

SENATE BILL NO. 109
INTRODUCED BY DOHERTY

IN THE SENATE

JANUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 29, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 30, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 42; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 4, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 6, 1993	SECOND READING, CONCURRED IN.
MARCH 9, 1993	THIRD READING, CONCURRED IN. AYES, 85; NOES, 12.
MARCH 10, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 11, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 109
2 INTRODUCED BY Doherty
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE
5 DEFINITION OF "SERIOUS BODILY INJURY" IN CRIMINAL LAW TO
6 INCLUDE BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF
7 SERIOUS PERMANENT DISFIGUREMENT OR OF PROTRACTED LOSS OR
8 IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER
9 OR ORGAN; AND AMENDING SECTION 45-2-101, MCA."

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

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

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

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

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

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

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

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

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

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

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

1 ~~such-a~~ 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 the person's conduct. When
20 knowledge of the existence of a particular fact is an
21 element of an offense, such knowledge is established if a
22 person is aware of a high probability of its existence.
23 Equivalent terms, such as "knowing" or "with knowledge",
24 have the same 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.

(38) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

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

(47) "Party official" means a person who holds an 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 office or public employment is vested by law with a duty
6 to maintain public order or to make arrests for offenses
7 while acting within the scope of his the 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-

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

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

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

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

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

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

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

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

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

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to 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 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 reputation 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 property is not demanded or received 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 instrument that has been satisfied.

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

1 legal right, privilege, or obligation ~~shall-be~~ is considered
2 the amount of economic loss ~~which~~ that the owner of the
3 instrument might reasonably suffer by virtue of the loss of
4 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 by the standards set
17 forth in subsection (69)(a) ~~above~~, its value ~~shall--be~~ is
18 considered to be an amount less than \$300.

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."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0109, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act expanding the definition of "serious bodily injury" in criminal law and amending various definitions.

ASSUMPTIONS:

1. The bill will have no material fiscal impact.

FISCAL IMPACT:

None.

David Lewis 1-13-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Doherty 1/14/93

STEVE DOHERTY, PRIMARY SPONSOR DATE

Fiscal Note for SB0109, as introduced

SB 109

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 109

INTRODUCED BY DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE DEFINITION OF "SERIOUS BODILY INJURY" IN CRIMINAL LAW TO INCLUDE BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF SERIOUS PERMANENT DISFIGUREMENT OR OF PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN; AND AMENDING SECTION 45-2-101, MCA."

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

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11 pertinent to the disposition of the property involved;

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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

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(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 the person's 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 "negligent" and "with negligence", have the same meaning.

(38) "Obtain" means:

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

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

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

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

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

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

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

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

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

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

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

(47) "Party official" means a person who holds an 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 office or public employment is vested by law with a duty
6 to maintain public order or to make arrests for offenses
7 while acting within the scope of his the 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-

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

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

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

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

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

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

(59) (A) "Serious bodily injury" means bodily injury which that:

(I) creates a substantial risk of death; or which that

(II) causes or-creates-a--substantial--risk--of serious permanent disfigurement or of protracted loss or impairment of the function or process of any bodily member or organ; OR

(III) AT THE TIME OF INJURY, CAN REASONABLY BE EXPECTED TO RESULT IN SERIOUS PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN. It

(B) THE TERM includes serious mental illness or impairment.

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

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or

1 object manipulated by another person for the purpose of
 2 arousing or gratifying the sexual desire of either party.
 3 Any penetration, however slight, is sufficient.

4 (62) "Solicit" or "solicitation" means to command,
 5 authorize, urge, incite, request, or advise another to
 6 commit an offense.

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

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

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

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

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

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

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

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

1 (c) commit any criminal offense;

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

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

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

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

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

10 (i) bring about or continue a strike, boycott, or other
 11 similar collective action if the property is not demanded or
 12 received for the benefit of the groups ~~which--he~~ that the
 13 person purports to represent; or

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

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

24 (i) The value of an instrument constituting an evidence
 25 of debt, such as a check, draft, or promissory note, ~~shall~~

1 be is considered the amount due or collectible, ~~thereon or~~
 2 ~~thereby, such~~ The figure is ordinarily being the face amount
 3 of the indebtedness less any portion thereof--~~which~~ of the
 4 instrument that has been satisfied.

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

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

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

25 (c) Amounts involved in thefts committed pursuant to a

1 common scheme or the same transaction, whether from the same
 2 person or several persons, may be aggregated in determining
 3 the value of the property.

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

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

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

-End-

SENATE BILL NO. 109
INTRODUCED BY DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE DEFINITION OF "SERIOUS BODILY INJURY" IN CRIMINAL LAW TO INCLUDE BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF SERIOUS PERMANENT DISFIGUREMENT OR OF PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN; AND AMENDING SECTION 45-2-101, MCA."

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

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

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

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

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

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

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he 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;

(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 the person's 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.

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

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3 of interest or possession, whether to the offender or to
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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,
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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
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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,
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1 or human-readable form, computer services, any other
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3 Any penetration, however slight, is sufficient.

4 (62) "Solicit" or "solicitation" means to command,
5 authorize, urge, incite, request, or advise another to
6 commit an offense.

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

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

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

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

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

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

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

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

1 (c) commit any criminal offense;

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

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

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

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

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

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

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

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

24 (i) The value of an instrument constituting an evidence
25 of debt, such as a check, draft, or promissory note, shall

1 be is considered the amount due or collectible, ~~thereon or~~
 2 ~~thereby, such~~ The figure is ordinarily being the face amount
 3 of the indebtedness less any portion thereof--~~which~~ of the
 4 instrument that has been satisfied.

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

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

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

25 (c) Amounts involved in thefts committed pursuant to a

1 common scheme or the same transaction, whether from the same
 2 person or several persons, may be aggregated in determining
 3 the value of the property.

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

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

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

-End-

SENATE BILL NO. 109
INTRODUCED BY DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE DEFINITION OF "SERIOUS BODILY INJURY" IN CRIMINAL LAW TO INCLUDE BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF SERIOUS PERMANENT DISFIGUREMENT OR OF PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN; AND AMENDING SECTION 45-2-101, MCA."

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

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

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

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

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

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

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he 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.

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

(a) permanently;

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

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

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

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

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

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

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

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

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss,

disadvantage, or injury to any person or entity in whose welfare he the affected person is interested.

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

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

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

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

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

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

(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 the person's 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 "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 the 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

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 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 produced data or information, commercial instruments, computer software or computer programs, in either machine-

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

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

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

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

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

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

(59) (A) "Serious bodily injury" means bodily injury which that:

(I) creates a substantial risk of death; or which that
(II) causes ~~or creates a substantial risk of~~ serious permanent disfigurement or ~~of~~ protracted loss or impairment of the function or process of any bodily member or organ; OR
(III) AT THE TIME OF INJURY, CAN REASONABLY BE EXPECTED TO RESULT IN SERIOUS PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN. ~~It~~

(B) THE TERM includes serious mental illness or impairment.

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

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or

1 object manipulated by another person for the purpose of
 2 arousing or gratifying the sexual desire of either party.
 3 Any penetration, however slight, is sufficient.

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-End-