legal  
 8 claim--or--defense;  
 9 {69}--(a)--"Value"--means--the--market--value--of--the--property  
 10 at--the--time--and--place--of--the--crime--or,--if--such--cannot--be  
 11 satisfactorily--ascertained,--the--cost--of--the--replacement--of  
 12 the--property--within--a--reasonable--time--after--the--crime--if  
 13 the--offender--appropriates--a--portion--of--the--value--of--the  
 14 property,--the--value--shall--be--determined--as--follows:  
 15 (i)--The---value---of---an---instrument---constituting--an  
 16 evidence--of--debt,--such--as--a--check,--draft,--or--promissory  
 17 note,--shall--be--considered--the--amount--due--or--collectible  
 18 thereon--or--thereby,--such--figure--ordinarily--being--the--face  
 19 amount--of--the--indebtedness--less--any--portion--thereof--which  
 20 has--been--satisfied;  
 21 (ii)--The--value--of--any--other--instrument--which--creates,  
 22 releases,--discharges,--or--otherwise--affects--any--valuable  
 23 legal--right,--privilege--or--obligation--shall--be--considered  
 24 the---amount---of---economic--loss--which--the--owner--of--the  
 25 instrument--might--reasonably--suffer--by--virtue--of--the--loss--of

1 the-instrument;

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

12 {b}-When-it-cannot-be-determined-if-the-value--of--the  
13 property--is--more--or--less--than-\$300-by-the-standards-set  
14 forth-in--subsection--(69){a}-above,-its-value--shall--be  
15 considered-to-be-an-amount-less-than-\$300;

16 {c}-Amounts-involved-in-thefts-committed-pursuant-to-a  
17 common-scheme-or-the-same-transaction,-whether-from-the-same  
18 person--or-several-persons,-may-be-aggregated-in-determining  
19 the-value-of-the-property;

20 {70}-"Vehicle"--means-any-device-for--transportation--by  
21 land,-water,-or-air-or-mobile-equipment-with-provision-for  
22 transport-of-an-operator;

23 {71}-"Weapon"--means--any--instrument,-article,-or  
24 substance--which,-regardless--of--its--primary-function,-is  
25 readily-capable-of-being-used-to-produce--death--or--serious

1 bodily-injury;

2 {72}-"Witness"--means--a--person--whose--testimony--is  
3 desired-in-any-official-proceeding,-in-any-investigation--by  
4 a--grand--jury,-or--in--a--criminal-action,-prosecution,-or  
5 proceeding."

6 **Section 1.** Section 45-5-624, MCA, is amended to read:

7 "45-5-624. Unlawful possession of an intoxicating  
8 substance -- interference with sentence or court order. (1)  
9 A person under the age of 18 years commits the offense of  
10 possession of an intoxicating substance if he knowingly has  
11 in his possession an intoxicating substance other than an  
12 alcoholic beverage. A person under the age of 21 commits the  
13 offense of possession of an intoxicating substance if he  
14 knowingly has in his possession an alcoholic beverage,  
15 except that he does not commit the offense when in the  
16 course of his employment it is necessary to possess  
17 alcoholic beverages.

18 (2) A person convicted of the offense of possession of  
19 an intoxicating substance shall:

20 (a) if the person:

21 (i) is less than 18 years of age, be fined not to  
22 exceed \$50; or

23 (ii) is 18 years or older, be fined an amount not to  
24 exceed \$500 \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND  
25 OFFENSE, AND \$200 FOR A THIRD OFFENSE. FOR A FOURTH OR

1 SUBSEQUENT OFFENSE A PERSON MAY BE FINED AN AMOUNT NOT TO  
 2 EXCEED \$300 or be imprisoned in the county jail for a term  
 3 not to exceed 6 months, or both; and

4 (b) be ordered to complete and, ~~if financially able,~~  
 5 pay, either directly with money or indirectly through  
 6 court-ordered community service, all costs of his  
 7 participation in a community-based substance abuse  
 8 information course;

9 (c) have his driver's license confiscated by the court  
 10 for not more than 90 days and be ordered not to drive during  
 11 that period if he was driving or otherwise in actual  
 12 physical control of a motor vehicle when the offense  
 13 occurred; or

14 (d) be sentenced to any combination of these  
 15 penalties.

16 (3) A defendant who fails to comply with a sentence  
 17 and is under 21 years of age and was under 18 years of age  
 18 when he failed to comply must be transferred to the youth  
 19 court. If proceedings for violation of subsection (1) are  
 20 held in the youth court, the penalties in subsection (2) do  
 21 not apply. If proceedings for violation of subsection (1) or  
 22 for failure to comply with a sentence are held in the youth  
 23 court, the offender shall be treated as an alleged youth in  
 24 need of supervision as defined in 41-5-103. In such case,  
 25 the youth court may enter its judgment under 41-5-523.

1 (4) A person commits the offense of interference with  
 2 a sentence or court order if he purposely or knowingly  
 3 causes his child or ward to fail to comply with a sentence  
 4 imposed under this section or a youth court disposition  
 5 order for a youth found to have violated this section and  
 6 upon conviction shall be fined \$100 or imprisoned in the  
 7 county jail for 10 days, or both."

-End-

## HOUSE BILL NO. 393

INTRODUCED BY DARKO, STRIZICH, PETERSON, VAUGHN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO POSSESSION OF AN INTOXICATING SUBSTANCE; CLARIFYING THAT POSSESSION OF AN INTOXICATING SUBSTANCE INCLUDES CONSUMPTION OF THE SUBSTANCE; INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE; PROVIDING THAT COSTS OF PARTICIPATION IN A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE MAY BE PAID INDIRECTLY THROUGH COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTIONS 45-2-101 AND SECTION 45-5-624, MCA."

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

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

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

{1} "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action;

{2} "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or

documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual;

{3} "Another" means a person or persons, as defined in this code, other than the offender;

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

{5} "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment;

{6} "Cohabit" means to live together under the representation of being married;

{7} "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof;

{8} "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes



1 all--input--output--processing--storage--software--or  
 2 communication--facilities--that--are--connected--or--related--to  
 3 such--a--device--in--a--system--or--network;  
 4 {9}--"Computer-network"--means--the--interconnection--of  
 5 communication--systems--between--computers--or--computers--and  
 6 remote--terminals;  
 7 {10}--"Computer--program"--means--an--instruction--or  
 8 statement--or--a--series--of--instructions--or--statements--in--a  
 9 form--acceptable--to--a--computer--that--in--actual--or--modified  
 10 form--permits--the--functioning--of--a--computer--or--computer  
 11 system--and--causes--it--to--perform--specified--functions;  
 12 {11}--"Computer-services"--include--but--are--not--limited--to  
 13 computer--time--data--processing--and--storage--functions;  
 14 {12}--"Computer--software"--means--a--set--of--computer  
 15 programs--procedures--and--associated--documentation--concerned  
 16 with--the--operation--of--a--computer--system;  
 17 {13}--"Computer--system"--means--a--set--of--related,  
 18 connected--or--unconnected--devices--computer--software--or  
 19 other--related--computer--equipment;  
 20 {14}--"Conduct"--means--an--act--or--series--of--acts--and--the  
 21 accompanying--mental--state;  
 22 {15}--"Conviction"--means--a--judgment--of--conviction--or  
 23 sentence--entered--upon--a--plea--of--guilty--or--upon--a--verdict--or  
 24 finding--of--guilty--of--an--offense--rendered--by--a--legally  
 25 constituted--jury--or--by--a--court--of--competent--jurisdiction

1 authorized--to--try--the--case--without--a--jury;  
 2 {16}--"Correctional-institution"--means--the--state--prison,  
 3 county--or--city--jail--or--other--institution--for--the  
 4 incarceration--or--custody--of--persons--under--sentence--for  
 5 offenses--or--awaiting--trial--or--sentence--for--offenses;  
 6 {17}--"Deception"--means--knowingly--to:  
 7 (a)--create--or--confirm--in--another--an--impression--which  
 8 is--false--and--which--the--offender--does--not--believe--to--be--true;  
 9 (b)--fail--to--correct--a--false--impression--which--the  
 10 offender--previously--has--created--or--confirmed;  
 11 (c)--prevent--another--from--acquiring--information  
 12 pertinent--to--the--disposition--of--the--property--involved;  
 13 (d)--sell--or--otherwise--transfer--or--encumber--property,  
 14 failing--to--disclose--a--lien--adverse--claim--or--other--legal  
 15 impediment--to--the--enjoyment--of--the--property--whether--such  
 16 impediment--is--or--is--not--of--value--or--is--or--is--not--a--matter--of  
 17 official--record--or  
 18 (e)--promise--performance--which--the--offender--does--not  
 19 intend--to--perform--or--knows--will--not--be--performed--Failure--to  
 20 perform--standing--alone--is--not--evidence--that--the--offender--did  
 21 not--intend--to--perform;  
 22 {18}--"Defamatory-matter"--means--anything--which--exposes--a  
 23 person--or--a--group--class--or--association--to--hatred,  
 24 contempt--ridicule--degradation--or--disgrace--in--society--or  
 25 to--injury--to--his--or--its--business--or--occupation;

1 {19}-"Deprive"--means--to--withhold--property--of--another;  
 2 {a)--permanently;  
 3 {b)--for--such--a--period--as--to--appropriate--a--portion--of  
 4 its--value;  
 5 {c)--with--the--purpose--to--restore--it--only--upon--payment  
 6 of--reward--or--other--compensation;--or  
 7 {d)--to--dispose--of--the--property--and--use--or--deal--with  
 8 the--property--so--as--to--make--it--unlikely--that--the--owner--will  
 9 recover--it;  
 10 {20}-"Deviate--sexual--relations"--means--sexual--contact--or  
 11 sexual--intercourse--between--two--persons--of--the--same--sex--or  
 12 any--form--of--sexual--intercourse--with--an--animal;  
 13 {21}-"Felony"--means--an--offense--in--which--the--sentence  
 14 imposed--upon--conviction--is--death--or--imprisonment--in--the  
 15 state--prison--for--any--term--exceeding--1--year;  
 16 {22}-"Fleecible--felony"--means--any--felony--which--involves  
 17 the--use--or--threat--of--physical--force--or--violence--against--any  
 18 individual;  
 19 {23}-A--"frisk"--is--a--search--by--an--external--patting--of--a  
 20 person's--clothing;  
 21 {24}-"Government"--includes--any--branch,--subdivision,--or  
 22 agency--of--the--government--of--the--state--or--any--locality--within  
 23 it;  
 24 {25}-"Harm"--means--loss,--disadvantage,--or--injury--or  
 25 anything--so--regarded--by--the--person--affected,--including--loss,

1 disadvantage,--or--injury--to--any--person--or--entity--in--whose  
 2 welfare--he--is--interested;  
 3 {26}-A--"house--of--prostitution"--means--any--place--where  
 4 prostitution--or--promotion--of--prostitution--is--regularly  
 5 carried--on--by--one--or--more--persons--under--the--control,  
 6 management,--or--supervision--of--another;  
 7 {27}-"Human--being"--means--a--person--who--has--been--born--and  
 8 is--alive;  
 9 {28}-An--"illegal--article"--is--an--article--or--thing--which  
 10 is--prohibited--by--statute,--rule,--or--order--from--being--in--the  
 11 possession--of--a--person--subject--to--official--detention;  
 12 {29}-"Inmate"--means--a--person--who--engages--in  
 13 prostitution--in--or--through--the--agency--of--a--house--of  
 14 prostitution;  
 15 {30}-"Intoxicating--substance"--means--any--controlled  
 16 substance--as--defined--in--Title--50,--chapter--32,--and--any  
 17 alcoholic--beverage,--including--but--not--limited--to--any  
 18 beverage--containing--1/2--of--1%--or--more--of--alcohol--by--volume;  
 19 The--foregoing--definition--does--not--extend--to--dealcoholized  
 20 wine--or--to--any--beverage--or--liquid--produced--by--the--process--by  
 21 which--beer,--ale,--port,--or--wine--is--produced--if--it--contains  
 22 less--than--1/2--of--1%--of--alcohol--by--volume;  
 23 {31}-An--"involuntary--act"--means--any--act--which--is:  
 24 {a)--a--reflex--or--convulsion;  
 25 {b)--a--bodily--movement--during--unconsciousness--or--sleep;

{c}--conduct-during-hypnosis-or-resulting-from-hypnotic suggestion;-or

{d}--a-bodily-movement-that-otherwise-is-not-a-product of--the-effort--or--determination--of--the-actor;-either conscious-or-habitual;

{32}-"Juror"--means-any-person-who-is-a-member--of--any jury,-including-a-grand-jury,-impaneled-by-any-court-in-this state--in--any--action--or--proceeding--or--by--any--officer authorized-by-law--to--impanel--a--jury--in--any--action--or proceeding;-The-term-"juror"--also--includes-a-person-who-has been-drawn-or-summoned-to-attend-as-a-prospective-juror;

{33}-"Knowingly"--a-person-acts-knowingly-with-respect to--conduct--or--to--a--circumstance--described-by-a-statute defining-an-offense-when-he-is-aware-of-his-conduct-or--that the--circumstance--exists;-A-person--acts--knowingly--with respect-to-the-result-of--conduct--described--by--a--statute defining--an--offense--when--he--is--aware--that--it--is--highly probable--that--such--result--will--be--caused--by--his--conduct;- When--knowledge--of--the--existence--of--a--particular--fact--is--an element-of-an-offense,-such-knowledge-is-established--if--a person--is--aware--of--a--high-probability-of-its-existence;- Equivalent-terms-such-as-"knowing"-or-"with-knowledge"--have the-same-meaning;

{34}-"Mentally--defective"--means-that-a-person-suffers from-a-mental-disease-or-defect-which-renders-him--incapable

of-appreciating-the-nature-of-his-conduct;

{35}-"Mentally--incapacitated"--means--that-a-person-is rendered--temporarily--incapable--of--appreciating--or controlling-his-conduct-as-a-result-of-the-influence-of-an intoxicating-substance;

{36}-"Misdemeanor"--means--an--offense--in--which--the sentence--imposed--upon--conviction--is--imprisonment-in-the county-jail-for-any-term-or-a-fine,-or-both,-or-the-sentence imposed-is-imprisonment-in-the-state-prison-for-any-term--of 1-year-or-less;

{37}-"Negligently"--a--person--acts--negligently--with respect-to-a-result-or-to--a--circumstance--described--by--a statute-defining-an-offense-when-he-consciously-disregards-a risk--that--the--result--will-occur-or-that-the-circumstance exists-or-when-he-disregards-a-risk-of-which--he--should--be aware--that--the--result--will-occur-or-that-the-circumstance exists;-The-risk-must-be-of-such-a-nature-and-degree-that-to disregard-it-involves-a-gross-deviation-from-the-standard-of conduct-that--a--reasonable--person--would--observe--in--the actor's--situation;- "Gross-deviation"--means-a-deviation-that is--considerably--greater--than--lack--of--ordinary--care;- Relevant--terms--such--as--"negligent"--and--"with-negligence" have-the-same-meaning;

{38}-"Obtain"--means:

{a)--in-relation-to-property,-to-bring-about-a-transfer

1 of-interest-or-possession, whether-to--the--offender--or--to  
2 another, and

3 (b)--in--relation--to--labor-or-services, to-secure-the  
4 performance-thereof;

5 (39)--"Obtains-or-exerts-control"--includes--but--is--not  
6 limited--to--the-taking, carrying-away, or-sale, conveyance,  
7 or-transfer-of-title--to,--interest--in,--or--possession--of  
8 property;

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

15 (41)--"Offender"--means--a--person--who--has--been-or-is  
16 liable-to-be-arrested, charged, convicted, or-punished-for-a  
17 public-offense;

18 (42)--"Offense"--means-a-crime-for-which--a--sentence--of  
19 death--or--of-imprisonment-or-a-fine-is-authorized; Offenses  
20 are-classified-as-felonies-or-misdemeanors;

21 (43)--"Official-detention"--means-imprisonment--resulting  
22 from--a--conviction--for--an--offense,--confinement--for--an  
23 offense, confinement-of-a-person-charged--with--an--offense,  
24 detention--by--a-pence-officer-pursuant-to-arrest, detention  
25 for-extradition-or-deportation, or-any-lawful-detention--for

1 the--purpose--of-the-protection-of-the-welfare-of-the-person  
2 detained--or--for--the--protection--of--society,--Official  
3 detention--does--not--include--supervision--of--probation-or  
4 parole, constraint-incidentai-to--release--on--bail,--or--an  
5 unlawful-arrest-unless-the-person-arrested-employed-physical  
6 force, a-threat-of-physical-force, or-a-weapon-to-escape;

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

14 (45)--"Other--state"--means-any-state-or-territory-of-the  
15 United--States,--the--District--of--Columbia,--and--the  
16 Commonwealth-of-Puerto-Rico;

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

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

1 level-of-responsibility;

2 {48}-"Peace-officer"-means-any-person-who-by-virtue-of  
3 his-office-or-public-employment-is-vested-by-law-with-a-duty  
4 to-maintain-public-order-or-to-make-arrests-for-offenses  
5 while-acting-within-the-scope-of-his-authority;

6 {49}-"Pecuniary-benefit"--is-benefit-in-the-form-of  
7 money,property,commercial-interests,or-anything-else-the  
8 primary-significance-of-which-is-economic-gain;

9 {50}-"Person"---includes---an---individual,---business  
10 association,partnership,corporation,government,or--other  
11 legal-entity--and-an-individual-acting-or-purporting-to-act  
12 for-or-on-behalf-of-any-government-or--subdivision--thereof;

13 {51}-"Physically-helpless"--means--that--a--person--is  
14 unconscious-or-is-otherwise-physically-unable-to-communicate  
15 unwillingness-to-act;

16 {52}-"Possession"-is-the-knowing-control-of-anything  
17 for-a-sufficient-time-to-be-able-to-terminate-control and  
18 for-the-purposes-of-possession-of-intoxicating-substances,  
19 includes-consumption.

20 {53}-"Premises"---includes--any--type--of--structure--or  
21 building-and-any-real-property;

22 {54}-"Property"-means-any-tangible-or-intangible-thing  
23 of-value;Property-includes-but-is-not-limited-to:

24 (a)--real-estate;

25 (b)--money;

1 (c)--commercial-instruments;

2 (d)--admission-or-transportation-tickets;

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

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

8 (g)--electricity,gas,and-water;

9 (h)--birds,animals,and-fish-which-ordinarily-are-kept  
10 in-a-state-of-confinement;

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

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

22 (k)--electronic-impulses,--electronically-processed-or  
23 produced--data--or--information,---commercial---instruments,  
24 computer--software--or--computer-programs,in-either-machine-  
25 or--human-readable--form,--computer--services,---any--other

1 tangible-or-intangible-item-of-value-relating-to-a-computer,  
2 computer---system,---or---computer---network,---and---any---copies  
3 thereof;

4 {55}-"Property--of--another"--means--real--or--personal  
5 property--in--which--a-person-other-than-the-offender-has-an  
6 interest-which-the-offender-has-no-authority--to--defeat--or  
7 impair,--even--though--the--offender--himself--may--have--an  
8 interest-in-the-property;

9 {56}-"Public-place"--means-any-place-to-which-the-public  
10 or-any-substantial-group-thereof-has-access;

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

19 {58}-"Purposely"--a-person-acts-purposely-with-respect  
20 to-a-result-or-to-conduct-described-by-a-statute-defining-an  
21 offense-if-it-is-his-conscious-object--to--engage--in--that  
22 conduct--or--to-cause-that-result. When-a-particular-purpose  
23 is-an-element-of-an-offense,--the--element--is--established  
24 although--such--purpose-is-conditional,--unless-the-condition  
25 negates-the-harm-or-evil-sought-to-be-prevented-by-the-law

1 defining-the-offense. Equivalent-terms-such-as-"purpose"--and  
2 "with-the-purpose"--have-the-same-meaning;

3 {59}-"Serious-bodily-injury"--means-bodily-injury--which  
4 creates--a-substantial-risk-of-death-or-which-causes-serious  
5 permanent-disfigurement-or-protracted-loss-or-impairment--of  
6 the--function--or--process-of-any-bodily-member-or-organ,--it  
7 includes-serious-mental-illness-or-impairment;

8 {60}-"Sexual-contact"--means-any-touching-of-the--sexual  
9 or--other--intimate--parts--of-the-person-of-another-for-the  
10 purpose-of-arousing--or--gratifying--the--sexual--desire--of  
11 either-party;

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

20 {62}-"Solicit"--or--"solicitation"--means--to--command,  
21 authorize,--urge,--incite,--request,--or--advise--another-to  
22 commit-an-offense;

23 {63}-"State"--or--"this-state"--means--the--state--of  
24 Montana,--all--the--land--and--water-in-respect-to-which-the  
25 state--of--Montana--has--either--exclusive--or--concurrent

1 jurisdiction; and the air space above such land and water;

2 (64) "Statute" means any act of the legislature of this

3 state;

4 (65) "Stolen property" means property over which

5 control has been obtained by theft;

6 (66) A "stop" is the temporary detention of a person

7 that results when a peace officer orders the person to

8 remain in his presence;

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

10 improperly; meddle with it; make unwarranted alterations in

11 its existing condition; or deposit refuse upon it;

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

13 (a) inflict physical harm on the person threatened or

14 any other person or on property;

15 (b) subject any person to physical confinement or

16 restraint;

17 (c) commit any criminal offense;

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

19 (e) expose any person to hatred, contempt, or

20 ridicule;

21 (f) harm the credit or business reputation of any person;

22 (g) reveal any information sought to be concealed by

23 the person threatened;

24 (h) take action as an official against anyone or

25 anything; withhold official action; or cause such action or

1 withholding;

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

3 other similar collective action if the property is not

4 demanded or received for the benefit of the groups which he

5 purports to represent; or

6 (j) testify or provide information or withhold

7 testimony or information with respect to another's legal

8 claim or defense;

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

10 at the time and place of the crime or, if such cannot be

11 satisfactorily ascertained, the cost of the replacement of

12 the property within a reasonable time after the crime. If

13 the offender appropriates a portion of the value of the

14 property, the value shall be determined as follows:

15 (i) The value of an instrument constituting an

16 evidence of debt, such as a check, draft, or promissory

17 note, shall be considered the amount due or collectible

18 thereon or thereby, such figure ordinarily being the face

19 amount of the indebtedness less any portion thereof which

20 has been satisfied;

21 (ii) The value of any other instrument which creates,

22 releases, discharges, or otherwise affects any valuable

23 legal right, privilege, or obligation shall be considered

24 the amount of economic loss which the owner of the

25 instrument might reasonably suffer by virtue of the loss of

1 the-instrument-

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

12 {b}-When-it-cannot-be-determined-if-the-value-of-the  
13 property-is-more-or-less-than-\$300-by-the-standards-set  
14 forth-in-subsection-{69}{a}-above,its-value-shall-be  
15 considered-to-be-an-amount-less-than-\$300-

16 {c}-Amounts-involved-in-thefts-committed-pursuant-to-a  
17 common-scheme-or-the-same-transaction,whether-from-the-same  
18 person-or-several-persons,may-be-aggregated-in-determining  
19 the-value-of-the-property-

20 {70}-"Vehicle"-means-any-device-for-transportation-by  
21 land,water,or-air-or-mobile-equipment-with-provision-for  
22 transport-of-an-operator-

23 {71}-"Weapon"-means-any-instrument,article,or  
24 substance-which-regardless-of-its-primary-function,is  
25 readily-capable-of-being-used-to-produce-death-or-serious

1 bodily-injury-

2 {72}-"Witness"-means-a-person-whose-testimony-is  
3 desired-in-any-official-proceeding,in-any-investigation-by  
4 a-grand-jury,or-in-a-criminal-action,prosecution,or  
5 proceeding-

6 **Section 1.** Section 45-5-624, MCA, is amended to read:

7 "45-5-624. Unlawful possession of an intoxicating  
8 substance -- interference with sentence or court order. (1)  
9 A person under the age of 18 years commits the offense of  
10 possession of an intoxicating substance if he knowingly has  
11 in his possession an intoxicating substance other than an  
12 alcoholic beverage. A person under the age of 21 commits the  
13 offense of possession of an intoxicating substance if he  
14 knowingly has in his possession an alcoholic beverage,  
15 except that he does not commit the offense when in the  
16 course of his employment it is necessary to possess  
17 alcoholic beverages.

18 (2) A person convicted of the offense of possession of  
19 an intoxicating substance shall:

20 (a) if the person:

21 (i) is less than 18 years of age, be fined not to  
22 exceed \$50; or

23 (ii) is 18 years or older, be fined an amount not to  
24 exceed \$500 \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND  
25 OFFENSE, AND \$200 FOR A THIRD OFFENSE. FOR A FOURTH OR



1 SUBSEQUENT OFFENSE A PERSON MAY BE FINED AN AMOUNT NOT TO  
 2 EXCEED \$300 or be imprisoned in the county jail for a term  
 3 not to exceed 6 months, or both; and

4 (b) be ordered to complete and, ~~if financially able,~~  
 5 pay, either directly with money or indirectly through  
 6 court-ordered community service, all costs of his  
 7 participation in a community-based substance abuse  
 8 information course;

9 (c) have his driver's license confiscated by the court  
 10 for not more than 90 days and be ordered not to drive during  
 11 that period if he was driving or otherwise in actual  
 12 physical control of a motor vehicle when the offense  
 13 occurred; or

14 (d) be sentenced to any combination of these  
 15 penalties.

16 (3) A defendant who fails to comply with a sentence  
 17 and is under 21 years of age and was under 18 years of age  
 18 when he failed to comply must be transferred to the youth  
 19 court. If proceedings for violation of subsection (1) are  
 20 held in the youth court, the penalties in subsection (2) do  
 21 not apply. If proceedings for violation of subsection (1) or  
 22 for failure to comply with a sentence are held in the youth  
 23 court, the offender shall be treated as an alleged youth in  
 24 need of supervision as defined in 41-5-103. In such case,  
 25 the youth court may enter its judgment under 41-5-523.

1 (4) A person commits the offense of interference with  
 2 a sentence or court order if he purposely or knowingly  
 3 causes his child or ward to fail to comply with a sentence  
 4 imposed under this section or a youth court disposition  
 5 order for a youth found to have violated this section and  
 6 upon conviction shall be fined \$100 or imprisoned in the  
 7 county jail for 10 days, or both."

-End-

## HOUSE BILL NO. 393

INTRODUCED BY DARKO, STRIZICH, PETERSON, VAUGHN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO POSSESSION OF AN INTOXICATING SUBSTANCE; CLARIFYING THAT POSSESSION OF AN INTOXICATING SUBSTANCE INCLUDES CONSUMPTION OF THE SUBSTANCE; INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE; PROVIDING THAT COSTS OF PARTICIPATION IN A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE MAY BE PAID INDIRECTLY THROUGH COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTIONS 45-2-101 AND SECTION 45-5-624, MCA."

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

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

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

{1}--"Acts"--has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action;

{2}--"Administrative proceeding"--means any proceeding the outcome of which is required to be based on a record or

documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual;

{3}--"Another"--means a person or persons, as defined in this code, other than the offender;

{4}--"Benefit"--means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

{5}--"Bodily injury"--means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment;

{6}--"Cohabit"--means to live together under the representation of being married;

{7}--"Common scheme"--means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof;

{8}--"Computer"--means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes

1 all--input;--output;--processing;--storage;--software;--or  
 2 communication--facilities--that--are--connected--or--related--to  
 3 such--a--device--in--a--system--or--network;  
 4 {9}--"Computer-network"--means--the--interconnection--of  
 5 communication--systems--between--computers--or--computers--and  
 6 remote--terminals;  
 7 {10}--"Computer--program"--means--an--instruction--or  
 8 statement--or--a--series--of--instructions--or--statements;--in--a  
 9 form--acceptable--to--a--computer;--that--in--actual--or--modified  
 10 form--permits--the--functioning--of--a--computer--or--computer  
 11 system--and--causes--it--to--perform--specified--functions;  
 12 {11}--"Computer-services"--include--but--are--not--limited--to  
 13 computer--time;--data--processing;--and--storage--functions;  
 14 {12}--"Computer--software"--means--a--set--of--computer  
 15 programs;--procedures;--and--associated--documentation--concerned  
 16 with--the--operation--of--a--computer--system;  
 17 {13}--"Computer--system"--means--a--set--of--related;  
 18 connected;--or--unconnected--devices;--computer--software;--or  
 19 other--related--computer--equipment;  
 20 {14}--"Conduct"--means--an--act--or--series--of--acts--and--the  
 21 accompanying--mental--state;  
 22 {15}--"Conviction"--means--a--judgment--of--conviction--or  
 23 sentence--entered--upon--a--plea--of--guilty--or--upon--a--verdict--or  
 24 finding--of--guilty--of--an--offense--rendered--by--a--legally  
 25 constituted--jury--or--by--a--court--of--competent--jurisdiction

1 authorized--to--try--the--case--without--a--jury;  
 2 {16}--"Correctional institution"--means--the--state--prison;  
 3 county--or--city--jail;--or--other--institution--for--the  
 4 incarceration--or--custody--of--persons--under--sentence--for  
 5 offenses--or--awaiting--trial--or--sentence--for--offenses;  
 6 {17}--"Deception"--means--knowingly--to:  
 7 (a)--create--or--confirm--in--another--an--impression--which  
 8 is--false--and--which--the--offender--does--not--believe--to--be--true;  
 9 (b)--fail--to--correct--a--false--impression--which--the  
 10 offender--previously--has--created--or--confirmed;  
 11 (c)--prevent--another--from--acquiring--information  
 12 pertinent--to--the--disposition--of--the--property--involved;  
 13 (d)--sell--or--otherwise--transfer--or--encumber--property;  
 14 failing--to--disclose--a--lien;--adverse--claim;--or--other--legal  
 15 impediment--to--the--enjoyment--of--the--property;--whether--such  
 16 impediment--is--or--is--not--of--value--or--is--or--is--not--a--matter--of  
 17 official--record;--or  
 18 (e)--promise--performance--which--the--offender--does--not  
 19 intend--to--perform--or--knows--will--not--be--performed--Failure--to  
 20 perform--standing--alone--is--not--evidence--that--the--offender--did  
 21 not--intend--to--perform;  
 22 {18}--"Defamatory matter"--means--anything--which--exposes--a  
 23 person--or--a--group;--class;--or--association--to--hatred;  
 24 contempt;--ridicule;--degradation;--or--disgrace--in--society--or  
 25 to--injury--to--his--or--its--business--or--occupation;

1 {19}-"Deprive"--means--to-withhold-property-of-another;  
 2 {a)--permanently;  
 3 {b)--for-such-a-period-as-to-appropriate-a-portion-of  
 4 its-value;  
 5 {c)--with--the--purpose-to-restore-it-only-upon-payment  
 6 of-reward-or-other-compensation;-or  
 7 {d)--to-dispose-of-the-property-and-use--or--deal--with  
 8 the--property--so-as-to-make-it-unlikely-that-the-owner-will  
 9 recover-it.  
 10 {20}-"Deviate-sexual-relations"-means-sexual-contact-or  
 11 sexual-intercourse-between-two-persons-of-the--same--sex--or  
 12 any-form-of-sexual-intercourse-with-an-animal;  
 13 {21}-"Felony"--means--an--offense-in-which-the-sentence  
 14 imposed-upon-conviction-is--death--or--imprisonment--in--the  
 15 state-prison-for-any-term-exceeding-1-year;  
 16 {22}-"Forcible--felony"-means-any-felony-which-involves  
 17 the-use-or-threat-of-physical-force-or-violence-against-any  
 18 individual;  
 19 {23}-A--"Frisk"-is-a-search-by-an-external-patting-of-a  
 20 person's-clothing;  
 21 {24}-"Government"-includes-any-branch,-subdivision,-or  
 22 agency-of-the-government-of-the-state-or-any-locality-within  
 23 it;  
 24 {25}-"Harm"--means--loss;-disadvantage;-or--injury-or  
 25 anything-so-regarded-by-the-person-affected;-including-loss;

1 disadvantage;-or-injury-to-any-person--or--entity--in--whose  
 2 welfare-he-is-interested;  
 3 {26}-A--"house--of--prostitution"-means-any-place-where  
 4 prostitution--or--promotion--of--prostitution--is--regularly  
 5 carried--on--by--one--or--more--persons--under--the-control;  
 6 management;-or-supervision-of-another;  
 7 {27}-"Human-being"-means-a-person-who-has-been-born-and  
 8 is-alive;  
 9 {28}-An-"illegal-article"-is-an-article-or-thing--which  
 10 is--prohibited--by-statute;-rule;-or-order-from-being-in-the  
 11 possession-of-a-person-subject-to-official-detention;  
 12 {29}-"Inmate"--means--a--person--who--engages--in  
 13 prostitution--in--or--through--the--agency--of--a--house--of  
 14 prostitution;  
 15 {30}-"Intoxicating--substance"--means--any--controlled  
 16 substance--as--defined--in--Title--58;-chapter--32;-and-any  
 17 alcoholic-beverage;-including--but--not--limited--to--any  
 18 beverage--containing-1/2-of-1%--or--more--of-alcohol-by-volume.  
 19 The-foregoing-definition-does-not--extend--to--dealcoholized  
 20 wine-or-to-any-beverage-or-liquid-produced-by-the-process-by  
 21 which-beer;-ale;-port;-or-wine-is-produced-if-it-contains  
 22 less-than-1/2-of-1%--of-alcohol-by-volume;  
 23 {31}-An-"involuntary-act"-means-any-act-which-is:  
 24 {a)--a-reflex-or-convulsion;  
 25 {b)--a-bodily-movement-during-unconsciousness-or-sleep;

{c}--conduct-during-hypnosis-or-resulting-from-hypnotic suggestion;-or

{d)--a-bodily-movement-that-otherwise-is-not-a--product of--the--effort--or--determination--of--the--actor;-either conscious-or-habitual;

{32}--"Juror"--means-any-person-who-is-a--member--of--any jury;-including-a-grand-jury;-impaneled-by-any-court-in-this state--in--any--action--or--proceeding--or--by--any--officer authorized-by-law--to--impanel--a--jury--in--any--action--or proceeding;-The-term-"juror"--also--includes-a-person-who-has been-drawn-or-summoned-to-attend-as-a-prospective-juror;

{33}--"Knowingly"--a-person-acts-knowingly-with--respect to--conduct--or--to--a--circumstance--described-by-a-statute defining-an-offense-when-he-is-aware-of-his-conduct-or--that the--circumstance--exists;-A--person--acts--knowingly--with respect-to-the-result-of--conduct--described--by--a--statute defining--an--offense--when--he--is--aware--that--it--is--highly probable--that--such--result--will--be--caused--by--his--conduct;- When--knowledge--of--the--existence--of--a-particular-fact-is-an element-of-an-offense;-such-knowledge-is--established--if--a person--is--aware--of--a--high-probability-of-its-existence;- Equivalent-terms-such-as-"knowing"--or--"with-knowledge"--have the-same-meaning;

{34}--"Mentally-defective"--means-that-a-person-suffers from-a-mental-disease-or-defect-which-renders-him--incapable

of-appreciating-the-nature-of-his-conduct;

{35}--"Mentally--incapacitated"--means--that-a-person-is rendered--temporarily--incapable--of--appreciating--or controlling--his--conduct-as-a-result-of-the-influence-of-an intoxicating-substance;

{36}--"Misdemeanor"--means--an--offense--in--which--the sentence--imposed--upon--conviction--is--imprisonment-in-the county-jail-for-any-term-or-a-fine;-or-both;-or-the-sentence imposed-is-imprisonment-in-the-state-prison-for-any-term--of 1-year-or-less;

{37}--"Negligently"--a--person--acts--negligently--with respect-to-a-result-or-to--a--circumstance--described--by--a statute-defining-an-offense-when-he-consciously-disregards-a risk--that--the--result--will-occur-or-that-the-circumstance exists-or-when-he-disregards-a-risk-of-which--he--should--be aware--that--the--result-will-occur-or-that-the-circumstance exists;-The-risk-must-be-of-such-a-nature-and-degree-that-to disregard-it-involves-a-gross-deviation-from-the-standard-of conduct-that--a--reasonable--person--would--observe--in--the actor's--situation;- "Gross-deviation"--means-a-deviation-that is--considerably-greater--than--lack--of--ordinary--care;- Relevant--terms--such--as--"negligent"--and--"with-negligence" have-the-same-meaning;

{38}--"Obtain"--means:

{a)--in-relation-to-property;-to-bring-about-a-transfer

1 of interest or possession, whether to the offender or to  
 2 another; and  
 3 (b) in relation to labor or services, to secure the  
 4 performance thereof.  
 5 (39) "Obtains or exerts control" includes but is not  
 6 limited to the taking, carrying away, or sale, conveyance,  
 7 or transfer of title to, interest in, or possession of  
 8 property.  
 9 (40) "Occupied structure" means any building, vehicle,  
 10 or other place suitable for human occupancy or night lodging  
 11 of persons or for carrying on business, whether or not a  
 12 person is actually present. Each unit of a building  
 13 consisting of two or more units separately secured or  
 14 occupied is a separate occupied structure.  
 15 (41) "Offender" means a person who has been or is  
 16 liable to be arrested, charged, convicted, or punished for a  
 17 public offense.  
 18 (42) "Offense" means a crime for which a sentence of  
 19 death or of imprisonment or a fine is authorized. Offenses  
 20 are classified as felonies or misdemeanors.  
 21 (43) "Official detention" means imprisonment resulting  
 22 from a conviction for an offense, confinement for an  
 23 offense, confinement of a person charged with an offense,  
 24 detention by a peace officer pursuant to arrest, detention  
 25 for extradition or deportation, or any lawful detention for

1 the purpose of the protection of the welfare of the person  
 2 detained or for the protection of society. Official  
 3 detention does not include supervision of probation or  
 4 parole, constraint incidental to release on bail, or an  
 5 unlawful arrest unless the person arrested employed physical  
 6 force, a threat of physical force, or a weapon to escape.  
 7 (44) "Official proceeding" means a proceeding heard or  
 8 which may be heard before any legislative, judicial,  
 9 administrative, or other governmental agency or official  
 10 authorized to take evidence under oath, including any  
 11 referee, hearing examiner, commissioner, notary, or other  
 12 person taking testimony or deposition in connection with  
 13 such proceeding.  
 14 (45) "Other state" means any state or territory of the  
 15 United States, the District of Columbia, and the  
 16 Commonwealth of Puerto Rico.  
 17 (46) "Owner" means a person other than the offender who  
 18 has possession of or any other interest in the property  
 19 involved, even though such interest or possession is  
 20 unlawful, and without whose consent the offender has no  
 21 authority to exert control over the property.  
 22 (47) "Party official" means a person who holds an  
 23 elective or appointive post in a political party in the  
 24 United States by virtue of which he directs or conducts or  
 25 participates in directing or conducting party affairs at any

1 level-of-responsibility;

2 {48}-"Peace-officer"-means-any-person-who-by-virtue-of

3 his-office-or-public-employment-is-vested-by-law-with-a-duty

4 to-maintain-public-order-or-to-make-arrests-for-offenses

5 while-acting-within-the-scope-of-his-authority;

6 {49}-"Pecuniary-benefit"--is-benefit-in-the-form-of

7 money, property, commercial-interests, or anything-else--the

8 primary-significance-of-which-is-economic-gain;

9 {50}-"Person"----includes---an---individual,---business

10 association, partnership, corporation, government, or--other

11 legal--entity--and-an-individual-acting-or-purporting-to-act

12 for-or-on-behalf-of-any-government-or--subdivision--thereof;

13 {51}-"Physically-helpless"--means--that--a--person--is

14 unconscious-or-is-otherwise-physically-unable-to-communicate

15 unwillingness-to-act;

16 {52}-"Possession"-is-the-knowing--control--of--anything

17 for--a--sufficient-time-to-be-able-to-terminate-control and,

18 for-the-purposes-of-possession-of--intoxicating--substances,

19 includes-consumption;

20 {53}-"Premises"--includes--any--type--of--structure--or

21 building-and-any-real-property;

22 {54}-"Property"-means-any-tangible-or-intangible--thing

23 of-value; Property-includes-but-is-not-limited-to:

24 {a)--real-estate;

25 {b)--money;

1 {c)--commercial-instruments;

2 {d)--admission-or-transportation-tickets;

3 {e)--written--instruments--which--represent--or--embody

4 rights-concerning-anything--of--value,--including--labor--or

5 services,--or-which-are-otherwise-of-value-to-the-owner;

6 {f)--things--growing--on,--affixed-to,--or-found-on-land

7 and-things-which-are-part-of-or-affixed-to-any-building;

8 {g)--electricity, gas, and water;

9 {h)--birds, animals, and fish-which-ordinarily-are-kept

10 in-a-state-of-confinement;

11 {i)--food-and-drink, samples, cultures, microorganisms,

12 specimens, records, recordings, documents, blueprints,

13 drawings, maps, and whole-or-partial-copies, descriptions,

14 photographs, prototypes, or models thereof;

15 {j)--any--other---articles,---materials,---devices,

16 substances,--and--whole--or--partial--copies,--descriptions,

17 photographs, prototypes, or models thereof-which-constitute,

18 represent, evidence, reflect, or record--secret--scientific,

19 technical,---merchandising,---production,---or---management

20 information--or--a--secret--designed---process,---procedure,

21 formula, invention, or improvement; and

22 {k)--electronic--impulses,--electronically-processed-or

23 produced--data--or--information,---commercial---instruments,

24 computer--software--or-computer-programs, in-either-machine-

25 or--human-readable--form,--computer--services,---any---other

1 tangible-or-intangible-item-of-value-relating-to-a-computer,  
2 computer---system;---or---computer---network;---and---any---copies  
3 thereof;

4 {55}-"Property--of--another"--means--real--or--personal  
5 property--in--which--a-person-other-than-the-offender-has-an  
6 interest-which-the-offender-has-no-authority--to--defeat--or  
7 impair;---even--though--the--offender--himself--may--have--an  
8 interest-in-the-property;

9 {56}-"Public-place"--means-any-place-to-which-the-public  
10 or-any-substantial-group-thereof-has-access;

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

19 {58}-"Purposely"--a--person-acts-purposely-with-respect  
20 to-a-result-or-to-conduct-described-by-a-statute-defining-an  
21 offense-if-it-is-his-conscious--object--to--engage--in--that  
22 conduct--or--to-cause-that-result;---When-a-particular-purpose  
23 is-an-element-of-an-offense;---the--element--is--established  
24 although--such--purpose-is-conditional;---unless-the-condition  
25 negatives-the-harm-or-evil-sought-to-be-prevented-by-the-law

1 defining-the-offense;---Equivalent-terms-such-as-"purpose"--and  
2 "with-the-purpose"--have-the-same-meaning;

3 {59}-"Serious-bodily-injury"--means-bodily-injury--which  
4 creates--a-substantial-risk-of-death-or-which-causes-serious  
5 permanent-disfigurement-or-protracted-loss-or-impairment--of  
6 the--function--or--process--of-any-bodily-member-or-organ;---it  
7 includes-serious-mental-illness-or-impairment;

8 {60}-"Sexual-contact"--means-any-touching-of-the--sexual  
9 or--other--intimate--parts--of-the-person-of-another-for-the  
10 purpose-of-arousing--or--gratifying--the--sexual--desire--of  
11 either-party;

12 {61}-"Sexual--intercourse"--means--penetration--of--the  
13 vulva;---anus;---or--mouth--of-one-person-by-the-penis--of--another  
14 person;---penetration--of--the-vulva-or-anus--of-one-person-by  
15 any-body-member-of-another-person;---or--penetration--of--the  
16 vulva--or--anus--of--one-person-by-any-foreign-instrument-or  
17 object-manipulated-by-another--person--for--the--purpose--of  
18 arousing--or--gratifying--the-sexual-desire-of-either-party;  
19 Any-penetration;---however-slight;---is-sufficient;

20 {62}-"Solicit"--or--"solicitation"--means--to--command,  
21 authorize;---urge;---incite;---request;---or--advise--another-to  
22 commit-an-offense;

23 {63}-"State"--or--"this--state"--means--the--state--of  
24 Montana;---all--the--land--and--water-in-respect-to-which-the  
25 state--of--Montana--has--either--exclusive--or--concurrent



1 jurisdiction; and the air space above such land and water;  
 2 {64} "Statute" means any act of the legislature of this  
 3 state;  
 4 {65} "Stolen property" means property over which  
 5 control has been obtained by theft;  
 6 {66} A "stop" is the temporary detention of a person  
 7 that results when a peace officer orders the person to  
 8 remain in his presence;  
 9 {67} "Tamper" means to interfere with something  
 10 improperly; meddle with it; make unwarranted alterations in  
 11 its existing condition; or deposit refuse upon it;  
 12 {68} "Threat" means a menace, however communicated, to:  
 13 (a) inflict physical harm on the person threatened or  
 14 any other person or on property;  
 15 (b) subject any person to physical confinement or  
 16 restraint;  
 17 (c) commit any criminal offense;  
 18 (d) accuse any person of a criminal offense;  
 19 (e) expose any person to hatred, contempt, or  
 20 ridicule;  
 21 (f) harm the credit or business reputation of any person;  
 22 (g) reveal any information sought to be concealed by  
 23 the person threatened;  
 24 (h) take action as an official against anyone or  
 25 anything, withhold official action, or cause such action or

1 withholding;  
 2 (i) bring about or continue a strike, boycott, or  
 3 other similar collective action if the property is not  
 4 demanded or received for the benefit of the groups which he  
 5 purports to represent; or  
 6 (j) testify or provide information or withhold  
 7 testimony or information with respect to another's legal  
 8 claim or defense;  
 9 {69} (a) "Value" means the market value of the property  
 10 at the time and place of the crime or, if such cannot be  
 11 satisfactorily ascertained, the cost of the replacement of  
 12 the property within a reasonable time after the crime; if  
 13 the offender appropriates a portion of the value of the  
 14 property, the value shall be determined as follows:  
 15 (i) The value of an instrument constituting an  
 16 evidence of debt, such as a check, draft, or promissory  
 17 note, shall be considered the amount due or collectible  
 18 thereon or thereby, such figure ordinarily being the face  
 19 amount of the indebtedness less any portion thereof which  
 20 has been satisfied;  
 21 (ii) The value of any other instrument which creates,  
 22 releases, discharges, or otherwise affects any valuable  
 23 legal right, privilege, or obligation shall be considered  
 24 the amount of economic loss which the owner of the  
 25 instrument might reasonably suffer by virtue of the loss of

1 the instrument;

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

12       {b)--When-it-cannot-be-determined-if-the-value--of--the  
13 property--is--more--or--less--than-\$300-by-the-standards-set  
14 forth-in--subsection--(69){a)--above,-its-value--shall-be  
15 considered-to-be-an-amount-less-than-\$300.

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

20       {70}-"Vehicle"-means-any-device-for--transportation--by  
21 land,-water,-or-air-or-mobile-equipment-with-provision-for  
22 transport-of-an-operator;

23       {71}-"Weapon"--means-any--instrument,-article,-or  
24 substance--which,-regardless-of--its--primary-function,-is  
25 readily-capable-of-being-used-to-produce--death-or--serious

1 bodily-injury;

2       {72}-"Witness"---means--a--person--whose--testimony--is  
3 desired-in-any-official-proceeding,-in-any-investigation--by  
4 a--grand--jury,-or--in--a--criminal-action,-prosecution,-or  
5 proceeding;"

6       Section 1. Section 45-5-624, MCA, is amended to read:

7       "45-5-624. Unlawful possession of an intoxicating  
8 substance -- interference with sentence or court order. (1)  
9 A person under the age of 18 years commits the offense of  
10 possession of an intoxicating substance if he knowingly has  
11 in his possession an intoxicating substance other than an  
12 alcoholic beverage. A person under the age of 21 commits the  
13 offense of possession of an intoxicating substance if he  
14 knowingly has in his possession an alcoholic beverage,  
15 except that he does not commit the offense when in the  
16 course of his employment it is necessary to possess  
17 alcoholic beverages.

18       (2) A person convicted of the offense of possession of  
19 an intoxicating substance shall:

20       (a) if the person:

21       (i) is less than 18 years of age, be fined not to  
22 exceed \$50; or

23       (ii) is 18 years or older, be fined an amount not to  
24 exceed \$500 \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND  
25 OFFENSE, AND \$200 FOR A THIRD OFFENSE. FOR A FOURTH OR

1 SUBSEQUENT OFFENSE A PERSON MAY BE FINED AN AMOUNT NOT TO  
 2 EXCEED \$300 or be imprisoned in the county jail for a term  
 3 not to exceed 6 months, or both; and

4 (b) be ordered to complete and, if financially able,  
 5 pay, either directly with money or indirectly through  
 6 court-ordered community service, all costs of his  
 7 participation in a community-based substance abuse  
 8 information course;

9 (c) have his driver's license confiscated by the court  
 10 for not more than 90 days and be ordered not to drive during  
 11 that period if he was driving or otherwise in actual  
 12 physical control of a motor vehicle when the offense  
 13 occurred; or

14 (d) be sentenced to any combination of these  
 15 penalties.

16 (3) A defendant who fails to comply with a sentence  
 17 and is under 21 years of age and was under 18 years of age  
 18 when he failed to comply must be transferred to the youth  
 19 court. If proceedings for violation of subsection (1) are  
 20 held in the youth court, the penalties in subsection (2) do  
 21 not apply. If proceedings for violation of subsection (1) or  
 22 for failure to comply with a sentence are held in the youth  
 23 court, the offender shall be treated as an alleged youth in  
 24 need of supervision as defined in 41-5-103. In such case,  
 25 the youth court may enter its judgment under 41-5-523.

1 (4) A person commits the offense of interference with  
 2 a sentence or court order if he purposely or knowingly  
 3 causes his child or ward to fail to comply with a sentence  
 4 imposed under this section or a youth court disposition  
 5 order for a youth found to have violated this section and  
 6 upon conviction shall be fined \$100 or imprisoned in the  
 7 county jail for 10 days, or both."

-End-