

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if the person purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1676, Ch. 56, L. 2009.

Criminal Law Commission Comments:

Source: M.P.C. 1962, § 240.1.

Subsection (a) prohibits the giving or receiving of any pecuniary benefit to influence official or political discretion. Offers of nonpecuniary gain, e.g., political support, honorific appointments, are penalized under subsection (b) but limited to judicial and administrative proceedings. "Administrative proceedings" is defined in section 94-2-101 [now MCA, 45-2-101] and includes some actions that might be called "executive" or "administrative", where the official action applies a general rule to an individual, e.g., in granting or revoking a license, awarding veteran's disability compensation or social security payments. Gifts to officials are covered by section 94-7-105 [now MCA, 45-7-104].

Compiler's Comments:

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of \$50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Annotator's Note: The purpose of this section on Bribery is to prohibit and provide punishment for the improper influencing of any official or governmental action. To this end the section replaces a number of repetitive, overlapping statutes which created numerous narrow offenses with sweeping provisions designed to deal with all situations involving improper influence of official or public actions. This section is applicable both to the individual who "offers, confers, or agrees to confer" and to the individual who "solicits, accepts or agrees to accept" a bribe. Subsection (1)(a) prohibits the giving or receiving of pecuniary benefit to influence official or political discretion. As far as it concerns elections, this section may overlap with Title 13, chapter 35, on Election and Campaign Practices and Criminal Provisions. Offers of nonpecuniary gain, e.g., political support, honorific appointments, are penalized under subsection (1)(b) but limited to judicial and administrative proceedings.

Subsection (1)(c) deals with the known duty situations and punishes the offer or acceptance of any benefit as consideration for the duty's violation by a public servant or party official.

The defense of lack of jurisdiction or of lack of qualification to act in the desired manner is expressly eliminated by subsection (1). This represents an apparent change from current Montana law which indicates that it is a defense that the person attempted to be improperly influenced is no longer capable of action (see *St. v. Porter*, 125 M 503, 242 P2d 984, 987 (1952)).

It should be noted that subsection (3) which provides for permanent disqualification from public office on conviction may be in conflict with Art. II, sec. 28, Mont. Const. which mandates full restoration of rights on discharge from supervision for "any offense against the state".

Cross References:

Code of ethics, Title 2, ch. 2, part 1.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of administrative proceeding, 45-2-101.

Definition of benefit, 45-2-101.

Definition of knowingly, 45-2-101.

Definition of party official, 45-2-101.

Definition of pecuniary benefit, 45-2-101.

Definition of public servant, 45-2-101.

Definition of purpose, 45-2-101.

Definition of solicit, 45-2-101.

Improperly influencing grain inspector, sampler, or weigher, 80-4-703.

Case Notes:

"Judicial Officer": Defendant who offered a bribe to a Deputy County Attorney was properly convicted under 94-7-102, R.C.M. 1947 (a forerunner of this section), making it an offense to offer bribes to a "judicial officer". *St. v. Hensley*, 171 M 38, 554 P2d 745 (1976).

Jurors: On prosecution for attempt to influence grand juror, evidence of transactions after juror had been discharged by operation of law was inadmissible even though defendant did not know that juror had been discharged. *St. v. Porter*, 125 M 503, 242 P2d 984 (1952).

Section 94-801, R.C.M. 1947 (a forerunner of this section), covering bribery of judicial officials, applied to members of the jury panel who might be selected to try a case, not just to those who had been selected and sworn. *State ex rel. Webb v. District Court*, 37 M 191, 95 P 593 (1908).

Intent: Allegation that sheriff received a bribe did not charge a violation of 94-3904, R.C.M. 1947 (a forerunner of this section), without an allegation of agreement that his official action would be influenced; sheriff may have intended entrapment or some other lawful purpose. *State ex rel. Beazley v. District Court*, 75 M 116, 241 P 1075 (1925).

Disbarment: Bribery of members of the Legislature was a felony under 94-2905, R.C.M. 1947 (a forerunner of this section), and would furnish ample ground for disbarment even though the acts were not in the attorney's official capacity, but the Supreme Court would not, as a matter of policy, act on disbarment until after criminal prosecution. *In re Wellcome*, 23 M 140, 58 P 45 (1899).

Attorney General Opinions:

Sheriffs Not to Receive Pecuniary Gifts: Section 45-7-104 prohibits the receipt by a Sheriff's Department of pecuniary gifts from individuals or organizations within the Sheriff's regulatory or investigative jurisdiction. 38 A.G. Op. 76 (1980).

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if the person purposely or knowingly:

(a) (i) threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(iii) threatens harm to any public servant or party official, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate the person's duty or to prevent the public servant or party official from accepting or holding any public office;

(iv) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;

(v) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before the jury, except according to the regular course of proceedings; or

(b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.

(2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section 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.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 351, L. 1995.

Criminal Law Commission Comments:

Source: M.P.C. 1962, § 240.2.

Penal legislation against the use of intimidation to influence the behavior of public officials is much rarer than legislation against bribery, although there are many statutes relating to jurors, legislators, and law enforcement officers.

Compiler's Comments:

1995 Amendment: Chapter 351 in (1)(a)(i) at beginning after "threatens", deleted "unlawful" and after "any person" inserted "the person's spouse, child, parent, or sibling, or the person's property"; in (1)(a)(ii), after "any public servant", inserted "to the public servant's spouse, child, parent, or sibling, or to the public servant's property"; in (1)(a)(iii), after "party official", inserted "the person's spouse, child, parent, or sibling, or the person's property" and at end inserted "or to prevent the public servant or party official from accepting or holding any public office"; inserted (1)(b) regarding injury caused because of a public servant's lawful duties or to prevent the discharge of a public servant's lawful duties; in (3), after "section", deleted "shall be fined not to exceed \$500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless

the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender"; adjusted subsection references; and made minor changes in style. Amendment effective April 11, 1995.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of \$50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Annotator's Note: This section concerning improper influencing of official matters prohibits conduct not covered by the preceding section on Bribery and is directed toward the improper influencing of public servants, party officials, jurors or voters by threat or private communication. The effect of this section is to broaden prior law to cover classes of persons who were not previously clearly protected against attempts to exert improper influence by these means. Subsection (1)(a) is all-inclusive in prohibiting the use of threats to influence the exercise of discretion by any public servant or party official or to influence a private citizen in the exercise of his franchise. Subsection (1)(b) is a narrower class drawn from those included in subsection (1)(a) for the imposition of additional penalties as provided under subsection (2) for those who use threats to influence judicial or administrative proceedings. Subsections (1)(d) and (1)(e) provide criminal sanctions for unauthorized private communications with the purpose of influencing the decision of a public servant having official discretion in a matter or a juror with regard to a matter pending before the jury.

The 1977 amendment made the former second sentence of subsection (1)(d) the separate subsection (2) and made the punishment subsection (3). Subsection (2) establishes that it is not a defense to charges brought under this provision that the person sought to be influenced could not have acted. Thus, the offender will not benefit from a mistaken belief that an official could have acted so as to bring about the offender's desired result.

The offenses under this section are generally punished as misdemeanors but if the threat is to commit an offense or the threat is intended to influence a judicial or administrative proceeding the punishment may be any term up to ten years. It should be noted that the facts justifying the increased penalty would have to be found by the jury. It should be also noted that many, if not all, of the situations involving threats which are punishable under this section are also punishable under MCA, 45-5-203, Intimidation. Consideration should be given to charging under that section in those situations since the penalties are heavier and elements of proof required are no greater.

Cross References:

Code of ethics, Title 2, ch. 2, part 1.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of administrative proceeding, 45-2-101.

Definition of party official, 45-2-101.

Definition of public servant, 45-2-101.

Definition of purpose, 45-2-101.

Definition of threat, 45-2-101.

Intimidation, 45-5-203.

Case Notes:

Circumstantial Evidence Sufficient to Affirm Conviction for Threats and Improper Influence in Official and Political Matters: After a confrontation with state highway crew members, the Heffners were convicted of threats and other improper influence in official and political matters, a felony under this section. They appealed on grounds that the convictions were based on mere

suspicion or conjecture. Although the evidence presented was circumstantial, a rational jury could nevertheless infer that the Heffners were upset that their swift travel on the road was impeded by the duties of the road grader operator and that the Heffners took out their anger and frustration on the grader operator. The circumstantial evidence was sufficient to support the convictions. *St. v. Heffner*, 1998 MT 181, 290 M 114, 964 P2d 736, 55 St. Rep. 732 (1998).

Threats and Improper Influence in Official and Political Matters -- Use of Force Unjustified: After a confrontation with state highway crew members, the Heffners were convicted of threats and other improper influence in official and political matters, a felony under this section. They appealed on grounds that their actions were made in self-defense. Their theory was wholly dependent on their version of the facts, which the jury was entitled to reject. The jury weighed the evidence, assessed the credibility of the witnesses, and found the state's version more credible. Viewing the evidence in the light most favorable to the prosecution, the Supreme Court held that there existed sufficient evidence from which a rational jury could find that the Heffners injured a road grader operator because of the discharge of his duties or to prevent him from discharging his duties and that the Heffners were not justified in their use of force against the grader operator. *St. v. Heffner*, 1998 MT 181, 290 M 114, 964 P2d 736, 55 St. Rep. 732 (1998).

Service of Process as Exercise of Discretion in Charge of Threat in Official Matters: Deputies attempted to serve civil process on Keating at his home. Keating threatened the officers and was convicted of threats in official matters under this section. On appeal, Keating contended that service of process was not a discretionary function that could serve as the basis of a charge of threats in official matters. The Supreme Court noted that the statutory definition of threats in official matters speaks to a threat made for the purpose of influencing an exercise of discretion by a public servant but does not speak to a discretionary function. The fact that service of process is a statutory duty under 7-32-2121, rather than a discretionary function, does not relate to the issue of whether service of process involves an exercise of discretion under this section. Under former Rule 4D, M.R.Civ.P. (now superseded), personal service of process can be accomplished wherever and whenever the person to be served can be found. The Sheriff's Department uses a variety of discretionary methods of serving process. Thus, service of process clearly involves the power of choice among several courses of action, constituting a sufficient exercise of discretion to form a basis for charges of threats in official matters. *St. v. Keating*, 285 M 463, 949 P2d 251, 54 St. Rep. 1250 (1997).

Jurors: On prosecution for attempt to influence grand juror, evidence of transactions after juror had been discharged by operation of law was inadmissible even though defendant did not know that juror had been discharged. *St. v. Porter*, 125 M 503, 242 P2d 984 (1952).

45-7-103. Criminal use of office or position. (1) An elected official or other public servant commits the offense of criminal use of office or position if the person knowingly solicits, accepts, or agrees to accept any pecuniary benefit accruing to the person, the person's political campaign, or the person's political party for giving or offering to give a decision, opinion, recommendation, or vote favorable to another, for exercising or offering to exercise a discretion in another's favor, or for violating or offering to violate the person's duty. A person commits an offense under this section if the person knowingly offers, confers, or agrees to confer compensation that is prohibited by this section.

(2) A person convicted under this section shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M.

1947, 94-7-104; amd. Sec. 1677, Ch. 56, L. 2009; amd. Sec. 1, Ch. 98, L. 2009.

Criminal Law Commission Comments:

Source: M.P.C. 1962, § 240.3.

There is little legislative precedent for this section, but it obviates the difficulty occasionally encountered in a bribery prosecution when the defendant contends that he did not solicit or receive anything until after the official transaction had been completed. This behavior should be discouraged because it undermines the integrity of government. Compensation for past action implies a promise of similar compensation for future favor.

Compiler's Comments:

2009 Amendments -- Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 98 substituted first sentence relating to offense of criminal use of office or position for "A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty"; and made minor changes in style. Amendment effective October 1, 2009.

Annotator's Note: The purpose of this section on Compensation for Past Official Behavior is the elimination of a problem occasionally encountered in bribery prosecution when the defendant claims he did not solicit or receive anything until after the transaction in question had been completed. It should be noted that, while this section is limited to pecuniary benefits to public servants, it punishes both the public servant who "solicits, accepts or agrees to accept" and the individual who "offers, confers or agrees to confer" such benefits.

Compensation for past action which implies a promise of similar compensation for future favor undermines public confidence in the integrity of government quite as effectively as the payment in advance. It is made punishable by the new code on those grounds.

The 1977 amendment changed the wording of subsection (1) slightly from "having otherwise exercised discretion in his favor" to read "having otherwise exercised a discretion in another's favor". As originally enacted it was unclear whether "his" referred to the public servant or to the person offering the compensation--as amended it is now clear that the phrase refers to the person making the offer of compensation.

Cross References:

Code of ethics, Title 2, ch. 2, part 1.

Definition of administrative proceeding, 45-2-101.

Definition of knowingly, 45-2-101.

Definition of pecuniary benefit, 45-2-101.

Definition of public servant, 45-2-101.

Definition of solicit, 45-2-101.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) A public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to the regulation, inspection, investigation, or custody or against whom litigation is known to be pending or contemplated.

(2) A public servant having any discretionary function to perform in connection with

contracts, purchases, payments, claims, or other pecuniary transactions of the government may not solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any contract, purchase, payment, claim, or transaction.

(3) A public servant having judicial or administrative authority and a public servant employed by or in a court or other tribunal having judicial or administrative authority or participating in the enforcement of its decision may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the public servant or tribunal with which the public servant or tribunal is associated.

(4) A legislator or public servant employed by the legislature or by any committee or agency of the legislature may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency of the legislature.

(5) This section does not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which the public servant is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) A person may not knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105; amd. Sec. 1678, Ch. 56, L. 2009.

Criminal Law Commission Comments:

Source: M.P.C. 1962, § 240.5.

This section covers gifts by businessmen to government inspectors or by carriers and utilities to regulatory authorities. In some cases a noncriminal sanction against a public servant would be preferred, but there is difficulty in arriving at satisfactory generalizations for all classes of persons and conduct covered by this section. This section is broader than the old law.

Compiler's Comments:

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Annotator's Note: This section on Gifts to Public Servants proscribes conduct which, while suspect, was beyond the scope of prior law. Prior law provisions dealing with bribery required an element of showing of purpose to affect as well as to transfer or offer to transfer property or other consideration. Under this section, all that need be shown is the jurisdiction or probable jurisdiction and the transfer, offer to transfer, agreement to transfer, or solicitation of a pecuniary benefit. The section is limited in that the benefit must be pecuniary in nature. "Pecuniary benefit" is defined as being a "benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain" (MCA, 45-2-101). This would seem to exclude from the scope of this section such gifts as the traditional Christmas bottle of Scotch or advertising gifts such as pens, note pads, or calendars.

The various subsections are broadly inclusive as to what public servants are barred from the acceptance of pecuniary benefits. Subsection (1) bars those engaged in regulatory functions or legal representation from the acceptance of gifts from persons known to be subject to regulation

or likely to be involved in a legal struggle with the state. Subsection (2) bars purchasing agents and others dealing in claims or other similar transactions from accepting gifts offered by other parties interested in the transaction. Subsection (3) is aimed at the protection of the judiciary and its employees and subsection (4) prohibits gifts to legislators and legislative employees when the donor is either involved or likely to be involved in a matter pending before the court or Legislature, respectively. Subsection (5) offers as exceptions to the foregoing such benefits as are allowed by law and trivial benefits which involve no substantial risk of undermining official impartiality.

It should be noted that this section makes it an offense to either "solicit, accept or agree to accept" or to "confer, offer or agree to confer" a prohibited gift. Accordingly, either party to the transaction can be subject to criminal sanction.

Cross References:

Code of ethics, Title 2, ch. 2, part 1.

Definition of knowingly, 45-2-101.

Definition of pecuniary benefit, 45-2-101.

Definition of public servant, 45-2-101.

Definition of solicit, 45-2-101.

Attorney General Opinions:

Sheriffs Not to Receive Pecuniary Gifts: Section 45-7-104 prohibits the receipt by a Sheriffs' Department of pecuniary gifts from individuals or organizations within the Sheriff's regulatory or investigative jurisdiction. 38 A.G. Op. 76 (1980).

Fundraising Programs: Section 45-7-104 does not prohibit the use by Sheriff's Departments of fundraising programs involving the sale of goods or services. 38 A.G. Op. 76 (1980).

Part 2. Perjury and Other Falsification in Official Matters