

Re: Montana Legislative Histories

Thank you for contacting the State Law Library of Montana regarding a Montana legislative history. The Montana Legislature meets every two years, commencing in January of odd-numbered years. The primary sources for determining legislative intent in Montana are the minutes of meetings of the legislative committees that considered the bill, the exhibits to those hearings, and the various versions of the bill that were proposed throughout the process. Where these materials “live” generally depends upon the date of their creation.

**Legislative Bills**

- Pre-1977 - contact Montana Historical Society at 444-2681
- State Law Library has collected and bound all versions of bills beginning with the 1975 session
- Online starting with 1997 session - <http://leg.mt.gov/css/bills/Default.asp>

**Legislative Minutes**

- Pre-1977 - contact Montana Historical Society at 444-2681
- 1977-1995 - available at State Law Library. The law library in the process of putting them online at <http://courts.mt.gov/leg>
- 1997-1999\* – Audio tapes at Historical Society
- Online print minutes 2001-2005 <http://leg.mt.gov/css/Committees/Session/Default.asp>
- Online audio/visual minutes 2007 to present. No transcribed minutes <http://leg.mt.gov/css/Committees/Session/Default.asp>
- Floor debates online since 2005 - <http://leg.mt.gov/css/Sessions/default.asp>

**Legislative Exhibits**

- Pre-1977 - contact Montana Historical Society 444-2681
- 1977-2003 – available at State Law Library. The law library in the process of putting them online at <http://courts.mt.gov/leg>
- Online starting with 2005 session - <http://leg.mt.gov/css/Committees/Session/Default.asp>

**Legislative Histories**

After the 2005 session, histories are done using online resources. The State Law Library keeps copies of all legislative histories compiled by us. Check with us first. Call 444-3660 or e-mail [lawlibcirc@mt.gov](mailto:lawlibcirc@mt.gov).

*\*The 1997 and 1999 House and Senate Committee written minutes are sparse. The minutes are available via audio tape at the Montana Historical Society.*

If you have any questions regarding legislative histories, please contact the State Law Library at 444-3660 or [lawlibcirc@mt.gov](mailto:lawlibcirc@mt.gov). Thank you.

February 2016

MONTANA LEGISLATIVE HISTORY

Chapter 184 19 77

Bill H \_\_\_\_\_ S 30 Original bill & history  c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 3/4 \_\_\_\_\_ C

Hearing Date(s) 1/11 \_\_\_\_\_ C

\_\_\_\_\_ C

1/13 \_\_\_\_\_ C

\_\_\_\_\_ C

1/17 \_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out 3/7 \_\_\_\_\_ C

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Did this bill originate in an interim committee?  Yes  No

Committee \_\_\_\_\_

Report \_\_\_\_\_

LEGISLATIVE SESSION

FORTY-FIFTH

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Referferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

SENATE BILL NO. 30

HAZELBAKER

INTRODUCED BY  
A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."

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

Section 1. Section 95-101, R.C.M. 1947, is amended to read as follows:

"95-101. Scope Application. These provisions in this title shall govern the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law."

Section 2. There is a new R.C.M. section numbered 95-302.1 that reads as follows:

95-302.1. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 93-410 and 95-302.

Section 3. Section 95-501, R.C.M. 1947, is amended to read as follows:

"95-501. Mental disease or defect excluding responsibility. (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he is unable either to appreciate the criminality of his conduct or to conform his

conduct to the requirements of law.

(2) As used in this chapter, the terms "mental disease or defect" does not include an abnormality manifested only by repeated repeated criminal or otherwise other antisocial conduct."

Section 4. Section 95-507, R.C.M. 1947, is amended to read as follows:

"95-507. Determination of irresponsibility on basis of report -- access-to-defendant-by-psychiatrist-of-his-own-choice examination by psychiatrist chosen by state of defendant -- form-of-expert psychiatric testimony when-issue-of-responsibility-is-tried upon-trial. (1) If the report filed under section 95-505 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that the mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) When If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or

INTRODUCED BILL

1 other expert selected by the one proposing the examination,  
 2 the examiner shall be permitted to have reasonable access to  
 3 the defendant for the purpose of the examination.  
 4 (3) Upon the trial, any psychiatrist who reported  
 5 under section 95-505 may be called as a witness by the  
 6 prosecution or by the defense. If the issue is being tried  
 7 before a jury, the jury shall ~~may~~ not be informed that the  
 8 psychiatrist was designated by the court or by the  
 9 superintendent of Warm Springs state hospital. Both the  
 10 prosecution and the defense may summon any other qualified  
 11 psychiatrist or other expert to testify, but no one who has  
 12 not examined the defendant is competent to testify to an  
 13 expert opinion with respect to the mental condition or  
 14 responsibility of the defendant, as distinguished from the  
 15 validity of the procedure followed by or the general  
 16 scientific propositions stated by another witness.

17 (4) When a psychiatrist or other expert who has  
 18 examined the defendant testifies concerning his ~~the~~  
 19 defendant's mental condition, he may make a statement as to  
 20 the nature of his examination, his diagnosis of the mental  
 21 condition of the defendant at the time of the commission of  
 22 the offense charged, and his opinion as to the ability of  
 23 the defendant to appreciate the criminality of his conduct,  
 24 or to conform his conduct to the requirements of law, or to  
 25 have a particular state of mind which is an element of the

1 offense charged. He the expert may make any explanation  
 2 reasonably serving to clarify his diagnosis and opinion and  
 3 may be cross-examined as to any matter bearing on his  
 4 competency or credibility or the validity of his diagnosis  
 5 or opinion."

6 Section 5. Section 95-509, R.C.M. 1947, is amended to  
 7 read as follows:

8 "95-509. ~~Statements--for--purposes-of Admissibility of~~  
 9 ~~statements made during examination or treatment inadmissible~~  
 10 ~~except-on-issue-of-mental-condition. A statement made by--a~~  
 11 ~~person---subjected---to for the purposes of psychiatric~~  
 12 ~~examination or treatment pursuant--to--sections---95-505~~  
 13 ~~95-506~~---95-508---for--the--purposes--of provided for in this  
 14 chapter by a person subjected to such examination or  
 15 treatment shall is not be admissible in evidence against him  
 16 in any criminal proceeding on any issue other than that of  
 17 his mental condition, but-it-shall-be it is admissible upon  
 18 that on the issue of his mental condition, whether or not it  
 19 would be otherwise deemed be considered a privileged  
 20 communication, unless such--statement it constitutes an  
 21 admission of guilt of the crime charged."

22 Section 6. Section 95-603, R.C.M. 1947, is amended to  
 23 read as follows:

24 "95-603. Issuance and service of arrest warrant upon  
 25 complaint. ~~shall~~ A complaint, as the basis of an arrest

1 warrant, shall be in writing.

2     ~~f(7)(2)~~ When a complaint is presented to a court

3 charging a person with the commission of an offense, the

4 court shall examine upon oath the complainant and may also

5 examine any witnesses.

6     ~~f(7)(3)~~ If it appears from the contents of the

7 complaint and the examination of the complainant and other

8 witnesses, if any, that there is probable cause to believe

9 that the person against whom the complaint was made has

10 committed an offense, a warrant shall be issued by the court

11 for the arrest of the person complained against. ~~in the~~ the

12 ~~court in its discretion of the court or upon the request of~~

13 ~~the county attorney, may issue a summons instead of a~~

14 ~~warrant. Upon the request of the county attorney, the court~~

15 ~~shall issue a summons instead of a warrant. More than one~~

16 ~~warrant or summons may issue on the same complaint.~~

17     ~~f(7)(4)~~ A warrant of arrest shall:

18     ~~f(7)(a)~~ Be ~~be~~ in writing in the name of the state of

19 Montana or in the name of a municipality if a violation of a

20 municipal ordinance is charged;

21     ~~f(7)(b)~~ Set ~~set~~ forth the nature of the offense;

22     ~~f(7)(c)~~ Command ~~command~~ that the person against whom

23 the complaint was made be arrested and brought before the

24 court issuing the warrant; ~~or~~ if he ~~the~~ the judge is absent or

25 unable to act, before the nearest or most accessible court

1 ~~in the same county; if an arrest is made in a county other~~

2 ~~than the one in which the warrant was issued the arrested~~

3 ~~person shall be taken without unnecessary delay before the~~

4 ~~nearest and most accessible judge in the county where the~~

5 ~~arrest was made;~~

6     ~~f(7)(d)~~ Specify the name of the person to be

7 arrested ~~or~~ if his name is unknown, shall designate such

8 ~~the~~ person by any name or description by which he can be

9 identified with reasonable certainty;

10     ~~f(7)(e)~~ State ~~state~~ the date when issued and the

11 municipality or county where issued; and

12     ~~f(7)(f)~~ Be ~~be~~ signed by the judge of the court with the

13 title of his office.

14     ~~f(7)(5)~~ The warrant of arrest may specify the amount of

15 bail.

16     ~~f(7)(6)~~ The warrant shall be directed to all peace

17 officers in the state. It shall be executed by a peace

18 officer and may be executed in any county of the state.

19 However, warrants issued for the violation of city

20 ordinances cannot be executed outside the city limits,

21 except as otherwise provided by sections 11-927 and 11-960."

22     Section 7. Section 95-704, R.C.M. 1947, is amended to

23 read as follows:

24     "95-704. Grounds for search warrant. Any judge may

25 issue a search warrant upon the written application of any

1 person ~~that an offense has been committed~~, made under oath  
 2 or affirmation before ~~him~~ the judge which:  
 3 ~~(1) states that an offense has been committed;~~  
 4 ~~(2) states facts sufficient to show probable~~  
 5 ~~cause for issuance of the warrant;~~  
 6 ~~(3) particularly describes the place~~  
 7 ~~or things to be searched; and~~  
 8 ~~(4) particularly describes the things~~  
 9 ~~to be seized."~~

10 Section 8. Section 95-719, R.C.M. 1947, is amended to  
 11 read as follows:  
 12 "95-719. Stop and frisk. (1) A peace officer may stop  
 13 any person he observes in circumstances that give ~~the peace~~  
 14 ~~officer~~ him reasonable cause to suspect that the person has  
 15 committed, is committing, or is about to commit an offense  
 16 involving the use or attempted use of force against ~~the a~~  
 17 person or theft, damage, or destruction of property if the  
 18 stop is reasonably necessary to obtain or verify an account  
 19 of the person's presence or conduct or to determine whether  
 20 to arrest the person.

21 (2) A peace officer may stop any person he finds near  
 22 the scene of an offense that ~~the peace officer~~ he has  
 23 reasonable cause to suspect has just been committed if:  
 24 (a) ~~the peace officer~~ he has reasonable cause to  
 25 suspect that the person has knowledge of material aid to the

1 investigation of the offense; or  
 2 (b) the stop is reasonably necessary to obtain or  
 3 verify the person's identity or an account of the offense.  
 4 (3) A peace officer may stop any person in connection  
 5 with an offense that ~~the peace officer~~ he has probable cause  
 6 to believe has been committed if:

7 (a) the offense is a felony involving the use or the  
 8 attempted use of force against a person or theft, damage, or  
 9 destruction of property; and

10 (b) ~~the peace officer~~ he has reasonable cause to  
 11 suspect the person committed the felony; and

12 (c) ~~if~~ the stop is reasonably necessary to obtain or  
 13 verify ~~his~~ the person's identity to determine whether to  
 14 arrest the person for the felony; or  
 15 ~~if~~ the peace officer has reasonable cause to suspect  
 16 that the person was present at the scene of the offense and  
 17 the stop is reasonably necessary to obtain or verify the  
 18 person's identity.

19 (4) A peace officer who has lawfully stopped a person  
 20 under this section may:

21 (a) frisk that ~~the~~ person and take other reasonably  
 22 necessary steps for protection if ~~the peace officer~~ he has  
 23 reasonable cause to suspect that the person is armed and  
 24 presently dangerous to ~~the peace officer~~ him or another  
 25 person present; and

1 (b) take possession of any object that ~~the peace~~  
 2 ~~officer~~ he discovers during the course of the frisk if ~~the~~  
 3 ~~peace-officer~~ he has probable cause to believe the object is  
 4 a deadly weapon.

5 (5) A peace officer who has lawfully stopped a person  
 6 under this section may demand of the person his name and his  
 7 present or last address.

8 (6) A peace officer who has lawfully stopped a person  
 9 under this section shall inform the person, as promptly as  
 10 possible under the circumstances and in any case before  
 11 questioning the person, that he is a peace officer, and that  
 12 the stop is not an arrest but rather a temporary detention  
 13 for an investigation, and that upon completion of the  
 14 investigation the person will be released unless he is  
 15 arrested.

16 (7) After the authorized purpose of the stop has been  
 17 accomplished or ~~thirty~~ 30 minutes have elapsed, whichever  
 18 occurs first, the peace officer shall allow the person to go  
 19 unless he has arrested the person."

20 Section 9. Section 95-1001, R.C.M. 1947, is amended to  
 21 read as follows:

22 "95-1001. Right to counsel. lll Every defendant  
 23 brought before the court must be informed by the court that  
 24 it is his right to have counsel before proceeding and must  
 25 be asked if he desires the aid of counsel. The defendant, if

1 charged with a felony, must be advised that counsel will be  
 2 furnished at state expense if he is unable to employ  
 3 counsel. If the offense charged is a felony and if the  
 4 defendant desires counsel and is unable to employ counsel, a  
 5 ~~the~~ court ~~of-record~~ must assign counsel to defend him. If  
 6 the offense charged is a misdemeanor and if the defendant  
 7 desires counsel and is unable to employ counsel, ~~a~~ the court  
 8 ~~of-record~~, in the interest of justice, may assign counsel to  
 9 defend him.

10 (2) ~~Absent a knowing and intelligent waiver, no person~~  
 11 ~~may be imprisoned for any offense, whether classified as a~~  
 12 ~~misdemeanor or a felony, unless he was represented by~~  
 13 ~~counsel at his trial. This is applicable to all criminal~~  
 14 ~~prosecutions, including prosecutions for violations of~~  
 15 ~~municipal ordinances."~~

16 Section 10. Section 95-1005, R.C.M. 1947, is amended  
 17 to read as follows:

18 "95-1005. Remuneration of appointed counsel. lll  
 19 Whenever in a criminal ~~action~~ or proceeding an attorney ~~at~~  
 20 ~~law~~ represents or defends any person by order of the court  
 21 on the ground that the person is financially unable to  
 22 employ counsel, ~~such~~ the attorney shall be paid for his  
 23 services such sum as a district court or justice of the  
 24 state supreme court certifies to be a reasonable  
 25 compensation therefor and shall be reimbursed for reasonable



1 costs incurred in the criminal proceeding.

2 ~~(2) Such costs shall be the expense of implementing~~

3 ~~subsection (1) is chargeable to the county in which the~~

4 ~~proceeding arose, except that:~~

5 (a) in proceedings solely involving the violation of a

6 city ordinance or state statute prosecuted in a municipal

7 ~~or city or police court, wherein costs shall be the expense~~

8 ~~is chargeable to the city or town in which the proceeding~~

9 ~~arose; and~~

10 (b) ~~in arrests in criminal proceedings when there has~~

11 ~~been an arrest~~ by agents of the department of fish and game

12 ~~and arrests by or agents of the department of justice, the~~

13 ~~costs including attorneys' fees of attorneys appointed by~~

14 ~~the court for the defendant} expense must be borne by the~~

15 ~~state agency causing the arrest.~~

16 Section 11. Section 95-1104, R.C.M. 1947, is amended

17 to read as follows:

18 "95-1104. ~~Setting and accepting bail under a warrant~~

19 ~~of arrest bail set in warrant -- acceptance by peace~~

20 ~~officer. A peace officer may accept cash bail in behalf of a~~

21 ~~judge where whenever the warrant of arrest specifies the~~

22 ~~amount of bail. In the event the whenever a peace officer~~

23 ~~accepts bail, he shall give a signed receipt to the offender~~

24 ~~setting forth the bail received. The peace officer shall~~

25 ~~then deliver the bail to the justice of the peace or police~~

1 city judge before whom the offender is to appear, and the

2 justice of the peace or police city judge shall give a

3 receipt to the police peace officer for the bail delivered."

4 Section 12. Section 95-1118, R.C.M. 1947, is amended

5 to read as follows:

6 "95-1118. ~~Conditions Form of conditions of bail.~~

7 ~~(1) If a person is admitted to bail before conviction,~~

8 ~~the conditions of bail bond shall be:~~

9 ~~(a) that he will appear to answer in the court having~~

10 ~~jurisdiction on a day certain and thereafter as ordered by~~

11 ~~the court until discharged on final order of the court and~~

12 ~~will not depart from this state without leave; and~~

13 ~~(b) subject to any other conditions as that the court~~

14 ~~may reasonably prescribe to assure his appearance when~~

15 ~~required.~~

16 ~~(1)(2) If the defendant is admitted to bail after~~

17 ~~conviction, the conditions of bail bond shall be that:~~

18 ~~(1)(a) He he will duly prosecute his appeal;~~

19 ~~(1)(b) He he will appear at such time and place as the~~

20 ~~court may direct;~~

21 ~~(1)(c) He he will not depart from this state without~~

22 ~~leave of the court; and~~

23 ~~(1)(d) If if the judgment is affirmed or the cause~~

24 ~~reversed and remanded for a new trial, he will forthwith~~

25 ~~surrender to the officer from whose custody he was bailed."~~

1 Section 13. Section 95-1119, R.C.M. 1947, is amended  
2 to read as follows:

3 "95-1119. Bail on a new trial. If the judgment of  
4 conviction is reversed and the cause remanded for a new  
5 trial, the trial court may order that the bail stand pending  
6 such trial, or substitute, reduce, or increase bail."

7 Section 14. Section 95-1120, R.C.M. 1947, is amended  
8 to read as follows:

9 "95-1120. Persons prohibited from furnishing bail  
10 security. No attorney ~~at law~~ and no official authorized to  
11 admit another to bail ~~shall~~ act in an official or  
12 professional capacity may act as surety or furnish bail."

13 Section 15. Section 95-1121, R.C.M. 1947, is amended  
14 to read as follows:

15 "95-1121. ~~Sureties for~~ guaranteed ~~arrest~~  
16 ~~bond certificates~~ of ~~undertaking~~ guaranteed ~~arrest~~  
17 ~~bond certificate.~~ for ~~any~~ A domestic or foreign surety  
18 company which has qualified to transact surety business in  
19 this state may, in any year, become surety in an amount not  
20 ~~to exceed one hundred dollars~~ exceeding \$100,000 with  
21 respect to any guaranteed ~~guaranteed~~ arrest bond certificates  
22 issued in such year by an automobile club or association or  
23 by an insurance company authorized to write automobile  
24 liability insurance within this state, by filing with the  
25 commissioner of insurance an undertaking thus to become

1 surety.

2 ~~by~~ such ~~the~~ undertaking shall be in a form to be  
3 prescribed by the commissioner and shall state the  
4 following:

5 ~~that~~ the name and address of the automobile club  
6 or clubs, automobile ~~association~~ associations, or insurance  
7 company ~~or~~ of companies ~~or~~ with respect to which  
8 issued the guaranteed arrest bond certificates of with  
9 respect to which the surety company undertakes to be  
10 surety and

11 ~~that~~ the unqualified obligation of the surety  
12 company to pay the fine or forfeiture in an amount not to  
13 exceed ~~one hundred dollars~~ exceeding \$100,000 of any person  
14 who, after posting a guaranteed arrest bond certificate with  
15 respect to which the surety company has undertaken to be  
16 surety, fails to make the appearance to guarantee which the  
17 guaranteed arrest bond certificate was posted.

18 ~~that~~ the term "guaranteed arrest bond certificate"  
19 means any printed card or other certificate which

20 is issued by an automobile club or association or  
21 insurance company to any of its members or insureds and

22 which ~~said~~ card or certificate is signed by such  
23 ~~the~~ member or insured and contains a printed statement that  
24 such ~~the~~ automobile club, automobile association, or  
25 insurance company and a surety company or an insurance

1 company authorized to transact both automobile liability  
 2 insurance and surety business in the state of Montana;  
 3 (ii) guarantee the appearance of the person whose  
 4 signature appears on the card or certificate; and  
 5 (iii) that will, in the event of the failure of such  
 6 the person to appear in court at the time of trial, pay any  
 7 fine or forfeiture imposed on such the person in an amount  
 8 not to exceed one hundred dollars exceeding \$100.00."

9 Section 16. Section 95-1122, R.C.M. 1947, is amended  
 10 to read as follows:

11 "95-1122. Violations---of--motor Motor vehicle laws  
 12 violations -- posting-of-guaranteed-arrest-bond--certificate  
 13 certificates accepted in lieu of cash. Any A guaranteed  
 14 arrest bond certificate with respect to which a surety  
 15 company has become surety or a guaranteed arrest bond  
 16 certificate issued by an insurance company authorized to  
 17 transact both automobile liability insurance and surety  
 18 business within this state, as provided in section 95-1121,  
 19 hereof, shall, when posted by the person whose signature  
 20 appears thereon, be accepted in lieu of cash bail in an  
 21 amount not to exceed one hundred dollars exceeding \$100.00  
 22 as a bail bond to guarantee the appearance of such the  
 23 person in any court, including municipal courts, in this  
 24 state at such time as may be required by the court, when  
 25 such the person is was arrested for violation of any a motor

1 vehicle law of this state or ordinance of any a municipality  
 2 in this state (except for the offense of driving while  
 3 intoxicated or for any felony) committed prior to the date  
 4 of expiration shown on such the guaranteed arrest bond  
 5 certificate, so A guaranteed arrest bond certificate posted  
 6 as a bail bond in any a court in this state shall--be is  
 7 subject to the same forfeiture and enforcement provisions  
 8 with-respect-to as bail bonds posted in criminal cases as  
 9 provided--by-law, and that--any--such a guaranteed arrest bond  
 10 certificate posted as a bail bond in any a municipal court  
 11 in this state shall--be is subject to the forfeiture and  
 12 enforcement provisions of the chapter or ordinance of the  
 13 particular municipality pertaining to bail bonds posted."

14 Section 17. Section 95-1406, R.C.M. 1947, is amended  
 15 to read as follows:

16 "95-1406. When-and-from-whom-they-may-ask--advice--and  
 17 who---may--be--present--during--their--sessions Advice and  
 18 assistance to grand jury --- who may be present ---  
 19 stenographer, transcript of testimony. (b)(1) The grand  
 20 jury may at all times ask the advice of the court or the  
 21 judge thereof, or the attorney general, or of the county  
 22 attorney. Unless such advice is asked, the judge of the  
 23 court shall not be present during the sessions of the grand  
 24 jury.

25 (b)(2) The county attorney of--the--county or the

1 attorney general may at all times appear before the grand  
 2 jury for the purpose of giving information or advice  
 3 relative to any matter cognizable by the grand jury, and may  
 4 interrogate witnesses before the grand jury whenever he  
 5 thinks it necessary. When a charge against or involving the  
 6 county attorney, or deputy county attorney, or anyone  
 7 employed by or connected with the office of the county  
 8 attorney is being investigated by the grand jury, such the  
 9 county attorney, or deputy county attorney, or all or any  
 10 one or more of them shall not be allowed to be present in  
 11 an official capacity before such the grand jury when such  
 12 the charge is being investigated in an official capacity  
 13 but only as a witness and he they or he shall only be  
 14 present while a witness and after his appearance appearing  
 15 as such a witness shall leave the place where the grand jury  
 16 is holding session.  
 17 ~~(f)(1)~~ When requested to do so by the grand jury of  
 18 any county, the attorney general or county attorney may  
 19 employ special counsel and investigators, whose duty it who  
 20 shall be to investigate and present the evidence acquired in  
 21 such investigation to such the grand jury.  
 22 ~~(f)(4)~~ The grand jury or county attorney may require  
 23 by subpoena the attendance of any person before the grand  
 24 jury as interpreter. While his services are necessary, such  
 25 the interpreter may be present at the examination of

1 witnesses before the grand jury. The compensation for the  
 2 services of such the interpreter constitutes a charge  
 3 against the county and shall be fixed by the grand jury in  
 4 an amount to be approved by the courts and it shall be paid  
 5 out of the county treasury on a warrant of the county  
 6 auditor upon an order of the judge of the district court.  
 7 ~~(f)(5) Transcript of testimony.~~ The grand jury  
 8 may appoint a stenographer to take in shorthand the  
 9 testimony of witnesses or the testimony may be taken by a  
 10 recording device, but the record so made shall include the  
 11 testimony of all witnesses on that particular investigation.  
 12 The shorthand notes or the recordings and transcript of the  
 13 same, if any, shall be delivered to and retained by the  
 14 clerk of the district court.  
 15 ~~(f)(6)~~ The stenographer and any typist who transcribes  
 16 the stenographer's notes or recordings shall be sworn by the  
 17 foreman not to disclose any testimony or the names of any  
 18 witnesses except when so ordered by the court.  
 19 ~~(f)(7)~~ The stenographic reporter shall certify and file  
 20 with the clerk of the district court an original  
 21 transcription of his shorthand notes and a copy thereof and  
 22 as many additional copies as there are defendants. The  
 23 reporter shall complete such the certification and filing  
 24 within ten days after the indictment has been found or  
 25 the accusation presented unless the court for good cause

1 makes an order extending the time. The clerk of the district  
 2 court shall deliver the original of the transcript ~~so~~ filed  
 3 with him to the county attorney immediately upon his receipt  
 4 thereof, ~~shall~~ retain one ~~fit~~ copy for use only by judges in  
 5 proceedings relating to the indictment or ~~accusation~~, and  
 6 ~~shall~~ deliver a copy of ~~such~~ the transcript to each ~~such~~  
 7 defendant or his attorney."

8 Section 18. Section 95-1407, R.C.M. 1947, is amended  
 9 to read as follows:

10 "95-1407. Subpoena of witnesses ~~---issuance~~. A subpoena  
 11 requiring the attendance of a witness before the grand jury  
 12 may be signed and issued by the county attorney, by the  
 13 ~~foreman of the grand jury,~~ or by the judge of the district  
 14 court. ~~for the subpoena may be directed to witnesses in the~~  
 15 ~~state~~ in support of the prosecution, ~~for~~ those witnesses  
 16 whose testimony, in ~~his~~ the opinion ~~of the issuer,~~ is  
 17 material in an investigation before the grand jury, and ~~for~~  
 18 such other witnesses as the grand jury ~~upon investigation~~  
 19 ~~pending before them~~ may direct."

20 Section 19. Section 95-1408, R.C.M. 1947, is amended  
 21 to read as follows:

22 "95-1408. Reception of evidence. ~~shall~~ In the  
 23 investigation of a charge, the grand jury shall receive no  
 24 other evidence than that given by witnesses produced and  
 25 sworn before ~~the grand jury~~ it ~~of~~ furnished by legal

1 documentary evidence or the deposition of a witness in the  
 2 cases mentioned in ~~section~~ 95-1802.

3 ~~shall~~ The grand jury is not required to hear evidence  
 4 for the defendant, but it shall weigh all the evidence  
 5 submitted to ~~its~~ ~~and when~~ if it has reason to believe other  
 6 evidence within its reach will explain away the charge, it  
 7 shall order the evidence to be produced and for that  
 8 purpose may require the county attorney to issue process for  
 9 witnesses.

10 ~~shall~~ The grand jury shall find an indictment when  
 11 all the evidence before ~~it~~ taken together, if unexplained  
 12 or uncontradicted, would in its judgment warrant a  
 13 conviction by a trial jury."

14 Section 20. Section 95-1502, R.C.M. 1947, is amended  
 15 to read as follows:

16 "95-1502. Commencement of prosecutions. ~~shall~~ All  
 17 prosecutions of offenses triable in the district courts  
 18 shall be by indictment or information ~~except as otherwise~~  
 19 ~~provided by chapter 55, title 94, R.C.M. 1947.~~

20 ~~shall~~ All other prosecutions of offenses may be by  
 21 complaint."

22 Section 21. Section 95-1504, R.C.M. 1947, is amended  
 23 to read as follows:

24 "95-1504. Joinder and discharge of offenses and  
 25 defendants. ~~shall~~ An indictment, information, ~~or~~ complaint

1 or-accusation may charge two (2) or more different offenses  
 2 connected together in their commission, or different  
 3 statements of the same offenses, or two (2) or more different  
 4 offenses of the same class of-crimes--or--offenses, under  
 5 separate counts, and--if If two (2) or more indictments,  
 6 informations, or complaints or-accusations are filed in such  
 7 cases in the same court, the court may order them to be  
 8 consolidated. Allegations made in one count may be  
 9 incorporated by reference in another count. The prosecution  
 10 is not required to elect between the different offenses or  
 11 counts set forth in the indictment, information, or  
 12 complaint or--accusation, but and the defendant may be  
 13 convicted of any number of the offenses charged, and--each  
 14 Each offense of which the defendant is convicted must be  
 15 stated in the verdict or the finding of the court.

1 the same indictment or information if they are alleged to  
 2 have participated in the same series of acts or transactions  
 3 constituting an offense or offenses. Such defendants may be  
 4 charged in one (1) or more counts together or separately,  
 5 and all of the defendants need not be charged in each count.  
 6 (b)(1) If it appears that a defendant or the state is  
 7 prejudiced by a joinder of related prosecutions or  
 8 defendants in a single charge or by joinder of separate  
 9 charges or defendants for trial, the court may order  
 10 separate trials, grant a severance of defendants, or provide  
 11 any other relief as justice may require.

16 (2) provided--that--the the court in which the case is  
 17 triable, in the interests of justice and for good cause  
 18 shown, may in its discretion order that the different  
 19 offenses or counts set forth in the indictment, information,  
 20 or complaint and-accusation be tried separately or divided  
 21 into two (2) or more groups and each of said the groups  
 22 tried separately. An acquittal of one (1) or more counts  
 23 shall not be deemed considered an acquittal of any other  
 24 count.

12 (b)(1) When two or more persons are included in the  
 13 same charge, the court may, at any time before the  
 14 defendants have gone into their defense, on the application  
 15 of the county attorney, direct any defendant to be  
 16 discharged, so that he may be a witness for the state.  
 17 (b)(1) When two or more persons are included in the  
 18 same indictment or information and the court is of the  
 19 opinion that in regard to a particular defendant there is  
 20 not sufficient evidence to put him on his defense, it the  
 21 court must order him to be discharged before the evidence is  
 22 closed, that he may be a witness for his codefendant."

25 (b)(1) Two (2) or more defendants may be charged in

23 Section 22. Section 95-1506, R.C.M. 1947, is amended  
 24 to read as follows:  
 25 "95-1506. Prior-conviction Procedural requirements---

1 persistent felony offenders. (1) When if the state seeks  
 2 increased punishment treatment of the accused as a prior  
 3 convicted felon persistent felony offender under section  
 4 94-4719 95-1507 or 95-2206.5 or both of those sections,  
 5 notice of that fact must be given in writing to the accused  
 6 or his attorney before the entry of a plea of guilty by the  
 7 accused or before the case is called for trial upon a plea  
 8 of not guilty.

9 (2) Such the notice must conform to the following  
 10 provisions:

11 (a) The notice must specify the prior convictions  
 12 alleged to have been incurred by the accused.

13 (b) The notice and the charges of prior convictions  
 14 contained therein shall not be made public nor or in any  
 15 manner be made known to the jury before the jury's verdict  
 16 is returned upon the felony charges provided that however  
 17 if the defendant shall testify testifies in his own behalf  
 18 he shall nevertheless be is subject to impeachment as  
 19 provided in section 93-1901-11y-RvEm-1947y-as-amended.

20 (c) If the accused is convicted upon the felony  
 21 charge, the notice, together with proper proof of timely  
 22 service, shall be filed with the court before the time fixed  
 23 for sentence sentencing. The court shall then fix a time for  
 24 hearing with at least three-37 days' notice to the accused.  
 25 (d) The hearing shall be held before the court

1 alone. If the court finds any of the allegations of prior  
 2 conviction true, the accused shall be sentenced under the  
 3 provisions of section-94-4719 95-1507 and 95-2206.5."

4 Section 23. Section 95-1507, R.C.M. 1947, is amended  
 5 to read as follows:

6 "95-1507. Sentence Sentencing of imprisonment---for  
 7 persistent felony offender. (1) A persistent felony  
 8 offender is an offender who has been previously been  
 9 convicted of a felony and the-present-offense-is who-is  
 10 presently-being-sentenced-for a second felony committed on a  
 11 different occasion than the first. An-offender-is-considered  
 12 to-have-been-previously-convicted-of-a-felony-if:

13 (2)---A-persistent-felony-offender-shall--be--imprisoned  
 14 in--the--state--prison--for--a-term-of-not-less-than-five-(5)  
 15 years-not-more-than-one-hundred-(100)-years-providing:

16 (a) the previous felony conviction was for an offense  
 17 committed in this state or any other jurisdiction for which  
 18 a sentence to a term of imprisonment in excess of one--(1)  
 19 year could have been imposed; and

20 (b) less than five-(5) years have elapsed between the  
 21 commission of the present offense and either (i) the  
 22 previous felony conviction or (ii) the offenders-released  
 23 offender-is-released on parole or otherwise from a prison or  
 24 other commitment imposed as a result of the previous felony  
 25 conviction; and

1 ~~(2) the offender was more than twenty one (21) years~~  
2 ~~old at the time of the commission of the new offense~~  
3 ~~(3)(C) A previous felony conviction shall not be~~  
4 ~~considered for the purpose of sentencing under this section~~  
5 ~~if the offender has not been pardoned on the grounds ground~~  
6 ~~of innocence or if and the conviction had not been set~~  
7 ~~aside in any post conviction a post conviction hearing.~~  
8 ~~(2) A persistent felony offender shall be imprisoned~~  
9 ~~in the state prison for a term of not less than 5 years or~~  
10 ~~more than 100 years if he was 21 years of age or older at~~  
11 ~~the time of the commission of the present offense."~~  
12 Section 24. Section 95-1704, R.C.M. 1947, is amended  
13 to read as follows:  
14 "95-1704. Time of making motion. The motion provided  
15 for in 95-1701 and 95-1702 shall be made before the plea is  
16 entered, but the court for cause may permit it to be made  
17 within a reasonable time thereafter."  
18 Section 25. Section 95-1706, R.C.M. 1947, is amended  
19 to read as follows:  
20 "95-1706. Effect of determination. (1) If a motion is  
21 determined adversely to the defendant, he shall plead if he  
22 has not previously pleaded. A plea previously entered shall  
23 stand.  
24 (2) If the court directs the action to be dismissed,  
25 the defendant must, if in custody, be discharged therefrom

1 or, if admitted to bail, have his bail exonerated or money  
2 deposited instead of bail must be refunded to him. However,  
3 if the court grants a motion to dismiss based on a defect in  
4 the institution of the prosecution or in the indictment,  
5 information, or complaint or when if it appears at any time  
6 before judgment that a mistake has been made in charging the  
7 proper offense, ~~it~~ the court may also order that the  
8 defendant be held in custody or that his bail be continued  
9 for a specified time pending the filing of a new complaint,  
10 indictment, or information."  
11 Section 26. Section 95-1707, R.C.M. 1947, is amended  
12 to read as follows:  
13 "95-1707. Transfer of trial. If the court determines  
14 that ~~the~~ a motion to dismiss based upon the grounds of lack  
15 of jurisdiction or improper place of trial is well founded,  
16 it may, instead of ordering dismissal, order the cause  
17 transferred to a court of competent jurisdiction or to a  
18 proper place of trial."  
19 Section 27. Section 95-1709, R.C.M. 1947, is amended  
20 to read as follows:  
21 "95-1709. Substitution of judge. (1) The defendant  
22 or the prosecution may move the court in writing for a  
23 substitution of ~~the~~ judge on the ground that ~~he~~ the ~~movant~~  
24 cannot <sup>be</sup> have a fair and impartial hearing or trial before  
25 ~~said~~ the judge. The motion shall be made at least fifteen



1 15) days prior to the trial of the case or any retrial  
2 thereof after appeal, except for good cause shown.

3 12) Upon the filing of such a motion, the judge  
4 against whom the motion is filed shall be without authority  
5 to act further in the criminal action, motion, or  
6 proceedings, but the provisions of this section do not apply  
7 except in regard to the arrangement of the calendar, the  
8 regulation of the order of business, the power of  
9 transferring the criminal action or proceeding to some other  
10 court, nor to and the power of calling in another judge to  
11 sit and act in such the criminal action or proceedings,  
12 providing that no judge shall so arrange the calendar  
13 as to defeat the purposes of this section.

14 13) Not more than one fit judge can may be  
15 disqualified in the criminal action or proceeding at the  
16 instance of the prosecution and not do more than one fit  
17 judge at the instance of the defendant or defendants.

18 14) If either a party in any matter above mentioned  
19 shall file the who files a motion as herein provided such  
20 party under subsection 11) may not complain of any  
21 reasonable delay as the result thereof.

22 15) The provision of this section shall be is  
23 inapplicable to any person in any cause involving a direct  
24 contempt of court.

25 16) In addition to the provision provisions of

1 subsection (f) subsections 11 through 15) any a defendant  
2 may move at any time for a substitution of the judge for  
3 cause supported by affidavit. Upon the filing of such the  
4 motion, the court shall conduct a hearing and determine the  
5 merits of the motion."

6 Section 28. Section 95-1711, R.C.M. 1947, is amended  
7 to read as follows:

8 "95-1711. Effect of former prosecution and multiple  
9 multiple charges and former prosecutions. (1) Definitions of  
10 terms: (a) The term "same transaction" includes conduct  
11 consisting of:

12 (i) a series of acts or omissions which are motivated  
13 by a purpose to accomplish a criminal objective and which  
14 are necessary or incidental to the accomplishment of that  
15 objective; or

16 (ii) a series of acts or omissions which are motivated  
17 by a common purpose or plan and which result in the repeated  
18 commission of the same offense or affect the same person or  
19 the same persons or the property thereof.

20 (b) An offense is an "included offense" when:  
21 (i) it is established by proof of the same or less  
22 than all the facts required to establish the commission of  
23 the offense charged; or

24 (ii) it consists of an attempt to commit the offense  
25 charged or to commit an offense otherwise included therein;

1 or

2 (iii) it differs from the offense charged only in the  
3 respect that a less serious injury or risk of injury to the  
4 same person, property, or public interest or a lesser kind  
5 of culpability suffices to establish its commission.

6 (2) ~~Method-of--prosecution--when--conduct--constitutes~~  
7 ~~more--than--one--offense~~ When the same transaction may  
8 establish the commission of more than one offense, a person  
9 charged with such conduct may be prosecuted for each such  
10 offense. He may not, however, be convicted of more than one  
11 offense if:

12 (a) one offense is included in the other; or  
13 (b) one offense consists only of a conspiracy or other  
14 form of preparation to commit the other; or

15 (c) inconsistent findings of fact are required to  
16 establish the commission of the offenses;

17 (d) the offenses differ only in that one is defined to  
18 prohibit a designated kind of conduct, generally and the  
19 other to prohibit a specific instance of such conduct; or  
20 (e) the offense is defined to prohibit a continuing  
21 course of conduct and the defendant's course of conduct was  
22 interrupted, and unless the law provides that the specific  
23 periods of such conduct constitute separate offenses.

24 (3) ~~When-prosecution--barred--by--former--prosecutions~~  
25 ~~Provided~~ If the offenses ~~if--more--than--one~~ were known to

1 the attorney prosecuting upon sufficient evidence to justify  
2 the filing of an information or the issuance of a warrant of  
3 arrest and were consummated prior to the original charge  
4 and ~~provided~~ if the jurisdiction and venue of the several  
5 offenses lie in a single court, a prosecution based upon the  
6 same transaction as a former prosecution is barred by such  
7 former prosecution under the following circumstances:

8 (a) The former prosecution resulted in an acquittal.  
9 There is an acquittal ~~if~~ ~~whenever~~ the prosecution ~~resulted~~  
10 ~~results~~ in a finding of not guilty by the trier of fact or  
11 in a determination that there was ~~is~~ insufficient evidence  
12 to warrant a conviction. A finding of guilty of a lesser  
13 included offense than the offense charged which is  
14 subsequently set aside is an acquittal of the greater  
15 inclusive offense that was charged.

16 (b) The former prosecution was terminated, after a  
17 complaint had been filed on a misdemeanor charge ~~or~~ after  
18 an information had been filed or an indictment found on a  
19 felony charge, by a final order of judgment for the  
20 defendant, which has not been set aside, reversed, or  
21 vacated and which necessarily required a determination  
22 inconsistent with a fact or a legal proposition that must be  
23 established for conviction of the offense.

24 (c) The former prosecution resulted in a conviction.  
25 There ~~is~~ ~~has~~ ~~been~~ a conviction if ~~whenever~~ the prosecution

1 resulted in:

2 (i) a judgment of conviction which has not been

3 reversed or vacated; or

4 (ii) a verdict of guilty which has not been set aside

5 and which is capable of supporting a judgment, so long as

6 failure to enter judgment was for a reason other than a

7 motion of the defendant; or

8 (iii) a plea of guilty accepted by the court, so long

9 as failure to enter judgment was for a reason other than a

10 motion of the defendant.

11 (d) The former prosecution was improperly terminated.

12 Except as provided in this subsection (d), there is an

13 improper termination of a prosecution if whenever the

14 termination is for reasons not amounting to an acquittal

15 and it takes place after the first witness is sworn but

16 before verdict. Termination under any either of the

17 following circumstances is not improper:

18 (i) the defendant consents to the termination or

19 waives his right to object to the termination; or

20 (ii) the trial court, in the exercise of its

21 discretion, finds that the termination is necessary because:

22 (A) it is physically impossible to proceed with the

23 trial in conformity with law; or

24 (B) there is a legal defect in the proceedings which

25 would make any judgment entered upon a verdict reversible as

1 a matter of law; or

2 (C) prejudicial conduct in or outside the courtroom

3 makes it impossible to proceed with the trial without

4 manifest injustice to either the defendant or the state; or

5 (D) the jury is unable to agree upon a verdict; or

6 (E) false statements of a juror on voir dire prevent a

7 fair trial.

8 (4) ~~Former prosecution in another jurisdiction--when a~~

9 ~~bar~~ when conduct constitutes an offense within the

10 concurrent jurisdiction of this state and of the United

11 States or another state or of two courts of separate and/or

12 overlapping concurrent jurisdiction in this state, a

13 prosecution in any such other jurisdiction is a bar to a

14 subsequent prosecution in this state under the following

15 circumstances:

16 (a) The first prosecution resulted in an acquittal or

17 in a conviction as defined in subsection (3) and the

18 subsequent prosecution is based on an offense arising out of

19 the same transaction.

20 (b) The former prosecution was terminated, after the

21 complaint has had been filed on a misdemeanor charge or

22 after the information was had been filed or the indictment

23 found on a felony charge, by an acquittal or by a final

24 order or judgment for the defendant which has not been set

25 aside, reversed, or vacated; and which the acquittal, final

1 order, or judgment necessarily required a determination  
 2 inconsistent with a fact which must be established for  
 3 conviction of the offense of ~~for~~ which the defendant is  
 4 subsequently prosecuted.

5 (5) ~~Former~~ ~~prosecution~~ ~~before~~ ~~court~~ ~~locking~~  
 6 ~~jurisdiction~~ ~~or~~ ~~when~~ ~~fraudulently~~ ~~procured~~ ~~by~~ ~~the~~ ~~defendant~~  
 7 A prosecution is not a bar within the meaning of subsections  
 8 (3) and (4) under any ~~one~~ ~~or~~ ~~more~~ of the following  
 9 circumstances:

10 (a) ~~the~~ ~~the~~ former prosecution was before a court  
 11 which lacked jurisdiction over the defendant or the  
 12 offense; or

13 (b) ~~the~~ ~~the~~ former prosecution was procured by the  
 14 defendant without the knowledge of the proper prosecuting  
 15 officer or with the purpose of avoiding the sentence which  
 16 might otherwise be imposed; or

17 (c) ~~the~~ ~~the~~ former prosecution resulted in a judgment  
 18 of conviction which was held invalid in ~~any~~ ~~post~~ ~~conviction~~  
 19 ~~a~~ ~~post~~ ~~conviction~~ hearing.\*

20 Section 29. Section 95-1803, R.C.M. 1947, is amended  
 21 to read as follows:

22 \*95-1803. Discovery, inspection, and notice. In all  
 23 criminal cases originally triable in district court the  
 24 following rules ~~shall~~ apply:

25 (a) ~~List~~ ~~of~~ ~~Witnesses~~\*

1 (1) For the purpose of notice only and to prevent  
 2 surprise, the prosecution shall furnish to the defendant and  
 3 file with the clerk of the court at the time of arraignment  
 4 a list of the witnesses ~~intended~~ ~~to~~ ~~be~~ ~~called~~ ~~by~~ the  
 5 prosecution ~~intends~~ ~~to~~ ~~call~~. The prosecution may, any time  
 6 after arraignment, add to the list the names of any  
 7 additional witnesses upon a showing of good cause. The list  
 8 shall include the names and addresses of the witnesses.

9 ~~(2) The requirement of subsection (a) of this~~  
 10 ~~section shall. This subsection does not apply to rebuttal~~  
 11 ~~witnesses.~~

12 ~~(b) Subpoenas may be used as a discovery device as~~  
 13 ~~provided for under section 95-1801(f).~~

14 ~~(c) (1) (a) On motion of any party within a reasonable~~  
 15 ~~time before trial, all parties each party shall produce at a~~  
 16 ~~reasonable time and place designated by the court all~~  
 17 ~~documents, papers or things which each party it intends to~~  
 18 ~~introduce in evidence. Thereupon any Each party shall, in~~  
 19 ~~the presence of a person designated by the court, be~~  
 20 ~~permitted to inspect or copy any such documents, papers or~~  
 21 ~~things. The order shall specify the time, place and manner~~  
 22 ~~of making the inspection and of taking the copies or~~  
 23 ~~photographs and may prescribe such terms and conditions as~~  
 24 ~~are just. If the evidence relates to scientific tests or~~  
 25 ~~experiments, the opposing party shall, if practicable, be~~

1 permitted to be present during the tests and to inspect the  
2 results thereof. Upon a sufficient showing, the court may at  
3 any time order that the discovery or inspection be denied,  
4 restricted, or deferred, or make other appropriate orders.  
5 (b) If, subsequent to compliance with an order issued  
6 pursuant to this rule, and prior to or during trial, a party  
7 discovers additional material previously requested which is  
8 subject to discovery or inspection under the this rule, he  
9 shall promptly notify the other party or his attorney or the  
10 court of the existence of the additional material. The court  
11 shall exclude any evidence not presented for inspection or  
12 copying pursuant to this rule unless good cause is shown  
13 for failure to comply. In the latter case the opposing party  
14 shall be entitled to a recess or a continuation  
15 of continuance during which it may inspect or copy the evidence  
16 in the manner provided for above in this subsection (2).  
17 (c) For purpose of notice only and to prevent  
18 surprise, the defendant shall furnish to the prosecution and  
19 file with the clerk of the court, at the time of entering  
20 his plea of not guilty or within ten (10) days thereafter or  
21 at such later time as the court may for good cause permit, a  
22 statement of intention to interpose the defense of insanity  
23 mental disease or defect, self-defense, or alibi.  
24 (d) If the defendant intends to interpose any of these  
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court, the names and addresses of all  
2 witnesses to be called by the defense in support thereof.  
3 The Prior to trial the defendant may, prior to trial, upon  
4 motion and showing of good cause, add to the list of  
5 witnesses the names of any additional witnesses. After the  
6 trial commences, no witnesses may be called by the defendant  
7 in support of these defenses unless the name of the witness  
8 is included on such the list, except upon good cause shown.  
9 (e) All matters which are privileged upon the  
10 trial, are privileged against disclosure through any  
11 discovery procedure.  
12 Section 30. Section 95-1810, R.C.M. 1947, is amended  
13 to read as follows:  
14 "95-1810. Witness from another state summoned to  
15 testify in this state. (1) if ~~Whenever~~ a person in any  
16 state which by its laws has made provision for commanding  
17 persons within its borders to attend and testify in criminal  
18 prosecutions or grand jury investigations commenced or  
19 about to commence in this state is a material witness in a  
20 prosecution pending in a court of record in this state or  
21 in a grand jury investigation which has commenced or is  
22 about to commence, a judge of such the court may issue a  
23 certificate under the seal of the court stating these facts  
24 and specifying the number of days the witness will be  
25 required. ~~this the~~ certificate ~~will~~ shall be presented to a

1 judge of a court of record in the county in which the  
 2 witness is found.  
 3 (2) If said the certificate recommends that the  
 4 witness be taken into immediate custody and delivered to an  
 5 officer of this state to assure his attendance in this  
 6 state, such it is prima facie proof of the desirability of  
 7 such custody and delivery and the judge may direct that such  
 8 the witness be forthwith brought before him immediately,  
 9 and if the judge being is satisfied of as to the  
 10 desirability of such custody and delivery, for which such  
 11 determination said certificate shall be prima facie proof  
 12 he may order that said the witness be forthwith immediately  
 13 taken into custody and delivered to an officer of this  
 14 state, which the order shall be is sufficient authority to  
 15 such for the officer to take such the witness into custody  
 16 and hold him unless and until he may be is released by bail,  
 17 recognizance, or order of the judge issuing the certificate.

18 (3) if the whenever a witness is summoned to attend  
 19 and testify in this state, he shall be tendered the sum of  
 20 ten cents (10¢) cents a mile for each mile and five dollars  
 21 (5\$00) for each day that he is required to travel and  
 22 attend as a witness, provided further that in those cases  
 23 in which if the state wherein the witness is found has by  
 24 statutory enactment required that the summoned witness be  
 25 paid an amount or amounts in excess of the amount

1 heretofore in this paragraph provided specified in the  
 2 preceding sentence, then said the witness may be tendered  
 3 said the amount or amounts so required by said that state to  
 4 be tendered though the said amount or amounts so required to  
 5 be tendered are in excess of the said amounts in this  
 6 paragraph provided for.

7 (4) A witness who has appeared in accordance with the  
 8 provisions of the summons shall may not be required to  
 9 remain within this state for a longer period of time than  
 10 the period mentioned in the certificate unless otherwise  
 11 ordered by the court.

12 (5) If such the witness fails without good cause to  
 13 attend and testify as directed in the summons, he shall be  
 14 punished in the manner provided for the punishment of any  
 15 witness who disobeys a summons issued from a court of record  
 16 in this state."

17 Section 31. Section 95-1909, R.C.M. 1947, is amended  
 18 to read as follows:

19 "95-1909. Trial jurors. (a) The clerk of court  
 20 shall make available to the parties a list of prospective  
 21 jurors with their addresses when the names have been drawn.  
 22 (b) The qualifications of jurors and who  
 23 will be exempted exemptions from jury duty are found  
 24 prescribed in sections 93-1301 through 93-1307 of the Civit  
 25 Code, which by reference are made a part of this code.

1 ~~(2)(b)~~ An exemption from service on a jury is not a  
 2 cause of challenge but the privilege of the person  
 3 exempted.

4 ~~(3)~~ The county attorney and the defendant or his  
 5 attorney shall conduct the examination of prospective  
 6 jurors. The court may conduct an additional examination. The  
 7 court may limit the examination by the defendant, his  
 8 attorney, or the prosecuting attorney if the court believes  
 9 such examination to be improper.

10 ~~(4)~~ Each party may challenge jurors for  
 11 cause, and each challenge must be tried by the court.

12 ~~(5)~~ A challenge for cause may be taken for all or  
 13 any of the following reasons or for any other reason which  
 14 the court determines:

15 (i) ~~consanguinity~~ consanguinity or relationship to the  
 16 defendant or to the person who is alleged to be injured by  
 17 the offense charged or on whose complaint the prosecution  
 18 was instituted; ~~or to the defendant~~

19 (ii) standing ~~standing~~ in the relation of guardian and  
 20 ward, attorney and client, master and servant, or landlord  
 21 and tenant, or debtor and creditor with, or being a member  
 22 of the family or in the employment of the defendant or of  
 23 the person who is alleged to be injured by the offense  
 24 charged or on whose complaint the prosecution was  
 25 instituted ~~or in his employment~~

1 (iii) ~~Being~~ being a party adverse to the defendant in a  
 2 civil action or having complained against or been accused  
 3 by him in a criminal prosecution;

4 (iv) ~~Having~~ having served on the grand jury which found  
 5 the indictment or on a coroner's jury which inquired into  
 6 the death of a person whose death is the subject of the  
 7 indictment or information;

8 (v) ~~Having~~ having served on a trial jury which has  
 9 tried another person for the offense charged;

10 (vi) ~~Having~~ having been one a member of a jury formerly  
 11 sworn to try the same charge, ~~and whose the verdict of which~~  
 12 was set aside or which was discharged without verdict after  
 13 the case was submitted to it;

14 (vii) ~~Having~~ having served as a juror in a civil action  
 15 brought against the defendant for the act charged as an  
 16 offense;

17 (viii) if if the offense charged be is punishable with  
 18 death, ~~with-entertaining--of~~ having such conscientious  
 19 opinions as would preclude his finding the defendant  
 20 guilty in which case he must neither be permitted nor  
 21 compelled to serve as a juror;

22 (ix) ~~Having~~ having a belief that the punishment fixed  
 23 by law is too severe for the offense charged;

24 (x) ~~for-the-existence-of~~ having a state of mind on-the  
 25 part-of-the-juror in reference to the case or to either of

1 the parties which ~~will~~ would prevent him from acting with  
 2 entire impartiality and without prejudice to the substantial  
 3 rights of either party.  
 4 ~~§15~~ All challenges must be interposed before the  
 5 jury is sworn, unless the cause of challenge be ~~is~~  
 6 discovered after the jury is sworn and before the  
 7 introduction of any evidence, ~~when in which case~~ the court,  
 8 in its discretion, may allow the challenge to be interposed.  
 9 ~~§16~~ Each defendant shall be allowed eight ~~of~~  
 10 peremptory challenges in capital cases, six ~~of~~ in all other  
 11 cases tried in the district court before a ~~twelve-~~of~~~~  
 12 ~~person 12-person jury-and-three-~~of~~-in-all-cases--tried--in~~  
 13 ~~justice--of-the-peace-or-justice-courts. However,--there~~ ~~here~~  
 14 may not be additional challenges for separate counts charged  
 15 in the indictment or information. If the indictment or  
 16 information charges a capital offense as well as lesser  
 17 offenses in separate counts, the maximum number of  
 18 challenges ~~shall be~~ is eight ~~of~~. The state shall be allowed  
 19 the same number of peremptory challenges as all of the  
 20 defendants. In a civil--or criminal case tried in the  
 21 district court before a ~~six-~~of~~-person six-person jury~~, the  
 22 state and all the defendants shall be allowed three ~~of~~  
 23 peremptory challenges each. ~~When the partners in a criminal~~  
 24 ~~case in the district court agree upon a jury consisting of a~~  
 25 ~~number of persons other than 6 or 12, they shall also agree~~

1 in writing upon the number of peremptory challenges to be  
 2 allowed.  
 3 ~~§17~~ After the jury is impaneled and sworn, the  
 4 court may direct the selection of ~~that~~ one or more alternate  
 5 jurors, ~~be selected~~ in the same manner as principal jurors,  
 6 who ~~the alternate jurors~~ shall take the same oath as the  
 7 principal jurors. Each party shall have one additional  
 8 peremptory challenge for each alternate juror. Alternate  
 9 jurors in the order in which they are called shall replace  
 10 jurors who, prior to the time the jury arrives at its ~~verdict~~  
 11 ~~verdict~~, become unable or disqualified to perform their  
 12 duties. An alternate juror ~~shall~~ ~~may~~ not join the jury in  
 13 its deliberation unless called upon by the court to replace  
 14 a member of the jury. His conduct during the period in which  
 15 the jury is considering its verdict shall be regulated by  
 16 instructions of the trial court. An alternate juror who does  
 17 not replace a principal juror shall be discharged after the  
 18 jury arrives at its verdict.  
 19 ~~§18~~ The jury shall return a general verdict to each  
 20 offense charged.  
 21 ~~§19~~ When, at the close of the state's evidence or  
 22 at the close of all the evidence the evidence is  
 23 insufficient to support a finding or verdict of guilty, the  
 24 court may on its own motion or on the motion of the  
 25 defendant dismiss the action and discharge the defendant.



1 However, the court may allow the case to be reopened for  
2 good cause shown."

3 Section 32. Section 95-1915, R.C.M. 1947, is amended  
4 to read as follows:

5 "95-1915. Verdict. ~~(b)(1)~~ Return. The verdict shall  
6 must be unanimous in all criminal actions. Such the verdict  
7 shall be signed by the foreman and returned by the jury to  
8 the judge in open court.

9 ~~(b)(2) Several-Defendants.~~ If there are two ~~(2)~~ or  
10 more defendants, the jury, at any time during its  
11 deliberations, may return a verdict or verdicts with respect  
12 to a defendant or defendants as to whom it has agreed. If  
13 If the jury cannot agree with respect to all, the defendant  
14 or defendants as to whom it does not agree may be tried  
15 again.

16 ~~(c)(1) Conviction--of--a-lesser-offense.~~ The defendant  
17 may be found guilty of an offense necessarily included in  
18 the offense charged or of an attempt to commit either the  
19 offense charged or an offense necessarily included therein  
20 if the attempt is an offense.

21 ~~Whenever--a--crime--is--distinguished--into--degrees--the~~  
22 ~~jury--if--they--convict--the--defendant--must--find--the--degree--of~~  
23 ~~the--crime--of--which--he--is--guilty.~~

24 ~~(d)(4) Poll-of-jury.~~ When a verdict is returned, the  
25 jury shall be polled at the request of any party or upon the

1 court's own motion. If upon the poll there is not the  
2 required concurrence, the jury may be directed to retire for  
3 further deliberations or may be discharged."

4 Section 33. Section 95-2004, R.C.M. 1947, is amended  
5 to read as follows:

6 "95-2004. Trial in justice justices' and justice city  
7 courts. ~~(b)(1)~~ Method of trial:

8 ~~(a)~~ The defendant is entitled to a jury of six ~~(6)~~  
9 qualified persons, but may consent to a lesser number ~~the~~  
10 ~~parties may agree to a number less than six.~~

11 ~~(b)~~ A trial by jury may be waived by the consent of  
12 both parties expressed in open court and entered in the  
13 docket.

14 ~~(c)~~ Questions of law shall be decided by the court  
15 and questions of fact by the jury except ~~that~~ when a jury  
16 trial is waived, then the court shall determine both  
17 questions of law and questions of fact.

18 ~~(d)~~ Plea of guilty. Before or during trial,  
19 a plea of guilty may be accepted when:

20 ~~(a)~~ The defendant enters a plea of guilty in  
21 open court; and

22 ~~(b)~~ The court has informed the defendant of the  
23 consequences of his plea and of the maximum penalty provided  
24 by law which may be imposed upon acceptance of such plea.

25 ~~(c)~~ Presence of defendant. The ~~whenever~~

1 the offense charged carries a penalty of a fine only, the  
 2 trial may be had in the absence of the defendant, but, if  
 3 his presence is necessary for any purpose, the court may  
 4 require the personal attendance of the defendant at the  
 5 trial.

6 ~~(d)(1)~~ Time to Prepare Prepara for Trial. After  
 7 the plea the defendant shall be is entitled to a reasonable  
 8 time to prepare for trial."

9 Section 34. Section 95-2005, R.C.M. 1947, is amended  
 10 to read as follows:

11 "95-2005. Formation of trial jury. ~~(a) Number of~~  
 12 ~~jurors--(a) jury in justice or police court shall consist of~~  
 13 ~~six--(a) persons--but the parties may agree to a number less~~  
 14 ~~than six--(b)(1) Formation of trial jury--The At the~~  
 15 ~~time of preparing the district court jury lists, the county~~

16 ~~jury commission--at the time of preparing the district court~~  
 17 ~~jury lists shall prepare a jury list for each justice~~  
 18 ~~justices and police city court within the county. Each list~~  
 19 ~~shall consist of residents of the appropriate county, city,~~  
 20 ~~or town. Such list the lists shall be selected in any~~  
 21 ~~reasonable manner which shall ensure absence fairness, and~~  
 22 ~~it each shall include a number of names sufficient to meet~~  
 23 ~~the annual jury requirements of the respective court.~~  
 24 ~~Additional lists may be prepared if required. The list lists~~  
 25 ~~shall be filed in the office of the clerk of the district~~

1 ~~court, and--the the appropriate list shall be posted in a~~  
 2 ~~public place in each such county, city, or town, and such~~  
 3 ~~list shall comprise the trial jury list for the ensuing year~~  
 4 ~~for such county, city, or town.~~

5 ~~(2) Trial jurors shall be summoned from the jury list~~  
 6 ~~by notifying each one orally that he is summoned and of the~~  
 7 ~~time and place at which his attendance is required.~~

8 ~~(3) The prosecuting attorney and the defendant or his~~  
 9 ~~attorney shall conduct the examination of prospective~~  
 10 ~~jurors. The court may conduct an additional examination. The~~  
 11 ~~court may limit the examination by the defendant, his~~  
 12 ~~attorney or the prosecuting attorney if the court believes~~  
 13 ~~such examination to be improper.~~

14 ~~(4) Each party may challenge jurors for cause, and~~  
 15 ~~each challenge must be tried by the court. The challenge may~~  
 16 ~~be for any cause enumerated in section 95-1909(a)-(2) (4)(b)~~  
 17 ~~of this code. Each defendant shall be allowed three (3)~~  
 18 ~~peremptory challenges and the state shall be allowed the~~  
 19 ~~same number of peremptory challenges as all of the~~  
 20 ~~defendants."~~

21 Section 35. Section 95-2006, R.C.M. 1947, is amended  
 22 to read as follows:

23 "95-2006. Verdict. ~~(a) Return. The verdict of the~~  
 24 ~~jury must in all cases be general. It shall be returned by~~  
 25 ~~the jury to the judge in open court, who must enter it or~~

1 cause it to be entered in the minutes. The verdict of the  
2 jury must be unanimous.

3 ~~§121 Several defendants~~ When several defendants are  
4 tried together, ~~if and~~ the jury cannot agree upon a verdict  
5 as to all, ~~they the jury~~ may render a verdict as to those in  
6 regard to whom ~~they do it does agree~~ on which a ~~A~~ judgment  
7 must be entered accordingly ~~on the verdict~~, and the case as  
8 to the rest may be tried by another jury.

9 ~~§131 Post-of-jury~~ When a verdict is returned, the  
10 jury shall be polled at the request of any party or upon the  
11 court's own motion. If upon the poll there is not a  
12 unanimous concurrence, the jury may be directed to retire  
13 for further deliberations or may be discharged.

14 ~~§141 Discharge---of---jury~~ The jury cannot be  
15 discharged after the cause is submitted to them until they  
16 have agreed upon and rendered their verdict, unless for good  
17 cause the court sooner discharges them."

18 Section 36. Section 95-2007, R.C.M. 1947, is amended  
19 to read as follows:

20 "95-2007. Sentence and judgment. ~~§111~~ If a judgment  
21 of acquittal is rendered, the defendant must be immediately  
22 discharged.

23 ~~§121~~ After a plea or verdict of guilty or after a  
24 judgment against the defendant, the court must designate a  
25 time for sentencing, which must be within a reasonable time

1 after the ~~rendering of the~~ verdict or judgment is ~~rendered~~.  
2 The sentence must be entered in the minutes of the court as  
3 soon as it is imposed.

4 ~~§131~~ If the defendant pleads guilty or is convicted  
5 either by the court or by a jury, the court must impose a  
6 sentence of ~~fine or imprisonment or both as the case may~~  
7 ~~be~~ the court may ~~suspend the execution of the sentence up~~  
8 ~~to the maximum sentence allowed for the particular offense~~  
9 ~~the court may impose any reasonable conditions or~~  
10 ~~restrictions on the sentence which it deems necessary as~~  
11 ~~provided in 95-2206a, 95-2206a.1 through 95-2206a.4 and~~  
12 ~~95-2207.~~ If alcohol or other drugs are involved, the court  
13 may impose such rehabilitative measures as it deems  
14 ~~considers~~ advisable under the circumstances.

15 ~~§141~~ The determination and imposition of sentence  
16 ~~shall be~~ are the exclusive duty of the court."

17 Section 37. Section 95-2009, R.C.M. 1947, is amended  
18 to read as follows:

19 "95-2009. Appeal. ~~§111~~ All cases on appeal from  
20 justices' or police city courts must be tried anew in the  
21 district court and may be tried before a jury of six ~~to~~  
22 ~~which may be drawn from either the regular panel or jury box~~  
23 ~~now selected as provided in Title 93, Chapter 50.~~

24 ~~§121~~ The defendant may appeal to the district court  
25 by giving written notice of his intention to appeal within

1 ten-days-10 days after judgment.

2 ~~(e)13~~ Within thirty-30 days, the entire record of  
3 the justice justices or justice sity court proceedings shall  
4 be transferred to the district court or the appeal shall be  
5 dismissed. It shall-be is the duty of the defendant to  
6 perfect the appeal."

7 Section 38. Section 95-2010, R.C.M. 1947, is amended  
8 to read as follows:

9 "95-2010. Disqualification of justicee magistratery or  
10 justice of the peace. (1) The defendant or the prosecution  
11 may move the court in writing for the disqualification of a  
12 justicee magistratery or justice of the peace on the ground  
13 that he the movant cannot have a fair and impartial hearing  
14 or trial before the justicee magistratery or justice of the  
15 peace. The motion shall be made at least fifteen-15 days  
16 prior to the trial of the case or any retrial thereof after  
17 appeal, except for good cause shown.

18 (2) Upon the filing of such-a the motion, the justicee  
19 magistratery or justice of the peace against whom the motion  
20 is filed shall be without authority to act further in the  
21 criminal action, motion, or proceedings, but-the-provisions  
22 of-this-section--do-not--apply except-in--regard to the  
23 arrangement of the calendar, the regulation of the order of  
24 business, the power of transferring the criminal action or  
25 proceeding to some other court, nor-to and the power of

1 calling in another justicee magistratery or justice of the  
2 peace to sit and act in such the criminal action or  
3 proceedings, providing-that-no-justicee No magistratery or  
4 justice of the peace shall may so arrange the calendar as to  
5 defeat the purposes of this section.

6 (3) Not No more than one fit-justicee magistratery or  
7 justice of the peace can may be disqualified in the criminal  
8 action or proceeding at the instance of the prosecution and  
9 not no more than one fit-justicee magistratery or justice of  
10 the peace at the instance of the defendant or defendants.

11 (4) If--either A party in-any-matter--above-mentioned  
12 shall--file-the who files a motion as--herein--provided--such  
13 party under--subsection--(1) may not complain of any  
14 reasonable delay as the result thereof.

15 (5) The-provision-of-this This section shall--be is  
16 inapplicable to any person in any cause involving a direct  
17 contempt of court.

18 (2)(5) In addition to the provision provisions of  
19 subsection--(1)--any subsections--(1) through (5), a defendant  
20 may move at any time for the disqualification of a justicee  
21 magistratery or justice of the peace for cause, supported by  
22 affidavit. Upon the filing of such the motion, the court  
23 shall conduct a hearing and determine the merits of the  
24 motion."

25 Section 39. Section 95-2101, R.C.M. 1947, is amended

1 to read as follows:

2 "95-2101. New trial. ~~§111~~ Definition and Effects. A

3 new trial is a re-examination ~~reexamination~~ of the issue in

4 the same court before another jury after a verdict or

5 finding has been rendered, and the ~~the~~ granting of a new

6 trial places the parties in the same position as if there

7 had been no trial.

8 ~~§112~~ Motion for a New Trial. ~~§111~~ Following a

9 verdict or finding of guilty, the court may grant the

10 defendant a new trial if required in the interest of

11 justice.

12 ~~§113~~ The motion for a new trial shall be in writing

13 and shall specify the grounds therefor. ~~It~~ shall be filed by

14 the defendant within thirty ~~(30)~~ days following a verdict or

15 finding of guilty. Reasonable notice of the motion shall be

16 served upon ~~on~~ the state.

17 ~~§114~~ The motion for a new trial shall specify the

18 grounds therefor.

19 (c) Alternative Authority of the Court on Hearing

20 Motion for New Trial. On hearing the motion for a new trial,

21 if justified by law and the weight of the evidence, the

22 court may:

23 ~~§115~~ Deny the motion;

24 ~~§116~~ Grant a new trial; or

25 ~~§117~~ Modify or change the verdict or finding

1 by finding the defendant guilty of a lesser degree of the

2 crime charged finding the defendant guilty of a lesser

3 included crime or finding the defendant not guilty."

4 Section 40. Section 95-2202, R.C.M. 1947, is amended

5 to read as follows:

6 "95-2202. Sentence. ~~and~~ Rendering judgment and

7 pronouncing sentence. ~~§111~~ The judgment shall be rendered

8 in open court.

9 ~~§112~~ If the verdict or finding is not guilty

10 judgment shall be rendered immediately and the defendant

11 shall be discharged from custody or from the obligation of

12 his bail bonds, except as provided in 95-1916.

13 ~~§113~~ If the verdict or finding is guilty sentence

14 shall be pronounced and judgment rendered within a

15 reasonable time."

16 Section 41. Section 95-2206, R.C.M. 1947, is amended

17 to read as follows:

18 "95-2206. Sentence. ~~§11~~ Whenever any a person has been

19 found guilty of a crime or an offense upon a verdict or a

20 plea of guilty the court may:

21 ~~§11a~~ Defer imposition of sentence for a period

22 not to exceed one exceeding ~~11~~ year for any misdemeanor or

23 for a period not to exceed three exceeding ~~13~~ years for any

24 felony. The sentencing judge may impose upon the defendant

25 any reasonable restrictions or conditions during the period

1 of the deferred imposition. Such reasonable restrictions or  
 2 conditions may include:  
 3      jail base release;  
 4      jail time not to exceed ninety exceeding 90  
 5 days;  
 6      conditions for probation;  
 7      restitution;  
 8      any other reasonable conditions deemed  
 9 considered necessary for rehabilitation or for the  
 10 protection of society; or  
 11      any combination of the above;  
 12      suspend execution of sentence up to the  
 13 maximum sentence allowed for the particular offense. The  
 14 sentencing judge may impose on the defendant any reasonable  
 15 restrictions during the period of suspended sentence. Such  
 16 reasonable restrictions may include:  
 17      jail base release;  
 18      jail time not to exceed exceeding 90 days;  
 19      conditions for probation;  
 20      restitution;  
 21      any other reasonable conditions deemed  
 22 considered necessary for rehabilitation or for the  
 23 protection of society;  
 24      any combination of the above;  
 25      restrictions or conditions are violated; any

1      except time except time shall not be a credit  
 2 against the sentence unless the court shall otherwise  
 3 order;  
 4      impose a fine as provided by law for the  
 5 offense;  
 6      commit the defendant to a correctional  
 7 institution with or without a fine as provided by law for  
 8 the offense;  
 9      impose any combination of subsections  
 10      (b), (c), or (4) and (d) above.  
 11      If any restrictions or conditions imposed under  
 12 subsection (a) or (b) are violated, any elapsed time  
 13 except jail time shall not be a credit against the  
 14 sentence, unless the court orders otherwise.  
 15      (a) The district court may also impose any of  
 16 the following restrictions or conditions on the above  
 17 sentence provided for in subsection (1) which it deems  
 18 considers necessary to obtain the objective objectives of  
 19 rehabilitation and the protection of society:  
 20      prohibit the defendant the right to hold public  
 21 office;  
 22      prohibit the defendant the right to own or  
 23 carry a dangerous weapon;  
 24      prohibit freedom of association;  
 25      prohibit freedom of movement;

1 (f)(v) any other limitation reasonably related to the  
2 objectives of rehabilitation or and the protection of  
3 society.

4 (f)(b) The judge in the justice a justice's city of  
5 municipal court shall does not have the authority to  
6 restrict an individual's rights as enumerated in subsection  
7 (f)(a).

8 (4) Any A judge, magistrate of justice of the peace  
9 who has suspended the execution of a sentence or deferred  
10 the imposition of a sentence of imprisonment under this  
11 section or his successor is authorized thereafter in his  
12 discretion, during the period of such the suspended sentence  
13 or deferred imposition of sentence, in his discretion to  
14 revoke such the suspension or impose sentence and order such  
15 the person committed, or He may also, in his discretion,  
16 order the prisoner placed under the jurisdiction of the  
17 state board of pardons as provided by law or retain such  
18 jurisdiction with this his court. Prior to the revocation of  
19 an order suspending or deferring the imposition of sentence,  
20 the person affected shall be given a hearing."

21 Section 42. Section 95-2206.1, R.C.M. 1947, is amended  
22 to read as follows:

23 "95-2206.1. Sentence to death, when whenever a person  
24 is convicted of an has been found guilty of an offense upon  
25 a verdict or plea of guilty, the court may, if the offense

1 is punishable by death or imprisonment, the court may  
2 sentence the offender to death or imprisonment."

3 Section 43. Section 95-2206.5, R.C.M. 1947, is amended  
4 to read as follows:

5 "95-2206.5. ~~Judicial~~ designation Designation of  
6 persistent felony offenders offender for purposes of parole  
7 eligibility. (1) When an offender has been previously  
8 convicted of a felony and the present offense is a second  
9 felony committed on a different occasion than the first, the  
10 the sentencing court shall designate the an offender a  
11 persistent felony offender for purposes of eligibility for  
12 parole under section 95-3214, provided if the offender:

13 (a) the previous felony conviction was for an offense  
14 committed in this state or any other jurisdiction for which  
15 a sentence to a term of imprisonment in excess of one (1)  
16 year could have been imposed, and is defined as a persistent  
17 felony offender in 95-1507(1), and

18 (b) less than five (5) years have elapsed between the  
19 commission of the present offense and either

20 (i) the previous felony conviction or  
21 (ii) the offenders release on parole or otherwise from  
22 prison or other commitment imposed as a result of the  
23 previous felony conviction and

24 (c) the offender was more than eighteen (18) years  
25 of age or older at the time of the commission of the present

1 Section 45. Section 95-2224, R.C.M. 1947, is amended  
2 to read as follows:

3 "95-2224. Prisoner-not-agent-or Penalty for Treating  
4 Prisoner as involuntary servant. No prisoner in the  
5 community under the provisions of this act shall be deemed  
6 to be an agent or involuntary servant of the department or  
7 of the supervising agency while released from confinement  
8 pursuant to the terms of the furlough program. Abuse of  
9 this section shall be deemed official misconduct pursuant to  
10 94-7-401~~4~~ R.C.M. 1947. An officer or employee of the  
11 department or of the supervising agency who treats a  
12 prisoner participating in the furlough program as an  
13 involuntary servant is guilty of official misconduct and is  
14 punishable as provided in 94-7-401~~4~~."

15 Section 46. Section 95-2229, R.C.M. 1947, is amended  
16 to read as follows:

17 "95-2229. Traffic Disposition of traffic fines  
18 collected from juvenile offenders--disposition juveniles.  
19 All fines collected by the district courts from children  
20 under eighteen (18) years of age for unlawful operation of  
21 motor vehicles resulting from as the result of traffic  
22 summonses issued by the peace officers of the cities or  
23 counties or by highway patrolmen, together with that  
24 portion of the fines which is specified in section 75-7903~~1~~  
25 shall be retained by the county treasurer of the county in

1 offense.  
2 (2) ~~A previous felony conviction shall not be~~  
3 ~~considered for the purposes of this section if the offender~~  
4 ~~has been pardoned on the grounds of innocence or if the~~  
5 ~~conviction had been set aside in any post conviction~~  
6 ~~hearing.~~

7 (3) ~~A judicial determination of that an offender is~~  
8 ~~a persistent felony offender under this section may be made~~  
9 ~~only when the conviction for the present offense occurs~~  
10 ~~after July 1, 1975."~~

11 Section 44. Section 95-2209, R.C.M. 1947, is amended  
12 to read as follows:

13 "95-2209. Entry of judgment and judgment. When  
14 judgment upon a conviction is rendered, the clerk must enter  
15 the same in the minutes, stating briefly the offense for  
16 which the conviction was had, and the fact of prior  
17 convictions if any, and he must, within five (5) days,  
18 annex together and file the following papers which will  
19 constitute the judgment:--

- 20 (1) The indictment or information and a copy of
- 21 the minutes of the arraignment, pleas and motions;
- 22 (2) A copy of the minutes of the trial;
- 23 (3) The instructions given or refused and the
- 24 endorsements thereon;
- 25 (4) A copy of the judgment."



1 which the offense occurred and at the end of each month  
 2 distributed as follows:  
 3 ~~forall~~ fines lines collected as the result of  
 4 summonses issued by city police ~~peace~~ officers shall be  
 5 distributed to the city in which the police ~~peace~~ officer is  
 6 employed and credited to the city general fund~~s~~.  
 7 ~~forall~~ fines lines collected as the result of  
 8 summonses issued by county peace officers shall be retained  
 9 by the county treasurer and credited to the county road  
 10 fund~~s~~.  
 11 ~~forall~~ fines lines collected as the result of  
 12 summonses issued by state highway patrolmen shall be paid to  
 13 the state treasurer of Montana ~~and-by-him-credited who~~  
 14 shall ~~credit them~~ to the general fund of the state~~s~~.  
 15 ~~forall~~ that ~~that~~ that portion of the fines ~~as-provided-for~~  
 16 which is specified in section 75-7903, shall be paid to the  
 17 state treasurer of Montana ~~and-by-him-credited who shall~~  
 18 credit it to the automobile driver education account in the  
 19 earmarked revenue fund.\*  
 20 Section 47. Section 95-2403, R.C.M. 1947, is amended  
 21 to read as follows:  
 22 "95-2403. Scope of appeal ~~by state~~. ~~forall~~ Except as  
 23 authorized by this code ~~title~~, the state may not appeal in a  
 24 criminal case.  
 25 ~~forall~~ The state may appeal from any court order or

1 judgment the substantive effect of which results in:  
 2 ~~forall~~ dismissing a case;  
 3 ~~forall~~ modifying or changing the verdict as provided  
 4 in section 95-2101 ~~forall~~;  
 5 ~~forall~~ granting a new trial;  
 6 ~~forall~~ quashing an arrest or search warrant;  
 7 ~~forall~~ suppressing evidence;  
 8 ~~forall~~ suppressing a confession or admission; or  
 9 ~~forall~~ granting or denying change of venue.\*  
 10 Section 48. Section 95-2426, R.C.M. 1947, is amended  
 11 to read as follows:  
 12 "95-2426. Determination--of--appeal ~~Action--reviewing~~  
 13 ~~court may take~~. On appeal the reviewing court may:  
 14 (1) Reverse ~~reverse~~, affirm or modify the judgment or  
 15 order from which the appeal is taken;  
 16 (2) Set ~~set~~ aside, affirm or modify any or all of the  
 17 proceedings subsequent to or dependent upon the judgment or  
 18 order from which the appeal is taken;  
 19 (3) Reduce ~~the-degree-of~~ ~~reduce~~ the offense of which  
 20 the appellant was convicted ~~to a lesser-included-offense~~;  
 21 (4) Reduce ~~reduce~~ the punishment imposed by the trial  
 22 court; or  
 23 (5) Order ~~order~~ a new trial if justice so requires.\*  
 24 Section 49. Section 95-2601, R.C.M. 1947, is amended  
 25 to read as follows:

1 "95-2601. Petition-in-the-trial-court circumstances in  
 2 which validity of sentence may be challenged. Any A person  
 3 adjudged guilty of an offense in a court of record who has  
 4 no adequate remedy of appeal and who claims that sentence  
 5 was imposed in violation of the constitution or the laws of  
 6 this state or the ~~constitution~~ constitution of the United  
 7 States, or that the court was without jurisdiction to impose  
 8 such ~~the~~ sentence, or that ~~the~~ sentence was in excess of the  
 9 maximum authorized by law, or is otherwise subject to  
 10 collateral attack upon any ground of alleged error  
 11 available under a writ of habeas corpus, writ of coram  
 12 nobis, or other ~~common-law~~ common law or statutory remedy  
 13 may ~~move~~ petition the court which imposed the sentence, or  
 14 the supreme court, or any justice of the supreme court to  
 15 vacate, set aside, or correct the sentence."

16 Section 50. Section 95-2604, R.C.M. 1947, is amended  
 17 to read as follows:

18 "95-2604. When motion petition may be ~~made~~ made filed. A  
 19 motion petition for such relief may be ~~made~~ made filed at any  
 20 time after conviction."  
 21 Section 51. Section 95-2605, R.C.M. 1947, is amended  
 22 to read as follows:

23 "95-2605. Proceedings on the petition. 11 Unless the  
 24 motion petition and the files and records of the case  
 25 conclusively show that the prisoner petitioner is entitled

1 to no relief, the court shall cause notice thereof to be  
 2 served upon the county attorney in the county in which the  
 3 conviction took place, grant a prompt hearing thereon,  
 4 determine the issues and make findings of fact and  
 5 conclusions with respect thereto.  
 6 12 The court may receive proof by affidavits,  
 7 depositions, oral testimony, or other evidence. In its  
 8 discretion the court may order the petitioner brought before  
 9 the court for the hearing.

10 13 If the court finds in favor of the petitioner, it  
 11 shall enter an appropriate order with respect to the  
 12 judgment or sentence in the former proceedings and such  
 13 supplementary orders as to reassignment, retrial, custody,  
 14 bail, or discharge as may be necessary and proper. If the  
 15 court finds for the state, the petitioner shall be returned  
 16 to the custody of the person to whom the writ was directed."

17 Section 52. Section 95-2606, R.C.M. 1947, is amended  
 18 to read as follows:

19 "95-2606. Record must be kept. A court which  
 20 entertains a motion petition pursuant to this chapter must  
 21 keep a record of the proceedings and enter its findings and  
 22 conclusions."

23 Section 53. Section 95-2608, R.C.M. 1947, is amended  
 24 to read as follows:

25 "95-2608. Review. Either the petitioner or the state

1 may appeal to the supreme court of Montana from an order  
2 entered on the motion petition. The appeal shall must be  
3 taken within six-(6) months from the entry of the order."

4 Section 54. Section 95-2902, R.C.M. 1947, is amended  
5 to read as follows:

6 "95-2902. Reasonable doubt as to degree which offense  
7 convicts only of lowest offense. When it appears  
8 beyond a reasonable doubt that the defendant has committed a  
9 public an offense-and but there is reasonable ground--of  
10 doubt in--which--of--two--or--more--degrees as to whether he is  
11 guilty of a given offense of one of more lesser included  
12 offenses, he can may only be convicted of the lowest-of-such  
13 degrees--only greatest included offense about which there is  
14 no reasonable doubt."

15 Section 55. Section 95-3004, R.C.M. 1947, is amended  
16 to read as follows:

17 "95-3004. The burden Burden of the state in a homicide  
18 trial. testify In a homicide trial, before an extrajudicial  
19 confession may be admitted into evidence, the state must  
20 introduce independent evidence tending to establish the  
21 death and the fact that the death was caused by a criminal  
22 agency.

23 testify In a deliberate homicide, knowledge or purpose  
24 may be inferred from the fact that the accused committed a  
25 homicide and no circumstances or of mitigation, excuse, or

1 justification appear."

2 Section 56. Section 95-3011, R.C.M. 1947, is amended  
3 to read as follows:

4 "95-3011. Competency of husband-and-wife-as-witnesses  
5 spouses. Except with the consent of both, or in cases of  
6 criminal violence upon-one by one-upon the other, or-in-case  
7 of abandonment, or neglect of children by either party, or  
8 of abandonment or neglect of the-wife one by the husband  
9 other, neither husband--nor--wife spouse is a competent  
10 witness for or against the other in a criminal action or  
11 proceeding to which one or both are parties."

12 Section 57. Section 95-3012, R.C.M. 1947, is amended  
13 to read as follows:

14 "95-3012. Testimony of person legally accountable. A  
15 conviction cannot be had on the testimony of one responsible  
16 or legally accountable for the same offense, as defined in  
17 section 94-2-106, unless he the-testimony is corroborated by  
18 other evidence which in itself and without the aid of the  
19 testimony of the one responsible or legally accountable for  
20 the same offense tends to connect the defendant with the  
21 commission of the offense, and-the the corroboration is not  
22 sufficient if it merely shows the commission of the  
23 offense or the circumstances thereof."

24 Section 58. Section 95-3110, R.C.M. 1947, is amended  
25 to read as follows:

1 "95-3110. Rights of accused persons -- application-for  
 2 writ-of habeas corpus. (1) No person arrested upon such  
 3 warrant shall may be delivered over to the agent whom the  
 4 executive authority demanding him shall have has appointed  
 5 to receive him unless he shall be is first taken forthwith  
 6 without delay before a judge of a court of record in this  
 7 state, who shall inform him of the demand made for his  
 8 surrender and of the crime with which he is charged, and  
 9 what that he has the right to demand and procure legal  
 10 counsel;.

11 (2) and--if If the prisoner or his counsel shall state  
 12 states that he or they desire to test the legality of his  
 13 arrest, the judge of such the court of record shall fix a  
 14 reasonable time to be allowed him within which to apply for  
 15 a writ of habeas corpus. When such the writ is applied for,  
 16 notice thereof, and of the time and place of hearing  
 17 thereon shall be given to the prosecuting officer of the  
 18 county in which the arrest is was made, and in which the  
 19 accused is in custody and to the said agent of the  
 20 demanding state."

21 Section 59. Section 95-3113, R.C.M. 1947, is amended  
 22 to read as follows:

23 "95-3113. Arrest of accused before making of  
 24 requisition. (1) A judge or magistrate of this state shall  
 25 issue a warrant directed to any peace officer commanding the

1 officer to apprehend the person named therein wherever the  
 2 person may be found in this state and to bring the person  
 3 before the same or any other judges, magistrates, or court who  
 4 or which may be available in or convenient of access to the  
 5 place where the arrest is made, to answer the charge or  
 6 complaint and affidavit whenever; Whenever

7 (a) any a person within this state shall be is charged  
 8 on the oath of any a credible person before any the judge or  
 9 magistrate of this state with the commission of any a crime  
 10 in any other another state, and, except in cases arising  
 11 under section 95-3106, with having fled from justice or  
 12 with having been convicted of a crime in that state and  
 13 having escaped from confinement or having broken the terms  
 14 of his bail, probation, or parole; or

15 (b) whenever a complaint shall have been is made  
 16 before any the judge or magistrate in this state setting  
 17 forth on the affidavit of any a credible person in another  
 18 state that a crime has been committed in such the other  
 19 state and that the accused is believed to be in this state  
 20 and has been charged in such the other state with;

21 (i) the commission of the crime, and, except in cases  
 22 arising under section 95-3106, has having fled from  
 23 justice; or

24 (ii) with having been convicted of a crime in that  
 25 state and having escaped from bail, probation, or parole;

1 and is believed to be in this state, the judge or magistrate  
 2 shall issue a warrant directed to any peace officer  
 3 commanding him to apprehend the person named therein  
 4 wherever he may be found in this state and to bring him  
 5 before the same or any other judge, magistrate or court who  
 6 or which may be available in or convenient of access to the  
 7 place where the arrest may be made, to answer charge or  
 8 complaint and affidavit and a

9 [2]. A certified copy of the sworn charge or complaint  
 10 or and affidavit upon which the warrant is issued shall be  
 11 attached to the warrant."

12 Section 60. Section 95-3117, R.C.M. 1947, is amended  
 13 to read as follows:

14 "95-3117. Extension of time of commitment adjournment.  
 15 If the accused is not arrested under the warrant of the  
 16 governor by the expiration of the time specified in the  
 17 warrant, bond, or undertaking, a judge or magistrate may  
 18 discharge him or may recommit him for a further period of  
 19 sixty days or a supreme court justice or county  
 20 district court judge may again take bail for his appearance  
 21 and surrender, as provided in section 95-3116, but with for  
 22 a period not to exceed sixty days after the date of  
 23 such the new bond or undertaking."

24 Section 61. Section 95-3120, R.C.M. 1947, is amended  
 25 to read as follows:

1 "95-3120. Guilt or innocence of accused, when inquired  
 2 into. The guilt or innocence of the accused as to the crime  
 3 of which he is charged may not be inquired into by the  
 4 governor or in any proceeding after the demand for  
 5 extradition accompanied by a charge of crime in legal form  
 6 as above provided for in 95-3103 shall have been  
 7 presented to the governor, except as it may be involved in  
 8 identifying the person held as the person charged with the  
 9 crime."

10 Section 62. Section 95-3123, R.C.M. 1947, is amended  
 11 to read as follows:

12 "95-3123. Application for issuance of requisition by  
 13 whom made contents. [2] When the return to this state of  
 14 a person charged with a crime in this state is required, the  
 15 prosecuting attorney shall present to the governor his  
 16 written application for a requisition for the return of the  
 17 person charged, in which the application shall state the  
 18 name of the person so charged, the crime charged against  
 19 him, the approximate time, place and circumstances of its  
 20 commission, and the state in which he is believed to be,  
 21 including the location of the accused therein at the time  
 22 the application is made and certifying it shall certify  
 23 that in the opinion of the said prosecuting attorney the  
 24 ends of justice require the arrest and return of the accused  
 25 to this state for trial and that the proceeding is not being

1 instituted to enforce a private claim.

2 ~~ff~~(2) When the return to this state is required of a  
3 person who has been convicted of a crime in this state and  
4 has escaped from confinement or broken the terms of his  
5 bail, probation, or parole, the prosecuting attorney of the  
6 county in which the offense was committed, the parole board,  
7 or the warden of the institution or sheriff of the county  
8 from which the escape was made, shall present to the  
9 governor a written application for a requisition for the  
10 return of such the person, in which the application shall  
11 be stated state the name of the person, the crime of which  
12 he was convicted, the circumstances of his escape from  
13 confinement or of the breach of the terms of his bail,  
14 probation, or parole, and the state in which he is believed  
15 to be, including the location of the person therein at the  
16 time the application is made.

17 ~~ff~~(3) The application shall be verified by  
18 affidavit, shall be executed in duplicate, and shall be  
19 accompanied by two certified copies of the

20 (a) indictment returned, or

21 (b) information and affidavit filed, or of the

22 (c) complaint made to the judge or magistrate stating  
23 the offense with which the accused is charged, or of the

24 (d) judgment of conviction, or

25 (e) of the sentence.

1 (4) The prosecuting officer, parole board, warden, or  
2 sheriff may also attach such further affidavits and other  
3 documents in duplicate as he shall deem considers proper to  
4 be submitted with such the application.

5 (5) One copy of the application, with the action of  
6 the government indicated by endorsement thereon, and one of  
7 the certified copies of the indictment, complaint, or  
8 information and affidavits, or of the judgment of  
9 conviction, or of the sentence shall be filed in the office  
10 of the secretary of state to remain of record in that  
11 office. The other copies of all papers shall be forwarded  
12 with the governor's requisition.

13 Section 63. Section 95-3125, R.C.M., 1947, is amended  
14 to read as follows:

15 "95-3125. No fee to be paid to public officer  
16 procuring surrender. Restrictions on compensation for  
17 assisting return of fugitive. No compensation, fee, or  
18 reward of any kind can be paid to or received by a  
19 public officer of this state or other person for a service  
20 rendered in procuring from the governor the demand mentioned  
21 in section 95-3124, or for the surrender of the fugitive, or  
22 for conveying him to this state or detaining him therein,  
23 except as provided for in such section 95-3134 and  
24 95-3134A."

25 Section 64. Section 95-3125, R.C.M., 1947, is amended

1 to read as follows:

2 "95-3129. Nonwaiver by this state. Nothing contained

3 in this act contained shall ~~may~~ be deemed to constitute

4 considered a waiver by this state of its rights, powers or

5 privilege to try such the demanded person from for a crime

6 committed within this state or of its rights, powers or

7 privilege to regain custody of such the person by

8 extradition proceedings or otherwise for the purpose of

9 trial, a sentence or punishment for any a crime committed

10 within this state; nor shall ~~may~~ any proceedings had under

11 this act which result in or fail to result in extradition

12 be deemed considered in any way a waiver by this state of

13 any of its rights, privileges or jurisdiction in any way

14 whatsoever."

15 Section 65. Section 95-3206, R.C.M. 1947, is amended

16 to read as follows:

1 duty by the department, shall be confidential and shall not

2 be disclosed directly or indirectly to anyone other than the

3 members of the board or a judge. The board or a court may in

4 its discretion, when the best interest interests or welfare

5 of a particular defendant or prisoner makes such action

6 desirable or helpful, permit the inspection of the report or

7 any parts thereof by the prisoner or his attorney."

8 Section 66. Section 95-3214, R.C.M. 1947, is amended

9 to read as follows:

10 "95-3214. Parole authority and procedure. (1) The

11 Subject to the following restrictions, the board shall

12 release on parole by appropriate order any person confined

13 in the Montana state prison, except persons under sentence

14 of death, when in its opinion there is reasonable

15 probability that the prisoner can be released without

16 detriment to himself or to the community provided:

17 (a) ~~That no~~ No convict serving a time sentence shall

18 may be paroled until he has served at least one-quarter

19 (1/4) of his full term, less the good time allowances-offy

20 as allowance provided for in section 80-19051, or 12 1/2

21 years upon his term, whichever is less, except that no No

22 convict designated a persistent felony offender under

23 section 95-2206.5 may be paroled until he has served at

24 least one-third (1/3) of his full term, less the good time

25 allowances-offy--as allowance provided for in section

17 "95-3206. Orders, records, report --reviewability,

18 confidentiality. (1) Decisions of the board shall be by

19 majority vote. The orders of the board are not reviewable

20 except as to compliance with the terms of this act.

21 (2) The department of institutions shall keep a record

22 of the board's acts and decisions available to the public.

23 However, all social records, including the pre-sentence

24 presentence report, the pre-parole paroleg reports and the

25 supervision history obtained in the discharge of official

1 80-1905, or 17 1/2 years upon his term, whichever is less. A  
2 first offender serving a time sentence may be paroled after  
3 he has served upon his term of sentence twelve and  
4 one-half (12-1/2) years. A persistent felony offender as  
5 defined in section 95-2206 may be paroled after he has  
6 served upon his term of sentence seventeen and one-half  
7 (17-1/2) years.

8 (b) No convict serving a life sentence shall may be  
9 paroled until he has served thirty (30) years, less the good  
10 time allowances off as allowance provided for in section  
11 80-1905.

12 (2) A parole shall be ordered only for the best  
13 interests of society and not as an award of clemency or a  
14 reduction of sentence or pardon. A prisoner shall be placed  
15 on parole only when the board believes that he is able and  
16 willing to fulfill the obligations of a law-abiding citizen.

17 (3) (a) Within two (2) months after his admission  
18 and at such intervals thereafter as it determines, the board  
19 shall consider all pertinent information regarding each  
20 prisoner, including the circumstances of his offense, his  
21 previous social history and criminal record, his conduct,  
22 employment, and attitude in prison, and the reports of and  
23 any physical and mental examinations which have been made.

24 (3) (b) Before ordering the parole of any prisoner, the  
25 board shall interview him. A parole shall be ordered only

1 for the best interest of society not as an award of  
2 clemency or a reduction of sentence or pardon. A prisoner  
3 shall be placed on parole only when the board believes that  
4 he is able and willing to fulfill the obligations of a  
5 law-abiding citizen.

6 (4) (a) Every prisoner while on parole shall remain in  
7 the legal custody of the institution from which he was  
8 released but shall be subject to the orders of the board.  
9 (b) When an order for parole is issued, it shall  
10 recite the conditions thereof.

11 (4) (5) The board may adopt any other rules it  
12 considers proper or necessary with respect to the  
13 eligibility of prisoners for parole, and the conduct of  
14 parole hearings or and conditions to be imposed upon  
15 parolees. When an order for parole is issued it shall recite  
16 the conditions thereof.

17 Section 95-3215, R.C.M. 1947, is amended  
18 to read as follows:

19 "95-3215. Conditional release Duration of parole. A  
20 prisoner on parole who has served one-fourth (1/4) of his  
21 term or terms, less the good time allowances allowances, or a  
22 persistent felony offender on parole who has served  
23 one-third (1/3) of his term or terms, less the good time  
24 allowances allowances, is considered released on parole until  
25 the expiration of the maximum term or terms for which he was



1 sentenced, less the good time allowances--as allowance  
2 provided for in section 80-1905."

3 Section 68. Section 95-3306, R.C.M. 1947, is amended  
4 to read as follows:

5 "95-3306. Supervision on parole. (1) The department  
6 shall retain custody of all persons placed on parole; and  
7 shall supervise the persons during their parole period in  
8 accord with the conditions set by the board.

9 (2) The department shall assign personnel to assist  
10 persons eligible for parole in preparing a parole plan.  
11 Department personnel shall make a report of their efforts  
12 and findings to the board prior to its consideration of the  
13 case of the eligible person.

14 (3) A copy of the conditions of his parole shall be  
15 signed by the parolee and given to him and to his probation  
16 and parole officers who shall report on his progress under  
17 the rules of the board.

18 (4) The probation and parole officer shall regularly  
19 advise and consult with the parolee, assist him in adjusting  
20 to community life, and inform him of the restoration of his  
21 rights on successful completion of sentence.

22 (5) The probation and parole officer shall keep such  
23 records as the board or department may require. All records  
24 shall be entered in the master file of the individual."

25 Section 69. Section 95-3308, R.C.M. 1947, is amended

1 to read as follows:

2 "95-3308. Return of parole violator. (1) (a) At any  
3 time during release on parole or conditional release, the  
4 department may issue a warrant for the arrest of the  
5 released prisoner for violations violation of any of the  
6 conditions of release or a notice to appear to answer to a  
7 charge of violation. Such the notice shall be served  
8 personally upon the prisoner. The warrant shall authorize  
9 all officers named therein to return such the prisoner to  
10 the actual custody of the penal institution from which he  
11 was released, or to any other suitable detention facility  
12 designated by the department.

13 (b) Any probation and parole officer may arrest such  
14 the prisoner without a warrant or may deputize any other  
15 officer with power to arrest to do so by giving him a  
16 written statement setting forth that the prisoner has, in  
17 the judgment of said the probation and parole officer,  
18 violated the conditions of his release. Such the written  
19 statement delivered with the prisoner by the arresting  
20 officer to the official in charge of the institution from  
21 which the prisoner was released or other place of detention  
22 shall be sufficient warrant for the detention of the parolee  
23 or conditional releasee. The probation and parole officer,  
24 after making an arrest, shall present to the detaining  
25 authorities a similar statement of the circumstances of

1 violation.  
 2 (c) Pending hearing, as hereinafter provided in  
 3 subsections (2) and (3), upon any charge of violation, the  
 4 prisoner may, if circumstances warrant, be incarcerated in  
 5 such institution.

6 ( ) (a) After the arrest of said the prisoner, a  
 7 hearing shall be held within a reasonable time, unless such  
 8 the hearing is waived by the parolee, to determine whether  
 9 there is probable cause or reasonable grounds to believe  
 10 that the arrested parolee has committed acts which would  
 11 constitute a violation of parole conditions. An independent  
 12 officer, who need not be a judicial officer, must preside  
 13 over this the hearing. This the hearing must be conducted  
 14 at or reasonably near the place of the alleged parole  
 15 violation or arrest and as promptly as convenient after  
 16 arrest. The parolee must be given notice of this the  
 17 hearing and must be allowed to appear and speak in his own  
 18 behalf and introduce relevant information to the hearings  
 19 officer.

20 (b) The hearings officer shall make a summary of  
 21 what transpires at the hearing in terms of the responses and  
 22 position of the parolee and the substance of the documents  
 23 or evidence given in support of parole revocation and of the  
 24 parolee's position. Based on the information given to him,  
 25 the hearings officer must shall determine whether there is

1 probable cause to hold the parolee for the final decision of  
 2 the board of pardons as specified provided in section  
 3 95-3217 subsection (3).  
 4 (b) If the hearings officer determines that there  
 5 is probable cause to believe that the prisoner has violated  
 6 a condition of his parole, the probation and parole officer  
 7 shall immediately notify the board and shall submit in  
 8 writing a report showing in what manner the prisoner has  
 9 violated the conditions of release, and this this report  
 10 shall be accompanied by the findings of the hearings  
 11 officer.

12 (b) Thereupon, the board shall cause the prisoner to  
 13 be promptly brought before it for a hearing on the violation  
 14 charged under such rules and regulations as the board may  
 15 adopt. If the violation is established, the board may  
 16 continue or revoke the parole or conditional release or  
 17 enter such other order as it may see fit.

18 (c) (1) A prisoner for whose return a warrant has been  
 19 issued shall after the issuance of such warrant if it is  
 20 found that the warrant cannot be served be deemed a  
 21 fugitive or to have fled from justice. If it shall appear  
 22 appears that he has violated the provisions of his release,  
 23 the board shall determine whether the time from the issuing  
 24 of such the warrant to the date of his arrest or any part  
 25 of it shall will be counted as time served under the

1 sentence shall be determined by the board.  
2 (4) A prisoner for whose return a warrant has been  
3 issued shall, after the issuance of the warrant, if it is  
4 found that the warrant cannot be served, be considered a  
5 fugitive or to have fled from justice."  
6 Section 70. Repealer. Sections 16-2615, 16-3403,  
7 95-103 through 95-108, 95-2211, and 95-3233, R.C.M. 1947,  
8 are repealed.

-End-

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 11, 1977

Meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL: All members of the committee were present.

The following witnesses were present to testify:

Senator Carroll Graham - District 29  
Dave Cogley, attorney - Legislative Council  
Senator Chet Blaylock - District 35  
Pat Hooks, attorney - Townsend, Montana  
Margaret S. Davis, Helena - League of Women Voters of Montana  
Larry Weinberg, attorney - Legislative Council  
John Hanson - Comm. of Campaign Finances and Practices  
Mike Pichette - Montana Democratic Party

CONSIDERATION OF SENATE BILL 9:

Senator Graham told the committee that he had been picked by the Legislative Council to carry this recodification bill. He introduced Dave Cogley, an attorney with the Legislative Council, who went over the bill section by section for the committee and also noted the changes which they had made, their reasons for doing so, and answered questions of the committee.

Chairman Turnage thanked him for having appeared on this bill. He then asked him if he was satisfied that what has been done in the drafting of this bill will not liberalize or enlarge gambling. Dave Cogley said that there is no intent to open the door to enlarge legalized gambling in the drafting of this bill.

The Chairman then asked the Judiciary Committee's attorney, Lon Maxwell, if he felt this bill was satisfactory. He said that Dave Cogley had pretty well covered the ground in this bill and that he does not feel this bill will liberalize the state gambling laws.

CONSIDERATION OF SENATE BILL 33:

Pat Hooks, attorney, appeared as a proponent of this bill, but wished to have it amended on page 21, section 35, line 25, by striking ", or ballot issue". He presented the committee with a copy of Judge Battin's Amended Opinion & Order in the case of C & C Plywood Corp. et al. v. John N. Hanson, Commissioner of Campaign Finances and Practices of the State of Montana. (Exhibit #1)

Margaret Davis, Helena, representing the League of Women Voters of Montana, appeared as a proponent of the bill with the words "or ballot issue" left in on page 21, section 35, line 25. She presented a written statement to the committee on S.B. 33. (Exhibit #2).

Joan Mayer, attorney for the Legislative Council, told the committee that they are not supposed to make substantive changes in recodifying. In this case, she felt that section 35 does not belong in the recodification bill because it is still in the courts and is only tentatively unconstitutional.

Mike Pichette of the Montana Democratic Party appeared as an opponent of S.B. 33, echoing the opinion of Joan Mayer of the Legislative Council and stating that Judge Battin's decision may be overturned.

John Hanson, Commissioner of Campaign Finances and Practices of the state of Montana, also appeared as an opponent of S.B. 33.

Pat Hooks requested time to rebut and Chairman Turnage granted him this privilege. He then asked the committee to note the attachment to the bill on the last page and stated that, by deleting section 35 entirely and also the repealer in section 50, line 15, "23-4744," the law would remain as it now stands subject to the appeal currently pending.

At this time, Senator Blaylock closed on S.B. 33, stating that it seems the bill should be left as is for now as it is a recodification bill.

Chairman Turnage asked Joan Mayer, Legislative Council attorney assigned to the Judiciary Committee, to work up something on the repealer. He said he thought it sensible to leave the law as is at this time, and requested a motion.

Senator Towe moved to delete section 35, page 21, and to delete the repealer clause on page 32, section 50, line 15, "23-4744,". The motion carried unanimously.

#### CONSIDERATION OF SENATE BILL 30:

Joan Mayer, Legislative Council attorney, explained the change she had made in recodifying. She stated that on page 6 she had struck lines 1 through 5 as they were covered in §95-1105 and felt it to be a minor change and §95-1105 is broader.

Chairman Turnage said he did not believe it should be struck altogether. It was suggested that "or adjoining county" should be inserted.

#### CONSIDERATION OF SENATE BILL 27:

This is the recodification bill for general election laws. Larry Weinberg, attorney for the Legislative Council, was present to explain any changes to the committee. He went through the first six sections, but it was necessary to stop at section 7 as many of the committee members had to attend other meetings at 11:00 a.m..

The committee secretary is to notify John Hanson and the Secretary of States office of the date set for the hearing again on S.B. 27 and 33.

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 13, 1977

Meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building at 9:35 a.m..

ROLL CALL:

All members were present with Senator Regan having been detained at another meeting until 9:55 a.m..

The following witnesses were present to testify:

Senator Bergren - District 46  
Senator Hazelbaker - District 41  
Senator Watt - District 49  
Joan Mayer - attorney with Legislative Council

CONSIDERATION OF SENATE BILL ~~37~~<sup>56</sup>:

Senator Watt briefly went over this bill as he was the chief sponsor of it. He asked the committee to check the bill over and see if it was needed.

Chairman Turnage said that the committee would do so and that he would have the staff and counsel of this committee study it and see if it is needed. He then thanked Senator Watt for appearing on S.B. ~~56~~ and excused him.

CONSIDERATION OF SENATE BILL 30:

Senator Hazelbaker was present as sponsor of this bill

Joan Mayer, attorney with the Legislative Council, had explained the first six sections to the committee on Tuesday, again began her explanation of the changes she had made in recodifying with section 6.

At this time it was decided to amend each section, if needed, after reviewing the section with Joan.

Senator Towe moved to reinstate the deleted material on page 6, section 6, subsection (c), lines 1 through 5; and to further amend subsection (c) on page 6, line 1 after the word "county" by inserting the words "or the adjoining county; and to further amend subsection (c), page 6, line 5, after the word "made" by inserting the words "or the adjoining county". The motion carried unanimously.

The next section to be amended is section 9.

Senator Towe moved to delete subsection (1) of section 9 as it is a substantive change. The motion carried.

Senator Towe then amended the above motion and moved as

follows: Strike section 9, pages 9 and 10, in its entirety, and renumber the following sections. This motion carried unanimously.

The next amendment was made to section 14. Senator Murray moved to strike section 14 in its entirety and renumber the following sections. The motion carried unanimously.

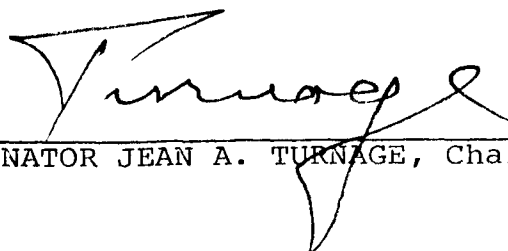
The next section to be amended is section 27. Senator Towe moved to strike section 27 on pages 26, 27 and 28 in its entirety and renumber the following sections accordingly. The motion carried unanimously. This was done because of a Montana Supreme Court Order of December 29, 1976, which promulgates in detail new rules for disqualification of judges.

Senator Towe then moved to amend section 31, subsection (6), page 41, line 23, following the word "the" by striking the word "partners" and inserting in lieu thereof the word "parties". The motion carried unanimously.

Senator Towe next moved to amend section 33, page 44, line 25, by striking the word "Whenever" and inserting the word "The" in lieu thereof; and to further amend section 33, page 45, line 1, by striking the words "the offense charged carries a penalty of a fine only, the". The motion carried unanimously.

At this time the secretary was instructed to cancel the hearing of S.B. 67 on Monday, January 17, 1977. This will leave only S.B. 68 and S.B. 70 to be heard on Monday. The committee also decided to continue with S.B. 30 at the Saturday, January 15, 1977 hearing.

There being no further time allowed for this meeting, the committee adjourned at 11:03 a.m. to reconvene at 9:30 a.m. on January 14, 1977, at which time they will hear S.B. 27, 33 and 37.

  
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SENATOR JEAN A. TURNAGE, Chairman

follows: Strike section 9, pages 9 and 10, in its entirety, and renumber the following sections. This motion carried unanimously.

The next amendment was made to section 14. Senator Murray moved to strike section 14 in its entirety and renumber the following sections. The motion carried unanimously.

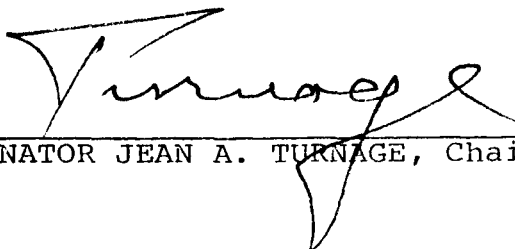
The next section to be amended is section 27. Senator Towe moved to strike section 27 on pages 26, 27 and 28 in its entirety and renumber the following sections accordingly. The motion carried unanimously. This was done because of a Montana Supreme Court Order of December 29, 1976, which promulgates in detail new rules for disqualification of judges.

Senator Towe then moved to amend section 31, subsection (6), page 41, line 23, following the word "the" by striking the word "partners" and inserting in lieu thereof the word "parties". The motion carried unanimously.

Senator Towe next moved to amend section 33, page 44, line 25, by striking the word "Whenever" and inserting the word "The" in lieu thereof; and to further amend section 33, page 45, line 1, by striking the words "the offense charged carries a penalty of a fine only, the". The motion carried unanimously.

At this time the secretary was instructed to cancel the hearing of S.B. 67 on Monday, January 17, 1977. This will leave only S.B. 68 and S.B. 70 to be heard on Monday. The committee also decided to continue with S.B. 30 at the Saturday, January 15, 1977 hearing.

There being no further time allowed for this meeting, the committee adjourned at 11:03 a.m. to reconvene at 9:30 a.m. on January 14, 1977, at which time they will hear S.B. 27, 33 and 37.

  
\_\_\_\_\_  
SENATOR JEAN A. TURNAGE, Chairman



CONSIDERATION OF SENATE BILL 30:

The researcher, Joan Mayer, an attorney with the Legislative Council, resumed her explanation of any changes made during the recodification of this bill with section 64 on page 70, and continued through the bill.

DISPOSITION OF SENATE BILL 30:

Senator Warden moved that Senate Bill 30, as amended, DO PA The motion carried unanimously.

At this time, the Chairman requested the attorney from the Legislative Council to draft a bill to amend 94-5607 to provide that persons other than parents or guardians can commit the offense of endangering the welfare of children.

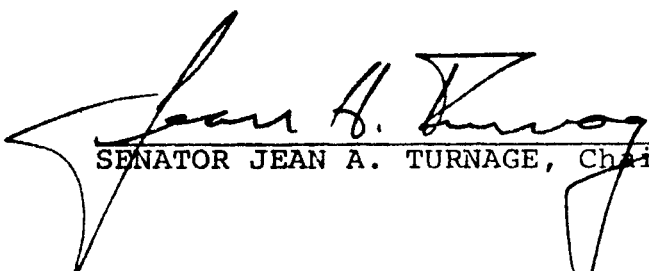
CONSIDERATION OF SENATE BILL 34:

Senator Hazelbaker, sponsor of S.B. 34, was present at this meeting. This is a recodification bill and, therefore, Joan May of the Legislative Council explained the changes which had been made.

Senator Murray moved to amend section 22 on page 34, subsection (c), lines 24 and 25, by striking the "," following "makes" and reinserting the "or", and to further amend by striking the "a" the word "make" and striking the words "or knowingly accepts"; a to further amend on line 25 by striking the word "to" and insert in lieu thereof the word "from". The motion carried unanimously

The committee proceeded through section 24 and is to begin with section 25 on page 38 when they resume consideration of S.B

There being no further time for this meeting, the committee adjourned at 11:10 a.m. to reconvene on January 18, 1977, at 9:30 a.m..

  
SENATOR JEAN A. TURNAGE, Chair

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 567	to submit to the electors of Mont. an amendment constitution, to remove supreme court jurisdiction over admission to the bar.	1-27	Huennekens	Thursday 3rd	do not pass	2-9
SB 30	to revise and clarify the laws relating to criminal procedure	1-28	Hazelbaker	March 4th	be concurred in	3-7
SB 40	removing & clarifying statutory references to sovereign or governmental immunity to coordinate	1-28	Towe	March 8	amended and concurred in	3-10
HJR 43	urging repeal of the federal water pollution control act	1-28	Fabrega	Thursday 3rd 7 p.m.	"WATER" do pass	2-11
HB 585	amending the definition of pollution, authorizing the bd of health & environmental sciences to change a stream classification, etc.	1-28	Vincent	Friday 4th	do pass	2-9
HB 589	to give justice, municipal & city courts, traffic violations, fish & game etc. and jurisdiction over the youth court	1-28	Williams	Thursday 3rd	do pass as amended	2-9

JUDICIARY COMMITTEE

March 4, 1977

The regularly scheduled meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. March 4, 1977, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Kennerly and Colburn.

Scheduled for hearing were Senate Bills 30, 34, 405, 414, 415 and Senate Joint Resolutions 19 and 28. Senate Bill 419 was cancelled at the request of the sponsor Senator Towe, and will be heard at a later date.

THE HEARING OPENED ON SENATE JOINT RESOLUTION 19.

SENATOR LOCKREM, DISTRICT #32:

This bill requests the legislative committee on priorities to assign to an appropriate standing committee a study of legislation to compensate victims of crime and to have the committee report to the 46th legislature. It should not be used to justify killing 357.

PROPONENT, TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:

We still support that bill but ask that you do give consideration for Senator Lockrem's bill.

REPRESENTATIVE CONROY:

What was the reason for eliminating the portion dealing with the Indians?

SENATOR LOCKREM:

For some reason they felt it was discrimination, and the question of jurisdiction should be encompassed.

There were no further questions and no opponents, the hearing closed on Senate Joint Resolution 19.

THE HEARING OPENED ON SENATE JOINT RESOLUTION #28:

SENATOR THOMAS, DISTRICT #20:

SJR 28 is asking for an interim study on uniform sentencing procedure. This was asked for by Chief Justice Hatfield in his state of the law message.

JUDGE HATFIELD:

Under the criminal justice plan we will be doing the same things and therefore I am in favor of your doing this. The information you are asking for here will be developed.

TOM DOWLING, SHERIFFS AND PEACE OFFICERS:

We support this bill.

TOM HONZEL, COUNTY ATTORNEYS:

We support this resolution. You can readily see there are problems in the present structure of the justice system of the state of

March 4, 1977

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Montana. I think it is proper to do a study of this. I think most of you are aware that a judge can defer sentencing in a case but in some places they are using deferred prosecution. There are some things that are going on already with or without legislative sanction.

There were no other proponents and no opponents.

SENATOR THOMAS:

We think this is a very important study and I think the state of Montana would benefit.

THE HEARING CLOSED ON SENATE JOINT RESOLUTION #28:

THE HEARING OPENED ON SENATE BILL #405:

SENATOR MEHRENS, DISTRICT #45:

This bill was introduced by request of the state fire marshall.

STATE FIRE MARSHALL:

It was at our request that the Senator introduced the bill. It keeps track of the people in the community who start fires. He suggested an amendment on line 11, page 1, to strike "state fire marshall" and insert "arson".

There were no other proponents and no opponents, and no questions, the hearing closed on Senate Bill #405.

MR. A. J. MURRAY:

I am sorry to be late, but I would like to state my opposition to SJR #19. I have a report in the House Appropriations Committee, "The Victim & Restitution Study".

REPRESENTATIVE CONROY:

If we amended the language back in, would that change your opinion.

MR. MURRAY:

The study included the indian population. He went on to explain the study and the reasoning involved, etc.

CHAIRMAN SCULLY:

I would like to tell you that I talked with Senator Roberts and he said that Senate Bills 414 and 415 are self-explanatory and we, the committee, can do whatever we wish.

THE HEARING OPENED ON SENATE BILL #30:

SENATOR HAZELBAKER, DISTRICT #41:

This is a recod bill and I will let the staff explain it to you.

March 4, 1977

Page 3

JOAN MAYER, LEGISLATIVE COUNSEL:

I rewrote this bill to clear it up and to clarify the language. She went through the bill and explained the various sections and what she had done.

SENATE BILL #34:

Joan explained that this was also done, the clarification and rewriting.

CHAIRMAN SCULLY suggested that Joan compile a list of the various sections and what she had done in these two bills and give the copy of the explanation to the committee rather than go through it section by section. This she agreed to do.

The meeting adjourned at 8:45 a.m.



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REPRESENTATIVE JOHN SCULLY, CHAIRMAN



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Mary Ellen Connelly, Secretary

HOUSE MEMBERS  
ROBERT L. MARKS  
CHAIRMAN  
FRANCIS BARDANOUVE  
OSCAR KVAALEN  
PAT MCKITTRICK  
ROSE WEBER  
EXECUTIVE DIRECTOR  
PAMELA DUENSING  
ADMINISTRATIVE ASSISTANT  
ROBERTA MOODY  
SUPERVISOR, ALTER SYSTEM



Montana Legislative Council  
State Capitol  
Helena, 59601

SENATE MEMBERS  
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CARROLL GRAHAM  
FRANK HAZELBACH  
DIANA DOWLING  
DIRECTOR, LEGISLATIVE  
CODE COMMISSION  
ROBERT PERSON  
DIRECTOR, RESEARCH

LC 0040

1977 Legislature  
Code Commissioner Bill - Summary

Senate Bill No. 30

TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO  
CRIMINAL PROCEDURE.

(This summary does not include discussion of routine form  
or grammatical changes.)

Section 1. 95-101. Application. Added "all" to clarify.  
Changed "These provisions" to "This title" to clarify.

Section 2. 95-302.1. Jurisdiction of justices' courts.  
New section to replace 95-302 which is being moved to the  
title on the judiciary by recodification - aid recodification.

Section 3. 95-501. Mental disease or defect excluding  
responsibility. Changed "terms" to "term", "re-repeated" to  
"repeated", and "otherwise" to "other" - apparent errors.

Section 4. 95-507. Determination of irresponsibility  
on basis of report - examination by psychiatrist chosen by  
state or defendant - psychiatric testimony upon trial. In  
subsection (4), clarified "his" and "He".

Section 5. 95-509. Admissibility of statements made  
during examination or treatment. Rewritten for clarity.  
Changed the internal reference to 95-505, 95-506, and 95-507  
to a reference to the chapter - apparent error, 95-507(b)  
also provides for examination of the defendant and there is  
no apparent reason for a distinction. "This chapter", rather  
than a list of sections, was used for simplicity and to pro-  
vide for future amendments.

Section 6. 95-603. Issuance and service of arrest  
warrant upon complaint. Rewrote subsection (3) to clarify.  
In subsection (4)(c), clarified "he" and deleted last part  
to correct conflict with 95-1105.

Section 7. 95-704. Grounds for search warrant. Clari-  
"him". Moved part of introductory sentence to new subsecti-  
(1) - clarify and correct apparent error.

Section 8. 95-719. Stop and frisk. Made use of "he" and "him" consistent. In subsection (4)(b), changed "probably" to "probable" - apparent error.

Section 9. 95-1001. Right to counsel. Added new subsection (2) to bring in line with Argersinger v. Hamlin, 407 U.S. 25 - constitutionality. In subsection (1), deleted "of record"- representation by counsel is constitutionally required in all courts.

Section 10. 95-1005. Remuneration of appointed counsel. In subsection (1), deleted "action or" and "at law" - superfluous. In subsection (2), deleted "or police" as redundant - city court is the new name for police court; rewrote to clarify that the compensation, as well as "reasonable costs", is chargeable.

Section 11. 95-1104. Bail set in warrant - acceptance by peace officer. Changed "police" to "peace" in last sentence - consistent terminology.

Section 12. 95-1118. Form of conditions of bail. Deleted "bond" in two places to clarify that all forms of bail are covered. Deleted "subject to" to clarify.

Section 13. 95-1119. Bail on a new trial. Added "or" to clarify and correct apparent error.

Section 14. 95-1120. Persons prohibited from furnishing bail. Added "acting in an official or professional capacity" to clarify that situations such as bailing out a family member are not covered.

Section 15. 95-1121. Guaranteed arrest bond certificates. Rewrote subsection (2) (a) to clarify. In subsection (3)(a), added "or" to clarify. In subsection (3)(b), deleted "which ... certificate" as superfluous and added "automobile" to clarify. In subsection (3)(b) (ii), deleted "that" - clarify and apparent error.

Section 16. 95-1122. Motor vehicle violations - certificates accepted in lieu of cash. Corrected run-on sentence by inserting "A guaranteed arrest bond certificate" and rewrote last sentence for clarity.

Section 17. 95-1406. Advice and assistance to grand jury - who may be present - stenographer, transcript of testimony. In subsection (2), deleted "of the county" as superfluous and rewrote the subsection to clarify. In subsection (3), added "acquired" to clarify. In subsection (5) (c), deleted two obsolete references to "accusation" - complaint, information and indictment are the only current methods for bringing a criminal action.

Section 18. 95-1407. Subpoena of witnesses. Added "foreman of the" to clarify who signs the subpoena. Rewrote the last sentence to clarify, deleting "upon...them" as superfluous.

Section 19. 95-1408. Reception of evidence. In subsection (1), added "or" to clarify.

Section 20. 95-1502. Commencement of prosecutions. Deleted last phrase of subsection (1) - refers to repealed chapter.

Section 21. 95-1504. Joinder and discharge of offenses and defendants. Deleted four references to "accusation" - see section 15. In subsection (1), deleted "of crimes or offenses" - superfluous. In subsection (6), clarified "it".

Section 22. 95-1506. Procedural requirements - persistent felony offenders. Changed "prior convicted felon" to "persistent felony offender" - update terminology. Changed reference to 94-4713, which has been repealed, to reference to 95-1507 and 95-2206.5. Although technically only 95-1507 is the successor of 94-4713, there is no apparent reason for distinguishing procedural requirements for 95-2206.5. The failure to specify either section was apparently an oversight and including both should avoid challenges as to constitutionality.

Section 23. 95-1507. Sentencing of persistent felony offender. Rewrote and reorganized section to separate out definition of persistent felony offender to aid recodification and clarify. (Note that normally old subsection (2)(c) would be included in the definition in new subsection (1). However, this is not possible since 95-1507 and 95-2206.5 have different age requirements.) In subsection (1)(b), changed "offenders released" to "offender's release" and "previously" to "previous" - apparent errors.

Section 24. 95-1704. Time of making motion. Added "provided...95-1702" to clarify what motion.

Section 25. 95-1706. Effect of determination. Added "have" and deleted "must be" - grammatical clarity. Clarified "it".

Section 26. 95-1707. Transfer of trial. Changed "the" to "a" and added "ordering" to clarify.



Section 27. 95-1709. Substitution of judge. Changed "but...apply" to "except in regard" to clarify. Rewrote subsection (4) to simplify and clarify its application.

Section 28. 95-1711. Effect of multiple charges and former prosecutions. In subsection (2)(e), deleted "and" - apparent error. In subsection (3), deleted "if more than one" - superfluous. In subsection (3)(b), added "or" to clarify. In subsection (3)(d), clarified "this subsection" and changed "any" to "either" to aid recodification by allowing subsections (3)(d)(i) and (ii) to be punctuated as sentences and permitting the deletion of "or" at the end of subsection (3)(d)(i). In subsection (4), changed "and/or" to ", overlapping, or" to correct undesirable usage - see Bill Drafting Manual, page 22. In subsection (4)(b), changed "has" to "had" and "was" to "had been" - apparent errors, added "or" to clarify, added "on a felony charge" to clarify and make consistent with subsection (3)(b), changed "which" to "the" to clarify, and changed "of" to "for" - apparent error. In subsection (5), added "one or more" to aid recodification (see subsection (3)(d)).

Section 29. 95-1803. Discovery, inspection, and notice. Deleted subsection (b), unnecessary and redundant. In subsection (2)(b), changed "the" to "this" to clarify what rule, changed "continuation" to "continuance" - apparent error, and clarified "above". In subsection (3)(a), changed "insanity" to "mental disease or defect" - obsolete terminology. In subsection (3)(a), added "of the witness" to clarify.

Section 30. 95-1810. Witness from another state summoned to testify in this state. In subsection (1), deleted "commenced..." as redundant and changed "will" to "shall" to clarify. Rewrote subsection (2) to clarify. In subsection (3), clarified "hereinbefore...provided" and deleted "to be...for" as redundant.

Section 31. 95-1909. Trial jurors. In subsection (1), added "the names have been" to clarify. In subsection (2)(a), clarified "who...exempted", deleted "of the Civil Code" as an obsolete reference, and deleted "which by...code" as superfluous. Rewrote subsections (4)(b)(i), (4)(b)(ii), (4)(b)(vi), and (4)(b)(x) to clarify. In subsection (4)(b)(viii), changed "with entertaining of" to "having" - apparent error. In subsection (6), deleted reference to justices' and police (city) courts - redundant with 95-2005, and deleted reference to civil cases in last sentence - conflict with 93-1205. Although 93-1205 was last amended in 1971 and 95-1909(f) (now 95-1909(6)) in 1974, the reference to civil cases in 95-1909(f)

was apparently accidental. The legislature knew it was amending a section that is part of the title on criminal procedure, just as it knew that 93-1205 is in the title on civil procedure. Also in subsection (6), added last sentence to correct apparent error of omission. Minor rewording of subsection (7) for clarity.

Section 32. 95-1915. Verdict. Deleted fourth paragraph - obsolete references to degrees of a crime.

Section 33. 95-2004. Trial in justices' and city courts. Reworded subsection (1) (a) to incorporate language of 95-2005(a) to aid recodification. Added "whenever...five only" to subsection(3) to clarify and avoid an unconstitutional interpretation.

Section 34. 95-2005. Formation of trial jury. Deleted former subsection (a) - incorporated into 95-2004 to aid recodification. Minor rewording of new subsection (1) to clarify. Added "one" in subsection (2) to clarify. In subsection (4), updated internal reference - 95-1909 is being amended.

Section 35. 95-2006. Verdict. In subsection (1), added "it" to clarify. Reworded subsection (2) to clarify.

Section 36. 95-2007. Sentence and judgment. In subsection (3), deleted redundant language and inserted reference to several sections to clarify. (After recodification, these sections will constitute a part of a chapter and, thus, the internal reference will be simple.)

Section 37. 95-2009. Appeal. In subsection (1), deleted obsolete reference to jury box No. 3 (no longer exists) and added correct internal reference.

Section 38. 95-2010. Disqualification of magistrate or justice of the peace. Deleted nine references to "justice" as unnecessary and confusing; "magistrate or justice of the peace" adequately covers all lower court judges. In subsection (2), changed "but...apply" to "except in regard" to clarify. Rewrote subsection (4) to simplify and clarify its application.

Section 39. 95-2101. New trial. Moved old subsection (3) to new subsection (2)(b) to simplify and aid recodification. In subsection (2)(c)(iii), deleted obsolete reference to degree of a crime.

Section 40. 95-2202. Rendering judgment and pronouncing sentence. Qualified subsection (2) to avoid conflict with 95-1916.

Section 41. 95-2206. Sentence. In subsection (1), deleted reference to "crime" - redundant with "offense". Moved paragraph at end of former subsection (2) to follow former subsection (5) and clarified application - credit for jail time applies to both deferred and suspended sentences. (See In the Matter of Robert J. LeDerma, 33 St. Rep. 902 (1976), in which the Montana Supreme Court stated that the two types of sentences are as a practical matter very similar.) In subsection (1)(d), added "as provided" - apparent error. In subsection (1)(e), changed "or" to "and" - apparent error. In subsection (2)(a)(v), changed "or" to "and" - apparent error. In subsection (2)(b), added reference to city and municipal courts - apparent error. In subsection (3), added "magistrate, or justice of the peace" to clarify, deleted "Thereafter" - superfluous, and changed "this" to "his" - apparent error.

Section 42. 95-2206.1. Sentence to death. Reworded to aid recodification; this section will be incorporated into 93-2206.

Section 43. 95-2206.5. Designation of persistent felon offender for purposes of parole eligibility. Deleted redundancies with 95-1507 and reworded to aid recodification. In subsection (2), clarified "of".

Section 44. 95-2209. Entry of judgment. Deleted reference to "judgment roll" to update. No other references to it appear and it has been abolished in civil cases.

Section 45. 95-2224. Penalty for treating prisoner as involuntary servant. Rewrote to clarify apparent intent.

Section 46. 95-2229. Disposition of traffic fines collected from juveniles. In the first paragraph, clarified "resulting from" and added "or" to clarify. In subsection (1), changed "police" to "peace" in two places for consistent terminology. Minor rewording of subsections (3) and (4) to clarify.

Section 47. 95-2403. Scope of appeal. In subsection (1), changed "code" to "title" to clarify. In subsection (2)(b), updated internal reference - 95-2101 is being amended.

Section 48. 95-2426. Action reviewing court may take. In subsection (3), changed reference to degree of crime to reference to included offense - update terminology.

Section 49 through 53. 95-2601, 95-2604, 95-2605, 95-2606, 95-2608. Changed references to motion to references to petition to make terminology in the chapter consistent.

Section 54. 95-2902. Reasonable doubt as to which offense convicts only of least offense. Completely rewrote to delete obsolete references to degrees of an offense and replace them with references to included offenses. Added "beyond a reasonable doubt" in the first clause to clarify. Deleted "public" and "ground of" as meaningless.

Section 55. 95-3004. Burden of the state in homicide trial. In subsection (1), added "the fact" to clarify. In subsection (2), changed "or" to "of" - apparent error.

Section 56. 95-3011. Competency of spouses. Corrected discriminatory phrase "neglect...".

Section 57. 95-3012. Testimony of person legally accountable. Changed "he" to "the testimony" to clarify. In the last sentence, added "if" - apparent error.

Section 58. 95-3110. Rights of accused persons - habeas corpus. In subsection (1), last clause, changed "what" to "that" - apparent error.

Section 59. 95-3113. Arrest of accused before making of requisition. Moved part of paragraph to new subsection (1) to clarify and aid recodification. In subsection (1)(b), moved last clause "is believed..." to clarify and changed "has" to "having" - apparent error. Note that "of this state" was moved to subsection (1). In subsection (2), changed "or" to "and" - apparent error.

Section 60. 95-3117. Extension of time of commitment adjournment. Added "the" to clarify. Changed "county" to "district court" - apparent error. Changed "but with" to "for" to clarify.

Section 61. 95-3120. Guilt or innocence of accused, when inquired into. Clarified "above" by inserting appropriate internal reference (95-3103). Deleted "accompanied... form" - redundant with 95-3103.

Section 62. 95-3123. Application for issuance of requisition. Reworded subsections (1) and (2) to clarify.

Section 63. 95-3125. Restrictions on compensation for assisting return of fugitive. Added reference to 95-3134.1 - apparent error.

Section 64. 95-3129. Nonwaiver by this state. Changed "from" to "for a" - apparent error. Deleted "a" before "sentence" - apparent error.

Section 65. 95-3206. Orders, records, report - reviewability, confidentiality. Changed "of" to "with the" - apparent error. Deleted "of institutions" - "department" is defined.

Section 66. 95-3214. Parole authority and procedure. Added "Subject..." to clarify. Rewrote subsection (1)(a) to clarify that the lesser of one-quarter of the term and 12-1/2 years (or one-third of the term and 17-1/2 years in the case of a persistent felony offender) must be served in order to qualify for parole and to clarify the reference to the good time allowance provided for in 80-1905. Moved part of former subsection (3) to new subsection (2) to aid recodification and clarify. In subsection (3)(a), changed "and" to "any" - apparent error. Moved part of old subsection (4) to new subsection (4)(b) to clarify and aid recodification. In subsection (5), added "any" to clarify and changed "or" to "and" - apparent error.

Section 67. 95-3215. Duration of parole. Clarified "good time allowances" - see 80-1905. Added "on parole" after "persistent felony offender" to clarify.

Section 68. 95-3306. Supervision on parole. Added "and" in subsection (4) to clarify.

Section 69. 95-3308. Return of parole violator. Changed "violations" to "violation" to clarify. In subsection (1)(c), clarified "hereinafter". In subsection (2)(b), clarified first sentence and corrected incorrect internal reference to 95-3217. Moved part of former subsection (4) (now subsection (3)(c)) to new subsection (4) to aid recodification.

Section 70. Repealer. Sections 16-2615 and 16-3403 conflict with 95-810. Property found on body - to whom delivered (coroner).

Section 95-2211 is unnecessary and redundant. It refers to Chapter 25, and Chapters 22 and 25 are being combined.

Sections 95-103 through 95-108. Adoption of rules of criminal procedure (formerly 95-2801 through 95-2806) are obsolete. The power they confer expired on January 1, 1969 (see 95-107, formerly 95-2805).

Section 95-3233. The legislature attempted to repeal this section in 1974 but designated its former section number (94-9851) instead of the correct section number. Suggesting repeal now in case the 1974 repeal was ineffective. If the 1974 repeal was effective, this repeal is a harmless nullity.

1 SENATE BILL NO. 30

2 INTRODUCED BY HAZELBAKER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5 CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 95-101, R.C.M. 1947, is amended to  
9 read as follows:

10 "95-101. ~~See~~ APPLICATION. ~~These provisions~~ This  
11 title shall govern the procedure in all the courts of  
12 Montana in all criminal proceedings except where provision  
13 for a different procedure is specifically provided by law."

14 Section 2. There is a new R.C.M. section numbered  
15 95-302.1 that reads as follows:

16 "95-302.1. Jurisdiction of justices' courts. The  
17 justices' courts have criminal jurisdiction as authorized by  
18 93-410 and 95-302.

19 Section 3. Section 95-501, R.C.M. 1947, is amended to  
20 read as follows:

21 "95-501. Mental disease or defect excluding  
22 responsibility. ~~(1)~~ A person is not responsible for  
23 criminal conduct if at the time of such conduct as a result  
24 of mental disease or defect he is unable either to  
25 appreciate the criminality of his conduct or to conform his

1 conduct to the requirements of law.

2 ~~(1)~~ As used in this chapter, the ~~terms~~ terms "mental  
3 disease or defect" does not include an abnormality  
4 manifested only by ~~repeated~~ repeated criminal or  
5 ~~otherwise~~ other antisocial conduct."

6 Section 4. Section 95-507, R.C.M. 1947, is amended to  
7 read as follows:

8 "95-507. Determination of irresponsibility on basis of  
9 report -- ~~access to defendant by psychiatrist of his own~~  
10 ~~expert examination by psychiatrist chosen by state of~~  
11 ~~defendant -- form of expert psychiatric testimony when issue~~  
12 ~~of responsibility is tried upon trial.~~ (1) If the report  
13 filed under ~~section~~ 95-505 finds that the defendant at the  
14 time of the criminal conduct charged suffered from a mental  
15 disease or defect which rendered him unable to appreciate  
16 the criminality of his conduct or to conform his conduct to  
17 the requirements of law and the court, after a hearing if a  
18 hearing is requested by the attorney prosecuting or the  
19 defendant, is satisfied that the mental disease or defect  
20 was sufficient to exclude responsibility, the court on  
21 motion of the defendant shall enter judgment of acquittal on  
22 the ground of mental disease or defect excluding  
23 responsibility.

24 (2) ~~When~~ If either the defendant or the state wishes  
25 the defendant to be examined by a qualified psychiatrist or

1 other expert, selected by the one proposing the examination,  
 2 the examiner shall be permitted to have reasonable access to  
 3 the defendant for the purpose of the examination.  
 4 (3) Upon the trial, any psychiatrist who reported  
 5 under ~~section~~ 95-505 may be called as a witness by the  
 6 prosecution or by the defense. If the issue is being tried  
 7 before a jury, the jury shall may not be informed that the  
 8 psychiatrist was designated by the court or by the  
 9 superintendent of Warm Springs state hospital. Both the  
 10 prosecution and the defense may summon any other qualified  
 11 psychiatrist or other expert to testify, but no one who has  
 12 not examined the defendant is competent to testify to an  
 13 expert opinion with respect to the mental condition or  
 14 responsibility of the defendant, as distinguished from the  
 15 validity of the procedure followed by or the general  
 16 scientific propositions stated by another witness.

17 (4) When a psychiatrist or other expert who has  
 18 examined the defendant testifies concerning ~~his~~ the  
 19 defendant's mental condition, he may make a statement as to  
 20 the nature of his examination, his diagnosis of the mental  
 21 condition of the defendant at the time of the commission of  
 22 the offense charged, and his opinion as to the ability of  
 23 the defendant to appreciate the criminality of his conduct,  
 24 ~~or~~ to conform his conduct to the requirements of law, or to  
 25 have a particular state of mind which is an element of the

1 offense charged. He ~~The~~ expert may make any explanation  
 2 reasonably serving to clarify his diagnosis and opinion and  
 3 may be cross-examined as to any matter bearing on his  
 4 competency or credibility or the validity of his diagnosis  
 5 or opinion."  
 6 Section 5. Section 95-509, R.C.M. 1947, is amended to  
 7 read as follows:

8 "95-509. ~~Statements for purposes of Admissibility of~~  
 9 ~~statements made during examination or treatment inadmissible~~  
 10 ~~except on issue of mental condition. A statement made by a~~  
 11 ~~person subjected to for the purposes of psychiatric~~  
 12 ~~examination or treatment pursuant to sections 95-505,~~  
 13 ~~95-506, 95-508 for the purposes of provided for in this~~  
 14 ~~chapter by a person subjected to such examination or~~  
 15 ~~treatment shall is not be admissible in evidence against him~~  
 16 ~~in any criminal proceeding on any issue other than that of~~  
 17 ~~his mental condition, but it shall be it is admissible upon~~  
 18 ~~that on the issue of his mental condition, whether or not it~~  
 19 ~~would be otherwise deemed be considered a privileged~~  
 20 ~~communication, unless such statement it constitutes an~~  
 21 ~~admission of guilt of the crime charged."~~

22 Section 6. Section 95-603, R.C.M. 1947, is amended to  
 23 read as follows:

24 "95-603. Issuance and service of arrest warrant upon  
 25 complaint. ~~(a)~~ [1] A complaint, as the basis of an arrest



1 warrant, shall be in writing.  
 2 ~~(b)(2)~~ When a complaint is presented to a court  
 3 charging a person with the commission of an offense, the  
 4 court shall examine upon oath the complainant and may also  
 5 examine any witnesses.

6 ~~(b)(3)~~ If it appears from the contents of the  
 7 complaint and the examination of the complainant and other  
 8 witnesses, if any, that there is probable cause to believe  
 9 that the person against whom the complaint was made has  
 10 committed an offense, a warrant shall be issued by the court  
 11 for the arrest of the person complained against. ~~It is the~~ The  
 12 court, in its discretion ~~of the court or upon the request of~~  
 13 ~~the county attorney, may issue~~ a summons instead of a  
 14 warrant. ~~Upon the request of the county attorney, the court~~  
 15 shall issue a summons instead of a warrant. More than one  
 16 ~~(c)~~ warrant or summons may issue on the same complaint.

17 ~~(d)(4)~~ A warrant of arrest shall:  
 18 ~~(d)(a)~~ ~~be~~ be in writing in the name of the state of  
 19 Montana or in the name of a municipality if a violation of a  
 20 municipal ordinance is charged;

21 ~~(d)(b)~~ ~~set~~ set forth the nature of the offense;  
 22 ~~(d)(c)~~ ~~command~~ command that the person against whom  
 23 the complaint was made be arrested and brought before the  
 24 court issuing the warrant, or, if ~~the~~ the judge is absent or  
 25 unable to act, before the nearest or most accessible court

1 ~~in the same county. If an arrest is made in a county other~~  
 2 ~~than the one in which the warrant was issued the arrested~~  
 3 ~~person shall be taken without unnecessary delay before the~~  
 4 ~~nearest and most accessible judge in the county where the~~  
 5 ~~arrest was made in the same county or the adjoining county.~~  
 6 IF AN ARREST IS MADE IN A COUNTY OTHER THAN THE ONE IN WHICH  
 7 THE WARRANT WAS ISSUED THE ARRESTED PERSON SHALL BE TAKEN  
 8 WITHOUT UNNECESSARY DELAY BEFORE THE NEAREST AND MOST  
 9 ACCESSIBLE JUDGE IN THE COUNTY WHERE THE ARREST WAS MADE OR  
 10 THE ADJOINING COUNTY.

11 ~~(d)(d)~~ Specify the name of the person to be  
 12 arrested or, if his name is unknown, shall designate such  
 13 the person by any name or description by which he can be  
 14 identified with reasonable certainty:

15 ~~(d)(e)~~ State state the date when issued and the  
 16 municipality or county where issued, and  
 17 ~~(d)(f)~~ be signed by the judge of the court with the  
 18 title of his office.

19 ~~(d)(5)~~ The warrant of arrest may specify the amount of  
 20 bail.

21 ~~(d)(6)~~ The warrant shall be directed to all peace  
 22 officers in the state. It shall be executed by a peace  
 23 officer and may be executed in any county of the state.  
 24 However, warrants issued for the violation of city  
 25 ordinances cannot be executed outside the city limits,

1 except as otherwise provided by ~~sections 11-927 and 11-960.~~  
 2 Section 7. Section 95-704, R.C.M. 1947, is amended to  
 3 read as follows:  
 4 "95-704. Grounds for search warrant. Any judge may  
 5 issue a search warrant upon the written application of any  
 6 person ~~that an offense has been committed,~~ made under oath  
 7 or affirmation before ~~the~~ the judge, which:

8 (1) states that an offense has been committed;

9 ~~(2)~~ (2) states facts sufficient to show probable  
 10 cause for issuance of the warrant;  
 11 ~~(3)~~ (3) particularly particularly describes the place  
 12 or things to be searched; and  
 13 ~~(4)~~ (4) particularly particularly describes the things  
 14 to be seized."

15 Section 8. Section 95-719, R.C.M. 1947, is amended to  
 16 read as follows:

17 "95-719. Stop and frisk. (1) A peace officer may stop  
 18 any person he observes in circumstances that give ~~the~~  
 19 ~~officer~~ him reasonable cause to suspect that the person has  
 20 committed, is committing, or is about to commit an offense  
 21 involving the use or attempted use of force against ~~the~~ a  
 22 person or theft, damage, or destruction of property if the  
 23 stop is reasonably necessary to obtain or verify an account  
 24 of the person's presence or conduct or to determine whether  
 25 to arrest the person.

1 (2) A peace officer may stop any person he finds near  
 2 the scene of an offense that ~~the~~  
 3 reasonable cause to suspect has just been committed if:

4 (a) ~~the~~ he has reasonable cause to  
 5 suspect that the person has knowledge of material aid to the  
 6 investigation of the offense; or  
 7 (b) the stop is reasonably necessary to obtain or  
 8 verify the person's identity or an account of the offense.

9 (3) A peace officer may stop any person in connection  
 10 with an offense that ~~the~~ he has probable cause  
 11 to believe has been committed if:

12 (a) the offense is a felony involving the use or the  
 13 attempted use of force against a person or theft, damage, or  
 14 destruction of property; ~~and~~  
 15 (b) ~~the~~ he has reasonable cause to  
 16 suspect the person committed the felony; and

17 (c) (i) the stop is reasonably necessary to obtain or  
 18 verify ~~his~~ the person's identity to determine whether to  
 19 arrest the person for the felony; or  
 20 (ii) the peace officer has reasonable cause to suspect  
 21 that the person was present at the scene of the offense and  
 22 the stop is reasonably necessary to obtain or verify the  
 23 person's identity.

24 (4) A peace officer who has lawfully stopped a person  
 25 under this section may:

1 read as follows:

2 95-1004, right to counsel, ~~in every defendant~~

3 brought before the court ~~must be informed by the court that~~

4 ~~it is his right to have counsel before proceeding and must~~

5 ~~be asked if he desires the aid of counsel. The defendant, if~~

6 ~~charged with a felony, must be advised that counsel will be~~

7 ~~furnished at state expense if he is unable to employ~~

8 ~~counsel. If the offense charged is a felony and if the~~

9 ~~defendant desires counsel and is unable to employ counsel, a~~

10 ~~the court of record must assign counsel to defend him, if~~

11 ~~the offense charged is a misdemeanor and if the defendant~~

12 ~~desires counsel and is unable to employ counsel, the court~~

13 ~~of record in the interest of justice, may assign counsel to~~

14 ~~defend him.~~

15 ~~(2) Absent a knowing and intelligent waiver, no person~~

16 ~~may be imprisoned for any offense, whether classified as a~~

17 ~~misdemeanor or a felony, unless he was represented by~~

18 ~~counsel at his trial, this is applicable to all criminal~~

19 ~~proceedings, including proceedings for violations of~~

20 ~~municipal ordinances.~~

21 Section 9. Section 95-1005, R.C.M. 1947, is amended to

22 read as follows:

23 "95-1005. Remuneration of appointed counsel. (1)

24 Whenever in a criminal action ~~or~~ proceeding an attorney at

25 ~~law~~ represents or defends any person by order of the court,

1 (a) frisk that the person and take other reasonably

2 necessary steps for protection if the peace officer he has

3 reasonable cause to suspect that the person is armed and

4 presently dangerous to the peace officer him or another

5 person present; and

6 (b) take possession of any object that the peace

7 officer he discovers during the course of the frisk if the

8 peace officer he has probable cause to believe the object is

9 a deadly weapon.

10 (5) A peace officer who has lawfully stopped a person

11 under this section may demand of the person his name and his

12 present or last address.

13 (6) A peace officer who has lawfully stopped a person

14 under this section shall inform the person, as promptly as

15 possible under the circumstances and in any case before

16 questioning the person, that he is a peace officer, and that

17 the stop is not an arrest but rather a temporary detention

18 for an investigation, and that upon completion of the

19 investigation the person will be released unless he is

20 arrested.

21 (7) After the authorized purpose of the stop has been

22 accomplished or ~~thirty~~ (30) minutes have elapsed, whichever

23 occurs first, the peace officer shall allow the person to go

24 unless he has arrested the person."

25 Section 9. Section 95-1004, R.C.M. 1947, is amended to

1 on the ground that the person is financially unable to  
 2 employ counsel, ~~such~~ the attorney shall be paid for his  
 3 services such sum as a district court or justice of the  
 4 state supreme court certifies to be a reasonable  
 5 compensation therefor and shall be reimbursed for reasonable  
 6 costs incurred in the criminal proceeding.

7 (2) Such costs shall be the expense of implementing  
 8 subsection (1) is chargeable to the county in which the  
 9 proceeding arose, except that:

10 (a) in proceedings solely involving the violation of a  
 11 city ordinance or state statute prosecuted in a municipally  
 12 or city or police court, ~~wherein costs shall be the expense~~  
 13 is chargeable to the city or town in which the proceeding  
 14 arose; and

15 (b) ~~in arrests in criminal proceedings when there has~~  
 16 ~~been an arrest~~ by agents of the department of fish and game  
 17 ~~and arrests by~~ or agents of the department of justice, the  
 18 ~~costs--(including attorneys' fees of attorneys appointed by~~  
 19 ~~the court for the defendant) expense must be borne by the~~  
 20 state agency causing the arrest."

21 Section 10. Section 95-1104, R.C.M. 1947, is amended  
 22 to read as follows:

23 "95-1104. ~~Setting and accepting bail under a warrant~~  
 24 ~~of arrest bail set in warrant acceptance by peace~~  
 25 ~~officer.~~ A peace officer may accept cash bail in behalf of a

1 judge ~~where~~ whenever the warrant of arrest specifies the  
 2 amount of bail. ~~In the event the~~ whenever a peace officer  
 3 accepts bail, he shall give a signed receipt to the offender  
 4 setting forth the bail received. The peace officer shall  
 5 then deliver the bail to the justice of the peace or ~~peace~~  
 6 city judge before whom the offender is to appear, and the  
 7 justice of the peace or ~~peace~~ city judge shall give a  
 8 receipt to the ~~peace~~ peace officer for the bail delivered."

9 Section 11. Section 95-1118, R.C.M. 1947, is amended  
 10 to read as follows:

11 "95-1118. ~~Conditions~~ Form of conditions of bail.  
 12 ~~(1)~~ If a person is admitted to bail before conviction,  
 13 the conditions of bail ~~shall be:~~

14 (a) that he will appear to answer in the court having  
 15 jurisdiction on a day certain and thereafter as ordered by  
 16 the court until discharged on final order of the court and  
 17 will not depart from this state without leave; and  
 18 (b) ~~subject to~~ any other conditions ~~as that~~ the court  
 19 may reasonably prescribe to assure his appearance when  
 20 required.

21 ~~(2)~~ If the defendant is admitted to bail after  
 22 conviction, the conditions of bail ~~shall be that:~~

23 ~~(a)~~ He he will duly prosecute his appeal;  
 24 ~~(b)~~ He he will appear at such time and place as the  
 25 court may direct;

1 respect to any ~~guaranteed~~ guaranteed arrest bond certificates  
 2 issued in such year by an automobile club or association or  
 3 by an insurance company authorized to write automobile  
 4 liability insurance within this state, by filing with the  
 5 commissioner of insurance an undertaking thus to become  
 6 surety.  
 7 ~~(4)(2)~~ such The undertaking shall be in a form to be  
 8 prescribed by the commissioner and shall state the  
 9 following:  
 10 ~~(4)(3)~~ the the name and address of the automobile club  
 11 or clubs, automobile ~~associations~~ associations, or insurance  
 12 ~~company or companies, or associations with respect to which~~  
 13 issued the guaranteed arrest bond certificates ~~of~~ with  
 14 respect to which the surety company undertakes to be  
 15 surety; and  
 16 ~~(4)(4)~~ the the unqualified obligation of the surety  
 17 company to pay the fine or forfeiture in an amount not to  
 18 exceed ~~one hundred dollars~~ dollars exceeding ~~(\$100.00)~~ of any person  
 19 who, after posting a guaranteed arrest bond certificate with  
 20 respect to which the surety company has undertaken to be  
 21 surety, fails to make the appearance to guarantee which the  
 22 guaranteed arrest bond certificate was posted.  
 23 ~~(4)(5)~~ The term "guaranteed arrest bond certificate"  
 24 means any printed card or other certificate which  
 25 ~~is~~ is issued by an automobile club or association or

1 ~~(4)(6)~~ he he will not depart from this state without  
 2 leave of the court; and  
 3 ~~(4)(7)~~ if if the judgment is affirmed or the cause  
 4 reversed and remanded for a new trial, he will forthwith  
 5 surrender to the officer from whose custody he was bailed."  
 6 Section 12. Section 95-1119, R.C.M. 1947, is amended  
 7 to read as follows:  
 8 "95-1119. Bail on a new trial. If the judgment of  
 9 conviction is reversed and the cause remanded for a new  
 10 trial, the trial court may order that the bail stand pending  
 11 such trial, or substitute, reduce, or increase bail."  
 12 ~~Section 14. Section 95-1120, R.C.M. 1947, is amended~~  
 13 ~~to read as follows:~~  
 14 ~~"95-1120. Persons prohibited from furnishing bail~~  
 15 ~~security. No attorney at law and no official authorized to~~  
 16 ~~admit another to bail shall acting in an official or~~  
 17 ~~professional capacity act as surety or furnish bail."~~  
 18 Section 13. Section 95-1121, R.C.M. 1947, is amended  
 19 to read as follows:  
 20 "95-1121. Sureties for guaranteed guaranteed arrest  
 21 bond certificates ~~filling of undertaking~~ guaranteed ~~arrest~~  
 22 ~~bond certificates.~~ ~~(4)(1)~~ any A domestic or foreign surety  
 23 company which has qualified to transact surety business in  
 24 this state may, in any year, become surety in an amount not  
 25 ~~to exceed one hundred dollars~~ exceeding ~~(\$100.00)~~ with

1 insurance company to any of its members or insureds, and  
 2 (b) which said card or certificate is signed by each  
 3 the member or insured and contains a printed statement that  
 4 each the automobile club, automobile association, or  
 5 insurance company and a surety company or an insurance  
 6 company authorized to transact both automobile liability  
 7 insurance and surety business in the state of Montana;  
 8 (i) guarantee the appearance of the person whose  
 9 signature appears on the card or certificate; and  
 10 (ii) that will, in the event of the failure of each  
 11 the person to appear in court at the time of trial, pay any  
 12 fine or forfeiture imposed on each the person in an amount  
 13 not to exceed one hundred dollars exceeding \$100.00."
   
 14 Section 14. Section 95-1122, R.C.M. 1947, is amended  
 15 to read as follows:

16 "95-1122. Violations--of--motor Motor vehicle laws  
 17 violations -- posting of guaranteed arrest bond certificate  
 18 Certificates accepted in lieu of cash. Any A guaranteed  
 19 arrest bond certificate with respect to which a surety  
 20 company has become surety or a guaranteed arrest bond  
 21 certificate issued by an insurance company authorized to  
 22 transact both automobile liability insurance and surety  
 23 business within this state, as provided in section 95-1121,  
 24 hereof shall, when posted by the person whose signature  
 25 appears thereon, be accepted in lieu of cash bail in an

1 amount not to exceed one hundred dollars exceeding \$100.00)  
 2 as a bail bond to guarantee the appearance of each the  
 3 person in any court, including municipal courts, in this  
 4 state, at such time as may be required by the court, when  
 5 each the person is was arrested for violation of any a motor  
 6 vehicle law of this state or ordinance of any a municipality  
 7 in this state (except for the offense of driving while  
 8 intoxicated or for any felony) committed prior to the date  
 9 of expiration shown on each the guaranteed arrest bond  
 10 certificate, so A guaranteed arrest bond certificate posted  
 11 as a bail bond in any a court in this state shall be is  
 12 subject to the same forfeiture and enforcement provisions  
 13 with respect to as bail bonds posted in criminal cases as  
 14 provided by law, and that any each a guaranteed arrest bond  
 15 certificate posted as a bail bond in any a municipal court  
 16 in this state shall be is subject to the forfeiture and  
 17 enforcement provisions of the chapter or ordinance of the  
 18 particular municipality pertaining to bail bonds posted."

19 Section 15. Section 95-1406, R.C.M. 1947, is amended  
 20 to read as follows:  
 21 "95-1406. When and from whom they may ask advice and  
 22 the may be present during their sessions Advice and  
 23 assistance to grand jury -- who may be present ---  
 24 stenographer, transcript of testimony. (b)(1) The grand  
 25 jury may at all times, ask the advice of the court or the

1 judge thereof, ~~or~~ the attorney general, ~~or~~ ~~of~~ the county  
2 attorney. Unless such advice is asked, the judge of the  
3 court shall not be present during the sessions of the grand  
4 jury.

5 ~~(b)(2)~~ The county attorney ~~of the county~~ or the  
6 attorney general may at all times appear before the grand  
7 jury for the purpose of giving information or advice  
8 relative to any matter cognizable by the grand jury, and may  
9 interrogate witnesses before the grand jury whenever he  
10 thinks it necessary. When a charge against or involving the  
11 county attorney, ~~or~~ deputy county attorney, or anyone  
12 employed by or connected with the office of the county  
13 attorney, is being investigated by the grand jury, ~~and~~ the  
14 county attorney, ~~or~~ deputy county attorney, or all or any  
15 one or more of them, shall not be allowed to be present in  
16 an official capacity before ~~and~~ the grand jury when ~~such~~  
17 the charge is being investigated, ~~is an official capacity~~  
18 ~~but only as a witness, and to~~ They ~~or~~ he shall only be  
19 present while a witness and after his ~~appearance~~ appearing  
20 as ~~such~~ a witness shall leave the place where the grand jury  
21 is holding session.

22 ~~(c)(3)~~ When requested to do so by the grand jury of  
23 any county, the attorney general or county attorney may  
24 employ special counsel and investigators, ~~whose duty it who~~  
25 shall ~~be to~~ investigate and present the evidence acquired in

1 such investigation to ~~and~~ the grand jury.

2 ~~(d)(1)~~ The grand jury or county attorney may require  
3 by subpoena the attendance of any person before the grand  
4 jury as interpreter, while his services are necessary, ~~and~~  
5 the interpreter may be present at the examination of  
6 witnesses before the grand jury. The compensation for the  
7 services of ~~and~~ the interpreter constitutes a charge  
8 against the county, and shall be fixed by the grand jury, in  
9 an amount to be approved by the court, ~~and it shall be~~ paid  
10 out of the county treasury on a warrant of the county  
11 auditor upon an order of the judge of the district court.

12 ~~(e)(5) Transcript of Testimony~~ The grand jury  
13 may appoint a stenographer to take in shorthand the  
14 testimony of witnesses, or the testimony may be taken by a  
15 recording device, but the record so made shall include the  
16 testimony of all witnesses on that particular investigation.  
17 The shorthand notes or the recordings and transcript of the  
18 same, if any, shall be delivered to and retained by the  
19 clerk of the district court.

20 ~~(f)(1)~~ The stenographer and any typist who transcribes  
21 the stenographer's notes or recordings shall be sworn by the  
22 foreman not to disclose any testimony or the names of any  
23 witnesses except when so ordered by the court.

24 ~~(g)~~ The stenographic reporter shall certify and file  
25 with the clerk of the district court an original

1 transcription of his shorthand notes and a copy thereof and  
 2 as many additional copies as there are defendants. The  
 3 reporter shall complete ~~each~~ the certification and filing  
 4 within ~~ten~~ 10 days after the indictment has been found ~~or~~  
 5 ~~the recitation presented~~ unless the court for good cause  
 6 makes an order extending the time. The clerk of the district  
 7 court shall deliver the original of the transcript ~~or~~ filed  
 8 with him to the county attorney immediately upon his receipt  
 9 thereof, ~~shall~~ retain one ~~of~~ copy for use only by judges in  
 10 proceedings relating to the indictment ~~or recitation~~, and  
 11 ~~shall~~ deliver a copy of ~~each~~ the transcript to each ~~each~~  
 12 defendant or his attorney."

13 Section 16. Section 95-1407, R.C.M. 1947, is amended  
 14 to read as follows:

15 "95-1407. Subpoena of witnesses ~~is as follows~~. A subpoena  
 16 requiring the attendance of a witness before the grand jury  
 17 may be signed and issued by the county attorney, by the  
 18 foreman of the grand jury, or by the judge of the district  
 19 court, ~~for~~ The subpoena may be directed to witnesses in the  
 20 state in support of the prosecution, ~~for~~ those witnesses  
 21 whose testimony, in ~~his~~ the opinion of the issuer, is  
 22 material in an investigation before the grand jury, and ~~for~~  
 23 such other witnesses as the grand jury ~~upon~~ investigation  
 24 pending before them may direct."

25 Section 17. Section 95-1408, R.C.M. 1947, is amended

1 to read as follows:

2 "95-1408. Reception of evidence. ~~(a)(1)~~ In the  
 3 investigation of a charge, the grand jury shall receive no  
 4 other evidence than that given by witnesses produced and  
 5 sworn before ~~the grand jury~~, it ~~or~~ furnished by legal  
 6 documentary evidence, or the deposition of a witness in the  
 7 cases mentioned in ~~section~~ 95-1802.

8 ~~(b)(2)~~ The grand jury is not required to hear evidence  
 9 for the defendant, but it shall weigh all the evidence  
 10 submitted to it, ~~and when~~ if it has reason to believe other  
 11 evidence within its reach will explain away the charge, it  
 12 shall order the evidence to be produced, and for that  
 13 purpose may require the county attorney to issue process for  
 14 witnesses.

15 ~~(c)(3)~~ The grand jury shall find an indictment when  
 16 all the evidence before it, taken together, if unexplained  
 17 or uncontradicted, would, in its judgment, warrant a  
 18 conviction by a trial jury."

19 Section 18. Section 95-1502, R.C.M. 1947, is amended  
 20 to read as follows:

21 "95-1502. Commencement of prosecutions. ~~(a)(1)~~ All  
 22 prosecutions of offenses triable in the district courts  
 23 shall be by indictment or information ~~except as otherwise~~  
 24 ~~provided by chapter 55, title 94, R.C.M. 1947.~~

25 ~~(b)(2)~~ All other prosecutions of offenses may be by



1 complaint."

2 Section 19. Section 95-1504, R.C.M. 1947, is amended

3 to read as follows:

4 "95-1504. Joinder and discharge of offenses and

5 defendants. ~~(b)(1)~~ An indictment, information, or complaint

6 ~~or~~ may charge two (2) or more different offenses

7 connected together in their commission, or different

8 statements of the same offense, or two (2) or more different

9 offenses of the same class ~~of~~ ~~or~~ ~~more~~ ~~different~~, under

10 separate counts, ~~and~~ ~~if~~ ~~two~~ ~~(2)~~ or more indictments,

11 informations, or complaints ~~or~~ ~~are~~ ~~filed~~ in such

12 cases in the same court, the court may order them to be

13 consolidated. Allegations made in one count may be

14 incorporated by reference in another count. The prosecution

15 is not required to elect between the different offenses or

16 counts set forth in the indictment, information, or

17 complaint ~~or~~ ~~and~~ ~~the~~ ~~defendant~~ ~~may~~ ~~be~~

18 convicted of any number of the offenses charged, ~~and~~ ~~each~~

19 Each offense of which the defendant is convicted must be

20 stated in the verdict or the finding of the court.

21 (2) ~~provided~~ ~~that~~ ~~the~~ The court in which the case is

22 triable, in the interests of justice and for good cause

23 shown, may in its discretion order that the different

24 offenses or counts set forth in the indictment, information,

25 or complaint ~~and~~ ~~accusations~~ be tried separately or divided

1 into two (2) or more groups and each of ~~and~~ the groups

2 tried separately. An acquittal of one (1) or more counts

3 shall not be ~~deemed~~ considered an acquittal of any other

4 count.

5 ~~(b)(3)~~ Two (2) or more defendants may be charged in

6 the same indictment or information if they are alleged to

7 have participated in the same series of acts or transactions

8 constituting an offense or offenses. Such defendants may be

9 charged in one (1) or more counts together or separately.

10 and all of the defendants need not be charged in each count.

11 ~~(b)(4)~~ If it appears that a defendant or the state is

12 prejudiced by a joinder of related prosecutions or

13 defendants in a single charge or by joinder of separate

14 charges or defendants for trial, the court may order

15 separate trials, grant a severance of defendants, or provide

16 any other relief as justice may require.

17 ~~(b)(5)~~ When two or more persons are included in the

19 same charge, the court may, at any time before the

19 defendants have gone into their defense, on the application

20 of the county attorney, direct any defendant to be

21 discharged, so that he may be a witness for the state.

22 ~~(b)(6)~~ When two or more persons are included in the

23 same indictment or information, and the court is of the

24 opinion that in regard to a particular defendant there is

25 not sufficient evidence to put him on his defense, ~~the~~ the

1 court must order him to be discharged before the evidence is  
2 closed, that he may be a witness for his codefendant."

3 Section 20. Section 95-1506, R.C.M. 1947, is amended  
4 to read as follows:

5 "95-1506. ~~prior conviction~~ Procedural requirements --  
6 persistent felony offenders. (1) When If the state seeks  
7 ~~increased punishment~~ treatment of the accused as a ~~prior~~  
8 ~~convicted felon~~ persistent felony offender under ~~sections~~  
9 ~~94-413~~ 95-1507 or 95-2206.5 or both of those sections,  
10 notice of that fact must be given in writing to the accused  
11 or his attorney before the entry of a plea of guilty by the  
12 accused, or before the case is called for trial upon a plea  
13 of not guilty.

14 (2) ~~Such~~ The notice must conform to the following  
15 provisions:

16 (a) The notice must specify the prior convictions  
17 alleged to have been incurred by the accused.

18 (b) The notice and the charges of prior convictions  
19 contained therein shall not be made public ~~nor~~ or in any  
20 manner be made known to the jury before the jury's verdict  
21 is returned upon the felony charge, ~~provided that however,~~  
22 if the defendant ~~shall testify~~ testifies in his own behalf,  
23 he shall ~~nevertheless~~ be is subject to impeachment as  
24 provided in ~~section~~ 93-1901-11, R.C.M. 1947, as amended.

25 (4)(2) If the accused is convicted upon the felony

1 charge, the notice, together with proper proof of timely  
2 service, shall be filed with the court before the time fixed  
3 for ~~sentence~~ sentencing. The court shall then fix a time for  
4 hearing with at least ~~three~~ (3) days' notice to the accused.  
5 (4)(4) The hearing shall be held before the court  
6 alone. If the court finds any of the allegations of prior  
7 conviction true, the accused shall be sentenced under the  
8 provisions of ~~section~~ 94-413 95-1507 and 95-2206.5."

9 Section 21. Section 95-1507, R.C.M. 1947, is amended  
10 to read as follows:

11 "95-1507. ~~Sentence~~ Sentencing of imprisonment -- for  
12 persistent felony offender. (1) A persistent felony  
13 offender is an offender who has been previously been  
14 convicted of a felony and ~~the present offense is~~ who is  
15 presently being sentenced for a second felony committed on a  
16 different occasion than the first. An offender is considered  
17 to have been previously convicted of a felony if:

18 (2) ~~A persistent felony offender shall be imprisoned~~  
19 ~~in the state prison for a term of not less than five (5)~~  
20 ~~years nor more than one hundred (100) years providing~~

21 (a) the previous felony conviction was for an offense  
22 committed in this state or any other jurisdiction for which  
23 a sentence to a term of imprisonment in excess of ~~one~~ (1)  
24 year could have been imposed; and

25 (b) less than ~~five~~ (5) years have elapsed between the

1 determined adversely to the defendant, he shall plead if he  
2 has not previously pleaded. A plea previously entered shall  
3 stand.

4 (2) If the court directs the action to be dismissed,  
5 the defendant must, if in custody, be discharged therefrom;  
6 or, if admitted to bail, have his bail exonerated or money  
7 deposited instead of bail ~~must be~~ refunded to him. However,  
8 if the court grants a motion to dismiss based on a defect in  
9 the institution of the prosecution or in the indictment,  
10 information, or complaint or ~~when~~ if it appears at any time  
11 before judgment that a mistake has been made in charging the  
12 proper offense, ~~the~~ the court may also order that the  
13 defendant be held in custody or that his bail be continued  
14 for a specified time pending the filing of a new complaint,  
15 indictment, or information."

16 Section 24. Section 95-1707, R.C.M. 1947, is amended  
17 to read as follows:

18 "95-1707. Transfer of trial. If the court determines  
19 that ~~the~~ a motion to dismiss based upon the grounds of lack  
20 of jurisdiction or improper place of trial is well founded,  
21 it may, instead of ordering dismissal, order the cause  
22 transferred to a court of competent jurisdiction or to a  
23 proper place of trial."

24 ~~Section 27. Section 95-1709, R.C.M. 1947, is amended~~  
25 ~~to read as follows:~~

1 commission of the present offense and either ~~(i)~~ the  
2 previous felony conviction or ~~(ii)~~ the ~~offender's~~ released  
3 offender's release on parole or otherwise from a prison or  
4 other commitment imposed as a result of the previous felony  
5 conviction; and

6 ~~(c) the offender was more than twenty-one (21) years~~  
7 ~~old at the time of the commission of the new offense~~  
8 ~~(3)(c) A previous felony conviction shall not be~~  
9 ~~considered for the purpose of sentencing under this section~~  
10 ~~if the offender has not been pardoned on the grounds~~ GROUND  
11 of innocence, or if and the conviction had not been set  
12 aside in any post-conviction hearing.

13 (2) A persistent felony offender shall be imprisoned  
14 in the state prison for a term of not less than 5 years or  
15 more than 100 years if he was 21 years of age or older at  
16 the time of the commission of the present offense."

17 Section 22. Section 95-1704, R.C.M. 1947, is amended  
18 to read as follows:

19 "95-1704. Time of making motion. The motion provided  
20 for in 95-1701 and 95-1702 shall be made before the plea is  
21 entered, but the court for cause may permit it to be made  
22 within a reasonable time thereafter."

23 Section 23. Section 95-1706, R.C.M. 1947, is amended  
24 to read as follows:

25 "95-1706. Effect of determination. (1) If a motion is

1     95-1709, Substitution of Judge. (a) ~~if~~ The defendant  
2     or the prosecution may move the court in writing for a  
3     substitution of the judge on the ground that he ~~is~~ ~~cannot~~  
4     cannot have a fair and impartial hearing or trial before  
5     said the judge. The motion shall be made at least fifteen  
6     (15) days prior to the trial of the case, or any retrial  
7     thereof after appeal, except for good cause shown.  
8     ~~if~~ Upon the filing of such a ~~the~~ motion, the judge  
9     against whom the motion is filed shall be without authority  
10    to act further in the criminal action, motion or  
11    proceedings but the provisions of this section do not apply  
12    except in regard to the arrangement of the calendar, the  
13    regulation of the order of business, the power of  
14    transferring the criminal action or proceeding to some other  
15    court, not to and the power of calling in another judge to  
16    sit and act in such the criminal action or proceeding,  
17    providing that no judge shall be so arrange the calendar  
18    as to defeat the purpose of this section.

19    ~~if~~ Not so more than one (1) judge can ~~be~~  
20    designated in the criminal action or proceeding at the  
21    instance of the prosecution and not so more than one (1)  
22    judge at the instance of the defendant or defendant.  
23    ~~if~~ If either a party in any matter above mentioned  
24    shall file the ~~who~~ ~~file~~ motion as herein provided such  
25    party ~~under~~ ~~substitution~~ ~~if~~ may not complain of any

1     reasonable delay as the result thereof.  
2     ~~if~~ The provision of this ~~the~~ section shall be ~~is~~  
3     inapplicable to any person in any cause involving a direct  
4     contempt of court.  
5     (b) ~~if~~ In addition to the provision provisions of  
6     subsection (a) ~~subsections (1) through (5)~~ any a defendant  
7     may move at any time for a substitution of the judge for  
8     cause supported by affidavit, upon the filing of such the  
9     motion the court shall conduct a hearing and determine the  
10    merits of the motion.

11    Section 25, Section 95-1711, R.C.M. 1947, is amended  
12    to read as follows:

13    "95-1711. Effect of former prosecution and multiple  
14    multiple charges and former prosecutions. (1) Definitions of  
15    terms. (a) The term "same transaction" includes conduct  
16    consisting of:  
17    (i) a series of acts or omissions which are motivated  
18    by a purpose to accomplish a criminal objective and which  
19    are necessary or incidental to the accomplishment of that  
20    objective; or  
21    (ii) a series of acts or omissions which are motivated  
22    by a common purpose or plan and which result in the repeated  
23    commission of the same offense or affect the same person or  
24    the same persons or the property thereof.

25    (b) An offense is an "included offense" when:

1 (i) it is established by proof of the same or less  
2 than all the facts required to establish the commission of  
3 the offense charged; ~~or~~

4 (ii) it consists of an attempt to commit the offense  
5 charged or to commit an offense otherwise included therein;  
6 or

7 (iii) it differs from the offense charged only in the  
8 respect that a less serious injury or risk of injury to the  
9 same person, property, or public interest or a lesser kind  
10 of culpability suffices to establish its commission.

11 (2) ~~Method of prosecution when conduct constitutes~~  
12 ~~more than one offense.~~ When the same transaction may  
13 establish the commission of more than one offense, a person  
14 charged with such conduct may be prosecuted for each such  
15 offense. He may not, however, be convicted of more than one  
16 offense if:

17 (a) one offense is included in the other; ~~or~~

18 (b) one offense consists only of a conspiracy or other  
19 form of preparation to commit the other; ~~or~~

20 (c) inconsistent findings of fact are required to  
21 establish the commission of the offenses;

22 (d) the offenses differ only in that one is defined to  
23 prohibit a designated kind of conduct generally and the  
24 other to prohibit a specific instance of such conduct; or

25 (e) the offense is defined to prohibit a continuing

1 course of conduct and the defendant's course of conduct was  
2 interrupted, and unless the law provides that the specific  
3 periods of such conduct constitute separate offenses.

4 (3) ~~When prosecution barred by former prosecution~~  
5 ~~provided~~ If the offenses, ~~if more than one~~ were known to  
6 the attorney prosecuting upon sufficient evidence to justify  
7 the filing of an information or the issuance of a warrant of  
8 arrest and were consummated prior to the original charge  
9 and ~~provided~~ if the jurisdiction and venue of the several  
10 offenses lie in a single court, a prosecution based upon the  
11 same transaction as a former prosecution is barred by such  
12 former prosecution under the following circumstances:

13 (a) The former prosecution resulted in an acquittal.  
14 There is an acquittal ~~if~~ whenever the prosecution ~~resulted~~  
15 ~~results~~ in a finding of not guilty by the trier of fact or  
16 in a determination that there ~~was~~ is insufficient evidence  
17 to warrant a conviction. A finding of guilty of a lesser  
18 included offense than the offense charged which is  
19 subsequently set aside is an acquittal of the greater  
20 inclusive offense that was charged.

21 (b) The former prosecution was terminated, after a  
22 complaint had been filed on a misdemeanor charge or after  
23 an information had been filed or an indictment found on a  
24 felony charge, by a final order of judgment for the  
25 defendant, which has not been set aside, reversed, or

1 vacated and which necessarily required a determination  
2 inconsistent with a fact or a legal proposition that must be  
3 established for conviction of the offense.

4 (c) The former prosecution resulted in a conviction.  
5 There ~~is~~ has been a conviction ~~if whenever~~ the prosecution  
6 resulted in:

7 (i) a judgment of conviction which has not been  
8 reversed or vacated; ~~or~~

9 (ii) a verdict of guilty which has not been set aside  
10 and which is capable of supporting a judgment, so long as  
11 failure to enter judgment was for a reason other than a  
12 motion of the defendant; or

13 (iii) a plea of guilty accepted by the court, so long  
14 as failure to enter judgment was for a reason other than a  
15 motion of the defendant.

16 (d) The former prosecution was improperly terminated.  
17 Except as provided in this subsection ~~(d)~~, there is an  
18 improper termination of a prosecution ~~if whenever~~ the  
19 termination is for reasons not amounting to an acquittal  
20 and ~~it~~ takes place after the first witness is sworn but  
21 before verdict. Termination under ~~any~~ either of the  
22 following circumstances is not improper:

23 (i) ~~the~~ The defendant consents to the termination or  
24 waives his right to object to the termination; ~~or~~

25 (ii) ~~the~~ The trial court, in the exercise of its

1 discretion, finds that the termination is necessary because:  
2 (A) it is physically impossible to proceed with the  
3 trial in conformity with law; ~~or~~

4 (B) there is a legal defect in the proceedings which  
5 would make any judgment entered upon a verdict reversible as  
6 a matter of law; ~~or~~

7 (C) prejudicial conduct, in or outside the courtroom  
8 makes it impossible to proceed with the trial without  
9 manifest injustice to either the defendant or the state; ~~or~~

10 (D) the jury is unable to agree upon a verdict; or  
11 (E) false statements of a juror on voir dire prevent a  
12 fair trial.

13 (4) ~~Former prosecution in another jurisdiction when a~~  
14 ~~party~~ When conduct constitutes an offense within the  
15 concurrent jurisdiction of this state and of the United  
16 States or another state or of two courts of separate, ~~and/or~~  
17 ~~overlapping~~ or concurrent jurisdiction in this state, a  
18 prosecution in any such other jurisdiction is a bar to a  
19 subsequent prosecution in this state under the following  
20 circumstances:

21 (a) The first prosecution resulted in an acquittal or  
22 in a conviction as defined in subsection (3) and the  
23 subsequent prosecution is based on an offense arising out of  
24 the same transaction.

25 (b) The former prosecution was terminated, after the

1 complaint has had been filed on a misdemeanor charge OF  
 2 after the information ~~has~~ had been filed or the indictment  
 3 found ON a felony charge, by an acquittal or by a final  
 4 order or judgment for the defendant which has not been set  
 5 aside, reversed, or vacated; and ~~that~~ the acquittal, final  
 6 order, or judgment necessarily required a determination  
 7 inconsistent with a fact which must be established for  
 8 conviction of the offense of for which the defendant is  
 9 subsequently prosecuted.

10 (5) ~~Former prosecution before court lacking~~  
 11 ~~jurisdiction or when fraudulently procured by the defendant.~~  
 12 A prosecution is not a bar within the meaning of subsections  
 13 (3) and (4) under any one or more of the following  
 14 circumstances:

- 15 (a) ~~the~~ The former prosecution was before a court
- 16 which lacked jurisdiction over the defendant or the
- 17 offense ~~of~~
- 18 (b) ~~the~~ The former prosecution was procured by the
- 19 defendant without the knowledge of the proper prosecuting
- 20 officer or with the purpose of avoiding the sentence which
- 21 might otherwise be imposed ~~or~~
- 22 (c) ~~the~~ The former prosecution resulted in a judgment
- 23 of conviction which was held invalid in ~~any post-conviction~~
- 24 a post-conviction hearing.

25 Section 26. Section 95-1803, R.C.M. 1947, is amended

1 to read as follows:  
 2 "95-1803. Discovery, inspection, and notice. In all  
 3 criminal cases originally triable in district court the  
 4 following rules shall apply:

- 5 (a) ~~list of witnesses~~
- 6 (1) For the purpose of notice only and to prevent
- 7 surprise, the prosecution shall furnish to the defendant and
- 8 file with the clerk of the court at the time of arraignment
- 9 a list of the witnesses ~~intended to be called by the~~
- 10 prosecution intends to call. The prosecution may, any time
- 11 after arraignment, add to the list the names of any
- 12 additional witnesses, upon a showing of good cause. The list
- 13 shall include the names and addresses of the witnesses.

14 (2) ~~The requirement of subsection (a) (1) of this~~  
 15 ~~section shall. This subsection does not apply to rebuttal~~  
 16 witnesses.

17 (b) ~~Subpoenas may be used as a discovery device as~~  
 18 ~~provided for under section 95-1804(d).~~

19 (c) (1) (a) On motion of any party within a reasonable  
 20 time before trial, ~~all parties~~ each party shall produce at a  
 21 reasonable time and place designated by the court all  
 22 documents, papers, or things which ~~each party~~ it intends to  
 23 introduce in evidence. ~~Thereafter any~~ Each party shall, in  
 24 the presence of a person designated by the court, be  
 25 permitted to inspect or copy any such documents, papers, or

1 things. The order shall specify the time, place, and manner  
 2 of making the inspection and of taking the copies or  
 3 photographs and may prescribe such terms and conditions as  
 4 are just. If the evidence relates to scientific tests or  
 5 experiments, the opposing party shall, if practicable, be  
 6 permitted to be present during the tests and to inspect the  
 7 results thereof. Upon a sufficient showing, the court may at  
 8 any time order that the discovery or inspection be denied,  
 9 restricted, or deferred, or make other appropriate orders.

10 (b) If, subsequent to compliance with an order issued  
 11 pursuant to this rule, and prior to or during trial, a party  
 12 discovers additional material previously requested which is  
 13 subject to discovery or inspection under ~~the~~ this rule, he  
 14 shall promptly notify the other party or his attorney or the  
 15 court of the existence of the additional material. The court  
 16 shall exclude any evidence not presented for inspection or  
 17 copying pursuant to this rule unless good cause is shown  
 18 for failure to comply. In the latter case the opposing party  
 19 shall be entitled to a recess or a ~~continuance~~  
 20 continuance during which it may inspect or copy the evidence  
 21 in the manner provided for ~~above~~ in this subsection (2).

22 (4)(3) (a) For purpose of notice only and to prevent  
 23 surprise, the defendant shall furnish to the prosecution and  
 24 file with the clerk of the court, at the time of entering  
 25 his plea of not guilty or within ~~ten~~ (10) days thereafter or

1 at such later time as the court may for good cause permit, a  
 2 statement of intention to interpose the defense of ~~insanity~~  
 3 mental disease or defect, self-defense, or alibi.

4 (b) If the defendant intends to interpose any of these  
 5 defenses, he shall also furnish to the prosecution and file  
 6 with the clerk of the court, the names and addresses of all  
 7 witnesses to be called by the defense in support thereof.  
 8 ~~The~~ Prior to trial the defendant may, ~~prior to trial,~~ upon  
 9 motion and showing of good cause, add to the list of  
 10 witnesses the names of any additional witnesses. After the  
 11 trial commences, no witnesses may be called by the defendant  
 12 in support of these defenses unless the name of the witness  
 13 is included on ~~each~~ the list, except upon good cause shown.  
 14 ~~(e)(4)~~ All matters which are privileged upon the  
 15 trial, are privileged against disclosure through any  
 16 discovery procedure."

17 Section 27. Section 95-1810, R.C.M. 1947, is amended  
 18 to read as follows:

19 "95-1810. Witness from another state summoned to  
 20 testify in this state. (1) ~~If~~ Whenever a person in any  
 21 state, which by its laws has made provision for commanding  
 22 persons within its borders to attend and testify in criminal  
 23 prosecutions, or grand jury investigations ~~concerned in~~  
 24 ~~about to commence~~ in this state is a material witness in a  
 25 prosecution pending in a court of record in this state or



1 in a grand jury investigation, which has commenced or is  
 2 about to commence, a judge of ~~each~~ the court may issue a  
 3 certificate under the seal of the court stating these facts  
 4 and specifying the number of days the witness will be  
 5 required. ~~This~~ The certificate ~~will~~ shall be presented to a  
 6 judge of a court of record in the county in which the  
 7 witness is found.

8 (2) If ~~said~~ the certificate recommends that the  
 9 witness be taken into immediate custody and delivered to an  
 10 officer of this state to assure his attendance in this  
 11 state, ~~such~~ it is prima facie proof of the desirability of  
 12 such custody and delivery and the judge may direct that ~~such~~  
 13 the witness be ~~forthwith~~ brought before him ~~immediately~~.  
 14 ~~and~~ If the judge ~~being~~ is satisfied ~~as~~ to the  
 15 desirability of such custody and delivery, ~~for~~ ~~which~~ ~~such~~  
 16 ~~determination~~ ~~said~~ ~~certificate~~ ~~shall~~ ~~be~~ ~~prima~~ ~~facie~~ ~~proof~~  
 17 he may order that ~~said~~ the witness be ~~forthwith~~ immediately  
 18 taken into custody and delivered to an officer of this  
 19 state. ~~which~~ The order ~~shall~~ be is sufficient authority to  
 20 ~~such~~ for the officer to take ~~such~~ the witness into custody  
 21 and hold him unless and until he ~~may~~ be is released by bail,  
 22 recognizance, or order of the judge issuing the certificate.

23 (3) If ~~the~~ whenever a witness is summoned to attend  
 24 and testify in this state, he shall be tendered the sum of  
 25 ~~ten~~ ~~cents~~ ~~(10)~~ cents a mile for each mile and ~~five~~ ~~dollars~~

1 ~~(55.00)~~ for each day that he is required to travel and  
 2 attend as a witness, ~~provided~~ ~~further~~ ~~that~~ ~~in~~ ~~these~~ ~~cases~~  
 3 ~~in~~ ~~which~~ If the state wherein the witness is found has by  
 4 statutory enactment required that the summoned witness be  
 5 paid an amount ~~ex~~ ~~ceeds~~ in excess of the amount  
 6 ~~herebefore~~ ~~in~~ ~~this~~ ~~paragraph~~ ~~provided~~ ~~specified~~ ~~in~~ ~~the~~  
 7 ~~preceding~~ ~~sentences~~, then ~~said~~ the witness may be tendered  
 8 ~~said~~ the amount ~~ex~~ ~~ceeds~~ required by ~~said~~ that state to  
 9 be tendered ~~though~~ ~~the~~ ~~said~~ ~~amount~~ ~~or~~ ~~amounts~~ ~~so~~ ~~required~~ ~~to~~  
 10 ~~be~~ ~~tendered~~ ~~are~~ ~~in~~ ~~excess~~ ~~of~~ ~~the~~ ~~said~~ ~~amounts~~ ~~in~~ ~~this~~  
 11 ~~paragraph~~ ~~provided~~ ~~for~~.

12 (4) A witness who has appeared in accordance with the  
 13 provisions of the summons ~~shall~~ may not be required to  
 14 remain within this state for a longer period of time than  
 15 the period mentioned in the certificate, unless otherwise  
 16 ordered by the court.

17 (5) If ~~such~~ the witness fails without good cause to  
 18 attend and testify as directed in the summons, he shall be  
 19 punished in the manner provided for the punishment of any  
 20 witness who disobeys a summons issued from a court of record  
 21 in this state."

22 Section 28. Section 95-1909, R.C.M. 1947, is amended  
 23 to read as follows:

24 "95-1909. Trial jurors. ~~(a)~~ The clerk of court  
 25 shall make available to the parties a list of prospective

1 jurors with their addresses when the names have been drawn.

2 (b)(2) The qualifications of jurors and the  
3 will be exempted from jury duty are found  
4 prescribed in sections 93-1301 through 93-1307, of the Civil  
5 Code, which by reference are made a part of this code.

6 (b) An exemption from service on a jury is not a  
7 cause of challenge but the privilege of the person  
8 exempted.

9 (c) The county attorney and the defendant or his  
10 attorney shall conduct the examination of prospective  
11 jurors. The court may conduct an additional examination. The  
12 court may limit the examination by the defendant, his  
13 attorney, or the prosecuting attorney if the court believes  
14 such examination to be improper.

15 (d) Each party may challenge jurors for  
16 cause, and each challenge must be tried by the court.

17 (e) A challenge for cause may be taken for all or  
18 any of the following reasons or for any other reason which  
19 the court determines:

20 (i) Consanguinity or relationship to the  
21 defendant or to the person who is alleged to be injured by  
22 the offense charged, or on whose complaint the prosecution  
23 was instituted, or to the defendant.

24 (ii) Standing in the relation of guardian and  
25 ward, attorney and client, master and servant, or landlord

1 and tenant, or debtor and creditor with, or being a member  
2 of the family or in the employment of, the defendant, or of  
3 the person who is alleged to be injured by the offense  
4 charged, or on whose complaint the prosecution was  
5 instituted, or in his employment;

6 (iii) Being being a party adverse to the defendant in a  
7 civil action, or having complained against or been accused  
8 by him in a criminal prosecution;

9 (iv) Having having served on the grand jury which found  
10 the indictment or on a coroner's jury which inquired into  
11 the death of a person whose death is the subject of the  
12 indictment or information;

13 (v) Having having served on a trial jury which has  
14 tried another person for the offense charged;

15 (vi) Having having been a member of a jury formerly  
16 sworn to try the same charge, and these the verdict of which  
17 was set aside or which was discharged without verdict after  
18 the case was submitted to it;

19 (vii) Having having served as a juror in a civil action  
20 brought against the defendant for the act charged as an  
21 offense;

22 (viii) If if the offense charged be is punishable with  
23 death, with ~~capital~~ having such conscientious  
24 opinions as would preclude his finding the defendant  
25 guilty, in which case he must neither be permitted nor

1 compelled to serve as a juror;  
 2 (ix) ~~Having~~ having a belief that the punishment fixed  
 3 by law is too severe for the offense charged;  
 4 (x) ~~For the existence of~~ having a state of mind ~~on the~~  
 5 ~~part of the juror~~ in reference to the case, or to either of  
 6 the parties, which ~~will~~ would prevent him from acting with  
 7 entire impartiality and without prejudice to the substantial  
 8 rights of either party.  
 9 ~~(f)(15)~~ All challenges must be interposed before the  
 10 jury is sworn, unless the cause of challenge ~~be~~ is  
 11 discovered after the jury is sworn and before the  
 12 introduction of any evidence, ~~\*\*\*~~ in which case the court,  
 13 in its discretion, may allow the challenge to be interposed.  
 14 ~~(f)(16)~~ Each defendant shall be allowed eight ~~(8)~~  
 15 peremptory challenges in capital cases, six ~~(6)~~ in all other  
 16 cases tried in the district court before a ~~twelve (12)~~  
 17 ~~person 12-person jury, and three (3) in all cases tried in~~  
 18 ~~justice of the peace or police courts. However, these three~~  
 19 may not be additional challenges for separate counts charged  
 20 in the indictment or information. If the indictment or  
 21 information charges a capital offense, as well as lesser  
 22 offenses in separate counts, the maximum number of  
 23 challenges ~~shall be~~ is eight ~~(8)~~. The state shall be allowed  
 24 the same number of peremptory challenges as all of the  
 25 defendants. In a ~~civil or~~ criminal case tried in the

1 district court before a ~~six (6) person~~ six-person jury, the  
 2 state and all the defendants shall be allowed three ~~(3)~~  
 3 peremptory challenges each. ~~When the parties PARTIES in a~~  
 4 ~~criminal case in the district court agree upon a jury~~  
 5 ~~consisting of a number of persons other than 6 or 12, they~~  
 6 ~~shall also agree in writing upon the number of peremptory~~  
 7 ~~challenges to be allowed.~~  
 8 ~~(f)(17)~~ After the jury is impaneled and sworn, the  
 9 court may direct ~~the selection of~~ that one or more alternate  
 10 jurors ~~be selected in the same manner as principal jurors.~~  
 11 ~~The alternate jurors shall take the same oath as the~~  
 12 principal jurors. Each party shall have one additional  
 13 peremptory challenge for each alternate juror. Alternate  
 14 jurors in the order in which they are called shall replace  
 15 jurors who, prior to the time the jury arrives at its ~~verdict~~  
 16 ~~verdict~~, become unable or disqualified to perform their  
 17 duties. An alternate juror ~~shall~~ may not join the jury in  
 18 its deliberation unless called upon by the court to replace  
 19 a member of the jury. His conduct during the period in which  
 20 the jury is considering its verdict shall be regulated by  
 21 instructions of the trial court. An alternate juror who does  
 22 not replace a principal juror shall be discharged after the  
 23 jury arrives at its verdict.  
 24 ~~(\*) (8)~~ The jury shall return a general verdict to each  
 25 offense charged.

1     ~~(b)(9)~~ When, at the close of the state's evidence or  
 2 at the close of all the evidence, the evidence is  
 3 insufficient to support a finding or verdict of guilty, the  
 4 court may on its own motion or on the motion of the  
 5 defendant, dismiss the action and discharge the defendant.  
 6 However, the court may allow the case to be reopened for  
 7 good cause shown."

8     Section 29. Section 95-1915, R.C.M. 1947, is amended  
 9 to read as follows:

10     "95-1915. Verdict. ~~(b)(1)~~ ~~Return~~. The verdict shall  
 11 must be unanimous in all criminal actions. ~~Such~~ The verdict  
 12 shall be signed by the foreman and returned by the jury to  
 13 the judge in open court.

14     ~~(b)(2) Several Defendants~~. If there are two ~~(2)~~ or  
 15 more defendants, the jury, at any time during its  
 16 deliberations, may return a verdict or verdicts with respect  
 17 to a defendant or defendants as to whom it has agreed. ~~If~~  
 18 If the jury cannot agree with respect to all, the defendant  
 19 or defendants as to whom it does not agree may be tried  
 20 again.

21     ~~(b)(3) Conviction of a lesser offense~~. The defendant  
 22 may be found guilty of an offense necessarily included in  
 23 the offense charged, or of an attempt to commit either the  
 24 offense charged or an offense necessarily included therein  
 25 if the attempt is an offense.

1     ~~Whenever a crime is distinguished into degrees, the~~  
 2 ~~jury, if they convict the defendant, must find the degree of~~  
 3 ~~the crime of which he is guilty.~~

4     ~~(b)(1)~~ Roll-off-jury. When a verdict is returned, the  
 5 jury shall be polled at the request of any party or upon the  
 6 court's own motion. If upon the poll there is not the  
 7 required concurrence, the jury may be directed to retire for  
 8 further deliberations or may be discharged."

9     Section 30. Section 95-2004, R.C.M. 1947, is amended  
 10 to read as follows:

11     "95-2004. Trial in ~~justice~~ justice and ~~peace~~ peace city  
 12 courts. ~~(b)(1)~~ Method of ~~trial~~ trial:

13     ~~(b)(a)~~ The defendant is entitled to a jury of six ~~(6)~~  
 14 qualified persons, but ~~may consent to a lesser number~~ the  
 15 parties may agree to a number less than six.

16     ~~(b)(b)~~ A trial by jury may be waived by the consent of  
 17 both parties expressed in open court and entered in the  
 18 docket.

19     ~~(b)(c)~~ Questions of law shall be decided by the court  
 20 and questions of fact by the jury except that, when a jury  
 21 trial is waived, ~~then~~ the court shall determine both  
 22 questions of law and questions of fact.

23     ~~(b)(2)~~ Plea of ~~guilty~~ guilty. Before or during trial,  
 24 a plea of guilty may be accepted when:

25     ~~(b)(a)~~ ~~the~~ the defendant enters a plea of guilty in

1 open court, and

2 ~~(2)(b)~~ the the court has informed the defendant of the

3 consequences of his plea and of the maximum penalty provided

4 by law which may be imposed upon acceptance of such plea.

5 ~~(4)(3)~~ Presence of defendant defendant. ~~the presence~~

6 ~~the offense charged carries a penalty of a fine only~~

7 ~~the trial~~ may be had in the absence of the defendant, but,

8 if his presence is necessary for any purpose, the court may

9 require the personal attendance of the defendant at the

10 trial.

11 ~~(4)(4)~~ Time to prepare ~~pleas~~ for ~~trial~~ trial. After

12 the plea the defendant ~~shall be~~ is entitled to a reasonable

13 time to prepare for trial."

14 Section 31. Section 95-2005, R.C.M. 1947, is amended

15 to read as follows:

16 "95-2005. Formation of trial jury. (a) ~~Number of~~

17 ~~jurors. A jury in justice or police court shall consist of~~

18 ~~six (6) persons, but the parties may agree to a number less~~

19 ~~than six (6) (4) (1) formation of trial jury. The at the~~

20 ~~time of preparing the district court jury list, the county~~

21 jury commission, at the time of preparing the district court

22 jury list, shall prepare a jury list for each justice

23 justice's and police city court within the county. Each list

24 shall consist of residents of the appropriate county, city,

25 or town. ~~Each list~~ The lists shall be selected in any

1 reasonable manner which ~~shall~~ ~~ensure~~ ensures fairness, and

2 ~~it~~ each shall include a number of names sufficient to meet

3 the annual jury requirements of the respective court.

4 Additional lists may be prepared if required. The ~~list~~ lists

5 shall be filed in the office of the clerk of the district

6 court, ~~and the~~ The appropriate list shall be posted in a

7 public place in each ~~such~~ county, city, or town, and such

8 list shall comprise the trial jury list for the ensuing year

9 for such county, city, or town.

10 (2) Trial jurors shall be summoned from the jury list

11 by notifying each ~~one~~ orally that he is summoned and of the

12 time and place at which his attendance is required.

13 (3) The prosecuting attorney and the defendant or his

14 attorney shall conduct the examination of prospective

15 jurors. The court may conduct an additional examination. The

16 court may limit the examination by the defendant, his

17 attorney, or the prosecuting attorney if the court believes

18 such examination to be improper.

19 (4) Each party may challenge jurors for cause, and

20 each challenge must be tried by the court. The challenge may

21 be for any cause enumerated in ~~section~~ 95-1909~~(4)~~ ~~(2)~~ (4)(b)

22 ~~of this code~~. Each defendant shall be allowed three ~~(2)~~

23 peremptory challenges, and the state shall be allowed the

24 same number of peremptory challenges as all of the

25 defendants."

1 Section 32. Section 95-2006, R.C.M. 1947, is amended  
2 to read as follows:

3 "95-2006. Verdict. ~~(b)(1)~~ ~~Return~~ The verdict of the  
4 jury must in all cases be general. It shall be returned by  
5 the jury to the judge in open court, who must enter it or  
6 cause it to be entered in the minutes. The verdict of the  
7 jury must be unanimous.

8 ~~(b)(2) Several defendants~~ When several defendants are  
9 tried together, ~~if~~ and the jury cannot agree upon a verdict  
10 as to all, ~~they~~ the jury may render a verdict as to those in  
11 regard to whom ~~they do~~ it does agree, ~~on which a~~ A judgment  
12 must be entered accordingly on the verdict, and the case as  
13 to the rest may be tried by another jury.

14 ~~(b)(3) Poll of jury~~ When a verdict is returned, the  
15 jury shall be polled at the request of any party or upon the  
16 court's own motion. If upon the poll there is not a  
17 unanimous concurrence, the jury may be directed to retire  
18 for further deliberations or may be discharged.

19 ~~(b)(4) Discharge of jury~~ The jury cannot be  
20 discharged after the cause is submitted to them until they  
21 have agreed upon and rendered their verdict, unless for good  
22 cause the court sooner discharges them."

23 Section 33. Section 95-2007, R.C.M. 1947, is amended  
24 to read as follows:

25 "95-2007. Sentence and judgment. ~~(b)(1)~~ If a judgment

1 of acquittal is rendered, the defendant must be immediately  
2 discharged.

3 ~~(b)(2)~~ After a plea or verdict of guilty, or after a  
4 judgment against the defendant, the court must designate a  
5 time for sentencing, which must be within a reasonable time  
6 after the rendering of the verdict or judgment ~~is rendered~~.  
7 The sentence must be entered in the minutes of the court as  
8 soon as it is imposed.

9 ~~(b)(3)~~ If the defendant pleads guilty, or is convicted  
10 either by the court or by a jury, the court must impose a  
11 sentence of fine or imprisonment or both as the case may  
12 be. The court may suspend the execution of the sentence up  
13 to the maximum sentence allowed for the particular offense  
14 The court may impose any reasonable conditions or  
15 restrictions on the sentence which it deems necessary as  
16 provided in 95-2206, 95-2206.1 through 95-2206.4, and  
17 95-2207. If alcohol or other drugs are involved, the court  
18 may impose such rehabilitative measures as it deems  
19 considers advisable under the circumstances.

20 ~~(b)(4)~~ The determination and imposition of sentence  
21 shall be are the exclusive duty of the court."

22 Section 34. Section 95-2009, R.C.M. 1947, is amended  
23 to read as follows:

24 "95-2009. Appeal. ~~(b)(1)~~ All cases on appeal from  
25 justices' or ~~police~~ city courts must be tried anew in the

1 ~~criminal action, motion or proceeding, but the provisions~~  
 2 ~~of this section do not apply except in regard to the~~  
 3 ~~arrangement of the calendar, the regulation of the order of~~  
 4 ~~business, the power of transferring the criminal action or~~  
 5 ~~proceeding to some other court, nor to the power of~~  
 6 ~~calling in another justice, magistrate, or justice of the~~  
 7 ~~peace to sit and act in such the criminal action or~~  
 8 ~~proceeding, providing that no justice is magistrate or~~  
 9 ~~justice of the peace shall be so arrange the calendar as to~~  
 10 ~~defeat the purposes of this section.~~  
 11 ~~(1) Not more than one (1) justice, magistrate, or~~  
 12 ~~justice of the peace can be disqualified in the criminal~~  
 13 ~~action or proceeding, at the instance of the prosecution and~~  
 14 ~~not more than one (1) justice, magistrate or defendant~~  
 15 ~~the peace at the instance of the defendant or defendant~~  
 16 ~~(1) If either a party in any matter above mentioned~~  
 17 ~~shall file the who files a motion as herein provided such~~  
 18 ~~party judge subsection (1) may not complain of any~~  
 19 ~~reasonable delay as the result thereof.~~  
 20 ~~(5) The provision of this this section shall be in~~  
 21 ~~inapplicable to any person in any cause involving a direct~~  
 22 ~~contempt of court.~~  
 23 ~~(7)(6) In addition to the provision provisions of~~  
 24 ~~subsection (1) any subsection (1) through (5) a defendant~~  
 25 ~~may move at any time for the disqualification of a justice~~

1 district court, and may be tried before a jury of six (6)  
 2 which may be drawn from either the regular panel or jury box  
 3 who is selected as provided in Title 93, Chapter 50.  
 4 (b) (2) The defendant may appeal to the district court  
 5 by giving written notice of his intention to appeal within  
 6 ten days (10) days after judgment.  
 7 (c) (3) Within thirty (30) days, the entire record of  
 8 the justice justice's or justice city court proceedings shall  
 9 be transferred to the District court or the appeal shall be  
 10 dismissed. It shall be is the duty of the defendant to  
 11 perfect the appeal."  
 12 Section 38, Section 95-2010, R.C.M., 1987, is amended  
 13 to read as follows:  
 14 95-2010. Disqualification of justice, magistrate, or  
 15 justice of the peace. (1) The defendant or the prosecution  
 16 may move the court in writing for the disqualification of a  
 17 justice, magistrate, or justice of the peace on the ground  
 18 that he the warrant cannot have a fair and impartial hearing  
 19 or trial before the justice, magistrate or justice of the  
 20 peace. The motion shall be made at least fifteen (15) days  
 21 prior to the trial of the case, or any retrial thereof after  
 22 appeal except for good cause shown.  
 23 (2) Upon the filing of such a the motion the justice  
 24 magistrate, or justice of the peace against whom the motion  
 25 is filed shall be without authority to act further in the

1 magistrate or justice of the peace for cause supported by  
 2 affidavits. Upon the filing of such the motion the court  
 3 shall conduct a hearing and determine the merits of the  
 4 motion.

5 Section 35, Section 95-2101, R.C.M. 1947, is amended  
 6 to read as follows:

7 "95-2101. New trial. (a) [1] Definition and effect. A  
 8 new trial is a re-examination reexamination of the issue in  
 9 the same court, before another jury, after a verdict or  
 10 finding has been rendered, and the granting of a new  
 11 trial places the parties in the same position as if there  
 12 had been no trial.

13 (b) [2] Motion for a new trial. (a) Following a  
 14 verdict or finding of guilty, the court may grant the  
 15 defendant a new trial if required in the interest of  
 16 justice.

17 (b) [b] The motion for a new trial shall be in writing  
 18 and shall specify the grounds therefor. It shall be filed by  
 19 the defendant within thirty (30) days following a verdict or  
 20 finding of guilty. Reasonable notice of the motion shall be  
 21 served upon the state.

22 (c) The motion for a new trial shall specify the  
 23 grounds therefor.

24 (c) Alternative authority of the Court on hearing  
 25 motion for new trial. On hearing the motion for a new trial,

1 if justified by law and the weight of the evidence, the  
 2 court may:

3 1. (d) deny the motion;   
 4 2. (ii) grant a new trial; or

5 3. (iii) modify or change the verdict or finding  
 6 by finding the defendant guilty of a lesser degree of the  
 7 crime charged, finding the defendant guilty of a lesser  
 8 included crime or finding the defendant not guilty."

9 Section 40, Section 95-2202, R.C.M. 1947, is amended  
 10 to read as follows:

11 "95-2202. Sentence and rendering judgment and  
 12 ~~reversing sentence.~~ (a) [1] The judgment shall be rendered  
 13 in open court.

14 (b) [2] If the verdict or finding is not guilty  
 15 judgment shall be rendered immediately and the defendant  
 16 shall be discharged from custody or from the obligation of  
 17 his bail bond ~~except as provided in 95-1016.~~

18 (c) [3] If the verdict or finding is guilty sentence  
 19 shall be pronounced and judgment rendered within a  
 20 reasonable time.

21 Section 36, Section 95-2206, R.C.M. 1947, is amended  
 22 to read as follows:

23 "95-2206. Sentence. [1] Whenever any a person has been  
 24 found guilty of a crime or an offense upon a verdict or a  
 25 plea of guilty, the court may:



1        ~~(t)(v)~~ any other reasonable conditions deemed  
2        considered necessary for rehabilitation or for the  
3        protection of society;  
4        ~~(t)(vi)~~ any combination of the above-  
5        ~~if any restrictions or conditions are violated, any~~  
6        ~~elapsed time, except jail time, shall not be a credit~~  
7        ~~against the sentence, unless the court shall otherwise~~  
8        order;  
9        ~~(t)(c)~~ impose a fine as provided by law for the  
10       offense-  
11       ~~(t)(d)~~ commit the defendant to a correctional  
12       institution with or without a fine as provided by law for  
13       the offense-  
14       ~~(t)(e)~~ impose any combination of subsections  
15       ~~(t)(1)(b), (t)(1)(c), or (t)(1)(d) above.~~  
16       ~~(2) If any restrictions or conditions imposed under~~  
17       ~~subsection (1)(a) or (1)(b) are violated, any elapsed time,~~  
18       ~~except jail time, shall not be a credit against the~~  
19       ~~sentence, unless the court orders otherwise.~~  
20       ~~(t)(3)(a)~~ The district court may also impose any of  
21       the following restrictions or conditions on the above  
22       sentence provided for in subsection (1) which it deems  
23       considers necessary to obtain the objective objectives of  
24       rehabilitation and the protection of society:  
25       ~~(t)(i)~~ prohibit the defendant the right to hold public

1        ~~(t)(a)~~ defer imposition of sentence for a period  
2        not to exceed one exceeding (1) year for any misdemeanor or  
3        for a period not to exceed three exceeding (3) years for any  
4        felony. The sentencing judge may impose upon the defendant  
5        any reasonable restrictions or conditions during the period  
6        of the deferred imposition. Such reasonable restrictions or  
7        conditions may include:  
8        ~~(t)(i)~~ jail base release;  
9        ~~(t)(ii)~~ jail time not to exceed ninety exceeding (90)  
10       days;  
11       ~~(t)(iii)~~ conditions for probation;  
12       ~~(t)(iv)~~ restitution;  
13       ~~(t)(v)~~ any other reasonable conditions deemed  
14       considered necessary for rehabilitation or for the  
15       protection of society; or  
16       ~~(t)(vi)~~ any combination of the above-  
17       ~~(t)(b)~~ suspend execution of sentence up to the  
18       maximum sentence allowed for the particular offense. The  
19       sentencing judge may impose on the defendant any reasonable  
20       restrictions during the period of suspended sentence. Such  
21       reasonable restrictions may include:  
22       ~~(t)(i)~~ jail base release;  
23       ~~(t)(ii)~~ jail time not to exceed exceeding (90) days;  
24       ~~(t)(iii)~~ conditions for probation;  
25       ~~(t)(iv)~~ restitution;

1 office;  
 2 ~~(b)(iii)~~ prohibit the defendant the right to own or  
 3 carry a dangerous weapon;  
 4 ~~(c)(iii)~~ prohibit freedom of association;  
 5 ~~(d)(iv)~~ prohibit freedom of movement;  
 6 ~~(e)(v)~~ any other limitation reasonably related to the  
 7 objectives of rehabilitation ~~or~~ and the protection of  
 8 society.

9 ~~(7)(b)~~ The judge in ~~the~~ justice's city or  
 10 municipal court shall ~~does~~ not have the authority to  
 11 restrict an individual's rights as enumerated in subsection  
 12 ~~(6)~~ (3)(a).

13 ~~(4)~~ Any A judge, magistrate or justice of the peace  
 14 who has suspended the execution of a sentence or deferred  
 15 the imposition of a sentence of imprisonment under this  
 16 section or his successor is authorized ~~thereafter~~ in his  
 17 discretion, during the period of ~~such~~ the suspended sentence  
 18 or deferred imposition of sentence, in his discretion, to  
 19 revoke ~~such~~ the suspension or impose sentence and order ~~such~~  
 20 the person committed, ~~or he~~ may also, in his discretion,  
 21 order the prisoner placed under the jurisdiction of the  
 22 ~~state~~ board of pardons as provided by law or retain such  
 23 jurisdiction with ~~the~~ his court. Prior to the revocation of  
 24 an order suspending or deferring the imposition of sentence,  
 25 the person affected shall be given a hearing."

1 Section 37. Section 95-2206.1, R.C.M. 1947, is amended  
 2 to read as follows:  
 3 "95-2206.1. Sentence to death. ~~When~~ whenever a person  
 4 is convicted of an ~~has been found guilty of an offense upon~~  
 5 a verdict or plea of guilty, the court may, if the offense  
 6 is punishable by death or imprisonment, ~~the court may~~  
 7 sentence the offender to death or imprisonment."  
 8 Section 38. Section 95-2206.5, R.C.M. 1947, is amended  
 9 to read as follows:

10 "95-2206.5. Judicial designation Designation of  
 11 persistent felony offenders offender for purposes of parole  
 12 eligibility. (1) ~~When an offender has been previously~~  
 13 convicted of a felony and the present offense is a second  
 14 felony committed on a different occasion than the first, the  
 15 sentencing court shall designate the an offender a  
 16 persistent felony offender for purposes of eligibility for  
 17 parole under ~~section~~ 95-3214, provided if the offender:

- 18 (a) the previous felony conviction was for an offense
- 19 committed in this state or any other jurisdiction for which
- 20 a sentence to a term of imprisonment in excess of ~~one~~ (1)
- 21 year ~~could have been imposed and is defined as a persistent~~
- 22 felony offender in 95-1507(1); and
- 23 (b) ~~less than five~~ (5) years have elapsed between the
- 24 commission of the present offense and either
- 25 (i) the previous felony conviction or

1 the minutes of the arraignment, pleas, and motions;  
 2 (2) a copy of the minutes of the trial;  
 3 (3) the instructions given or refused and the  
 4 endorsements thereon;  
 5 (4) a copy of the judgment.  
 6 Section 39, Section 95-2224, R.C.N. 1947, is amended  
 7 to read as follows:  
 8 "95-2224. Prisoner not agent, or penalty for assisting  
 9 prisoner as PRISONER NOT AGENT OR involuntary servant. No  
 10 prisoner in the community under the provisions of this act  
 11 shall be deemed to be an agent or involuntary servant of  
 12 the department or of the supervising agency while released  
 13 from confinement pursuant to the terms of the furlough  
 14 program. Abuse of this section shall be deemed official  
 15 misconduct pursuant to 94-7-401, R.C.N. 1947, in officer or  
 16 employee of the department or of the supervising agency who  
 17 treats a prisoner participating in the furlough program as  
 18 an involuntary servant is guilty of official misconduct and  
 19 is punishable as provided in 94-7-401. NO PRISONER IN THE  
 20 COMMUNITY UNDER THE PROVISIONS OF THIS ACT MAY BE CONSIDERED  
 21 TO BE AN AGENT OR INVOLUNTARY SERVANT OF THE DEPARTMENT OR  
 22 OF THE SUPERVISING AGENCY WHILE RELEASED FROM CONFINEMENT  
 23 PURSUANT TO THE TERMS OF THE FURLOUGH PROGRAM. ABUSE OF  
 24 AUTHORITY OVER A PRISONER IS OFFICIAL MISCONDUCT PUNISHABLE  
 25 AS PROVIDED IN 94-7-401."

1 (ii) the offender's release on parole or otherwise from  
 2 prison or other commitment imposed as a result of the  
 3 previous felony conviction; and  
 4 (e) (b) the offender was more than eighteen (18) years  
 5 of age or older at the time of the commission of the present  
 6 offense.  
 7 (2) A previous felony conviction shall not be  
 8 considered for the purposes of this section if the offender  
 9 has been pardoned on the grounds of innocence or if the  
 10 conviction had been set aside in any post-conviction  
 11 hearing.  
 12 (3) (2) A judicial determination of that an offender is  
 13 a persistent felony offender under this section may be made  
 14 only when the conviction for the present offense occurs  
 15 after July 1, 1975."  
 16 Section 44, Section 95-2209, R.C.N. 1947, is amended  
 17 to read as follows:  
 18 "95-2209. Entry of judgment and judgment roll. When  
 19 judgment upon a conviction is rendered, the clerk must enter  
 20 the same in the minutes, stating briefly the offense for  
 21 which the conviction was had and the fact of prior  
 22 convictions (if any) and he must, within five (5) days  
 23 annex together and file the following papers, which will  
 24 constitute the judgment roll:  
 25 (1) The indictment or information and a copy of

1 Section 40. Section 95-2229, R.C.M. 1947, is amended  
2 to read as follows:

3 "95-2229. Traffic Disposition of traffic fines  
4 collected from juvenile offenders deposited in juveniles.  
5 All fines collected by the district courts from children  
6 under eighteen (18) years of age for unlawful operation of  
7 motor vehicles resulting from as the result of traffic  
8 summonses issued by the peace officers of the cities or  
9 counties or by highway patrolmen, together with that  
10 portion of the fines which is specified in section 75-7903,  
11 shall be retained by the county treasurer of the county in  
12 which the offense occurred and at the end of each month  
13 distributed as follows:

14 (a) Fines collected as the result of  
15 summonses issued by city peace officers shall be  
16 distributed to the city in which the peace officer is  
17 employed and credited to the city general fund.

18 (b) Fines collected as the result of  
19 summonses issued by county peace officers shall be retained  
20 by the county treasurer and credited to the county road  
21 fund.

22 (c) Fines collected as the result of  
23 summonses issued by state highway patrolmen shall be paid to  
24 the state treasurer of Montana, and by him credited who  
25 shall credit them to the general fund of the state.

1 (d) That portion of the fines as provided for  
2 which is specified in section 75-7903, shall be paid to the  
3 state treasurer of Montana, and by him credited who shall  
4 credit it to the automobile driver education account in the  
5 earmarked revenue fund."

6 Section 41, Section 95-2403, R.C.M. 1947, is amended  
7 to read as follows:

8 "95-2403. Scope of appeal by state. (a) Except as  
9 OTHERWISE SPECIFICALLY authorized by this code title, the  
10 state may not appeal in a criminal case.

11 (b) The state may appeal from any court order or  
12 judgment the substantive effect of which results in:

13 (1) dismissing a case;

14 (2) modifying or changing the verdict as provided  
15 in section 95-2101 (a) (3) (2) (C) (III);

16 (3) granting a new trial;

17 (4) quashing an arrest or search warrant;

18 (5) suppressing evidence;

19 (6) suppressing a confession or admission; or

20 (7) granting or denying change of venue."

21 Section 42, Section 95-2426, R.C.M. 1947, is amended  
22 to read as follows:

23 "95-2426. Determination of appeal. ACTION REVIEWING  
24 court may take. On appeal the reviewing court may:

25 (1) Reverse, affirm, or modify the judgment or

1 order from which the appeal is taken;

2 (2) ~~set~~ set aside, affirm, or modify any or all of the  
3 proceedings subsequent to or dependent upon the judgment or  
4 order from which the appeal is taken;

5 (3) ~~reduce the degree of~~ reduce the offense of which  
6 the appellant was convicted to a lesser included offense;

7 (4) ~~reduce~~ reduce the punishment imposed by the trial  
8 court; or

9 (5) ~~order~~ order a new trial if justice so requires."

10 Section 43. Section 95-2601, R.C.M. 1947, is amended  
11 to read as follows:

12 "95-2601. ~~Petitioner in the trial court~~ Circumstances in  
13 which validity of sentence may be challenged. ~~Any~~ A person  
14 adjudged guilty of an offense in a court of record who has  
15 no adequate remedy of appeal and who claims that sentence  
16 was imposed in violation of the constitution or the laws of  
17 this state or the ~~Constitution~~ Constitution of the United  
18 States, ~~if~~ that the court was without jurisdiction to impose  
19 ~~such~~ the sentence, or that the sentence was in excess of the  
20 maximum authorized by law or is otherwise subject to  
21 collateral attack upon any ground of alleged error  
22 available under a writ of habeas corpus, writ of coram  
23 nobis, or other ~~common law~~ common law or statutory remedy  
24 ~~may~~ may ~~move~~ petition the court which imposed the sentence, ~~or~~  
25 the supreme court, or any justice of the supreme court to

1 vacate, set aside, or correct the sentence."

2 Section 44. Section 95-2604, R.C.M. 1947, is amended  
3 to read as follows:

4 "95-2604. When ~~set~~ petition may be ~~made~~ filed. A  
5 ~~set~~ petition for such relief may be ~~made~~ filed at any  
6 time after conviction."

7 Section 45. Section 95-2605, R.C.M. 1947, is amended  
8 to read as follows:

9 "95-2605. Proceedings on the petition. (1) Unless the  
10 ~~set~~ petition and the files and records of the case  
11 conclusively show that the ~~petitioner~~ petitioner is entitled  
12 to no relief, the court shall cause notice thereof to be  
13 served upon the county attorney in the county in which the  
14 conviction took place, grant a prompt hearing thereon,  
15 determine the issue, and make findings of fact and  
16 conclusions with respect thereto.

17 (2) The court may receive proof by affidavits,  
18 depositions, oral testimony, or other evidence. In its  
19 discretion the court may order the petitioner brought before  
20 the court for the hearing.

21 (3) If the court finds in favor of the petitioner, it  
22 shall enter an appropriate order with respect to the  
23 judgment or sentence in the former proceedings and such  
24 supplementary orders as to reassignment, retrial, custody,  
25 bail, or discharge as may be necessary and proper. If the

1 court finds for the state, the petitioner shall be returned  
 2 to the custody of the person to whom the writ was directed."  
 3 Section 46. Section 95-2606, R.C.M. 1947, is amended  
 4 to read as follows:  
 5 "95-2606. Record must be kept. A court which  
 6 entertains a ~~motion~~ petition pursuant to this chapter must  
 7 keep a record of the proceedings and enter its findings and  
 8 conclusions."

9 Section 47. Section 95-2608, R.C.M. 1947, is amended  
 10 to read as follows:

11 "95-2608. Review. Either the petitioner or the state  
 12 may appeal to the supreme court of Montana from an order  
 13 entered on the ~~motion~~ petition. The appeal ~~shall~~ must be  
 14 taken within ~~six~~ (6) months from the entry of the order."

15 Section 48. Section 95-2902, R.C.M. 1947, is amended  
 16 to read as follows:

17 "95-2902. Reasonable doubt as to degree which offense  
 18 convicts only of ~~lowest~~ least offense. When it appears  
 19 beyond a reasonable doubt that the defendant has committed a  
 20 ~~crime~~ crime an offense, and but there is reasonable ground of  
 21 doubt in which of two or more degrees as to whether he is  
 22 guilty of a given offense or one or more lesser included  
 23 offenses, he ~~can~~ may only be convicted of the ~~lowest~~ least of such  
 24 ~~degrees~~ degrees only ~~greatest~~ greatest included offense about which there is  
 25 no reasonable doubt."

1 Section 49. Section 95-3004, R.C.M. 1947, is amended  
 2 to read as follows:

3 "95-3004. ~~The burden~~ Burden of the state in a homicide  
 4 trial. ~~(1)~~ In a homicide trial, before an extrajudicial  
 5 confession may be admitted into evidence, the state must  
 6 introduce independent evidence tending to establish the  
 7 death, and the fact that the death was caused by a criminal  
 8 agency.

9 ~~(1)~~ (2) In a deliberate homicide, knowledge or purpose  
 10 may be inferred from the fact that the accused committed a  
 11 homicide and no circumstances ~~of~~ of mitigation, excuse, or  
 12 justification appear."

13 Section 50. Section 95-3011, R.C.M. 1947, is amended  
 14 to read as follows:

15 "95-3011. Competency of ~~husband and wife as witnesses~~  
 16 spouses. Except with the consent of both or in cases of  
 17 criminal violence ~~upon one~~ by one upon the other, ~~or in cases~~  
 18 ~~of~~ abandonment or neglect of children by either party, or  
 19 ~~of~~ abandonment or neglect of ~~the wife~~ one by the ~~husband~~  
 20 other, neither ~~husband~~ husband ~~or wife~~ spouse is a competent  
 21 witness for or against the other in a criminal action or  
 22 proceeding to which one or both are parties."

23 Section 51. Section 95-3012, R.C.M. 1947, is amended  
 24 to read as follows:

25 "95-3012. Testimony of person legally accountable.

1 conviction cannot be had on the testimony of one responsible  
 2 or legally accountable for the same offense, as defined in  
 3 section 94-2-106, unless ~~be~~ the testimony is corroborated by  
 4 other evidence, which in itself, and without the aid of the  
 5 testimony of the one responsible or legally accountable for  
 6 the same offense, tends to connect the defendant with the  
 7 commission of the offense, ~~and the~~ the corroboration is not  
 8 sufficient, if it merely shows the commission of the  
 9 offense or the circumstances thereof."

10 Section 52. Section 95-3110, R.C.M. 1947, is amended  
 11 to read as follows:

12 "95-3110. Rights of accused persons — ~~applicable for~~  
 13 ~~with~~ ~~of~~ habeas corpus. (1) No person arrested upon such  
 14 warrant ~~shall~~ may be delivered over to the agent whom the  
 15 executive authority demanding him ~~shall have~~ has appointed  
 16 to receive him unless he ~~shall be~~ is first taken ~~for~~  
 17 ~~without~~ delay before a judge of a court of record in this  
 18 state, who shall inform him of the demand made for his  
 19 surrender and of the crime with which he is charged, and  
 20 ~~that~~ that he has the right to demand and procure legal  
 21 counsel."

22 (2) ~~and~~ if the prisoner or his counsel ~~shall state~~  
 23 states that he or they desire to test the legality of his  
 24 arrest, the judge of ~~such~~ the court of record shall fix a  
 25 reasonable time to be allowed him within which to apply for

1 a writ of habeas corpus. When ~~such~~ the writ is applied for,  
 2 notice thereof, and of the time and place of hearing  
 3 thereon, shall be given to the prosecuting officer of the  
 4 county in which the arrest ~~is~~ was made and in which the  
 5 accused is in custody, and to the ~~said~~ agent of the  
 6 demanding state."

7 Section 53. Section 95-3113, R.C.M. 1947, is amended  
 8 to read as follows:

9 "95-3113. Arrest of accused before making of  
 10 requisition. (1) A judge or magistrate of this state shall  
 11 issue a warrant directed to any peace officer commanding the  
 12 officer to apprehend the person named therein wherever the  
 13 person may be found in this state and to bring the person  
 14 before the same or any other judge, magistrate, or court who  
 15 or which may be available in or convenient of access to the  
 16 place where the arrest is made to answer the charge or  
 17 complaint and affidavit whenever: ~~however~~

18 (a) ~~any~~ a person within this state ~~shall be~~ is charged  
 19 on the oath of ~~any~~ a credible person before ~~any~~ the judge or  
 20 magistrate ~~of this state~~ with the commission of ~~any~~ a crime  
 21 in ~~any other~~ another state, and, except in cases arising  
 22 under section 95-3106, with having fled from justice or  
 23 with having been convicted of a crime in that state and  
 24 having escaped from confinement, or having broken the terms  
 25 of his bail, probation, or parole, or

1 (b) whenever a complaint shall have been is made  
 2 before any the judge or magistrate in this state setting  
 3 forth on the affidavit of any a credible person in another  
 4 state that a crime has been committed in each the other  
 5 state and that the accused is believed to be in this state  
 6 and has been charged in each the other state with:  
 7 (i) the commission of the crime and, except in cases  
 8 arising under section 95-3106, has having filed from  
 9 justice; or  
 10 (ii) with having been convicted of a crime in that  
 11 state and having escaped from bail, probation, or parole,  
 12 and is believed to be in this state, the judge or magistrate  
 13 shall issue a warrant directed to any peace officer  
 14 commanding him to apprehend the person named therein  
 15 wherever he may be found in this state and to bring him  
 16 before the same or any other judge, magistrate or court the  
 17 or which may be available in or convenient of access to the  
 18 place where the arrest may be made, to answer charge or  
 19 complaint and affidavit and a

20 (2) A certified copy of the sworn charge or complaint  
 21 or and affidavit upon which the warrant is issued shall be  
 22 attached to the warrant."

23 Section 54. Section 95-3117, R.C.N. 1947, is amended  
 24 to read as follows:

25 "95-3117. Extension of time of commitment adjournment.

1 If the accused is not arrested under the warrant of the  
 2 governor by the expiration of the time specified in the  
 3 warrant, bond, or undertaking, a judge or magistrate may  
 4 discharge him or may recommit him for a further period of  
 5 sixty (60) days or a supreme court justice or court  
 6 district court judge may again take bail for his appearance  
 7 and surrender, as provided in section 95-3116, but with for  
 8 a period not to exceed sixty (60) days after the date of  
 9 such the new bond or undertaking."

10 Section 55. Section 95-3120, R.C.N. 1947, is amended  
 11 to read as follows:

12 "95-3120. Guilt or innocence of accused, when inquired  
 13 into. The guilt or innocence of the accused as to the crime  
 14 of which he is charged may not be inquired into by the  
 15 governor or in any proceeding after the demand for  
 16 extradition accompanied by a charge of crime in legal form  
 17 as above provided for in 95-3103 shall have has been  
 18 presented to the governor, except as it may be involved in  
 19 identifying the person held as the person charged with the  
 20 crime."

21 Section 56. Section 95-3123, R.C.N. 1947, is amended  
 22 to read as follows:

23 "95-3123. Application for issuance of requisition--by  
 24 when made--sentence. (1) When the return to this state of  
 25 a person charged with a crime in this state is required, the



1 prosecuting attorney shall present to the governor his  
 2 written application for a requisition for the return of the  
 3 person charged, ~~in which the application shall state the~~  
 4 name of the person so charged, the crime charged against  
 5 him, the approximate time, place, and circumstances of its  
 6 commission, and the state in which he is believed to be,  
 7 including the location of the accused therein at the time  
 8 the application is made, and certifying it shall certify  
 9 that, in the opinion of the said prosecuting attorney the  
 10 ends of justice require the arrest and return of the accused  
 11 to this state for trial and that the proceeding is not being  
 12 instituted to enforce a private claim.

13 ~~It~~(2) When the return to this state is required of a  
 14 person who has been convicted of a crime in this state and  
 15 has escaped from confinement or broken the terms of his  
 16 bail, probation, or parole, the prosecuting attorney of the  
 17 county in which the offense was committed, the parole board,  
 18 or the warden of the institution or sheriff of the county  
 19 from which the escape was made, shall present to the  
 20 governor a written application for a requisition for the  
 21 return of ~~such~~ the person, in which the application shall  
 22 be stated state the name of the person, the crime of which  
 23 he was convicted, the circumstances of his escape from  
 24 confinement or of the breach of the terms of his bail,  
 25 probation, or parole, and the state in which he is believed

1 to be, including the location of the person therein at the  
 2 time the application is made.  
 3 ~~It~~(3) The application shall be verified by  
 4 affidavit, ~~shall be~~ executed in duplicate, and ~~shall be~~  
 5 accompanied by two certified copies of the:  
 6 (a) indictment returned; ~~or~~  
 7 (b) information and affidavit filed; ~~or of the~~  
 8 (c) complaint made to the judge or magistrate, stating  
 9 the offense with which the accused is charged; ~~or of the~~  
 10 (d) judgment of conviction; or  
 11 (e) ~~of the~~ sentence.  
 12 (4) The prosecuting officer, parole board, warden, or  
 13 sheriff may also attach such further affidavits and other  
 14 documents in duplicate as he ~~shall deem~~ considers proper to  
 15 be submitted with ~~such~~ the application.  
 16 (5) One copy of the application, with the action of  
 17 the government indicated by endorsement thereon, and one of  
 18 the certified copies of the indictment, complaint,  
 19 information, and affidavits, ~~or of the~~ judgment of  
 20 conviction, or ~~of the~~ sentence shall be filed in the office  
 21 of the secretary of state to remain of record in that  
 22 office. The other copies of all papers shall be forwarded  
 23 with the governor's requisition."  
 24 Section 57. Section 95-3125, R.C.M. 1947, is amended  
 25 to read as follows:

1 "95-3125. ~~No fee to be paid to public officer~~  
 2 ~~proceeding--surrender~~ Restrictions on compensation for  
 3 assisting return of fugitive. No compensation, fee, or  
 4 reward of any kind ~~can~~ may be paid to or received by a  
 5 public officer of this state or other person, for a service  
 6 rendered in procuring from the governor the demand mentioned  
 7 in ~~section~~ 95-3124, ~~or~~ for the surrender of the fugitive, or  
 8 for conveying him to this state, or detaining him therein,  
 9 except as provided ~~for~~ in ~~such section~~ 95-3124 and 95-3124.1  
 10 95-3124 AND 95-3124.1."

11 Section 58. Section 95-3129, R.C.M. 1947, is amended  
 12 to read as follows:

13 "95-3129. Nonwaiver by this state. Nothing contained  
 14 in this act ~~contained--shall~~ may be ~~deemed to constitute~~  
 15 considered a waiver by this state of its right, power, or  
 16 privilege to try ~~such~~ the demanded person ~~for~~ for a crime  
 17 committed within this state or of its right, power, or  
 18 privilege to regain custody of ~~such~~ the person by  
 19 extradition proceedings or otherwise for the purpose of  
 20 trial, a sentence, or punishment for ~~any~~ a crime committed  
 21 within this state, nor ~~shall~~ may any proceedings had under  
 22 this act which result in, or fail to result in, extradition  
 23 be ~~deemed considered in any way~~ a waiver by this state of  
 24 any of its rights, privileges, or jurisdiction ~~in any way~~  
 25 ~~whatsoever.~~"

1 Section 59. Section 95-3206, R.C.M. 1947, is amended  
 2 to read as follows:

3 "95-3206. Orders, records, report ~~of~~ reviewability,  
 4 confidentiality. (1) Decisions of the board shall be by  
 5 majority vote. The orders of the board are not reviewable  
 6 except as to compliance ~~of~~ with the terms of this act.

7 (2) The department ~~of institutions~~ shall keep a record  
 8 of the board's acts and decisions available to the public.  
 9 However, all social records, including the ~~pre-sentence~~  
 10 presentence report, the ~~pre-parole discharge~~ report, and the  
 11 supervision history obtained in the discharge of official  
 12 duty by the department, shall be confidential and shall not  
 13 be disclosed directly or indirectly to anyone other than the  
 14 members of the board or a judge. The board or a court may in  
 15 its discretion, when the best ~~interest~~ interests or welfare  
 16 of a particular defendant or prisoner makes such action  
 17 desirable or helpful, permit the inspection of the report or  
 18 any parts thereof by the prisoner or his attorney."

19 Section 60. Section 95-3214, R.C.M. 1947, is amended  
 20 to read as follows:

21 "95-3214. Parole authority and procedure. (1) ~~The~~  
 22 subject to the following restrictions, the board shall  
 23 release on parole, by appropriate order, any person confined  
 24 in the Montana state prison, except persons under sentence  
 25 of death, when in its opinion there is reasonable

1 probability that the prisoner can be released without  
2 detriment to himself or to the community, provided:

3 (a) ~~that no~~ no convict serving a time sentence shall  
4 may be paroled until he has served at least one-quarter  
5 ~~(1/4)~~ of his full term, less the good time allowance ~~off~~  
6 as allowance provided for in section 80-1905, or 12 1/2  
7 years upon his term, whichever is less, except that no ~~no~~  
8 convict designated a persistent felony offender under  
9 section 95-2206.5 may be paroled until he has served at  
10 least one-third ~~(1/3)~~ of his full term, less the good time  
11 allowance ~~off~~, as allowance provided for in section  
12 80-1905, or 17 1/2 years upon his term, whichever is less. A  
13 first offender serving a time sentence may be paroled after  
14 he has served, upon his term of sentence, twelve and  
15 one-half (12 1/2) years, a persistent felony offender as  
16 defined in section 95-2206.5 may be paroled after he has  
17 served, upon his term of sentence, seventeen and one-half  
18 (17 1/2) years.

19 (b) No convict serving a life sentence shall may be  
20 paroled until he has served ~~thirty~~ (30) years, less the good  
21 time allowance ~~off~~, as allowance provided for in section  
22 80-1905.

23 (2) A parole shall be ordered only for the best  
24 interests of society and not as an award of clemency or a  
25 reduction of sentence or pardon. A prisoner shall be placed

1 on parole only when the board believes that he is able and  
2 willing to fulfill the obligations of a law-abiding citizen.  
3 ~~(2)(3)~~ (a) Within two (2) months after his admission  
4 and at such intervals thereafter as it determines, the board  
5 shall consider all pertinent information regarding each  
6 prisoner, including the circumstances of his offense, his  
7 previous social history and criminal record, his conduct,  
8 employment, and attitude in prison, and the reports of ~~and~~  
9 any physical and mental examinations which have been made.

10 ~~(3)(b)~~ Before ordering the parole of any prisoner the  
11 board shall interview him. ~~A parole shall be ordered only~~  
12 ~~for the best interest of society, not as an award of~~  
13 ~~clemency or a reduction of sentence or pardon. A prisoner~~  
14 ~~shall be placed on parole only when the board believes that~~  
15 ~~he is able and willing to fulfill the obligations of a~~  
16 ~~law-abiding citizen.~~

17 (4) (a) Every prisoner while on parole shall remain in  
18 the legal custody of the institution from which he was  
19 released, but shall be subject to the orders of the board.

20 (b) When an order for parole is issued, it shall  
21 recite the conditions thereof.

22 ~~(4)(5)~~ The board may adopt any other rules it  
23 considers proper or necessary, with respect to the  
24 eligibility of prisoners for parole, ~~and~~ the conduct of  
25 parole hearings, ~~and~~ conditions to be imposed upon

1 parolees. ~~When an order for parole is issued it shall recite~~  
2 ~~the conditions thereof.~~

3 Section 61. Section 95-3215, R.C.M. 1947, is amended  
4 to read as follows:

5 "95-3215. ~~Conditional release~~ Duration of Parole. A  
6 prisoner on parole who has served one-fourth ~~(1/4)~~ of his  
7 term or terms, less the good time ~~allowances~~ allowance, or a  
8 persistent felony offender ~~on parole~~ who has served  
9 one-third ~~(1/3)~~ of his term or terms, less the good time  
10 ~~allowances~~ allowance, is considered released on parole until  
11 the expiration of the maximum term or terms for which he was  
12 sentenced, less the good time ~~allowances~~ allowance  
13 provided ~~for in section 80-1905.~~

14 Section 62. Section 95-3306, R.C.M. 1947, is amended  
15 to read as follows:

16 "95-3306. Supervision on parole. (1) The department  
17 shall retain custody of all persons placed on parole and  
18 shall supervise the persons during their parole period in  
19 accord with the conditions set by the board.

20 (2) The department shall assign personnel to assist  
21 persons eligible for parole in preparing a parole plan.  
22 Department personnel shall make a report of their efforts  
23 and findings to the board prior to its consideration of the  
24 case of the eligible person.

25 (3) A copy of the conditions of his parole shall be

1 signed by the parolee and given to him and to his probation  
2 and parole officer, who shall report on his progress under  
3 the rules of the board.

4 (4) The probation and parole officer shall regularly  
5 advise and consult with the parolee, assist him in adjusting  
6 to community life, and inform him of the restoration of his  
7 rights on successful completion of sentence.

8 (5) The probation and parole officer shall keep such  
9 records as the board or department may require. All records  
10 shall be entered in the master file of the individual."

11 Section 63. Section 95-3308, R.C.M. 1947, is amended  
12 to read as follows:

13 "95-3308. Return of parole violator. (1) ~~At any~~  
14 ~~time during release on parole or conditional release,~~ the  
15 department may issue a warrant for the arrest of the  
16 released prisoner for ~~violations~~ violation of any of the  
17 conditions of release, or a notice to appear to answer to a  
18 charge of violation. ~~Such~~ The notice shall be served  
19 personally upon the prisoner. The warrant shall authorize  
20 all officers named therein to return ~~such~~ the prisoner to  
21 the actual custody of the penal institution from which he  
22 was released, or to any other suitable detention facility  
23 designated by the department.

24 ~~(b) Any~~ (b) Any probation and parole officer may arrest ~~such~~  
25 ~~the~~ prisoner without a warrant, or may deputize any other

1 officer with power to arrest to do so by giving him a  
 2 written statement setting forth that the prisoner has, in  
 3 the judgment of said the probation and parole officer,  
 4 violated the conditions of his release. ~~such~~ The written  
 5 statement delivered with the prisoner by the arresting  
 6 officer to the official in charge of the institution from  
 7 which the prisoner was released or other place of detention  
 8 shall be sufficient warrant for the detention of the parolee  
 9 or conditional releasee. The probation and parole officer,  
 10 after making an arrest, shall present to the detaining  
 11 authorities a similar statement of the circumstances of  
 12 violation.

13 (c) Pending hearing, as ~~hereinafter~~ provided in  
 14 ~~SUBSECTIONS (2) and (3)~~, upon any charge of violation, the  
 15 prisoner may, if circumstances warrant, be incarcerated in  
 16 ~~such~~ the institution.

17 (2) (a) After the arrest of said the prisoner, a  
 18 hearing shall be held within a reasonable time, unless ~~such~~  
 19 the hearing is waived by the parolee, to determine whether  
 20 there is probable cause or reasonable grounds to believe  
 21 that the arrested parolee has committed acts which would  
 22 constitute a violation of parole conditions. An independent  
 23 officer, who need not be a judicial officer, must preside  
 24 over ~~this~~ the hearing. ~~This~~ The hearing must be conducted  
 25 at or reasonably near the place of the alleged parole

1 violation or arrest and as promptly as convenient after  
 2 arrest. The parolee must be given notice of ~~this~~ the  
 3 hearing and must be allowed to appear and speak in his own  
 4 behalf and introduce relevant information to the hearings  
 5 officer.

6 (3) (b) The hearings officer shall make a summary of  
 7 what transpires at the hearing in terms of the responses and  
 8 ~~POSITION~~ of the parolee and the substance of the documents  
 9 or evidence given in support of parole revocation ~~and of the~~  
 10 ~~parolee's position~~. Based on the information given to him,  
 11 the hearings officer ~~may~~ shall determine whether there is  
 12 probable cause to hold the parolee for the final decision of  
 13 the board of pardons as ~~specified~~ provided in ~~section~~  
 14 ~~95-2247 subsection (3)~~.

15 (3) (a) If the hearings officer determines that there  
 16 is probable cause to believe that the prisoner has violated  
 17 a condition of his parole, the probation and parole officer  
 18 shall immediately notify the board and shall submit in  
 19 writing a report showing in what manner the prisoner has  
 20 violated the conditions of release, ~~and this~~ This report  
 21 shall be accompanied by the findings of the hearings  
 22 officer.

23 (b) Thereupon, the board shall cause the prisoner to  
 24 be promptly brought before it for a hearing on the violation  
 25 charged, under such rules ~~and regulations~~ as the board may

1 adopt. If the violation is established, the board may  
2 continue or revoke the parole or conditional release, or  
3 enter such other order as it may see fit.

4 ~~(4) (C) A prisoner for whose return a warrant has been~~  
5 ~~issued shall, after the issuance of such warrant, if it is~~  
6 ~~found that the warrant cannot be served, be deemed a~~  
7 ~~fugitive or to have fled from justice. If it shall appear~~  
8 ~~appears that he has violated the provisions of his release,~~  
9 ~~the board shall determine whether the time from the issuing~~  
10 ~~of such the warrant to the date of his arrest, or any part~~  
11 ~~of it, shall will be counted as time served under the~~  
12 ~~sentence, shall be determined by the board.~~

13 ~~(4) A prisoner for whose return a warrant has been~~  
14 ~~issued shall, after the issuance of the warrant, if it is~~  
15 ~~found that the warrant cannot be served, be considered a~~  
16 ~~fugitive or to have fled from justice."~~

17 Section 64. Repealer. Sections 16-2615, 16-3403,  
18 95-103 through 95-108, 95-2211, and 95-3233, R.C.M. 1947,  
19 are repealed.

-End-