

HOUSE BILL NO. 142
INTRODUCED BY ANDERSON

IN THE HOUSE

JANUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 26, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1993	PRINTING REPORT.
JANUARY 29, 1993	SECOND READING, DO PASS AS AMENDED. SEGREGATED FROM COMMITTEE OF WHOLE REPORT.
JANUARY 30, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 1, 1993	ENGROSSING REPORT.
FEBRUARY 3, 1993	THIRD READING, PASSED. AYES, 79; NOES, 14.
FEBRUARY 4, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 25, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
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APRIL 2, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 17, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT REJECTED.

IN THE SENATE

APRIL 17, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 24, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 142
2 INTRODUCED BY Miss. [Signature]
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO \$1,000
5 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES BEFORE
6 PENALTIES FOR THOSE CRIMES ARE INCREASED; AND AMENDING
7 SECTIONS 45-2-101, 45-6-101, 45-6-301, 45-6-309, 45-6-311,
8 45-6-312, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, MCA."

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

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

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

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

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

25 (3) "Another" means a person or persons, as defined in

1 this code, other than the offender.

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

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

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

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

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

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

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

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

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

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

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

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

24 (16) "Correctional institution" means the state prison,
25 county or city jail, or other institution for the

1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (17) "Deception" means knowingly to:

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

7 (b) fail to correct a false impression which that 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 without disclosing a lien, adverse
13 claim, or other legal impediment to the enjoyment of the
14 property, whether such the impediment is or is not of value
15 or is or is not a matter of official record; or

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

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

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

1 (a) permanently;

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

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

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

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

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

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

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

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

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

1 welfare he the affected person is interested.

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

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

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

11 (29) "Inmate" means a person who engages in prostitution
12 in or through the agency of a house of 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~~ Intoxicating substance does not
18 ~~extend--to~~ include dealcoholized wine or to any beverage or
19 liquid produced by the process by which beer, ale, port, or
20 wine is produced if it contains less than 1/2 of 1% of
21 alcohol by volume.

22 (31) An "involuntary act" means any act ~~which~~ that is:

23 (a) a reflex or convulsion;

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

25 (c) conduct during hypnosis or resulting from hypnotic

1 suggestion; or

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

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

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

24 (34) "Mentally defective" means that a person suffers
25 from a mental disease or defect which that renders him the

1 person incapable of appreciating the nature of his the
2 person's own conduct.

3 (35) "Mentally incapacitated" means that a person is
4 rendered temporarily incapable of appreciating or
5 controlling his the person's own conduct as a result of the
6 influence of an intoxicating substance.

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

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

25 (38) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

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

23 (47) "Party official" means a person who holds an
24 elective or appointive post in a political party in the
25 United States by virtue of which he the person directs or

1 conducts or participates in directing or conducting party
2 affairs at any level of responsibility.

3 (48) "Peace officer" means any person who by virtue of
4 his the person's office or public employment is vested by
5 law with a duty to maintain public order or to make arrests
6 for offenses while acting within the scope of his the
7 person's authority.

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

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

16 (51) "Physically helpless" means that a person is
17 unconscious or is otherwise physically unable to communicate
18 unwillingness to act.

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

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

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

25 (a) real estate;

1 (b) money;

2 (c) commercial instruments;

3 (d) admission or transportation tickets;

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

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

9 (g) electricity, gas, and water;

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

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

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

23 (k) electronic impulses, electronically processed or
24 produced data or information, commercial instruments,
25 computer software or computer programs, in either machine-

1 or human-readable form, computer services, any other
2 tangible or intangible item of value relating to a computer,
3 computer system, or computer network, and any copies
4 thereof.

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

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

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

20 (58) "Purposely"---a person acts purposely with respect
21 to a result or to conduct described by a statute defining an
22 offense if it is his the person's conscious object to engage
23 in that conduct or to cause that result. When a particular
24 purpose is an element of an offense, the element is
25 established although such the purpose is conditional, unless

1 the condition negatives the harm or evil sought to be
2 prevented by the law defining the offense. Equivalent terms,
3 such as "purpose" and "with the purpose", have the same
4 meaning.

5 (59) "Serious bodily injury" means bodily injury which
6 that creates a substantial risk of death or which that
7 causes serious permanent disfigurement or protracted loss or
8 impairment of the function or process of any bodily member
9 or organ. It includes serious mental illness or impairment.

10 (60) "Sexual contact" means any touching of the sexual
11 or other intimate parts of the person of another for the
12 purpose of arousing or gratifying the sexual desire of
13 either party.

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

22 (62) "Solicit" or "solicitation" means to command,
23 authorize, urge, incite, request, or advise another to
24 commit an offense.

25 (63) "State" or "this state" means the state of Montana,

1 all the land and water in respect to which the state of
2 Montana has either exclusive or concurrent jurisdiction, and
3 the air space above such the land and water.

4 (64) "Statute" means any act of the legislature of this
5 state.

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

8 (66) A "stop" is the temporary detention of a person
9 that results when a peace officer orders the person to
10 remain in his the peace officer's presence.

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

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

15 (a) inflict physical harm on the person threatened or
16 any other person or on property;

17 (b) subject any person to physical confinement or
18 restraint;

19 (c) commit any criminal offense;

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

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

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

23 (g) reveal any information sought to be concealed by
24 the person threatened;

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

1 anything, withhold official action, or cause such the action
2 or withholding;

3 (i) bring about or continue a strike, boycott, or other
4 similar collective action if the person making the threat
5 demands or receives property is--not--demanded--or--received
6 that is not for the benefit of the groups which-he that the
7 person purports to represent; or

8 (j) testify or provide information or withhold
9 testimony or information with respect to another's legal
10 claim or defense.

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

18 (i) The value of an instrument constituting an evidence
19 of debt, such as a check, draft, or promissory note, shall
20 be is considered the amount due or collectible. thereon--or
21 thereby--such The figure is ordinarily being the face amount
22 of the indebtedness less any portion thereof which of the
23 indebtedness that has been satisfied.

24 (ii) The value of any other instrument which that
25 creates, releases, discharges, or otherwise affects any

1 valuable legal right, privilege, or obligation ~~shall be~~ is
 2 considered the amount of economic loss which that the owner
 3 of the instrument might reasonably suffer by virtue of the
 4 loss of the instrument.

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

15 (b) When it cannot be determined if the value of the
 16 property is more or less than ~~\$300~~ \$1,000 by the standards
 17 set forth in subsection (69)(a) above, its value ~~shall be~~ is
 18 considered to be an amount less than ~~\$300~~ \$1,000.

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

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

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

5 (72) "Witness" means a person whose testimony is desired
 6 in any official proceeding, in any investigation by a grand
 7 jury, or in a criminal action, prosecution, or proceeding."

8 **Section 2.** Section 45-6-101, MCA, is amended to read:

9 "45-6-101. Criminal mischief. (1) A person commits the
 10 offense of criminal mischief if he the person knowingly or
 11 purposely:

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

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

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

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

23 (2) A person convicted of criminal mischief ~~shall~~ must
 24 be ordered to make restitution in an amount and manner to be
 25 set by the court. The court shall determine the manner and

amount of restitution after full consideration of the convicted person's ability to pay the same restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered ~~shall~~ must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of ~~\$300~~ \$1,000, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, ~~he-shall~~ the offender must be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."

Section 3. Section 45-6-301, MCA, is amended to read:

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

theft when he the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to--deprive that deprives the owner of the property; or

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

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to-deprive that deprives the owner of the property; or

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

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as to deprive that deprives the owner of the property; or

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

(4) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

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

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

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

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding \$300 \$1,000 in value shall be fined

not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding ~~\$300~~ \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

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

Section 4. Section 45-6-309, MCA, is amended to read:

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

required and of the penalty prescribed in this section is stated in the rental or lease agreement.

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

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

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$300 \$1,000 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding \$300 \$1,000 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 5. Section 45-6-311, MCA, is amended to read:

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

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

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

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

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding \$300 \$1,000 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding \$300 \$1,000 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 6. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he the person

1 knowingly:

2 (a) acquires, purchases, possesses, or uses any food
3 stamp or coupon that he the person is not entitled to; or

4 (b) transfers, sells, trades, gives, or otherwise
5 disposes of any food stamp or coupon to another person not
6 entitled to receive or use it.

7 (2) A person convicted of an offense under this section
8 shall be fined not more than \$500 or be imprisoned in the
9 county jail for not more than 6 months, or both. A person
10 convicted of an offense under this section, which offense is
11 part of a common scheme or in which the value of the food
12 stamps exceeds ~~\$150~~ \$1,000, shall be fined not more than
13 \$50,000 or be imprisoned in the state prison for not more
14 than 10 years, or both.

15 (3) As used in this section, "food stamp or coupon"
16 means any stamp, coupon, or type of certification provided
17 for the purchase of eligible food pursuant to the Food Stamp
18 Act of 1977, 7. U.S.C. 2011 through 2029, or any similar
19 public assistance program."

20 **Section 7.** Section 45-6-316, MCA, is amended to read:

21 "45-6-316. Issuing a bad check. (1) A person commits
22 the offense of issuing a bad check when he the person issues
23 or delivers a check or other order upon a real or fictitious
24 depository for the payment of money knowing that it will not
25 be paid by the depository.

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

6 (3) A person convicted of issuing a bad check shall be
7 fined not to exceed \$500 or be imprisoned in the county jail
8 for any term not to exceed 6 months, or both. If the
9 offender has engaged in issuing bad checks which that are
10 part of a common scheme or if the value of any property,
11 labor, or services obtained or attempted to be obtained
12 exceeds ~~\$300~~ \$1,000, he the offender shall be fined not to
13 exceed \$50,000 or be imprisoned in the state prison for any
14 term not to exceed 10 years, or both."

15 **Section 8.** Section 45-6-317, MCA, is amended to read:

16 "45-6-317. Deceptive practices. (1) A person commits
17 the offense of deceptive practices when he the person
18 purposely or knowingly:

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

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

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

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

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

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

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

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

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

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$300~~ \$1,000, the offender shall be fined not to exceed \$50,000 or be imprisoned in the

state prison for a term not to exceed 10 years, or both."

Section 9. Section 45-6-325, MCA, is amended to read:

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

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

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

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

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

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

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which

1 any right, obligation, or power with reference to any person
2 or property may be created, transferred, altered, or
3 terminated.

4 (4) A person convicted of the offense of forgery shall
5 be fined not to exceed \$500 or be imprisoned in the county
6 jail for any term not to exceed 6 months, or both. If the
7 forgery is part of a common scheme or if the value of the
8 property, labor, or services obtained or attempted to be
9 obtained exceeds ~~\$300~~ \$1,000, the offender shall be fined
10 not to exceed \$50,000 or be imprisoned in the state prison
11 for any term not to exceed 20 years, or both."

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

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

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

24 (b) If false or fraudulent claims are submitted
25 purposely and knowingly as part of a common scheme or if the

1 value of the claim or the aggregate value of all claims
2 exceeds ~~\$300~~ \$1,000, a person convicted of an offense under
3 this section shall be fined not to exceed \$10,000 or
4 imprisoned in the state prison for a term not to exceed 10
5 years, or both."

-End-

APPROVED BY COMMITTEE
ON JUDICIARYHOUSE BILL NO. 142
INTRODUCED BY ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO \$17,000
\$500 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES
BEFORE PENALTIES FOR THOSE CRIMES ARE INCREASED; AND
AMENDING SECTIONS 45-2-101, 45-6-101, 45-6-301, 45-6-309,
45-6-311, 45-6-312, 45-6-316, 45-6-317, 45-6-325, AND
45-7-210, 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 when 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
the beneficiary is interested, ~~but~~. Benefit does not include
an advantage promised generally to a group or class of
voters as a consequence of public measures which that 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 that results
in the repeated commission of the same offense or that
affects the same person or the same persons or the property
thereof of the same person or persons.

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

1 such-a that 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 that is false and which that the offender does not believe
7 to be true;

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

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

12 (d) sell or otherwise transfer or encumber property
13 ~~failing--to--disclose~~ without disclosing a lien, adverse
14 claim, or other legal impediment to the enjoyment of the
15 property, whether such the impediment is or is not of value
16 or is or is not a matter of official record; or

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

21 (18) "Defamatory matter" means anything which that
22 exposes a person or a group, class, or association to
23 hatred, contempt, ridicule, degradation, or disgrace in
24 society or to injury to his the person's or its business or
25 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 of
 6 reward or other compensation; or
 7 (d) to dispose of the property and use or deal with the
 8 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 that
 17 involves the use or threat of physical force or violence
 18 against any 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 the affected person 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 that is prohibited by statute, rule, or order from being in
 11 the possession of a person subject to official detention.

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

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

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

- 24 (a) a reflex or convulsion;
 25 (b) a bodily movement during unconsciousness or sleep;

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

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

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

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

25 (34) "Mentally defective" means that a person suffers

1 from a mental disease or defect which that renders him the
2 person incapable of appreciating the nature of his the
3 person's own conduct.

4 (35) "Mentally incapacitated" means that a person is
5 rendered temporarily incapable of appreciating or
6 controlling his the person's own conduct as a result of the
7 influence of an intoxicating substance.

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

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

1 (38) "Obtain" means:

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

5 (b) in relation to labor or services, to secure the
6 performance thereof of the labor or service.

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

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

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

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

23 (43) "Official detention" means imprisonment resulting
24 from a conviction for an offense, confinement for an
25 offense, confinement of a person charged with an offense,

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

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

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

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

24 (47) "Party official" means a person who holds an
25 elective or appointive post in a political party in the

1 United States by virtue of which he the person directs or
2 conducts or participates in directing or conducting party
3 affairs at any level of responsibility.

4 (48) "Peace officer" means any person who by virtue of
5 his the person's office or public employment is vested by
6 law with a duty to maintain public order or to make arrests
7 for offenses while acting within the scope of his the
8 person's authority.

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

12 (50) "Person" includes an individual, business
13 association, partnership, corporation, government, or other
14 legal entity and an individual acting or purporting to act
15 for or on behalf of any government or subdivision thereof of
16 government.

17 (51) "Physically helpless" means that a person is
18 unconscious or is otherwise physically unable to communicate
19 unwillingness to act.

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

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

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

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

1 computer software or computer programs, in either machine-
2 or human-readable form, computer services, any other
3 tangible or intangible item of value relating to a computer,
4 computer system, or computer network, and any copies
5 thereof.

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

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

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

21 (58) "Purposely"--a person acts purposely with respect
22 to a result or to conduct described by a statute defining an
23 offense if it is his the person's conscious object to engage
24 in that conduct or to cause that result. When a particular
25 purpose is an element of an offense, the element is

1 established although such the purpose is conditional, unless
2 the condition negatives the harm or evil sought to be
3 prevented by the law defining the offense. Equivalent terms,
4 such as "purpose" and "with the purpose", have the same
5 meaning.

6 (59) "Serious bodily injury" means bodily injury which
7 that creates a substantial risk of death or which that
8 causes serious permanent disfigurement or protracted loss or
9 impairment of the function or process of any bodily member
10 or organ. It includes serious mental illness or impairment.

11 (60) "Sexual contact" means any touching of the sexual
12 or other intimate parts of the person of another for the
13 purpose of arousing or gratifying the sexual desire of
14 either party.

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

23 (62) "Solicit" or "solicitation" means to command,
24 authorize, urge, incite, request, or advise another to
25 commit an offense.

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

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

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

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

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

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

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

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

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

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

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

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

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

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property is-not-demanded-or-received that is not for the benefit of the groups which-he that the person purports to represent; or

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

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

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

(ii) The value of any other instrument which that

1 creates, releases, discharges, or otherwise affects any
2 valuable legal right, privilege, or obligation ~~shall--be~~ is
3 considered the amount of economic loss which that the owner
4 of the instrument might reasonably suffer by virtue of the
5 loss of the instrument.

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

16 (b) When it cannot be determined if the value of the
17 property is more or less than \$300 ~~\$1,000~~ \$500 by the
18 standards set forth in subsection (69)(a) above, its value
19 ~~shall--be~~ is considered to be an amount less than \$300 ~~\$1,000~~
20 \$500.

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

25 (70) "Vehicle" means any device for transportation by

1 land, water, or air or by mobile equipment, with provision
2 for transport of an operator.

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

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

10 **Section 2.** Section 45-6-101, MCA, is amended to read:

11 "45-6-101. Criminal mischief. (1) A person commits the
12 offense of criminal mischief if he the person knowingly or
13 purposely:

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

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

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

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

25 (2) A person convicted of criminal mischief ~~shall~~ must

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

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$300 ~~\$1,000~~ \$500, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, ~~he--shall~~ the offender must be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."

Section 3. Section 45-6-301, MCA, is amended to read:

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to-deprive that deprives the owner of the property; or

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

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to--deprive that deprives the owner of the property; or

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

(3) A person commits the offense of theft when he the person purposely or knowingly obtains control over stolen

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as to--deprive that deprives the owner of the property; or

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

(4) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

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

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

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

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding \$300 ~~\$1,000~~ \$500 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding \$300 ~~\$1,000~~ \$500 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

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

Section 4. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he the person purposely and knowingly fails to return such the property within 48 hours

1 after the time provided for such return in the rental
2 agreement, provided that clear written notice, in bold
3 print, of the date and time when return of the property is
4 required and of the penalty prescribed in this section is
5 stated in the rental or lease agreement.

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

10 (3) After the rental or lease period specified in the
11 rental or lease agreement has expired, failure to return
12 rented or leased personal property within 72 hours of
13 written demand by the lessor, sent by certified mail to the
14 renter or lessee at the address given at the time of
15 entering the rental or lease agreement, constitutes prima
16 facie evidence of commission of the offense.

17 (4) (a) A person convicted of failure to return rented
18 or leased personal property not exceeding \$300 ~~\$17000~~ \$500
19 in value shall be fined not to exceed \$500 or be imprisoned
20 in the county jail for a term not to exceed 6 months, or
21 both.

22 (b) A person convicted of failure to return rented or
23 leased personal property exceeding \$300 ~~\$17000~~ \$500 in value
24 shall be imprisoned in the state prison for a term not to
25 exceed 10 years."

1 **Section 5.** Section 45-6-311, MCA, is amended to read:

2 "45-6-311. Unlawful use of a computer. (1) A person
3 commits the offense of unlawful use of a computer if he the
4 person knowingly or purposely:

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

7 (b) alters or destroys or causes another to alter or
8 destroy a computer program or computer software without
9 consent of the owner; or

10 (c) obtains the use of or alters or destroys a
11 computer, computer system, computer network, or any part
12 thereof as part of a deception for the purpose of obtaining
13 money, property, or computer services from the owner of the
14 computer, computer system, computer network, or part thereof
15 or from any other person.

16 (2) A person convicted of the offense of unlawful use
17 of a computer involving property not exceeding \$300 ~~\$17000~~
18 \$500 in value shall be fined not to exceed \$500 or be
19 imprisoned in the county jail for a term not to exceed 6
20 months, or both. A person convicted of the offense of
21 unlawful use of a computer involving property exceeding \$300
22 ~~\$17000~~ \$500 in value shall be fined not more than 2 1/2
23 times the value of the property used, altered, destroyed, or
24 obtained or be imprisoned in the state prison for a term not
25 to exceed 10 years, or both."

Section 6. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds ~~\$150~~ ~~\$1,000~~ \$500, shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program."

Section 7. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits

the offense of issuing a bad check when he the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

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

(3) A person convicted of issuing a bad check shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$300~~ ~~\$1,000~~ \$500, he the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 8. Section 45-6-317, MCA, is amended to read:

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

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

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

(c) makes or directs another to make a false or deceptive statement to any person respecting his that person's THE financial condition OF THE PERSON MAKING OR DIRECTING ANOTHER TO MAKE THE STATEMENT for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

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

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

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

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

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

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

(2) A person convicted of the offense of deceptive

practices shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~\$300~~ \$1,000 \$500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 45-6-325, MCA, is amended to read:

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

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

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

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

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

1 otherwise forging written instruments.

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

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

11 (4) A person convicted of the offense of forgery shall
12 be fined not to exceed \$500 or be imprisoned in the county
13 jail for any term not to exceed 6 months, or both. If the
14 forgery is part of a common scheme or if the value of the
15 property, labor, or services obtained or attempted to be
16 obtained exceeds ~~\$300~~ \$1,000 \$500, the offender shall be
17 fined not to exceed \$50,000 or be imprisoned in the state
18 prison for any term not to exceed 20 years, or both."

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

20 "45-7-210. False claims to public agencies. (1) A
21 person commits an offense under this section if he the
22 person purposely and knowingly presents for allowance or for
23 payment any false or fraudulent claim, bill, account,
24 voucher, or writing to any public agency, public servant, or
25 contractor authorized to allow or pay claims presented to

1 public agencies if genuine.

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

6 (b) If false or fraudulent claims are submitted
7 purposely and knowingly as part of a common scheme or if the
8 value of the claim or the aggregate value of all claims
9 exceeds ~~\$300~~ \$1,000 \$500, a person convicted of an offense
10 under this section shall be fined not to exceed \$10,000 or
11 imprisoned in the state prison for a term not to exceed 10
12 years, or both."

-End-

HOUSE BILL NO. 142

INTRODUCED BY ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO ~~\$1,000~~
~~\$500~~ ~~\$1,000~~ \$500 THE AMOUNT REQUIRED TO BE INVOLVED IN
VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE
INCREASED; ~~INCREASING--PENALTIES--FOR--THOSE--CRIMES;~~ AND
AMENDING SECTIONS 45-2-101, 45-6-101, 45-6-301, 45-6-309,
45-6-311, 45-6-312, 45-6-316, 45-6-317, 45-6-325, AND
45-7-210, 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 when 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
the beneficiary is interested, but. Benefit does not include
an advantage promised generally to a group or class of
voters as a consequence of public measures which that 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 that results
in the repeated commission of the same offense or that
affects the same person or the same persons or the property
thereof of the same person or persons.

(8) "Computer" means an electronic device that performs
logical, arithmetic, and memory functions by the
manipulation of electronic or magnetic impulses and includes
all input, output, processing, storage, software, or

1 communication facilities that are connected or related to
2 such-a that device in a system or network.

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

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

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

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

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

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

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

1 (16) "Correctional institution" means the state prison,
2 county or city jail, or other institution for the
3 incarceration or custody of persons under sentence for
4 offenses or awaiting trial or sentence for offenses.

5 (17) "Deception" means knowingly to:

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

9 (b) fail to correct a false impression which that 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~~ without disclosing a lien, adverse
15 claim, or other legal impediment to the enjoyment of the
16 property, whether such the impediment is or is not of value
17 or is or is not a matter of official record; or

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

22 (18) "Defamatory matter" means anything which that
23 exposes a person or a group, class, or association to
24 hatred, contempt, ridicule, degradation, or disgrace in
25 society or to injury to his the person's or its business or

1 occupation.

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

3 (a) permanently;

4 (b) for such a period as to appropriate a portion of
5 its value;

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

8 (d) to dispose of the property and use or deal with the
9 property so as to make it unlikely that the owner will
10 recover it.

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

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

17 (22) "Forcible felony" means any felony which that
18 involves the use or threat of physical force or violence
19 against any individual.

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

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

25 (25) "Harm" means loss, disadvantage, or injury or

1 anything so regarded by the person affected, including loss,
2 disadvantage, or injury to any person or entity in whose
3 welfare he the affected person is interested.

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

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

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

13 (29) "Inmate" means a person who engages in prostitution
14 in or through the agency of a house of 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 Intoxicating substance does not
20 extend--to include dealcoholized wine or to any beverage or
21 liquid produced by the process by which beer, ale, port, or
22 wine is produced if it contains less than 1/2 of 1% of
23 alcohol by volume.

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

25 (a) a reflex or convulsion;

(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 the person is aware of his the person's own 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 the person is aware that it is highly probable that such the result will be caused by his that 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 that renders him the person incapable of appreciating the nature of his the person's own conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his the person's own 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 in which 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 the person consciously disregards a risk that the result will occur or that the circumstance exists or when he the person disregards a risk of which he the person 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

1 "negligent" and "with negligence", have the same meaning.

2 (38) "Obtain" means:

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

6 (b) in relation to labor or services, to secure the
7 performance thereof of the labor or service.

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

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

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

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

24 (43) "Official detention" means imprisonment resulting
25 from a conviction for an offense, confinement for an

1 offense, confinement of a person charged with an offense,
2 detention by a peace officer pursuant to arrest, detention
3 for extradition or deportation, or any lawful detention for
4 the purpose of the protection of the welfare of the person
5 detained or for the protection of society. Official
6 detention does not include supervision of probation or
7 parole, constraint incidental to release on bail, or an
8 unlawful arrest unless the person arrested employed physical
9 force, a threat of physical force, or a weapon to escape.

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

17 (45) "Other state" means any state or territory of the
18 United States, the District of Columbia, and the
19 Commonwealth of Puerto Rico.

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

25 (47) "Party official" means a person who holds an

elective or appointive post in a political party in the United States by virtue of which he the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

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

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

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

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

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

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

(54) "Property" means any tangible or intangible thing

of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments which that represent or embody rights concerning anything of value, including labor or services, or which that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things which that are part of or affixed to any building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish which that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof which that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and
- (k) electronic impulses, electronically processed or

1 produced data or information, commercial instruments,
2 computer software or computer programs, in either machine-
3 or human-readable form, computer services, any other
4 tangible or intangible item of value relating to a computer,
5 computer system, or computer network, and any copies
6 thereof.

7 (55) "Property of another" means real or personal
8 property in which a person other than the offender has an
9 interest which that the offender has no authority to defeat
10 or impair, even though the offender himself may have an
11 interest in the property.

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

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

22 (58) "Purposely"--a person acts purposely with respect
23 to a result or to conduct described by a statute defining an
24 offense if it is his the person's conscious object to engage
25 in that conduct or to cause that result. When a particular

1 purpose is an element of an offense, the element is
2 established although such the purpose is conditional, unless
3 the condition negatives the harm or evil sought to be
4 prevented by the law defining the offense. Equivalent terms,
5 such as "purpose" and "with the purpose", have the same
6 meaning.

7 (59) "Serious bodily injury" means bodily injury which
8 that creates a substantial risk of death or which that
9 causes serious permanent disfigurement or protracted loss or
10 impairment of the function or process of any bodily member
11 or organ. It includes serious mental illness or impairment.

12 (60) "Sexual contact" means any touching of the sexual
13 or other intimate parts of the person of another for the
14 purpose of arousing or gratifying the sexual desire of
15 either party.

16 (61) "Sexual intercourse" means penetration of the
17 vulva, anus, or mouth of one person by the penis of another
18 person, penetration of the vulva or anus of one person by
19 any body member of another person, or penetration of the
20 vulva or anus of one person by any foreign instrument or
21 object manipulated by another person for the purpose of
22 arousing or gratifying the sexual desire of either party.
23 Any penetration, however slight, is sufficient.

24 (62) "Solicit" or "solicitation" means to command,
25 authorize, urge, incite, request, or advise another to

1 commit an offense.

2 (63) "State" or "this state" means the state of Montana,
3 all the land and water in respect to which the state of
4 Montana has either exclusive or concurrent jurisdiction, and
5 the air space above such the land and water.

6 (64) "Statute" means any act of the legislature of this
7 state.

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

10 (66) A "stop" is the temporary detention of a person
11 that results when a peace officer orders the person to
12 remain in his the peace officer's presence.

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

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

17 (a) inflict physical harm on the person threatened or
18 any other person or on property;

19 (b) subject any person to physical confinement or
20 restraint;

21 (c) commit any criminal offense;

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

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

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

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

1 the person threatened;

2 (h) take action as an official against anyone or
3 anything, withhold official action, or cause ~~such~~ the action
4 or withholding;

5 (i) bring about or continue a strike, boycott, or other
6 similar collective action if the person making the threat
7 demands or receives property is--not--demanded--or--received
8 that is not for the benefit of the groups which-he that the
9 person purports to represent; or

10 (j) testify or provide information or withhold
11 testimony or information with respect to another's legal
12 claim or defense.

13 (69) (a) "Value" means the market value of the property
14 at the time and place of the crime or, if such the market
15 value cannot be satisfactorily ascertained, the cost of the
16 replacement of the property within a reasonable time after
17 the crime. If the offender appropriates a portion of the
18 value of the property, the value ~~shall~~ must be determined as
19 follows:

20 (i) The value of an instrument constituting an evidence
21 of debt, such as a check, draft, or promissory note, ~~shall~~
22 be is considered the amount due or collectible, ~~thereon--or~~
23 ~~thereby,--such~~ The figure is ordinarily being the face amount
24 of the indebtedness less any portion thereof ~~which of the~~
25 indebtedness that has been satisfied.

(ii) The value of any other instrument which that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation ~~shall-be~~ is considered the amount of economic loss which that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(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~~ is 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 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 by the standards set forth in subsection (69)(a) above, its value ~~shall-be~~ is considered to be an amount less than \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500.

(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 by mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which that, 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 45-6-101, MCA, is amended to read:

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

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

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

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

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

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

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$500 ~~\$1,000~~ \$500 or be imprisoned in the county jail for any term not to exceed ~~12~~ 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$500 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, ~~he shall~~ the offender must be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons,

may be aggregated in determining pecuniary loss."

Section 3. Section 45-6-301, MCA, is amended to read:

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to-deprive that deprives the owner of the property; or

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

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to-deprive that deprives the owner of the property; or

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

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

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

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

6 (b) purposely or knowingly uses, conceals, or abandons
7 the property in such a manner ~~as to deprive~~ that deprives
8 the owner of the property; or

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

12 (4) A person commits the offense of theft when he the
13 person purposely or knowingly obtains or exerts unauthorized
14 control over any part of any public assistance provided
15 under Title 53 by a state or county agency, regardless of
16 the original source of assistance, by means of:

17 (a) a knowingly false statement, representation, or
18 impersonation; or

19 (b) a fraudulent scheme or device.

20 (5) A person commits the offense of theft when he the
21 person purposely or knowingly obtains or exerts unauthorized
22 control over any part of any benefits provided under Title
23 39, chapter 71 or 72, by means of:

24 (a) a knowingly false statement, representation, or
25 impersonation; or

1 (b) deception or other fraudulent action.

2 (6) (a) A person convicted of the offense of theft of
3 property not exceeding ~~\$300~~ ~~\$1,000~~ ~~\$500~~ ~~\$1,000~~ ~~\$500~~ in value
4 shall be fined not to exceed ~~\$500~~ ~~\$1,000~~ ~~\$500~~ or be
5 imprisoned in the county jail for any term not to exceed 6
6 ~~12~~ 6 months, or both. A person convicted of a second offense
7 shall be fined ~~NOT-LESS-THAN~~ \$500 ~~OR-MORE-THAN-\$1,000~~ or be
8 imprisoned in the county jail for a term not to exceed 6 ~~12~~
9 6 months, or both. A person convicted of a third or
10 subsequent offense shall be fined \$1,000 and be imprisoned
11 in the county jail for a term of not less than 30 days or
12 more than 6 ~~12~~ 6 months.

13 (b) A person convicted of the offense of theft of
14 property exceeding ~~\$300~~ ~~\$1,000~~ ~~\$500~~ ~~\$1,000~~ ~~\$500~~ in value or
15 theft of any commonly domesticated hooved animal shall be
16 fined not to exceed \$50,000 or be imprisoned in the state
17 prison for any term not to exceed 10 years, or both.

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

22 **Section 4.** Section 45-6-309, MCA, is amended to read:

23 "45-6-309. Failure to return rented or leased personal
24 property. (1) A person commits the offense of failure to
25 return rented or leased personal property if, without notice

to and permission of the lessor, he the person purposely and knowingly fails to return such the property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

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

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

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$300 ~~\$17,000~~ \$500 ~~\$17,000~~ \$500 in value shall be fined not to exceed \$500 ~~\$17,000~~ \$500 or be imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding \$300 ~~\$17,000~~ \$500 ~~\$17,000~~

\$500 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 5. Section 45-6-311, MCA, is amended to read:

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

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

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

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

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding \$300 ~~\$17,000~~ \$500 ~~\$17,000~~ \$500 in value shall be fined not to exceed \$500 ~~\$17,000~~ \$500 or be imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding \$300 ~~\$17,000~~ \$500 ~~\$17,000~~ \$500 in value shall be fined not more than 2 1/2 times the value of the property

1 used, altered, destroyed, or obtained or be imprisoned in
2 the state prison for a term not to exceed 10 years, or
3 both."

4 **Section 6.** Section 45-6-312, MCA, is amended to read:

5 "45-6-312. Unauthorized acquisition or transfer of food
6 stamps. (1) A person commits the offense of unauthorized
7 acquisition or transfer of food stamps if he the person
8 knowingly:

9 (a) acquires, purchases, possesses, or uses any food
10 stamp or coupon that he the person is not entitled to; or

11 (b) transfers, sells, trades, gives, or otherwise
12 disposes of any food stamp or coupon to another person not
13 entitled to receive or use it.

14 (2) A person convicted of an offense under this section
15 shall be fined not more than \$500 ~~\$17,000~~ \$500 or be
16 imprisoned in the county jail for not more than 6 ~~12~~ 6
17 months, or both. A person convicted of an offense under this
18 section, which offense is part of a common scheme or in
19 which the value of the food stamps exceeds \$150 ~~\$17,000~~ \$500
20 ~~\$17,000~~ \$500, shall be fined not more than \$50,000 or be
21 imprisoned in the state prison for not more than 10 years,
22 or both.

23 (3) As used in this section, "food stamp or coupon"
24 means any stamp, coupon, or type of certification provided
25 for the purchase of eligible food pursuant to the Food Stamp

1 Act of 1977, 7. U.S.C. 2011 through 2029, or any similar
2 public assistance program."

3 **Section 7.** Section 45-6-316, MCA, is amended to read:

4 "45-6-316. Issuing a bad check. (1) A person commits
5 the offense of issuing a bad check when he the person issues
6 or delivers a check or other order upon a real or fictitious
7 depository for the payment of money knowing that it will not
8 be paid by the depository.

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

14 (3) A person convicted of issuing a bad check shall be
15 fined not to exceed \$500 ~~\$17,000~~ \$500 or be imprisoned in the
16 county jail for any term not to exceed 6 ~~12~~ 6 months, or
17 both. If the offender has engaged in issuing bad checks
18 which that are part of a common scheme or if the value of
19 any property, labor, or services obtained or attempted to be
20 obtained exceeds \$300 ~~\$17,000~~ \$500 ~~\$17,000~~ \$500, he the
21 offender shall be fined not to exceed \$50,000 or be
22 imprisoned in the state prison for any term not to exceed 10
23 years, or both."

24 **Section 8.** Section 45-6-317, MCA, is amended to read:

25 "45-6-317. Deceptive practices. (1) A person commits

the offense of deceptive practices when he the person purposely or knowingly:

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

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

(c) makes or directs another to make a false or deceptive statement to any person respecting his that person's THE financial condition OF THE PERSON MAKING OR DIRECTING ANOTHER TO MAKE THE STATEMENT for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

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

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

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

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

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

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

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 ~~\$17000~~ \$500 or imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds \$300 ~~\$17000~~ \$500 ~~\$17000~~ \$500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 45-6-325, MCA, is amended to read:

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

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

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

(c) possesses with the purpose of issuing or delivering

1 any such document or other object knowing it to have been
2 thus made or altered; or

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

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

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

16 (4) A person convicted of the offense of forgery shall
17 be fined not to exceed \$500 ~~\$17,000~~ \$500 or be imprisoned in
18 the county jail for any term not to exceed 6 ~~12~~ 6 months, or
19 both. If the forgery is part of a common scheme or if the
20 value of the property, labor, or services obtained or
21 attempted to be obtained exceeds \$300 ~~\$17,000~~ \$500 ~~\$17,000~~
22 \$500, the offender shall be fined not to exceed \$50,000 or
23 be imprisoned in the state prison for any term not to exceed
24 20 years, or both."

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

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

8 (2) (a) Except as provided in subsection (2)(b), a
9 person convicted of an offense under this section shall be
10 fined not to exceed \$500 ~~\$17,000~~ \$500 or imprisoned in the
11 county jail for a term not to exceed 6 ~~12~~ 6 months, or both.

12 (b) If false or fraudulent claims are submitted
13 purposely and knowingly as part of a common scheme or if the
14 value of the claim or the aggregate value of all claims
15 exceeds \$300 ~~\$17,000~~ \$500 ~~\$17,000~~ \$500, a person convicted of
16 an offense under this section shall be fined not to exceed
17 \$10,000 or imprisoned in the state prison for a term not to
18 exceed 10 years, or both."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 24, 1993

Page 2 of 2
March 24, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 142 (first reading copy -- white), respectfully report that House Bill No. 142 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 5.

Strike: "\$500"

Insert: "\$750"

2. Title, line 7.

Following: "~~CRIMES,~~"

Insert: "INCREASING PENALTIES FOR THOSE CRIMES;"

3. Page 17, line 18.

Page 17, line 21.

Page 19, line 12.

Page 19, line 16.

Page 22, line 3.

Page 22, line 4.

Page 22, line 14.

Page 23, line 21.

Page 23, line 22.

Page 24, line 1.

Page 24, line 20.

Page 24, line 21.

Page 24, line 24.

Page 25, line 15.

Page 25, line 20.

Page 26, line 15.

Page 26, line 20.

Page 28, line 6.

Page 28, line 11.

Page 29, line 17.

Page 29, line 22.

Page 30, line 10.

Page 30, line 15.

Strike: "\$500"

Insert: "\$750"

4. Page 22, line 7.

Following: the first "~~THAN~~"

Insert: "not less than"

Following: "~~\$1,000~~"

Insert: "or more than \$750"

-END-

M Amd. Coord.
Sec. of Senate

Donest
Senator Carrying Bill

661234SC.San

SENATE
HB 142
661234SC.San

HOUSE BILL NO. 142

INTRODUCED BY ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO \$17,000
\$500 ~~\$17,000~~ \$500 \$750 THE AMOUNT REQUIRED TO BE INVOLVED IN
VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE
INCREASED; ~~INCREASING-PENALTIES-FOR-THOSE-CRIMES~~; INCREASING
PENALTIES FOR THOSE CRIMES; AND AMENDING SECTIONS 45-2-101,
45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-316,
45-6-317, 45-6-325, AND 45-7-210, 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 when 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
the beneficiary is interested, but, Benefit does not include
an advantage promised generally to a group or class of
voters as a consequence of public measures which that 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 that results
in the repeated commission of the same offense or that
affects the same person or the same persons or the property
thereof of the same person or persons.

(8) "Computer" means an electronic device that performs
logical, arithmetic, and memory functions by the
manipulation of electronic or magnetic impulses and includes
all input, output, processing, storage, software, or

1 communication facilities that are connected or related to
2 such-a that device in a system or network.

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

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

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

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

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

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

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

1 (16) "Correctional institution" means the state prison,
2 county or city jail, or other institution for the
3 incarceration or custody of persons under sentence for
4 offenses or awaiting trial or sentence for offenses.

5 (17) "Deception" means knowingly to:

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

9 (b) fail to correct a false impression which that 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~~ without disclosing a lien, adverse
15 claim, or other legal impediment to the enjoyment of the
16 property, whether such the impediment is or is not of value
17 or is or is not a matter of official record; or

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

22 (18) "Defamatory matter" means anything which that
23 exposes a person or a group, class, or association to
24 hatred, contempt, ridicule, degradation, or disgrace in
25 society or to injury to his the person's or its business or

1 occupation.

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

3 (a) permanently;

4 (b) for such a period as to appropriate a portion of

5 its value;

6 (c) with the purpose to restore it only upon payment of

7 reward or other compensation; or

8 (d) to dispose of the property and use or deal with the

9 property so as to make it unlikely that the owner will

10 recover it.

11 (20) "Deviate sexual relations" means sexual contact or

12 sexual intercourse between two persons of the same sex or

13 any form of sexual intercourse with an animal.

14 (21) "Felony" means an offense in which the sentence

15 imposed upon conviction is death or imprisonment in the

16 state prison for any term exceeding 1 year.

17 (22) "Forcible felony" means any felony which that

18 involves the use or threat of physical force or violence

19 against any individual.

20 (23) A "frisk" is a search by an external patting of a

21 person's clothing.

22 (24) "Government" includes any branch, subdivision, or

23 agency of the government of the state or any locality within

24 it.

25 (25) "Harm" means loss, disadvantage, or injury or

1 anything so regarded by the person affected, including loss,

2 disadvantage, or injury to any person or entity in whose

3 welfare he the affected person is interested.

4 (26) A "house of prostitution" means any place where

5 prostitution or promotion of prostitution is regularly

6 carried on by one or more persons under the control,

7 management, or supervision of another.

8 (27) "Human being" means a person who has been born and

9 is alive.

10 (28) An "illegal article" is an article or thing which

11 that is prohibited by statute, rule, or order from being in

12 the possession of a person subject to official detention.

13 (29) "Inmate" means a person who engages in prostitution

14 in or through the agency of a house of 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~~ Intoxicating substance does not

20 ~~extend to include~~ dealcoholized wine or to any beverage or

21 liquid produced by the process by which beer, ale, port, or

22 wine is produced if it contains less than 1/2 of 1% of

23 alcohol by volume.

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

25 (a) a reflex or convulsion;

(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 the person is aware of his the person's own 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 the person is aware that it is highly probable that such the result will be caused by his that 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 that renders him the person incapable of appreciating the nature of his the person's own conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his the person's own 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 in which 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 the person consciously disregards a risk that the result will occur or that the circumstance exists or when he the person disregards a risk of which he the person 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

1 "negligent" and "with negligence", have the same meaning.

2 (38) "Obtain" means:

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

6 (b) in relation to labor or services, to secure the
7 performance thereof of the labor or service.

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

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

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

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

24 (43) "Official detention" means imprisonment resulting
25 from a conviction for an offense, confinement for an

1 offense, confinement of a person charged with an offense,
2 detention by a peace officer pursuant to arrest, detention
3 for extradition or deportation, or any lawful detention for
4 the purpose of the protection of the welfare of the person
5 detained or for the protection of society. Official
6 detention does not include supervision of probation or
7 parole, constraint incidental to release on bail, or an
8 unlawful arrest unless the person arrested employed physical
9 force, a threat of physical force, or a weapon to escape.

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

17 (45) "Other state" means any state or territory of the
18 United States, the District of Columbia, and the
19 Commonwealth of Puerto Rico.

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

25 (47) "Party official" means a person who holds an

elective or appointive post in a political party in the United States by virtue of which he the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

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

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

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

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

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

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

(54) "Property" means any tangible or intangible thing

of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

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

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

(g) electricity, gas, and water;

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

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

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

(k) electronic impulses, electronically processed or

1 produced data or information, commercial instruments,
2 computer software or computer programs, in either machine-
3 or human-readable form, computer services, any other
4 tangible or intangible item of value relating to a computer,
5 computer system, or computer network, and any copies
6 thereof.

7 (55) "Property of another" means real or personal
8 property in which a person other than the offender has an
9 interest which that the offender has no authority to defeat
10 or impair, even though the offender himself may have an
11 interest in the property.

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

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

22 (58) "Purposely"---a person acts purposely with respect
23 to a result or to conduct described by a statute defining an
24 offense if it is his the person's conscious object to engage
25 in that conduct or to cause that result. When a particular

1 purpose is an element of an offense, the element is
2 established although such the purpose is conditional, unless
3 the condition negatives the harm or evil sought to be
4 prevented by the law defining the offense. Equivalent terms,
5 such as "purpose" and "with the purpose", have the same
6 meaning.

7 (59) "Serious bodily injury" means bodily injury which
8 that creates a substantial risk of death or which that
9 causes serious permanent disfigurement or protracted loss or
10 impairment of the function or process of any bodily member
11 or organ. It includes serious mental illness or impairment.

12 (60) "Sexual contact" means any touching of the sexual
13 or other intimate parts of the person of another for the
14 purpose of arousing or gratifying the sexual desire of
15 either party.

16 (61) "Sexual intercourse" means penetration of the
17 vulva, anus, or mouth of one person by the penis of another
18 person, penetration of the vulva or anus of one person by
19 any body member of another person, or penetration of the
20 vulva or anus of one person by any foreign instrument or
21 object manipulated by another person for the purpose of
22 arousing or gratifying the sexual desire of either party.
23 Any penetration, however slight, is sufficient.

24 (62) "Solicit" or "solicitation" means to command,
25 authorize, urge, incite, request, or advise another to

1 commit an offense.

2 (63) "State" or "this state" means the state of Montana,
3 all the land and water in respect to which the state of
4 Montana has either exclusive or concurrent jurisdiction, and
5 the air space above such the land and water.

6 (64) "Statute" means any act of the legislature of this
7 state.

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

10 (66) A "stop" is the temporary detention of a person
11 that results when a peace officer orders the person to
12 remain in his the peace officer's presence.

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

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

17 (a) inflict physical harm on the person threatened or
18 any other person or on property;

19 (b) subject any person to physical confinement or
20 restraint;

21 (c) commit any criminal offense;

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

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

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

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

1 the person threatened;

2 (h) take action as an official against anyone or
3 anything, withhold official action, or cause such the action
4 or withholding;

5 (i) bring about or continue a strike, boycott, or other
6 similar collective action if the person making the threat
7 demands or receives property is-not-demanded-or-received
8 that is not for the benefit of the groups which-he that the
9 person purports to represent; or

10 (j) testify or provide information or withhold
11 testimony or information with respect to another's legal
12 claim or defense.

13 (69) (a) "Value" means the market value of the property
14 at the time and place of the crime or, if such the market
15 value cannot be satisfactorily ascertained, the cost of the
16 replacement of the property within a reasonable time after
17 the crime. If the offender appropriates a portion of the
18 value of the property, the value shall must be determined as
19 follows:

20 (i) The value of an instrument constituting an evidence
21 of debt, such as a check, draft, or promissory note, shall
22 be is considered the amount due or collectible, thereon-or
23 thereby,-such The figure is ordinarily being the face amount
24 of the indebtedness less any portion thereof--which of the
25 indebtedness that has been satisfied.

(ii) The value of any other instrument which that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation ~~shall--be~~ is considered the amount of economic loss which that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(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~~ is 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 \$1,000 \$500 \$1,000 \$500~~ \$750 by the standards set forth in subsection (69)(a) above, its value ~~shall-be~~ is considered to be an amount less than ~~\$300 \$1,000 \$500 \$1,000 \$500~~ \$750.

(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 by mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which that, 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 45-6-101, MCA, is amended to read:

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

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

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

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

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

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

11 (3) A person convicted of the offense of criminal
 12 mischief shall be fined not to exceed \$500 ~~\$1,000~~ \$500 ~~\$750~~
 13 or be imprisoned in the county jail for any term not to
 14 exceed 6 ~~12~~ 6 months, or both. If the offender commits the
 15 offense of criminal mischief and causes pecuniary loss in
 16 excess of \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 ~~\$750~~, injures or
 17 kills a commonly domesticated hoofed animal, or causes a
 18 substantial interruption or impairment of public
 19 communication, transportation, supply of water, gas, or
 20 power, or other public services, ~~he-shall~~ the offender must
 21 be fined an amount not to exceed \$50,000 or be imprisoned in
 22 the state prison for any term not to exceed 10 years, or
 23 both.

24 (4) Amounts involved in criminal mischiefs committed
 25 pursuant to a common scheme or the same transaction, whether

1 against the public or the same person or several persons,
 2 may be aggregated in determining pecuniary loss."

3 **Section 3.** Section 45-6-301, MCA, is amended to read:

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

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

9 (b) purposely or knowingly uses, conceals, or abandons
 10 the property in ~~such a manner as-to-deprive~~ that deprives
 11 the owner of the property; or

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

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

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

20 (b) purposely or knowingly uses, conceals, or abandons
 21 the property in ~~such a manner as-to-deprive~~ that deprives
 22 the owner of the property; or

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

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

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

7 (b) purposely or knowingly uses, conceals, or abandons
 8 the property in such a manner as-to-deprive that deprives
 9 the owner of the property; or

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

13 (4) A person commits the offense of theft when he the
 14 person purposely or knowingly obtains or exerts unauthorized
 15 control over any part of any public assistance provided
 16 under Title 53 by a state or county agency, regardless of
 17 the original source of assistance, by means of:

18 (a) a knowingly false statement, representation, or
 19 impersonation; or

20 (b) a fraudulent scheme or device.

21 (5) A person commits the offense of theft when he the
 22 person purposely or knowingly obtains or exerts unauthorized
 23 control over any part of any benefits provided under Title
 24 39, chapter 71 or 72, by means of:

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

1 impersonation; or

2 (b) deception or other fraudulent action.

3 (6) (a) A person convicted of the offense of theft of
 4 property not exceeding ~~\$300~~ \$1,000 ~~\$500~~ \$1,000 ~~\$500~~ \$750 in
 5 value shall be fined not to exceed ~~\$500~~ \$1,000 ~~\$500~~ \$750 or
 6 be imprisoned in the county jail for any term not to exceed
 7 6 ± 6 months, or both. A person convicted of a second
 8 offense shall be fined ~~NOT-LESS-THAN~~ NOT LESS THAN ~~\$500~~ \$500 ~~OR~~
 9 ~~MORE-THAN-\$1,000~~ OR MORE THAN \$750 or be imprisoned in the
 10 county jail for a term not to exceed 6 ± 6 months, or both.
 11 A person convicted of a third or subsequent offense shall be
 12 fined \$1,000 and be imprisoned in the county jail for a term
 13 of not less than 30 days or more than 6 ± 6 months.

14 (b) A person convicted of the offense of theft of
 15 property exceeding ~~\$300~~ \$1,000 ~~\$500~~ \$1,000 ~~\$500~~ \$750 in
 16 value or theft of any commonly domesticated hooved animal
 17 shall be fined not to exceed \$50,000 or be imprisoned in the
 18 state prison for any term not to exceed 10 years, or both.

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

23 **Section 4.** Section 45-6-309, MCA, is amended to read:

24 **"45-6-309. Failure to return rented or leased personal**
 25 **property. (1) A person commits the offense of failure to**

return rented or leased personal property if, without notice to and permission of the lessor, he the person purposely and knowingly fails to return such the property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

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

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

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750 in value shall be fined not to exceed \$500 ~~\$1,000~~ \$500 \$750 or be imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both.

(b) A person convicted of failure to return rented or

leased personal property exceeding \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 5. Section 45-6-311, MCA, is amended to read:

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

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

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

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

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750 in value shall be fined not to exceed \$500 ~~\$1,000~~ \$500 \$750 or be imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500

\$750 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 6. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than \$500 ~~\$1,000~~ \$500 \$750 or be imprisoned in the county jail for not more than 6 ~~12~~ 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds \$150 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750, shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided

for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program."

Section 7. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when he the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

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

(3) A person convicted of issuing a bad check shall be fined not to exceed \$500 ~~\$1,000~~ \$500 \$750 or be imprisoned in the county jail for any term not to exceed 6 ~~12~~ 6 months, or both. If the offender has engaged in issuing bad checks which that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750, he the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 8. Section 45-6-317, MCA, is amended to read:

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

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

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

11 (c) makes or directs another to make a false or
12 deceptive statement to any person respecting his that
13 person's THE financial condition OF THE PERSON MAKING OR
14 DIRECTING ANOTHER TO MAKE THE STATEMENT for the purpose of
15 procuring a loan or credit or accepts a false or deceptive
16 statement from any person who is attempting to procure a
17 loan or credit regarding that person's financial condition;
18 or

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

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

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

25 (iii) using a credit card that has been falsely made,

1 counterfeited, or altered in any material respect;

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

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

6 (2) A person convicted of the offense of deceptive
7 practices shall be fined not to exceed \$500 ~~\$1,000~~ \$500 \$750
8 or imprisoned in the county jail for a term not to exceed 6
9 ~~12~~ 6 months, or both. If the deceptive practices are part of
10 a common scheme or the value of any property, labor, or
11 services obtained or attempted to be obtained exceeds \$300
12 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750, the offender shall be fined
13 not to exceed \$50,000 or be imprisoned in the state prison
14 for a term not to exceed 10 years, or both."

15 **Section 9.** Section 45-6-325, MCA, is amended to read:

16 "45-6-325. Forgery. (1) A person commits the offense of
17 forgery when with purpose to defraud he the person
18 knowingly:

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

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

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

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

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

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

(4) A person convicted of the offense of forgery shall be fined not to exceed \$500 ~~\$1,000~~ ~~\$500~~ \$750 or be imprisoned in the county jail for any term not to exceed 6 ~~12~~ 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$300 ~~\$1,000~~ ~~\$500~~ ~~\$1,000~~ ~~\$500~~ \$750, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both."

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

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

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed \$500 ~~\$1,000~~ ~~\$500~~ \$750 or imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds \$300 ~~\$1,000~~ ~~\$500~~ ~~\$1,000~~ ~~\$500~~ \$750, a person convicted of an offense under this section shall be fined not to exceed \$10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

-End-

Conference Committee
on House Bill 142
Report No. 1, April 15, 1993

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 142 met and considered the bill and recommend that House Bill 142 (reference copy -- salmon) be amended as follows:

1. Title, line 5.
 - Page 17, lines 19 and 21.
 - Page 19, lines 12 and 16.
 - Page 22, lines 4, 5, 9, and 15.
 - Page 23, lines 22 and 23.
 - Page 24, lines 2, 21, and 22.
 - Page 25, lines 1, 16, and 21.
 - Page 26, lines 16 and 21.
 - Page 28, lines 7 and 12.
 - Page 29, lines 18 and 23.
 - Page 30, lines 11 and 17.

Strike: "\$750"

Insert: "\$600"

And this Conference Committee report be adopted.

For the House:

Russell C. Fagg
Rep. Fagg, Chair

Shull W. Anderson
Rep. Anderson

Rep. D. Brown

For the Senate:

Wm. Yellowtail
Sen. Yellowtail, Chair

M. Halligan
Sen. Halligan

B. Brown
Sen. B. Brown

ADOPT

REJECT

C.C.R. 41
HB 142
831532CC.Hpf

Conference Committee
on House Bill 142
Report No.2, April 22, 1993

April 22, 1993
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 142 met and considered :

1. Senate Judiciary Committee amendments dated March 24, 1993

and recommend that House Bill 142 (reference copy -- salmon) be amended as follows:

1. Title, line 5.

Page 17, lines 19 and 21.

Page 19, lines 12 and 16.

Page 22, lines 4, 5, and 15.

Page 23, lines 22 and 23.

Page 24, lines 2, 21, and 22.

Page 25, lines 1, 16, and 21.

Page 26, lines 16 and 21.

Page 28, lines 7 and 12.

Page 29, lines 18 and 23.

Page 30, lines 11 and 17.

Strike: "\$750"

Insert: "\$500"

2. Title, lines 7 and 8.

Following: "~~CRIMES,~~" on line 7

Strike: remainder of line 7 through "CRIMES," on line 8

3. Page 22, line 8.

Strike: "NOT LESS THAN"

4. Page 22, line 9.

Strike: "OR MORE THAN \$750"

And this Conference Committee report be adopted.

For the House:

For the Senate:

Russell C. Fagg
Rep. Fagg, Chair

Wm Yellowtail
Sen. Yellowtail, Chair

Shirley W. Anderson
Rep. Anderson

M. Hally
Sen. Halligan

Dave Brown
Rep. D. Brown

B. Brown
Sen. B. Brown

Revised from Publications & Communications / 4-22-93

mf

ADOPT

REJECT

890918CC.Hpf

C.C.R.#2
HB 142
890918CC.Hpf

HOUSE BILL NO. 142

INTRODUCED BY ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO ~~\$17,000~~
~~\$500~~ ~~\$17,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ THE AMOUNT REQUIRED TO BE
INVOLVED IN VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES
ARE INCREASED; ~~INCREASING--PENALTIES--FOR--THOSE---CRIMES,~~
~~INCREASING--PENALTIES--FOR--THOSE--CRIMES,~~ AND AMENDING SECTIONS
45-2-101, 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-312,
45-6-316, 45-6-317, 45-6-325, AND 45-7-210, 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 when 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
the beneficiary is interested, but. Benefit does not include
an advantage promised generally to a group or class of
voters as a consequence of public measures which that 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 that results
in the repeated commission of the same offense or that
affects the same person or the same persons or the property
thereof of the same person or persons.

(8) "Computer" means an electronic device that performs
logical, arithmetic, and memory functions by the
manipulation of electronic or magnetic impulses and includes
all input, output, processing, storage, software, or

1 communication facilities that are connected or related to
2 such-a that device in a system or network.

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

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

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

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

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

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

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

1 (16) "Correctional institution" means the state prison,
2 county or city jail, or other institution for the
3 incarceration or custody of persons under sentence for
4 offenses or awaiting trial or sentence for offenses.

5 (17) "Deception" means knowingly to:

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

9 (b) fail to correct a false impression which that 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 without disclosing a lien, adverse
15 claim, or other legal impediment to the enjoyment of the
16 property, whether such the impediment is or is not of value
17 or is or is not a matter of official record; or

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

22 (18) "Defamatory matter" means anything which that
23 exposes a person or a group, class, or association to
24 hatred, contempt, ridicule, degradation, or disgrace in
25 society or to injury to his the person's or its business or

1 occupation.

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

3 (a) permanently;

4 (b) for such a period as to appropriate a portion of
5 its value;

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

8 (d) to dispose of the property and use or deal with the
9 property so as to make it unlikely that the owner will
10 recover it.

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

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

17 (22) "Forcible felony" means any felony which that
18 involves the use or threat of physical force or violence
19 against any individual.

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

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

25 (25) "Harm" means loss, disadvantage, or injury or

1 anything so regarded by the person affected, including loss,
2 disadvantage, or injury to any person or entity in whose
3 welfare he the affected person is interested.

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

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

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

13 (29) "Inmate" means a person who engages in prostitution
14 in or through the agency of a house of 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~~ Intoxicating substance does not
20 extend--to include dealcoholized wine or to any beverage or
21 liquid produced by the process by which beer, ale, port, or
22 wine is produced if it contains less than 1/2 of 1% of
23 alcohol by volume.

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

25 (a) a reflex or convulsion;

(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 the person is aware of his the person's own 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 the person is aware that it is highly probable that such the result will be caused by his that 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 that renders him the person incapable of appreciating the nature of his the person's own conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his the person's own 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 in which 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 the person consciously disregards a risk that the result will occur or that the circumstance exists or when he the person disregards a risk of which he the person 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

1 "negligent" and "with negligence", have the same meaning.

2 (38) "Obtain" means:

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

6 (b) in relation to labor or services, to secure the
7 performance thereof of the labor or service.

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

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

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

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

24 (43) "Official detention" means imprisonment resulting
25 from a conviction for an offense, confinement for an

1 offense, confinement of a person charged with an offense,
2 detention by a peace officer pursuant to arrest, detention
3 for extradition or deportation, or any lawful detention for
4 the purpose of the protection of the welfare of the person
5 detained or for the protection of society. Official
6 detention does not include supervision of probation or
7 parole, constraint incidental to release on bail, or an
8 unlawful arrest unless the person arrested employed physical
9 force, a threat of physical force, or a weapon to escape.

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

17 (45) "Other state" means any state or territory of the
18 United States, the District of Columbia, and the
19 Commonwealth of Puerto Rico.

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

25 (47) "Party official" means a person who holds an

1 elective or appointive post in a political party in the
2 United States by virtue of which he the person directs or
3 conducts or participates in directing or conducting party
4 affairs at any level of responsibility.

5 (48) "Peace officer" means any person who by virtue of
6 his the person's office or public employment is vested by
7 law with a duty to maintain public order or to make arrests
8 for offenses while acting within the scope of his the
9 person's authority.

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

13 (50) "Person" includes an individual, business
14 association, partnership, corporation, government, or other
15 legal entity and an individual acting or purporting to act
16 for or on behalf of any government or subdivision thereof of
17 government.

18 (51) "Physically helpless" means that a person is
19 unconscious or is otherwise physically unable to communicate
20 unwillingness to act.

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

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

25 (54) "Property" means any tangible or intangible thing

1 of value. Property includes but is not limited to:

2 (a) real estate;

3 (b) money;

4 (c) commercial instruments;

5 (d) admission or transportation tickets;

6 (e) written instruments which that represent or embody
7 rights concerning anything of value, including labor or
8 services, or which that are otherwise of value to the owner;
9 (f) things growing on, affixed to, or found on land and
10 things which that are part of or affixed to any building;

11 (g) electricity, gas, and water;

12 (h) birds, animals, and fish which that ordinarily are
13 kept in a state of confinement;

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

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

25 (k) electronic impulses, electronically processed or

1 produced data or information, commercial instruments,
2 computer software or computer programs, in either machine-
3 or human-readable form, computer services, any other
4 tangible or intangible item of value relating to a computer,
5 computer system, or computer network, and any copies
6 thereof.

7 (55) "Property of another" means real or personal
8 property in which a person other than the offender has an
9 interest which that the offender has no authority to defeat
10 or impair, even though the offender himself may have an
11 interest in the property.

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

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

22 (58) "Purposely"--a person acts purposely with respect
23 to a result or to conduct described by a statute defining an
24 offense if it is ~~his~~ the person's conscious object to engage
25 in that conduct or to cause that result. When a particular

1 purpose is an element of an offense, the element is
2 established although such the purpose is conditional, unless
3 the condition negatives the harm or evil sought to be
4 prevented by the law defining the offense. Equivalent terms,
5 such as "purpose" and "with the purpose", have the same
6 meaning.

7 (59) "Serious bodily injury" means bodily injury which
8 that creates a substantial risk of death or which that
9 causes serious permanent disfigurement or protracted loss or
10 impairment of the function or process of any bodily member
11 or organ. It includes serious mental illness or impairment.

12 (60) "Sexual contact" means any touching of the sexual
13 or other intimate parts of the person of another for the
14 purpose of arousing or gratifying the sexual desire of
15 either party.

16 (61) "Sexual intercourse" means penetration of the
17 vulva, anus, or mouth of one person by the penis of another
18 person, penetration of the vulva or anus of one person by
19 any body member of another person, or penetration of the
20 vulva or anus of one person by any foreign instrument or
21 object manipulated by another person for the purpose of
22 arousing or gratifying the sexual desire of either party.
23 Any penetration, however slight, is sufficient.

24 (62) "Solicit" or "solicitation" means to command,
25 authorize, urge, incite, request, or advise another to

1 commit an offense.

2 (63) "State" or "this state" means the state of Montana,
3 all the land and water in respect to which the state of
4 Montana has either exclusive or concurrent jurisdiction, and
5 the air space above such the land and water.

6 (64) "Statute" means any act of the legislature of this
7 state.

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

10 (66) A "stop" is the temporary detention of a person
11 that results when a peace officer orders the person to
12 remain in his the peace officer's presence.

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

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

17 (a) inflict physical harm on the person threatened or
18 any other person or on property;

19 (b) subject any person to physical confinement or
20 restraint;

21 (c) commit any criminal offense;

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

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

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

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

1 the person threatened;

2 (h) take action as an official against anyone or
3 anything, withhold official action, or cause such the action
4 or withholding;

5 (i) bring about or continue a strike, boycott, or other
6 similar collective action if the person making the threat
7 demands or receives property is--not--demanded--or--received
8 that is not for the benefit of the groups which he that the
9 person purports to represent; or

10 (j) testify or provide information or withhold
11 testimony or information with respect to another's legal
12 claim or defense.

13 (69) (a) "Value" means the market value of the property
14 at the time and place of the crime or, if such the market
15 value cannot be satisfactorily ascertained, the cost of the
16 replacement of the property within a reasonable time after
17 the crime. If the offender appropriates a portion of the
18 value of the property, the value shall must be determined as
19 follows:

20 (i) The value of an instrument constituting an evidence
21 of debt, such as a check, draft, or promissory note, shall
22 be is considered the amount due or collectible, thereon--or
23 thereby--such The figure is ordinarily being the face amount
24 of the indebtedness less any portion thereof which of the
25 indebtedness that has been satisfied.

(ii) The value of any other instrument which that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation ~~shall-be~~ is considered the amount of economic loss which that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(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~~ is 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 ~~\$1,000 \$500 \$1,000 \$500~~ \$750 \$500 by the standards set forth in subsection (69)(a) above, its value ~~shall-be~~ is considered to be an amount less than \$300 ~~\$1,000 \$500 \$1,000 \$500 \$750 \$500~~.

(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 by mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which that, 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 45-6-101, MCA, is amended to read:

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

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

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

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

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

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

11 (3) A person convicted of the offense of criminal
 12 mischief shall be fined not to exceed \$500 ~~\$1,000~~ \$500 ~~\$750~~
 13 \$500 or be imprisoned in the county jail for any term not to
 14 exceed 6 ~~12~~ 6 months, or both. If the offender commits the
 15 offense of criminal mischief and causes pecuniary loss in
 16 excess of \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 ~~\$750~~ \$500, injures or
 17 kills a commonly domesticated hoofed animal, or causes a
 18 substantial interruption or impairment of public
 19 communication, transportation, supply of water, gas, or
 20 power, or other public services, ~~he shall~~ the offender must
 21 SHALL be fined an amount not to exceed \$50,000 or be
 22 imprisoned in the state prison for any term not to exceed 10
 23 years, or both.

24 (4) Amounts involved in criminal mischiefs committed
 25 pursuant to a common scheme or the same transaction, whether

1 against the public or the ~~same~~ person or several persons,
 2 may be aggregated in determining pecuniary loss."

3 **Section 3.** Section 45-6-301, MCA, is amended to read:

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

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

9 (b) purposely or knowingly uses, conceals, or abandons
 10 the property in such a manner as-to-deprive that deprives
 11 the owner of the property; or

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

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

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

20 (b) purposely or knowingly uses, conceals, or abandons
 21 the property in such a manner as-to--deprive that deprives
 22 the owner of the property; or

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

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

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

(b) purposely or knowingly uses, conceals, or abandons the property in such a manner as-to--deprive that deprives the owner of the property; or

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

(4) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

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

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he the person purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or

impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding ~~\$300~~ \$1,000 ~~\$500~~ \$1,000 ~~\$500~~ \$750 ~~\$500~~ in value shall be fined not to exceed ~~\$500~~ \$1,000 ~~\$500~~ \$750 ~~\$500~~ or be imprisoned in the county jail for any term not to exceed ~~6~~ 12 ~~6~~ months, or both. A person convicted of a second offense shall be fined ~~NOT-LESS-THAN~~ NOT-LESS-THAN ~~\$500~~ OR-MORE-THAN-\$1,000 ~~OR-MORE-THAN-\$750~~ or be imprisoned in the county jail for a term not to exceed ~~6~~ 12 ~~6~~ months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than ~~6~~ 12 ~~6~~ months.

(b) A person convicted of the offense of theft of property exceeding ~~\$300~~ \$1,000 ~~\$500~~ \$1,000 ~~\$500~~ \$750 ~~\$500~~ in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

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

Section 4. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal

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

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

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

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$300 \$17000 \$500 \$17000 \$500 \$750 \$500 in value shall be fined not to exceed \$500 \$17000 \$500 \$750 \$500 or be imprisoned in the county jail for a term not to exceed 6 ±2 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding \$300 \$17000 \$500 \$17000 \$500 \$750 \$500 in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 5. Section 45-6-311, MCA, is amended to read:

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

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

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

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

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding \$300 \$17000 \$500 \$17000 \$500 \$750 \$500 in value shall be fined not to exceed \$500 \$17000 \$500 \$750 \$500 or be imprisoned in the county jail for a term not to exceed 6 ±2 6 months, or both. A person convicted of the offense of unlawful use of a

computer involving property exceeding \$300 ~~\$1,000~~ ~~\$500~~
~~\$1,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ in value shall be fined not more than
 2 1/2 times the value of the property used, altered,
 destroyed, or obtained or be imprisoned in the state prison
 for a term not to exceed 10 years, or both."

Section 6. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food
 stamps. (1) A person commits the offense of unauthorized
 acquisition or transfer of food stamps if he the person
 knowingly:

(a) acquires, purchases, possesses, or uses any food
 stamp or coupon that he the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise
 disposes of any food stamp or coupon to another person not
 entitled to receive or use it.

(2) A person convicted of an offense under this section
 shall be fined not more than \$500 ~~\$1,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ or
 be imprisoned in the county jail for not more than 6 ~~12~~ 6
 months, or both. A person convicted of an offense under this
 section, which offense is part of a common scheme or in
 which the value of the food stamps exceeds \$150 ~~\$1,000~~ ~~\$500~~
~~\$1,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~, shall be fined not more than \$50,000
 or be imprisoned in the state prison for not more than 10
 years, or both.

(3) As used in this section, "food stamp or coupon"

means any stamp, coupon, or type of certification provided
 for the purchase of eligible food pursuant to the Food Stamp
 Act of 1977, 7. U.S.C. 2011 through 2029, or any similar
 public assistance program."

Section 7. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits
 the offense of issuing a bad check when he the person issues
 or delivers a check or other order upon a real or fictitious
 depository for the payment of money knowing that it will not
 be paid by the depository.

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

(3) A person convicted of issuing a bad check shall be
 fined not to exceed \$500 ~~\$1,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ or be
 imprisoned in the county jail for any term not to exceed 6
~~12~~ 6 months, or both. If the offender has engaged in issuing
 bad checks which that are part of a common scheme or if the
 value of any property, labor, or services obtained or
 attempted to be obtained exceeds \$300 ~~\$1,000~~ ~~\$500~~ ~~\$1,000~~
~~\$500~~ ~~\$750~~ ~~\$500~~, he the offender shall be fined not to exceed
 \$50,000 or be imprisoned in the state prison for any term
 not to exceed 10 years, or both."

Section 8. Section 45-6-317, MCA, is amended to read:

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

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

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

(c) makes or directs another to make a false or deceptive statement to any person respecting his that person's THE financial condition OF THE PERSON MAKING OR DIRECTING ANOTHER TO MAKE THE STATEMENT for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

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

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

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

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

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

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

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed \$500 ~~\$1,000~~ \$500 \$750 \$500 or imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds \$300 ~~\$1,000~~ \$500 ~~\$1,000~~ \$500 \$750 \$500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 45-6-325, MCA, is amended to read:

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

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

(b) issues or delivers such the document or other

object knowing it to have been thus made or altered;

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

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

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

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

(4) A person convicted of the offense of forgery shall be fined not to exceed \$500 ~~\$17,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ or be imprisoned in the county jail for any term not to exceed 6 ~~12~~ 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$300 ~~\$17,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for

any term not to exceed 20 years, or both."

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

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

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed \$500 ~~\$17,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~ or imprisoned in the county jail for a term not to exceed 6 ~~12~~ 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds \$300 ~~\$17,000~~ ~~\$500~~ ~~\$17,000~~ ~~\$500~~ ~~\$750~~ ~~\$500~~, a person convicted of an offense under this section shall be fined not to exceed \$10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

-End-