

MONTANA JUDGES' BENCHBOOK

MUNICIPAL, JUSTICE, AND CITY COURTS



This BENCHBOOK is the property of the STATE OF MONTANA.

The BENCHBOOK is designed for the official use of those assisting in the administration of justice in courts of limited jurisdiction and for municipal, justice, and city court judges.

This BENCHBOOK must be delivered to the successor in office whenever the tenure of any judge is terminated. It is the recommendation of the Commission on Courts of Limited Jurisdiction that this manual be utilized by all courts of limited jurisdiction for conformity in the use of checklists, forms, and scripts.

Revised April 2004, by John H. Duehr, Troy City Judge

TABLE OF CONTENTS

Table of Contents..... i — v

CRIMINAL SECTION..... 1

 I. Complaint..... 1

 II. Arrest — Procedure 1

 III. Summons..... 2

 IV. Notice to Appear 3

Application for Complaint 5

Complaint..... 6

Summons..... 7

Summons for Notice to Appear 8

Bench Warrant (Juvenile) 9

Failure to Comply Warrant 10

Failure to Appear Warrant 11

Bench Warrant 12

Order to Show Cause 13

Order Dismissing Warrant..... 14

Affidavit of Probable Cause and Order to Hold or Release..... 15

Order for Appearance 17

Rights and Plea — Initial Appearance..... 18

Script — Initial Appearance — A 19

Script — Initial Appearance and Arraignment — B 20

Judge’s Checklist for Initial Appearance..... 21

Court Minutes Form..... 22

Minutes of Appearance..... 23

Refusal and Waiver of Preliminary Examination and
Setting Date for Preliminary Examination..... 24

Bail Transmittal 25

Financial Data for Appointed Counsel and Sentencing — A 26

Application for Court Appointed Counsel and Financial Data for Sentencing — B..... 27

Application for Court Appointed Counsel and Financial Data for Sentencing — C..... 28

Court Ruling Re: Request for Court Appointed Counsel 29

Notice to Defense Attorney 30

Juvenile Waiver of Right to Counsel 31

Waiver of Counsel 32

Waiver of Speedy Trial..... 33

Judge’s Checklist for Arraignments..... 34

Script for Arraignment — A 35

Script for Arraignment — B 38

Court Minutes 40

Minutes of Appearance..... 41

Waiver of Rights..... 42

Waiver of Jury..... 43

Omnibus Hearing Notice	44
Omnibus Hearing Statute and Waiver	45
Rights Form — Initial Appearance.....	46
Omnibus Hearing Memorandum	47
Checklist: Omnibus Hearing.....	51
Notice of Suspension of Registration, Registration Receipt, and License Plates.....	52
Trial Date Setting.....	53
Order Resetting Trial	54
Handout for Pro Se Defendant / Bench Trial.....	55
Conditions of Release Order.....	56
Sentencing Script	57
Juvenile Sentence and Order.....	58
Sentence and Order.....	59
Alternate Sentence and Order — A	60
Alternate Sentence and Order — B	62
Partner or Family Member Assault Audit.....	63
Order for Forfeiture of Vehicle.....	64
Petition to Revoke and Notice of Hearing.....	65
Order to Show Cause	66
Commitment Order	67
Defendant Release Order	68
Information for Mittimus Inmates	69
Subpoena / Subpoena Duces Tecum.....	70
Order Calling in Substitute Judge.....	71
Order for Substitute Judge	72
Bench Trial Script.....	73
Notice to Jurors	75
Affidavit to be Excused from Jury Service.....	76
Jury Questionnaire	77
Jury Service Memo	78
Jury Trial Script	79
Jury List	91
Jury Handout / Order of Trial	92
Minutes of Evidence	93
Verdict.....	94
Notice of Appeal.....	95
Dismissal Order	96
 SEARCH AND SEIZURE SECTION.....	 97
I. Authority.....	97
II. Grounds.....	97
III. Authority.....	98
IV. Return of Warrant and Custody of Seized Property	98
Glossary — Search and Seizure.....	99
Checklist: Search and Seizure.....	100
Affidavit for Search Warrant	101

Search Warrant.....	105
Receipt	106
Return.....	107
Order to Secure	108
Petition for Return of Seized Property.....	109
Notice of Hearing and Order — Property Ownership and Disposition.....	110

CIVIL SECTION

I. Complaint — Procedure	111
II. Summons — Procedure	111
III. Answer — Procedure.....	112
IV. Counterclaim — Procedure.....	112
V. Interpleader — Procedure.....	112
VI. Execution	112
VII. Appeal.....	113
Instructions — City/Justice Court.....	114
Handout — Proof of Service.....	118
Complaint.....	119
Summons.....	120
Praecipe.....	121
Affidavit of Service.....	122
Certification Form.....	123
Notice and Acknowledgment of Receipt of Summons and Complaint	124
Answer	125
Counterclaim.....	126
Interpleader Affidavit and Order	127
Financial Data for Informa Pauperis Application.....	129
Informa Pauperis Affidavit and Order	130
Judgment.....	131
Judgment After Default.....	132
Judgment by Confession.....	133
Stipulated Judgment.....	134
Judgment on the Pleadings.....	135
Procedure for Summary Judgment.....	136
Request for Hearing on Summary Judgment.....	137
Summary Judgment	138
Writ of Execution.....	139
Certification of Transcript of Docket.....	140
Satisfaction of Judgment.....	141
Order of Supplementary Hearing.....	142
Notice of Appeal.....	143
Pre-Trial Notice of Hearing — A	144
Pre-Trial Notice of Hearing — B.....	145
Pre-Trial Guide	146
Pre-Trial Conference Checklist.....	148
Trial Date Setting.....	149

Handout/Procedure for Civil Bench Trial.....	150
Bench Trial Script — Civil.....	151
Jury Trial Script — Civil.....	153
Jury List.....	164
Jury Handout/Order of Trial.....	165
Minutes of Evidence.....	166
Verdict.....	167

SMALL CLAIMS SECTION

I. Purpose.....	168
II. Jurisdiction — Venue.....	168
III. Commencement of Action.....	168
IV. Interpleader Affidavit.....	168
V. Counterclaim — Removal to Justice Court.....	168
VI. Trial — Judgment — Appeal.....	169
Complaint.....	170
Order and Notice to Defendant.....	171
Counterclaim.....	172
Præcipe.....	173
Interpleader Affidavit.....	174
Order for Interpleader Answer.....	175
Instructions — Small Claims Action.....	176
Script — Small Claims Action.....	180

PARTNER / FAMILY MEMBER ASSAULT SECTION..... 181

I. Jurisdiction — Venue.....	181
II. Basis for Issuance.....	181
III. Hearing.....	181
IV. Registration of Orders.....	181
V. Fees.....	181
Temporary Order of Protection Checklist.....	182
Partner / Family Member Assault Section.....	183
Petition for Temporary Order of Protection and Request for Hearing.....	184
Appendix.....	192
Order of Protection Instructions.....	193
Order of Protection Cover Sheet (With Instruction Sheet Numbers).....	197
Findings (With Instruction Sheet Numbers).....	198
Sheriff's Return (With Instruction Sheet Numbers).....	200
Order of Protection Cover Sheet (For Making Copies).....	201
Findings (For Making Copies).....	202
Sheriff's Return (For Making Copies).....	204
Instructions to Peace Officer for Service.....	205
File Information — Order of Protection.....	206
Affidavit to Dissolve Temporary Order of Protection and/or Order of Protection.....	207
Script — Order of Protection Hearing.....	209

MISCELLANEOUS SECTION	211
General Glossary.....	211
Rules for Courts of Limited Jurisdiction Training and Certification of Judges	219
Montana Supreme Court Commission on Courts of Limited Jurisdiction Judicial Education Policy.....	225
Montana Uniform Rules for the Justice and City Courts.....	228

CRIMINAL SECTION

I. Complaint – Procedure

1. In justice and city courts all criminal prosecutions must be commenced by complaint under oath.
2. The complaint shall:
 - a. be in writing and in the name of the State of Montana (or municipality if a violation of a municipal ordinance is charged).
 - b. specify the court in which the charge is filed,
 - c. charge the commission of an offense by:
 - i. stating the name of the offense, whether the offense is a misdemeanor or felony;
 - ii. citing the statute alleged to have been violated;
 - iii. stating the facts constituting the offense in ordinary language;
 - iv. stating the time and place of the offense as definitely as possible.
 - d. state the name of the accused.
3. The complaint shall be signed on oath by a peace officer, by a person having knowledge of the facts or by the city or county attorney. 46-11-401 MCA.
4. Please note that all prosecutorial duties belong to the city or county attorney; it is not the duty of the judge or officer to prosecute, and in fact, are prohibited from prosecution.

Duties of the Judge

1. Enter each action in the docket and the proceedings of the court on that action.
2. Review the complaint to insure that it contains the data required by statute. (See 46-11-401 MCA).
3. Verify that the complaint is signed on oath and if necessary administer the oath to the person signing the complaint.

II. Arrest – Procedure

1. A warrant may be issued based upon a written complaint.
2. If there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant, or a summons may be issued by the court.
3. More than one warrant or summons may be issued on the same complaint though not at the same time.

4. A warrant of arrest shall:
 - a. be in writing in the name of the State of Montana or, in the name of a municipality if a violation of a municipal ordinance is charged;
 - b. state the nature of the offense;
 - c. command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, before the nearest accessible court;
 - d. state the name of the person to be arrested or, if that person's name is unknown, designate the person by any name or description by which the person can be identified with reasonable certainty;
 - e. state the date when issued and the municipality or county where issued;
 - f. be signed by the judge of the court and the title of office noted.
5. The warrant may specify the amount of bail.
6. The warrant shall be directed to all peace officers in the state. (Warrants for violations of city ordinance cannot be executed outside the city limits except as provided by 7-32-4301 and 7-32-4302 MCA.)

B. Duties of the Judge

1. When an arrest warrant is requested, the court shall
 - a. examine upon oath the complainant or other witness;
 - b. determine if there is probable cause to believe that the person against whom the complaint was made has committed the offense;
 - c. decide whether to issue a warrant of arrest or a summons. Upon request of the county/city attorney, the court **shall** issue a summons instead of a warrant. Generally, an affidavit of probable cause will accompany the request for warrant;
 - d. review the warrant to make sure it contains the facts required by law. (See (4) above);
 - e. sign the warrant;
 - f. specify the amount of bail (optional).

III. Summons

A. Procedure

1. When the court is authorized to issue a warrant of arrest, it may in lieu thereof issue a summons (served in the same manner as a summons in a civil action).

2. The summons shall:
 - a. be in writing in the name of the State of Montana
 - b. state the name and address of the person summoned;
 - c. state the nature of the offense;
 - d. state the date when issued and municipality or county where issued;
 - e. be signed by the judge of the court;
 - f. command the person to appear before the court at a certain time and place;
3. If the person fails to appear, a warrant of arrest may be issued.

B. Duties of the Court

1. When a summons is requested the court shall:
 - a. examine upon oath the complainant or other witness;
 - b. determine if there is probable cause to believe that the person against whom the complainant was made has committed the offense;
 - c. decide whether to issue a warrant of arrest or a summons. Upon the request of the county/city attorney, the court **shall** issue a summons instead of a warrant. Generally, an affidavit of probable cause will accompany the request for a warrant;
 - d. review the summons to make sure it contains the facts required by law. (See 46-6-213);
 - e. sign the summons.

IV. Notice to Appear

A. Procedure

1. A peace officer is authorized to issue a notice to appear.

B. Duties of the Judge

1. None
See Section 46-6-310 MCA

C. Summons

See Section 46-6-213 MCA

D. Warrant of Arrest

See Section 46-6-201, 46-6-214, and 46-6-215 MCA

E. Jury Election

The right to a jury trial remains inviolate. A trial by jury must be set for a defendant in a criminal case unless the defendant waives that constitutional right. Section 46-16-210 and 46-17-201 both state that the waiver should be at the consent of the parties. This might indicate that the prosecution has the right to request a trial by jury even if the defendant waives the right. However, it is unlikely that the prosecution would ever pursue a jury trial if the defendant does not.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____ JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

APPLICATION FOR COMPLAINT

Case No. _____

* * * * *

_____, being duly sworn, deposes and says:

I understand that I have the choice of complaining to the City/County Attorney or by signing this application before the Judge. I elect to use this method to start criminal proceedings against the above named Defendant. I understand that the consequences of my signing a criminal complaint against the above named Defendant, may include the following:

1. The Defendant may be arrested and placed in custody.
2. The arrest, if proven false, may result in a lawsuit against me.
3. This charge will be prosecuted even though I might later change my mind.
4. I, as well as other witnesses, will be required to appear in court and testify regardless of inconvenience.

The complaint signed by me this date contains a true statement of the offense committed by the Defendant. I request that a Warrant of Arrest be issued by the Judge and that the Defendant be apprehended and brought before the court to be dealt with according to law.

Complainant

Sworn to before me this _____ day of _____, 20__.

Judge

by: Clerk

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

COMPLAINT
Case No. _____

* * * * *

_____ personally appeared before me this ____ day of _____, 20__, who, upon being examined under oath, deposes and says, that on or about the ____ day of _____, 20__, in the City/County of _____, State of Montana, the above named Defendant did commit the offense of: _____ (statute/code).

The facts constituting the offense are: _____

All of which is contrary to the statute(s) cited, and against the peace and dignity of the State of Montana.

Complainant

Subscribed and sworn to before me this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

SUMMONS

Case No. _____

* * * * *

THE STATE OF MONTANA TO: DEFENDANT _____.

Complaint upon oath having been this day made before me by _____,
that the crime of _____, has been committed,
and accusing the above-named Defendant, you are now summoned to appear before this court at
the hour of _____ o'clock ____ M. on the _____ day of _____, 20____, in the
City of _____, State of Montana for initial appearance in this cause.

Failure to appear at this time and place may be cause for issuance of a warrant for your
arrest.

Date

Judge

R E T U R N

I served the above Summons on the above-named Defendant on the _____ day of
_____, 20____, at _____ at _____,
at _____:____ o'clock ____ M.

Signed

Title

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**SUMMONS FOR
NOTICE TO APPEAR**

Case No. _____

* * * * *

TO: _____

You were issued a Notice to Appear on the _____ day of _____, 20____,
by the _____ for _____,
in violation of Section _____, MCA.

You are hereby directed to contact this Court on or before the hour of _____:_____ o'clock
_____.M. on the _____ day of _____, 20____, in the City of _____,
County of _____, State of Montana for initial appearance in this cause.

You may wish to post bond for this offense in the amount of \$_____. If this
amount is received by the above court date, the bail will be forfeited and the case closed. Failure
to respond to this notice will be cause for the issuance of a Warrant for your arrest.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

• Day Service Only •

BENCH WARRANT (JUVENILE)

Case No. _____

* * * * *

THE STATE OF MONTANA TO ANY PEACE OFFICER, GREETINGS:

The Defendant, _____, without cause failed to _____ on the ____ day of _____, 20____, the day he/she was ordered to _____ in the above entitled Court, of the State of Montana, being charged with _____ in violation of Section _____, MCA.

NOW, THEREFORE, on Order of Judge _____, you are hereby commanded forthwith to arrest the above named _____, and bring him/her before this Court, or any other Court, without unnecessary delay as provided by law.

The Defendant may be arrested only on a judicial day prior to the hour of ____:____ AM/PM and brought immediately before this Court and **not** placed in jail.

Bail is hereby set at \$_____. • **DAY SERVICE ONLY** •

DATED this ____ day of _____, 20____.

Judge

R E T U R N

I certify that I arrested the above named _____ on the ____ day of _____, 20____, at _____ by virtue of this warrant.

Officer

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**FAILURE TO COMPLY
WARRANT**

Case No. _____

* * * * *

IN THE STATE OF MONTANA TO ANY PEACE OFFICER, GREETINGS:

This Court having been advised that _____ has failed to comply with the terms of a judgment made and entered on the ____ day of _____, 20____, on a finding of guilty as charged to the crime of _____, a Misdemeanor.

YOU ARE HEREBY ORDERED to arrest the above named Defendant on the charge of CONTEMPT OF COURT, 3-10-401(3) or 3-11-303(1)(c) and bring him/her before this Court to answer the charge, or if the Court has adjourned for the day, you will commit him/her in default of substantial bail in the sum set forth, to the jail of the County, until the next session of this Court, when you will bring him/her before this Court to answer to the charge.

Bail is hereby set at \$_____.

THIS WARRANT MAY BE SERVED ANYTIME, DAY OR NIGHT, AT ANY PLACE, INCLUDING DEFENDANT’S RESIDENCE/HOME. []
(Judge must initial to verify service at home, day or night)

Dated this ____ day of _____, 20____.

Judge

R E T U R N

I served the above Warrant on the above-named Defendant on the ____ day of _____, 20____, at _____ at ____:____ o’clock ____M.

Title: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**FAILURE TO APPEAR
WARRANT**

Case No. _____

* * * * *

THE STATE OF MONTANA TO ANY PEACE OFFICER, GREETINGS:

This Court having been advised that _____ has failed to appear on the ____ day of _____, 20____, upon the charge of _____ a Misdemeanor/Felony in violation of Section _____, MCA.

YOU ARE COMMANDED FORTHWITH TO arrest the above named Defendant and bring him/her before this Court, or if the Court has adjourned for the day, you will commit him/her in default of substantial bail in the sum set forth, to the jail of the county, until the next session of this Court, when you will bring him/her before this Court.

Bail is hereby set at \$_____.

THIS WARRANT MAY BE SERVED ANYTIME, DAY OR NIGHT, AT ANY PLACE, INCLUDING DEFENDANT’S RESIDENCE/HOME. []
(Judge must initial to verify service at home, day or night)

Dated this ____ day of _____, 20____.

Judge

R E T U R N

I served the above Warrant on the above-named Defendant on the ____ day of _____, 20____, at _____ at _____ o’clock ____M.

Title: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

BENCH WARRANT

Case No. _____

* * * * *

THE STATE OF MONTANA TO ANY PEACE OFFICER, GREETINGS:

The above named Defendant, without cause failed to _____ on the ____ day of _____, 20____, the day he/she was ordered to _____ in the above entitled Court, of the State of Montana, in violation of Section _____, MCA.

NOW, THEREFORE, you are commanded forthwith to arrest the above named Defendant and bring him/her before this Court, or any other Court, without unnecessary delay as provided by law.

Bail is hereby set at \$_____.

THIS WARRANT MAY BE SERVED ANYTIME, DAY OR NIGHT, AT ANY PLACE, INCLUDING DEFENDANT'S RESIDENCE/HOME. []
(Judge must initial to verify service at home, day or night)

Dated this ____ day of _____, 20____.

Judge

R E T U R N

I served the above Warrant on the above-named Defendant on the _____, at _____ at ____:____ o'clock ____M.

Title: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

ORDER TO SHOW CAUSE

Case No. _____

* * * * *

YOU ARE HEREBY ORDERED to appear before the above entitled Court at ___:___ on the ___ day of _____, 20___, to show cause why an order should not be made finding you in Contempt of this Court for _____

Upon Failure to Appear, a Bench Warrant will be issued for your arrest.

Dated this ___ day of _____, 20___.

Judge

R E T U R N

I served the above Order to Show Cause on the above named Defendant on the ___ day of _____, 20___, at _____ at ___:___ o'clock __.M.

Title: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____))
Defendant)

**ORDER DISMISSING
WARRANT**

Case No. _____

* * * * *

On _____, a warrant was issued in this cause by the above entitled Court commanding that the above named Defendant be arrested and brought before the Court.

IT IS HEREBY ORDERED that the said Warrant of Arrest be dismissed and void, and shall be returned to the above entitled Court as not executed.

Dated this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)

vs)

_____,)
Defendant)

**AFFIDAVIT OF PROBABLE CAUSE
and
ORDER TO HOLD OR RELEASE**

Case No. _____

* * * * *

STATE OF MONTANA)

County of _____ :ss

City of _____)

The undersigned, being duly sworn, states as follows:

That Officer/Deputy _____ arrested _____
_____, the above named Defendant, for the offense(s) of

_____,
in violation of Section _____ MCA, at
_____ : _____ M., on the _____ day of _____, 20____, at _____,
Montana, on a warrantless arrest;

That I, _____, believe that there is probable cause to
hold said Defendant for the above stated offense(s) based on the following facts:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

Dated this ____ day of _____, 20____, at the hour of ____:____.M.

Affiant
SUBSCRIBED AND SWORN TO before me this ____ day of _____, 20____.

Judge

Notary Public for the State of Montana
Residing at _____
My commission expires _____

* * * * *

This affidavit was reviewed by Judge _____ this day
of ____ day of _____, 20____, at the hour of ____:____.M. (by telephone/fax).

Initialed by: _____

* Title * * * * *

ORDER

The undersigned, having reviewed the foregoing Affidavit of Probable Cause for a
warrantless arrest:

_____ IT IS HEREBY ORDERED that probable cause is found to hold the above
named Defendant on the charge(s) listed above.

_____ IT IS HEREBY ORDERED that probable cause is not found to hold the
above named Defendant on the charge(s) listed above. Further, the Defendant is ordered to be
released.

Dated this ____ day of _____, 20____.

Judge

xc: County/City Attorney
Defendant/Defense Attorney
Sheriff/Chief of Police

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

ORDER FOR APPEARANCE
(Release on Bail Posting)
Case No. _____

* * * * *

The above named Defendant is ordered to contact the City/Justice Court following his release from custody in the _____ jail on the next court day. Contact may be made in person at either the City or Justice court, or by telephone no later than ____:____.M of the next court day. Failure to contact the court of jurisdiction will result in Contempt of Court proceedings including a warrant of arrest. It is the sole responsibility of the Defendant to make contact with the Court to set up an appointment for appearance as ordered.

CITY COURT (Phone Number) _____

JUSTICE COURT (Phone Number) _____

City Judge

Justice of the Peace

I hereby acknowledge receipt of this notice and understand the consequences of my failure to contact the Court for appearance.

Date

Defendant

Releasing Authority: _____

RIGHTS — INITIAL APPEARANCE

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

DATE _____ DOCKET NO. _____

ARE YOU _____? YES NO

ARE YOU NOW UNDER THE INFLUENCE OF DRUGS OR ALCOHOL? YES NO

YOU HAVE BEEN CHARGED WITH: _____

_____ COMMITTED ON _____

THE MAXIMUM PENALTY FOR THIS (THESE) CHARGE(S) IS (ARE) _____

AND THE MINIMUM IS (ARE) _____

DO YOU UNDERSTAND THE CHARGE(S) AND THE POSSIBLE PENALTIES AGAINST YOU? YES NO

YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE A RIGHT TO HAVE AN ATTORNEY PRESENT BEFORE YOU MAKE ANY STATEMENTS, ANSWER ANY QUESTIONS, OR MAKE A PLEA OF GUILTY OR NOT GUILTY. IF YOU HAVE NO MONEY OR ASSETS AND YOU QUALIFY, AN ATTORNEY CAN BE APPOINTED FOR YOU BY THE COURT.

DO YOU UNDERSTAND THESE RIGHTS? YES NO

DO YOU WISH TO SPEAK WITH AN ATTORNEY? YES NO

DO YOU WISH TO HAVE AN ADEQUATE TIME TO THINK ABOUT THE CHARGES BEFORE YOU MAKE A PLEA? YES NO

IF YOU PLEAD GUILTY, DO YOU UNDERSTAND YOU WILL GIVE UP YOUR RIGHT TO A JURY TRIAL AND APPEAL? YES NO

TO CROSS EXAMINE WITNESSES? YES NO

TO CALL WITNESSES IN YOUR OWN BEHALF? YES NO

IF YOU PLEAD NOT GUILTY, YOU HAVE A RIGHT TO HAVE THE STATE PROVE THE CHARGE(S) BEYOND A REASONABLE DOUBT? YES NO

HOW THEN DO YOU WISH TO PLEAD TO THE ABOVE CHARGE(S)? GUILTY NOT GUILTY

MY SIGNATURE ATTESTS THAT I HAVE BEEN ADVISED OF MY RIGHT TO COUNSEL AND HEREBY WAIVE THAT RIGHT AND MAKE MY PLEA TO THE ABOVE CHARGE(S) KNOWINGLY, WILLFULLY, AND INTELLIGENTLY.

DEFENDANT

THIS COURT FINDS A FACTUAL BASIS FOR WHICH TO ACCEPT THE PLEA.

JUDGE

SCRIPT — INITIAL APPEARANCE — A
(For Felonies and Out of Jurisdiction Misdemeanors)

GOOD MORNING! I AM JUDGE _____.

IS YOUR CORRECT NAME _____? (Is it spelled correctly?)

WHAT IS YOUR CORRECT ADDRESS? ** (Residence and Mailing Address)

WHAT IS YOUR PHONE NUMBER?

WHAT IS YOUR DATE OF BIRTH?

WHAT IS YOUR SOCIAL SECURITY NUMBER?

WHERE IS YOUR PLACE OF EMPLOYMENT?

YOU ARE CHARGED WITH _____,

a misdemeanor/a felony, in violation of Section _____ MCA.

(Note whether an attorney is present.)

YOU HAVE THE RIGHT TO HAVE AN ATTORNEY REPRESENT YOU. IF YOU CANNOT AFFORD YOUR OWN ATTORNEY, ONE MAY BE APPOINTED TO REPRESENT YOU IN ACCORDANCE WITH SECTION 46-8-101 MCA. ** (If a MISDEMEANOR for another county; advise the Defendant that the right to a court appointed attorney must be exercised in the court of jurisdiction; set bail, etc. If bail is posted, set a time certain for the Defendant to appear in the court of jurisdiction.)

YOU HAVE THE RIGHT TO REMAIN SILENT THROUGHOUT THIS OR ANY JUDICIAL PROCEEDING, UNTIL THIS CASE IS DISPOSED OF.

IF YOU DECIDE TO SPEAK, ANYTHING YOU SAY CAN BE HELD AGAINST YOU AS EVIDENCE IN A TRIAL.

YOU HAVE THE RIGHT TO HAVE A HEARING ON PROBABLE CAUSE ON ANY FELONY CHARGE. THIS MATTER MUST BE FINALLY DISPOSED OF IN DISTRICT COURT OR THE CITY OR COUNTY COURT OF JURISDICTION. **(If a FELONY for the District Court in your county; complete the court appointed attorney form (If necessary); set bail, etc.)

YOU HAVE THE RIGHT TO HAVE BAIL SET PENDING THE FINAL OUTCOME OF THE CASE. ** (Make a bail determination or set bail as designated on the warrant.

SCRIPT — INITIAL APPEARANCE AND ARRAIGNMENT — B
(For Misdemeanors the Court has Jurisdiction over)

GOOD MORNING!

I AM JUDGE _____.

IS YOUR CORRECT NAME _____? (Is it spelled correctly?)
WHAT IS YOUR CORRECT ADDRESS? (Residence & mailing address preferred)
YOUR PHONE NUMBER IS _____? YOUR DATE OF BIRTH IS _____?
YOUR SOCIAL SECURITY NUMBER IS _____?
YOUR PLACE OF EMPLOYMENT IS _____?

YOU ARE CHARGED WITH _____, a Misdemeanor/a felony, in violation of
Section _____ MCA.

(If charged with a misdemeanor tell the defendant that this is the time for an arraignment. If charged with a felony, tell the defendant this is the time for an initial appearance.)

*** Note whether an attorney is present. Verify if the defendant has a copy of the complaint or ticket. READ the complaint to the defendant. Note (on the daily appearance or court minutes) who filed the charge; county/city attorney or officer. ***

YOU HAVE THE RIGHT TO HAVE AN ATTORNEY REPRESENT YOU. IF YOU CANNOT AFFORD AN ATTORNEY, ONE MAY BE APPOINTED TO ASSIST YOU AT EVERY STEP OF THIS CASE PURSUANT TO 46-8-101, MCA.

YOU HAVE THE RIGHT TO REMAIN SILENT DURING THIS OR ANY JUDICIAL PROCEEDING. IF YOU SPEAK, ANYTHING YOU SAY CAN BE HELD AGAINST YOU AS EVIDENCE AT A TRIAL.

YOU HAVE THE RIGHT TO HAVE BAIL SET AND BE RELEASED FROM JAIL PENDING A FINAL DECISION ON THIS CASE. THERE MAY BE CONDITIONS OF RELEASE IMPOSED.

YOU HAVE THE RIGHT TO TAKE ADDITIONAL TIME BEFORE ENTERING A PLEA AFTER THE READING OF THE RIGHTS.

YOU HAVE THE RIGHT TO EXPECT THAT THE STATE/CITY MUST PROVE THE CHARGE AGAINST YOU BEYOND A REASONABLE DOUBT. THE BURDEN NEVER SHIFTS TO YOU.

YOU HAVE THE RIGHT TO A TRIAL BY JURY (OR BY A JUDGE).

IF THIS CASE GOES TO TRIAL, YOU HAVE THE RIGHT TO CONFRONT, CROSS EXAMINE, OR QUESTION ANY WITNESSES THE STATE/CITY MAY BRING AGAINST YOU.

YOU HAVE THE RIGHT TO CALL WITNESSES TO TESTIFY IN YOUR BEHALF AND YOU HAVE THE RIGHT TO NOT BE COMPELLED TO OFFER EVIDENCE THAT MAY INCRIMINATE YOU.

IF YOU ARE NOT A UNITED STATES CITIZEN, YOU COULD BE DEPORTED ON CONVICTION.

YOU MAY BE REQUIRED TO PAY RESTITUTION, COURT COSTS OR ASSESSMENTS IF YOU ARE CONVICTED. THE COURT RETAINS JURISDICTION UNTIL RESTITUTION IS PAID IN FULL.

IF YOU ENTER A PLEA OF GUILTY, YOU ARE WAIVING YOUR RIGHT TO A TRIAL. IF YOU PLEAD GUILTY AS PART OF A PLEA BARGAIN, YOU MAY NOT BE ABLE TO WITHDRAW THE GUILTY PLEA, AS THE COURT IS NOT BOUND TO ACCEPT THE AGREEMENT.

THE MINIMUM PENALTY FOR THIS OFFENSE (If any) IS: _____.
THE MAXIMUM PENALTY FOR THIS OFFENSE IS: _____ (Necessary for misdemeanor charge only, advise of possible enhancements, i.e., loss of D/L, counseling, ACT classes)

YOU MAY ENTER A PLEA OF GUILTY OR NOT GUILTY AT THIS TIME.

JUDGE'S CHECKLIST FOR INITIAL APPEARANCE

True and correct name? _____

Advised Defendant of the charge? _____

Advised Defendant of right to silence? _____

Advised Defendant of right to attorney? _____

. . . Right to court appointed attorney? _____

Court appointed attorney requested? _____

Preliminary examination waived? _____

Preliminary examination set? _____

When? _____

Bail set at? \$ _____

Conditions of Release Order Form

Comments: _____

COURT MINUTES FORM — CRIMINAL ACTION

JUDGE _____ DATE _____

DEFENDANT _____ CASE NO. _____

Offense(s) charged _____

State represented by _____

Defendant represented by _____

Pro Se _____

Following rights cited to Defendant:

- ** _____ Right to counsel;
- ** _____ Court appointed counsel;
- ** _____ Right to silence;
- ** _____ Statements made used as evidence;
- _____ May be deported on conviction, if not a U.S. citizen;
- _____ Entry of a guilty or nolo contendere plea today may waive your right of appeal to the District Court;
- ** _____ Right to have bail set;
- _____ Right to trial by jury (or by a Judge);
 - _____ To confront and cross examine witnesses;
 - _____ Subpoena witnesses to testify for Defendant;
 - _____ Right against self incrimination;
 - _____ State must prove charge beyond reasonable doubt;
 - _____ Speedy trial;
- _____ Maximum penalty (possible enhancements);
- _____ Time to enter plea;
- _____ Court not bound by plea agreement;
- ** _____ Right to preliminary examination.

Court has determined Defendant understands rights and charges?

Court appointed attorney requested?

Court appointed attorney assigned? Name _____

Waiver of attorney signed? _____ Preliminary examination set? _____

Bail set? Amount \$ _____

Conditions of Release (Refer to Conditions of Release Order Form) _____

Guilty plea entered voluntarily and with knowledge? Defendant recited elements?

Sentence: _____

Not guilty plea entered — _____ Jury waived — _____ Jury waiver signed? _____

Trial date set? _____

Remarks/Notes: _____

(** Rights marked with asterisks are for FELONY or out of jurisdiction initial appearances only)

MINUTES OF APPEARANCE

JUDGE:

DATE:

** Docket Number:		
** Defendant's Name/Address:		
Phone Number:		
DOB:		
SSN:		
CHARGE: (Misd/Felony)		
Represented by Attorney (Name):		
Defendant advised of charge ** Copy rec'd by Defendant Read/Waived		
**Right to Counsel		
Court appointed Counsel		
**Right to silence		
**Statements made/evidence		
**Charge filed: CA/Other		
Script used:		
Enhancement advised:		
Deportation if not citizen Defendant MUST appear in person (Trial/Pretrial) Jury: Requested / Waived		
Right to Speedy Trial:		
Right to confront, cross-examine / subpoena witnesses: Max. sentence (enhancements): Burden on State to prove:		
Trial Date:		
Plea: If guilty or Nolo Contendere - Accepted as voluntarily w/knowledge and understood by Defendant. Elements established. Court not bound by plea agreement. Sentence. **Preliminary Exam		
**Right to Bail (amount set)		
Posted:		
Defendant in Jail:		
Remarks: (Check if Defendant notified of 61-5-214 D/L susp. for fail to pay fine)		

I have been informed of the pending charges; have been fully advised of penalties that may result from a finding of guilty or nolo contendere. I understand that a conviction may result in the imposition of jail time. Now, having been advised of the above facts and rights, I knowingly, voluntarily and intelligently waive my right to _____ Counsel; _____ Jury.

(See attached waiver(s))

Defendant's Signature: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA
Plaintiff

vs

Defendant

) **REFUSAL AND WAIVER OF**
) **PRELIMINARY EXAMINATION**
) **and**
) **SETTING DATE FOR**
) **PRELIMINARY EXAMINATION**

) Case No. _____

* * * * *

The Defendant, having been advised of his right to have a preliminary examination or hearing as to probable cause and having refused and waived a preliminary examination, the Defendant now signs this Refusal and Waiver of a preliminary examination.

Date

Defendant's Signature

The City Judge/Justice of the Peace certifies that the Defendant, having been advised of his right to a preliminary examination, has refused and waived a preliminary examination and signed (or refused to sign) a Refusal and Waiver of a preliminary examination.

IT IS ORDERED that a preliminary examination in the above entitled matter is refused and waived, and the Defendant is bound over to proceedings in the District Court, State of Montana.

Date

Judge

The Defendant having requested a preliminary examination; the hearing is set for _____, the ____ day of _____, 20__, at ____:____ M. in the above styled courtroom, in _____ County, Montana.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

BAIL TRANSMITTAL

Case No. _____

* * * * *

TO: The Honorable _____, Justice of the Peace/City Judge:

An affidavit and Motion for Leave to File Information having been filed in the above cause, you are hereby requested to endorse the amount and nature of the bond hereon and transmit same, together with a duplicate copy of this request, to the Clerk of District Court.

DATED this ____ day of _____, 20__.

By: _____
County/City Attorney

STATEMENTS AS TO BAIL

Bail in the above case has been fixed as follows:

_____ Bail fixed in the sum of \$_____, which has not been posted.

_____ Defendant has been released on his own recognizance.

_____ Defendant has been released on \$_____ bail, which was posted by _____, in the form of _____

_____ Defendant has not yet appeared in Justice Court/City Court.

Dated this ____ day of _____, 20__.

Justice of the Peace/City Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

(Form A)

* * * * *

STATE OF MONTANA)
)
Plaintiff)
)
vs)
)
_____)
Defendant)
* * * * *

FINANCIAL DATA FOR
APPOINTED COUNSEL
and
SENTENCING

Case No. _____

I, _____ state under oath that I am financially unable to
employ an attorney. I understand that if I am charged with a felony and I am eligible, a court must appoint counsel.
If a misdemeanor is charged, and I am eligible, a court may appoint an attorney only under certain circumstances.

I submit the following information to determine my eligibility. False statements or false information, will
result in a charge of false swearing. I understand that I may be required to pay back all or a part of the attorney fees
if I am convicted of the pending charge and I am able to do so. I also understand that this information may be used
to determine my ability to pay fines, fees, or costs, if I am convicted of any charges.

No. of Dependents _____ Date Last Employed _____
I am currently receiving: (Fill in amounts received or 0 for monthly amounts)
Salary \$ _____ AFDC \$ _____ Unemployment \$ _____
Soc Security \$ _____ Workers Comp \$ _____ Medicaid \$ _____
Pension \$ _____ Food Stamps \$ _____ Child Support \$ _____
Retirement \$ _____ Other Income \$ _____

Assets:

(LIST TOTAL VALUES)
Cash on hand or in bank \$ _____
Wages/Money owed to you \$ _____
Real Estate _____
Real Estate value \$ _____
Motor Vehicles _____
Sporting Equipment _____
(guns, boats, motorcycles, etc.) \$ _____
Personal Property, i.e., Furniture,
Appliances _____
Value/personal property \$ _____
Savings Accounts \$ _____
Stocks/Bonds/Securities \$ _____
Total All Assets \$ _____

(FILL IN AMOUNTS PAID OUT PER MONTH)
Rent/Mortgage payment \$ _____
Utilities \$ _____
Telephone \$ _____
Groceries \$ _____
Gas for Vehicles \$ _____
Cable or Satellite \$ _____
Drs., Hospitals \$ _____
Courts \$ _____
Attorneys \$ _____
Credit Cards \$ _____
Other Monthly Debts \$ _____
Total Debts per Month \$ _____

Defendant
Sworn to before me this ____ day of _____, 20__.

Justice of the Peace/City Judge

Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
(Form B)

_____,) **APPLICATION FOR COURT**
Applicant) **APPOINTED COUNSEL**
) **and**
_____,) **FINANCIAL DATA FOR**
Address) **SENTENCING**
)
_____,) Case No. _____

Phone Number _____
Offense(s) charged: _____ Age: _____
Defendant is _____ is not _____ in custody. DOB: _____

No. of Dependents _____ Date last employed: _____
Employed by: _____

I am / my family is currently receiving on a monthly basis:

Salary	\$ _____	AFDC	\$ _____	Unemployment	\$ _____
SSI	\$ _____	Workers Comp	\$ _____	Medicaid	\$ _____
Pension	\$ _____	Food Stamps	\$ _____	Child Support	\$ _____
Retirement	\$ _____	Other Income	\$ _____	Spouse's Income	\$ _____

Assets: _____ Total Income: \$ _____

(LIST TOTAL VALUES)

Cash on hand or in bank \$ _____
Wages/Money owed to you \$ _____
Real Estate _____
Real Estate value \$ _____
Motor Vehicles _____

Sporting Equipment _____
(guns, boats, motorcycles, etc.) \$ _____
Personal Property, i.e., Furniture,
Appliances _____
Value/personal property \$ _____
Savings Accounts \$ _____
Stocks/Bonds/Securities \$ _____

Monthly Debts:

(FILL IN AMOUNTS PAID OUT PER MONTH)
Rent/Mortgage payment \$ _____
Utilities \$ _____
Telephone \$ _____
Groceries \$ _____
Gas for Vehicles \$ _____
Cable or Satellite \$ _____
Drs., Hospitals \$ _____
Courts \$ _____
Attorneys \$ _____
Credit Cards \$ _____
Other Monthly Debts \$ _____

Total All Assets \$ _____ Total Debts per Month \$ _____

I do solemnly swear UNDER PENALTY OF PERJURY that the statements in this application are true, and that I have fully disclosed my assets. I am financially unable to employ an attorney. I understand that I may be required to pay all or a portion of the compensation and expenses incurred by my court appointed counsel if I am convicted of the pending charges and am able to do so.

SWORN TO this _____ day of _____, 20____.

Signature of Applicant

Judge

Notary Public for the State of Montana
Residing at _____
My Commission expires _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
(Form C)

_____)	APPLICATION FOR COURT APPOINTED COUNSEL and FINANCIAL DATA FOR SENTENCING
Applicant _____)	
_____)	
Address _____)	
_____)	
Phone Number _____)	Case No. _____

Offense(s) charged: _____ Age: _____
 Defendant is _____ is not _____ in custody. DOB: _____

No. of Dependents _____ Date last employed: _____

I am / my family is currently receiving on a monthly basis:

Salary	\$ _____	AFDC	\$ _____	Unemployment	\$ _____
SSI	\$ _____	Workers Comp	\$ _____	Medicaid	\$ _____
Pension	\$ _____	Food Stamps	\$ _____	Child Support	\$ _____
Retirement	\$ _____	Other Income	\$ _____	Spouse's Income	\$ _____
		Total Income	\$ _____		

Assets

Cash on hand or in bank \$ _____
 Wages/Money owed to you \$ _____
 Real Estate _____
 Real Estate value \$ _____
 Motor Vehicles _____

 Sporting Equipment _____
 (guns, boats, motorcycles, etc.) \$ _____
 Personal Property, i.e., Furniture,
 Appliances _____
 Value/personal property \$ _____
 Savings Accounts \$ _____
 Stocks/Bonds/Securities \$ _____

Monthly Debts:

Rent/Mortgage payment \$ _____
 Utilities \$ _____
 Telephone \$ _____
 Groceries \$ _____
 Gas for Vehicles \$ _____
 Cable or Satellite \$ _____
 Drs., Hospitals \$ _____
 Courts \$ _____
 Attorneys \$ _____
 Credit Cards \$ _____
 Other Monthly Debts \$ _____

I do solemnly swear UNDER PENALTY OF PERJURY that the statements in this application are true, and that I have fully disclosed my assets. I am financially unable to employ an attorney. I understand that I may be required to pay all or a portion of the compensation and expenses incurred by my court appointed counsel if I am convicted of the pending charges and am able to do so.

SWORN TO this _____ day of _____, 20____.

Signature of Applicant

Judge

Notary Public for the State of Montana

Residing at

My Commission expires

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
 BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
 * * * * *
 STATE OF MONTANA)
 Plaintiff)
 vs)
 _____)
 Defendant)
 * * * * *

**COURT RULING RE:
 REQUEST FOR COURT
 APPOINTED COUNSEL**

Case No. _____

ORDER DENYING COURT APPOINTED ATTORNEY

After review of the financial information supplied by the Defendant, the Court finds that the Defendant is not indigent, or does not face the possibility of incarceration if convicted, or otherwise does not qualify for court appointed counsel.

Dated this ____ day of _____, 20__.

 Judge

ORDER OF APPOINTMENT OF COURT APPOINTED ATTORNEY

Based upon the financial information supplied by the Defendant, the nature of the charges pending, and the likelihood the Defendant will be incarcerated if found guilty or pleads guilty or nolo contendere, counsel is now appointed to represent the Defendant. If the Defendant is convicted, the Court may require the Defendant to pay a portion of all of the attorney's fees incurred in the defense of this action, including appeal, if any. The Defendant is required to notify the Court if any change occurs in the Defendant's financial status during the pendency of this case, including appeal, if any.

Dated this ____ day of _____, 20__.

 Judge

UPON CONVICTION
ORDER REQUIRING DEFENDANT TO PAY ATTORNEY FEES

The Court having reviewed the financial condition of the Defendant, finds that the Defendant has the ability to pay a portion or all of the attorney's fees incurred in this matter. The Defendant is required to pay to the Justice/City/Municipal Court:

_____ Total of \$ _____.
 _____ \$ _____ per month beginning _____ 20__.

Dated this ____ day of _____, 20__.

 Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**NOTICE TO
DEFENSE ATTORNEY**

Case No. _____

* * * * *

1. DEFENDANT'S ADDRESS: _____

PHONE NUMBER: _____

2. OFFENSE(S) CHARGED WITH: _____

3. PLEA ENTERED TO CHARGE:
_____ Not guilty by Judge
_____ Not guilty by Defendant
_____ No plea entered (Felony)

4. NAME OF ATTORNEY: _____
_____ Is court appointed
_____ Is not court appointed

BAIL AMOUNT: _____

5. CONDITIONS OF BAIL: _____

6. The Defendant has been informed to contact the above named attorney on or before:

Date: _____, 20__.

This to certify to the Court that _____, Defendant, contacted me in regard to Court Docket Number _____. The date set for trial is/is not acceptable. I request a jury/bench trial in this matter.

Defense Attorney

**** Please return completed form to the Court ****

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**JUVENILE WAIVER
OF RIGHT TO COUNSEL**

Case No. _____

* * * * *

A complaint in the above entitled action, having been filed in this Court and the Defendant appearing in open court, for arraignment, and with parent/guardian present; the Defendant AND parent/guardian have been advised of and understand the following rights:

Right to post bail.

Right to remain silent.

Right to have an attorney and consult with an attorney before entering a plea. If the Defendant has no funds with which to hire an attorney, and the Defendant qualifies, an attorney may be appointed.

Right to a jury trial or a trial by the Judge.

Right to call witnesses to testify for me.

Right to see and question witnesses called in to testify against me.

Right to have the pending charge against me proven beyond a reasonable doubt.

The Defendant AND parent/guardian have been informed of the charges that are pending and have been fully advised of the penalties that may result in a plea or finding of guilty. Having been advised of all the above facts and rights, **I do waive my right to be represented by an attorney.**

Dated this ____ day of _____, 20__.

Defendant

Parent/Guardian

and sworn to before:

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

WAIVER OF COUNSEL

Case No. _____

* * * * *

A complaint in the above entitled action has been filed in this Court and the Defendant has appeared in open Court for arraignment. The Defendant has been advised of and understands the following rights:

- The right to post bail.
- The right to remain silent.
- The right to have an attorney and consult with an attorney before entering a plea. If I have no funds to hire an attorney, and I qualify, an attorney may be appointed.
- The right to a jury trial or a trial by the Judge.
- The right to call witnesses to testify for me.
- The right to confront and question witnesses called in to testify against me.
- The right to have the pending charge against me proven beyond a reasonable doubt.

I have been informed of the charge(s) that are pending and have been fully advised of the penalties that may result from a plea or finding of guilty. I also understand that a conviction may result in the imposition of jail time. Having been advised of all the above facts and rights, **I waive my right to be represented by an attorney.**

Dated this ____ day of _____, 20__.

Defendant

and sworn to before:

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

WAIVER OF SPEEDY TRIAL

Case No. _____

* * * * *

I, _____, the above named Defendant, having entered a plea of not guilty to the charge(s) now pending, do **waive my constitutional right to a speedy trial**, pursuant to 46-13-401, MCA.

Dated this ____ day of _____, 20__.

Defendant

Sworn to before:

Judge

JUDGE'S CHECKLIST FOR ARRAIGNMENTS

- _____ Arraignment must be in open court.
- _____ True name, Address, Phone #, etc.
- _____ Under no medical disability.
- _____ Understands English.
- _____ Advised of right to attorney.
- _____ Advised of right to court appointed attorney.
- _____ Advised of right to jury trial.
- _____ Advised of right to bail.
- _____ Advised of the charges, penalties, and enhancements.
- _____ Consequences of plea of "Not Guilty".
- _____ Consequences of plea of "Guilty" or "Nolo Contendere".
- _____ Implications of Plea Bargain (Court not bound).
- _____ Time to answer.
- _____ Copy of complaint.
- _____ Reading of complaint.
- _____ Entry of Plea.

SCRIPT FOR ARRAIGNMENT

Form A

Page 1 of 3 Pages

“Good morning / afternoon. I am Judge _____ and this is the time set for your arraignment and entry of plea to the charge(s) against you. You are charged with:

_____,
in violation of Section _____, MCA, which is / are misdemeanors. Before you answer, I must advise you of your constitutional rights and ask you several questions.”

“The complaint says that your name is _____.
Is this correct? Are you under any physical or mental disability at this time?” (*Particularly, if the accused appears without an attorney.*)

“Every person accused of an offense has the right to be represented by an attorney. If you are likely to be sentenced to serve in jail and are unable to hire your own, an attorney will be appointed to represent you; otherwise, you must hire your own attorney or represent yourself.” (*NOTE: Only an attorney or the Defendant may speak for the Defendant in court.*) You are not required to have an attorney and you may waive your right to have an attorney. Do you wish to have an attorney?” (*NOTE: If the Defendant waives the right to an attorney, have the defendant sign a Waiver of Attorney form.*)

“You also have the right to remain silent and not make statements that may incriminate you. If you do decide to speak, anything you say could be used as evidence against you in a trial.”

COPY AND READING OF COMPLAINT(S)

“Here is a copy of the complaint(s) which have been filed against you. Do you wish me to read them to you or do you wish to waive your right to have the charge(s) read aloud?” (*It is usually best to read the complaint to the Defendant.*)

ADVISING OF PENALTIES (INCLUDING ENHANCEMENTS)

“You are accused of _____, which is / are misdemeanors. If you are convicted of this / these offense(s) by a plea of guilty, nolo contendere, or a finding of guilty, the maximum and minimum punishments are as follows: _____. In addition, you may be required to pay all court costs, including attorney fees, witness and jury fees, and restitution if you are found guilty or plead guilty or nolo contendere. You could also lose driving, hunting, or other privileges, depending on the charge(s) against you. You might also be required to complete assessments, counseling, or treatment programs.”

“If you are not a citizen of the United States, you could be deported upon conviction.”

BAIL

“Every accused person has the right to have bail set and to know the procedure for pretrial release from custody.”

TIME TO ANSWER

“You may enter a plea to the charge(s) now — or you may have a reasonable time of not less than 24 hours to consider the charge(s) and return with your plea or answer. If you plead guilty or nolo contendere now, your right to appeal this (these) case(s) to the District Court will be waived. Will you answer to the charge(s) now?”

PLEAS AND CONSEQUENCES

“You must either answer “Not Guilty”, “Nolo Contendere”, or “Guilty”. If you answer “Not Guilty”, this case will be set for trial. You have the right to a speedy trial. At the trial you also have the right to see and question the witnesses called against you; to be represented by an attorney; to call witnesses to testify for you; and to testify yourself. You are not required to testify or call witnesses because you are presumed to be innocent and the State/City which brought this / these charge(s) must prove your guilt beyond a reasonable doubt before you can be found guilty.”

“The trial may be by jury. You are entitled to a jury trial for a misdemeanor. You may waive your right to a jury and choose to be tried by the judge or court only. If there is a trial and you are found guilty and I determine that you are able to pay the costs of the trial, you may be required to pay all or a portion of those costs. A verdict of guilty resulting from a jury trial or a trial held by the judge may be appealed within statutory time limits.”

“After trial, if you are found not guilty, you will be discharged by this court. If you are found guilty after a trial, you will be subject to the same penalties as if you had pleaded guilty. You will not be penalized for exercising your right to trial. If you answer ‘guilty’ or ‘nolo contendere’, at that time you are subject to the penalties I have given to you.”

PLEA BARGAINS

“Sometimes there are agreements between the State/City and you wherein, in exchange for some action or recommendation by the State/City you agree to plead ‘guilty’ to one or more of the charges filed, or to another charge. Understand clearly that I am not bound by these agreements.

If you agree to plead guilty or nolo contendere under a plea bargain and you receive a sentence other than the one you expect, you may not be allowed to withdraw your plea and are waiving your right to go to trial. Do you understand this?”

“I have advised you of the possible sentence(s) for the offense(s) of which you are accused. You should consider those penalties carefully. Do you have any questions?”

ENTRY OF PLEA

“How do you plead: Guilty, Nolo Contendere, or Not Guilty?”

(If plea is not guilty)

“By your plea of not guilty, a jury trial will be set unless you want to waive the jury, in which case, the trial would be held by a judge.” *If the jury is waived, have the Defendant sign a waiver form.* “You will be notified of the time and date for trial.”

*NOTE TO JUDGES: It is recommended that you set the trial date at this time and notify the Defendant. This will prevent any problems with notification to all parties. A written notice to confirm the trial date should be given to the Defendant, though it may be sent at a later time. You should also determine the bail amount, if any, to be set; determine conditions of bail (with or without a monetary bail); and advise the Defendant of the conditions.

(If plea is guilty or nolo contendere)

“Is this plea of guilty or nolo contendere entered voluntarily? Has anyone promised you anything to obtain this plea or threatened to harm you if you did not plead guilty?”

“Do you understand that by your plea of guilty to this charge you are admitting to the charges filed?” *(Refer to body of complaint)*

“You may have a reasonable time before you are sentenced. Do you wish to be sentenced now or at some later date?”

(Proceed to sentencing or set a time certain for sentencing)

*NOTE TO JUDGES: It is recommended that sentencing be done immediately. There is one Supreme Court case that states that if you do not sentence within a reasonable time, you may lose jurisdiction to do so.

SCRIPT FOR ARRAIGNMENT

Form B — Page 1 of 2 Pages

GOOD MORNING/AFTERNOON I AM JUDGE _____

IS YOUR CORRECT NAME _____? (Is it spelled correctly?)

WHAT IS YOUR DOB? _____? WHAT IS YOUR SOCIAL SECURITY NUMBER? _____ WHAT IS YOUR TELEPHONE NUMBER? _____

WHAT IS YOUR CORRECT ADDRESS? _____.
(Both mailing and residence address preferred. Also, getting the phone number and other information is always helpful if the Defendant doesn't appear or follow through and you have to issue a show cause order or warrant.)

YOU ARE CHARGED WITH _____, a misdemeanor, IN VIOLATION OF SECTION(S) _____, MCA.

*** Read the complaint to the Defendant ***

*** Note whether an attorney is present ***

SINCE THIS IS A MISDEMEANOR, YOU HAVE AT LEAST 24 HOURS IN WHICH TO ENTER A PLEA.

YOU HAVE THE RIGHT TO HAVE AN ATTORNEY. IF YOU CANNOT AFFORD YOUR OWN ATTORNEY, ONE MAY BE APPOINTED FOR YOU UNDER CERTAIN CIRCUMSTANCES. (Explain these circumstances for an appointed attorney to the Defendant.)

YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT BE COMPELLED TO OFFER INCRIMINATING EVIDENCE AGAINST YOURSELF. IF YOU DO SPEAK, ANYTHING YOU SAY COULD BE USED AS EVIDENCE AGAINST YOU AT A TRIAL.

YOU HAVE THE RIGHT TO A SPEEDY TRIAL AND YOU HAVE THE RIGHT TO HAVE THE TRIAL BY JURY. YOU MAY WAIVE THE RIGHT AND HAVE A TRIAL BEFORE THE JUDGE.

IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU COULD BE DEPORTED AFTER A CONVICTION.

IF WE GO TO TRIAL, WITH OR WITHOUT A JURY, YOU HAVE THE RIGHT TO FACE AND QUESTION ANY WITNESSES THAT MAY BE CALLED AGAINST YOU. YOU HAVE THE RIGHT TO CALL WITNESSES TO TESTIFY FOR YOU.

YOU HAVE THE RIGHT TO HAVE BAIL SET AND TO KNOW PRE-TRIAL RELEASE PROCEDURES, PENDING THE FINAL OUTCOME OF THIS CASE.

IF WE GO TO TRIAL, WITH OR WITHOUT A JURY, AND YOU ARE CONVICTED, YOU MAY BE ASSESSED THE COSTS OF THE TRIAL, INCLUDING JURY AND WITNESS FEES, ATTORNEY FEES, AND OTHER TRIAL COSTS. YOU MAY ALSO BE REQUIRED TO COMPLETE ASSESSMENTS, COUNSELING, OR TREATMENT.

IF THERE IS A PLEA BARGAIN WITH THE PROSECUTOR'S OFFICE, THIS COURT IS NOT BOUND BY THE AGREEMENT.

IF YOU PLEAD GUILTY OR NOLO CONTENDERE TODAY, YOU ARE WAIVING YOUR RIGHT OF APPEAL TO THE DISTRICT COURT.

THE MAXIMUM PENALTIES FOR THIS OFFENSE (INCLUDING ENHANCEMENTS) ARE _____. YOU MAY ALSO BE RESPONSIBLE FOR RESTITUTION AND COSTS.

DO YOU UNDERSTAND ALL OF THE RIGHTS I HAVE JUST READ TO YOU?

DO YOU HAVE ANY QUESTIONS?

ARE YOU READY TO ENTER A PLEA NOW, OR DO YOU WISH TO TAKE SOME TIME TO THINK ABOUT IT OR TALK WITH AN ATTORNEY OR SOMEONE ELSE?

*** If the plea is **not guilty**, set the trial for a jury unless waived by the Defendant. This will assure the right of jury trial and may be reserved at a later time. Send a notice to the Defendant and/or attorney of the trial date. Also, set times for motion hearings, pre-trials, etc., at this time. Set the bail (Own Recognizance or a money amount), with or without conditions from the Court. Advise the Defendant about the necessity to personally appear in court for each action, unless specifically exempted by the Court.

*** If the plea is **guilty** or **nolo contendere**, make sure you verify that the plea is voluntarily, knowingly, and willingly given and that the Defendant understands what he/she is pleading to, and the consequences thereof. Sentence immediately, whenever possible. Sentence according to the statute charged. Set up time pay arrangements, schedule jail, and all other sentence conditions at this time.

Make sure the Defendant understands his obligation to follow through with the sentence of the Court. If you need to issue orders to show cause, warrants, or other orders — there won't be any question of notice or that the Defendant understood your orders and conditions **IF YOU TAKE THE TIME TO EXPLAIN AT SENTENCING.**

COURT MINUTES, CRIMINAL ACTION

JUDGE _____

DATE _____

DEFENDANT _____

CASE NO. _____

Offense(s) charged: _____

State represented by: _____

Defendant represented by: _____

Pro Se _____

Following rights cited to Defendant:

- ** _____ Right to counsel.
- ** _____ Court appointed counsel.
- ** _____ Right to silence.
- ** _____ Statements made used as evidence.
- _____ May be deported on conviction, if not a U.S. Citizen.
- _____ Entry of a guilty or nolo contendere plea today may waive your right of appeal to the District Court.
- ** _____ Right to have bail set.
- _____ Right to trial by jury (or by judge).
- _____ Right:
 - to confront and cross examine witnesses;
 - to subpoena witnesses to testify for Defendant;
 - against self incrimination;
 - to require the State to prove charge beyond reasonable doubt;
 - to a speedy trial.
- _____ Maximum penalty (possible enhancements).
- _____ Court not bound by plea agreement.
- ** _____ Right to preliminary examination.

Court has determined Defendant understands rights and charges?

Court appointed attorney requested/assigned?

Name: _____.

Waiver of attorney signed?

Preliminary examination set?

Bail set? Amount: \$_____

Conditions of Release (Refer to Conditions of Release Order Form): _____

Guilty plea entered voluntarily and with knowledge and Defendant recited elements?

Sentence: _____

Not guilty plea entered. Jury waived/reserved? Jury waiver signed?

Trial date set? _____.

Remarks/Notes: _____

(Rights marked with asterisks (**)) are for FELONY or out of jurisdiction initial appearances only)

MINUTES OF APPEARANCE

JUDGE:

DATE:

** Docket Number:		
** Defendant's Name/Address:		
Phone Number:		
DOB:		
SSN:		
CHARGE: (Misd/Felony)		
Represented by Attorney (Name):		
Defendant advised of charge ** Copy rec'd by Defendant Read/Waived		
**Right to Counsel		
Court appointed Counsel		
**Right to silence		
**Statements made/evidence		
**Charge filed: CA/Other		
Script used:		
Enhancement advised:		
Deportation if not citizen Defendant MUST appear in person (Trial/Pretrial) Jury: Requested / Waived		
Right to Speedy Trial:		
Right to confront, cross-examine / subpoena witnesses: Max. sentence (enhancements): Burden on State to prove:		
Trial Date:		
Plea: If guilty or Nolo Contendere - Accepted as voluntarily w/knowledge and understood by Defendant. Elements established. Court not bound by plea agreement. Sentence.		
**Preliminary Exam		
**Right to Bail (amount set)		
Posted:		
Defendant in Jail:		
Remarks: (Check if Defendant notified of 61-5-214 D/L susp. for fail to pay fine)		

I have been informed of the pending charges; have been fully advised of penalties that may result from a finding of guilty or nolo contendere. I understand that a conviction may result in the imposition of jail time. Now, having been advised of the above facts and rights, I knowingly, voluntarily and intelligently waive my right to _____ Counsel; _____ Jury.

(See attached waiver(s))

Defendant's Signature: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)

Plaintiff)

vs)

Defendant)

* * * * *

WAIVER OF RIGHTS

Case No. _____

I, _____, am prepared to enter a plea of guilty or nolo contendere in the above entitled matter. The plea is made voluntarily and without force, threats, or promises.

I ACKNOWLEDGE THAT I FULLY UNDERSTAND:

1. The offense I am charge with, and the minimum mandatory penalty and the maximum penalty, including the effect of any penalty enhancement provision as provided by law. I also understand that I may be required to pay restitution, costs, or other assessments allowed by law.
2. I have the right to be represented by an attorney at every stage of the proceedings and, if necessary, one may be appointed to represent me.
3. I have the right to plead Not Guilty, and have a trial.
4. I have the right to have a trial by jury, or before a judge only.
At the trial, I have the right:
 - a. to have an attorney;
 - b. to call witnesses to testify for me and to see and question witnesses against me;
 - c. to remain silent; and
 - d. to have my guilt proven beyond a reasonable doubt.
5. By my plea of Guilty or Nolo Contendere, I give up the right to a trial and to a trial de novo (anew) in the District Court.
6. I am satisfied with the services of my attorney.
7. I am not suffering any disability or impairment by the taking of drugs, alcohol, or prescription medicine.
8. I understand that there are indirect consequences of this plea, which may include loss of privileges, completion of assessment, counseling, and treatment, and that this conviction will be counted against me, if I am convicted of a crime in the future.
9. I understand that if I plead guilty or nolo contendere in fulfillment of a plea agreement, the Court is not required to accept the agreement and I may not be entitled to withdraw the guilty or nolo contendere plea.
10. I understand that if I am not a citizen of the United States, I may be deported upon a conviction of these charges.

This plea of Guilty or Nolo Contendere is found to be knowingly and voluntarily made; that there is a factual basis for the plea; and, that it is the Judgment of this Court that the Defendant is Guilty of this charge.

Date

Defendant

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

WAIVER OF JURY

Case No. _____

* * * * *

I understand that I have a right to a trial by jury and I hereby waive that right. I understand that if this matter goes to trial, it will be heard before a judge alone, sitting without a jury.

I also understand that IF I FAIL TO APPEAR FOR TRIAL, any appearance bond posted will be forfeited; the trial may proceed in my absence; and, a warrant for my arrest may be issued.

Date

Defendant

ORDER

_____ An appearance bond is set in the amount of \$_____.

_____ Defendant is released on his/her Own Recognizance with the following conditions:
(Refer to Conditions of Release Order Form)

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**OMNIBUS
HEARING NOTICE**

* * * * *

You are hereby notified your pre-trial conference is scheduled for the ____ day of _____, 20__, at the hour of ____:____ AM/PM in the Justice/City Courtroom, _____, Montana.

This conference is held prior to trial to narrow issues to be tried, to secure stipulations as to matters and evidence to be heard, to take all other steps necessary to aid in the disposition of the case, and to ensure that pre-trial settlement has been reasonably considered by the parties.

Date

Judge

By: _____
Clerk

xc: _____ City Attorney
_____ County Attorney
_____ Defendant or Defense Attorney

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

STATE OF MONTANA)

Plaintiff)

vs)

Defendant)

**OMNIBUS HEARING
STATUTE and WAIVER**

Case No. _____

46-13-110 MCA

- (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.
- (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.
- (3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:
 - (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;
 - (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;
 - (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;
 - (d) notification of the existence of a plea agreement, 46-12-211;
 - (e) disclosure and discovery motions, Title 46, chapter 15, part 3;
 - (f) notice of reliance on certain defenses, 46-15-323;
 - (g) notice of seeking persistent felony offender status, 46-13-108;
 - (h) notice of other crimes, wrongs, or acts, 46-13-109;
 - (i) motion to suppress, 46-13-301 and 46-13-302;
 - (j) motion to dismiss, 46-13-401 and 46-13-402;
 - (k) motion for change of place of trial, 46-13-203 through 46-13-205;
 - (l) reasonableness of bail, Title 46, chapter 9; and
 - (m) stipulations.
- (4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.
- (5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.

THE DEFENDANT, HAVING READ THE ABOVE STATUTE, HEREBY WAIVES AN
OMNIBUS HEARING AND REQUESTS THE MATTER TO GO DIRECTLY TO TRIAL.

Defendant

Date

THE STATE, HAVING READ THE ABOVE STATUTE, HEREBY WAIVES AN OMNIBUS
HEARING AND REQUESTS THE MATTER GO DIRECTLY TO TRIAL.

County/City Attorney

Date

RIGHTS FORM – INITIAL APPEARANCE

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

DATE _____ DOCKET NO. _____

ARE YOU _____? YES NO

ARE YOU NOW UNDER THE INFLUENCE OF DRUGS OR ALCOHOL? YES NO

YOU HAVE BEEN CHARGED WITH: _____

_____ COMMITTED ON _____
THE MAXIMUM PENALTY FOR THIS (THESE) CHARGE(S) IS (ARE) _____

AND THE MINIMUM IS (ARE) _____

DO YOU UNDERSTAND THE CHARGE(S) AND THE POSSIBLE PENALTIES AGAINST YOU? YES NO

YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE A RIGHT TO HAVE AN ATTORNEY PRESENT BEFORE YOU MAKE ANY STATEMENTS, ANSWER ANY QUESTIONS, OR MAKE A PLEA OF GUILTY OR NOT GUILTY. IF YOU HAVE NO MONEY OR ASSETS AND YOU QUALIFY, AN ATTORNEY CAN BE APPOINTED FOR YOU BY THE COURT.

DO YOU UNDERSTAND THESE RIGHTS? YES NO

DO YOU WISH TO SPEAK WITH AN ATTORNEY? YES NO

DO YOU WISH TO HAVE AN ADEQUATE TIME TO THINK ABOUT THE CHARGES BEFORE YOU MAKE A PLEA? YES NO

IF YOU PLEAD GUILTY, DO YOU UNDERSTAND YOU WILL GIVE UP YOUR RIGHT TO A JURY TRIAL AND APPEAL? YES NO

TO CROSS EXAMINE WITNESSES? YES NO

TO CALL WITNESSES IN YOUR OWN BEHALF? YES NO

IF YOU PLEAD NOT GUILTY, YOU HAVE A RIGHT TO HAVE THE STATE PROVE THE CHARGE(S) BEYOND A REASONABLE DOUBT? YES NO

HOW THEN DO YOU WISH TO PLEAD TO THE ABOVE CHARGE(S)? GUILTY
NOT GUILTY

MY SIGNATURE ATTESTS THAT I HAVE BEEN ADVISED OF MY RIGHT TO COUNSEL AND HEREBY WAIVE THAT RIGHT AND MAKE MY PLEA TO THE ABOVE CHARGE(S) KNOWINGLY, WILLFULLY, AND INTELLIGENTLY.

DEFENDANT

THIS COURT FINDS A FACTUAL BASIS FOR WHICH TO ACCEPT THE PLEA.

JUDGE

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**OMNIBUS HEARING
MEMORANDUM**

Case No. _____

* * * * *

The Prosecutor and the Defendant/Defense Counsel acknowledge that they have both read the omnibus hearing statute, 46-13-110 MCA, and are now prepared to discuss any pretrial matters in addition to and including those matters listed in 46-13-110 MCA. Our discussion of and subsequent agreement on these pretrial matters is summarized by this memorandum.

I. DISCOVERY

1. In compliance with 46-15-322 MCA, the State shall immediately and on a continuing basis:
 - a. Disclose the names of the State’s witnesses (including experts), their statements, or a short summary of their anticipated testimony if no statement exists.
 - b. Disclose and make available for inspection all physical or documentary evidence in the State’s possession.
 - c. Disclose all oral, written, or recorded statements made by the Defendant to investigating officers or to a third person.
 - d. Disclose all exculpatory evidence known to the State.

2. In compliance with 46-15-323 MCA, the Defense shall immediately and on a continuing basis:
 - a. Disclose the names of the Defendant’s witnesses (including experts), their statements, or a short of their anticipated testimony if no statement exists.
 - b. Disclose and make available for inspection all physical or documentary evidence in the Defendant’s possession that will be used at trial.

II. SUPPRESSION MOTIONS

- 1. The Defendant moves, pursuant to 46-13-302 MCA, to suppress physical evidence:
() Yes () No If yes:

Defendant's brief must be filed 30 days prior to trial date. State's brief must be filed 10 days after Defendant's brief is filed.

Hearing date is set for _____.

- 2. The Defendant moves, pursuant to 46-13-301 MCA, to suppress any admission or confession: () Yes () No If yes:

Defendant's brief must be filed 30 days prior to trial date.

State's brief must be filed 10 days after Defendant's brief is filed.

Hearing date is set for _____.

III. OTHER CRIMES, WRONGS, OR ACTS

The State intends to introduce evidence of other crimes, wrongs, or acts pursuant to Rule 404 of the Montana Rules of Evidence.

- a. The notice required by State v. Just, as modified by State v. Matt (1991 814 P.2d 52, shall be filed 30 days prior to trial date.

- b. The Defendant may file a brief opposing the use of any of the matters referred to in the notice 10 days after State's brief is filed.

Deemed submitted on briefs: () Yes () No If no:

Hearing date is set for _____.

IV. AFFIRMATIVE DEFENSES

The Defendant is aware of the time limits imposed by 46-13-323 MCA, in which the Defendant may assert certain defenses.

- 1. The Defendant asserts an affirmative defense: () Yes () No If yes:

- a. The Defendant will assert the affirmative defense of:

- b. The names and addresses of all witnesses to be called in support of any affirmative defense, together with all written reports or statements made by them shall be furnished to the State 20 days prior to trial.

- c. The State shall furnish the Defendant with the names and addresses of all witnesses the State intends to call, to rebut the Defendant's affirmative defense, 15 days prior to trial.

- 2. The Defendant will rely on a general denial: () Yes () No

V. MOTIONS BY THE STATE

The State has pretrial motions: () Yes () No If yes:

These motions are: _____

_____.

State's brief will be filed 20 days prior to trial.
Defendant's brief will be filed 5 days after State's brief is filed.
Deemed submitted on briefs: () Yes () No If no:
Date of hearing: _____.

VI. MOTIONS BY THE DEFENDANT

The Defendant has pretrial motions: () Yes () No If yes:

These motions are: _____

_____.

Defendant's brief must be filed 20 days prior to trial date.
State's brief must be filed 5 days after Defendant's brief is filed.
Deemed submitted on briefs: () Yes () No If no:
Date of hearing: _____.

VII. PLEA AGREEMENT

A plea agreement has been reached pursuant to 46-12-211 MCA.
() Yes () No

VIII. ENHANCED PUNISHMENT

Pursuant to 46-13-110(3)(g) MCA, the State hereby gives notice to the Defendant that the State shall seek persistent felony offender status as follows:

_____.

IX. TRIAL PROCEDURE

1. This case is set for trial on _____.
Trial will be by () Jury () Bench in City, Justice, or Municipal Court.
2. The expected length of trial is _____ days/hours.
3. The Court will draw a panel of _____ prospective jurors.
4. ALL MOTIONS IN LIMINE SHALL BE FILED and called up for hearing no later than 7 days prior to trial unless good cause is shown.

X. STIPULATION OF ENTRY

The State and the Defendant have reviewed this Omnibus Hearing Memorandum and hereby stipulate to its' entry by the Court.

Date: _____

Prosecutor: _____

Defendant: _____

Defense Attorney: _____

* * * * *

HEREBY ORDERED

Date

Judge

CHECKLIST: OMNIBUS HEARING, CRIMINAL ACTION

Date _____

*	*	*	*	*	*	*
STATE OF MONTANA)			
	Plaintiff)			
	vs)			
_____)	Case No.	_____	
	Defendant)			
*	*	*	*	*	*	*

_____ Call to order
 _____ Persons present:
 _____ For State
 _____ For Defendant

_____ Defendant Pro Se
 _____ Defense Attorney

 Name

_____ Explain Purpose:
 #1 — Prepared for trial
 #2 — Motions considered
 #3 — Dignity of Court and Rights of Defendant protected.

_____ Less formal than trial; subject to rules governing contempt

_____ Questions to resolve:
 _____ #1 — Jury or Bench
 _____ #2 — Trial Date and Time _____, ____:____ a.m/p.m
 (possibility of trial in absentia)
 _____ #3 — Number of Witnesses: _____ Plaintiff _____ Defendant
 _____ #4 — Affirmative defense?
 _____ #5 — Discovery issues discussed
 _____ #6 — Last date to comply with discovery
 _____ #7 — Last date to file motions
 _____ #8 — Subpoena of witnesses discussed

_____ Handouts:
 _____ #1 Statute (for Pro Se Defendants)
 _____ #2 Trial guide (bench / jury)
 _____ #3 Notes of Investigation
 _____ #4 Omnibus memorandum/statute/waiver/checklist
 _____ #5 Miscellaneous

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA
Plaintiff

vs

Defendant

) **NOTICE OF SUSPENSION OF**
) **REGISTRATION AND SURRENDER**
) **OF REGISTRATION RECEIPT AND**
) **LICENSE PLATES**

) Case No. _____
)

* * * * *

On the _____ day of _____, 20____, the above named Defendant appeared before this Court and was found guilty of the offense of Operating a Motor Vehicle Without Liability Insurance, in violation of Section 61-6-301 MCA, or Failure to Carry Proof of Liability Insurance, in violation of Section 61-6-302 MCA as a second /subsequent offense.

Pursuant to Section 61-6-304 MCA, **IT IS HEREBY ORDERED** that the Defendant named above must surrender to this Court, the most current receipt of registration or a duplicate and license plates for the vehicle driven at the time the offense occurred. The vehicle is described as: _____

The Court shall send the receipt and plates, along with a copy of the Complaint or Notice to Appear and the disposition and a copy of this Order to the **Motor Vehicle Division**, which shall immediately suspend the receipt and plates for a period of 90 / 180 days from the date of conviction.

In addition, **IT IS HEREBY ORDERED** that you must immediately tender to the Court an amount of \$_____ to cover the costs of mailing to the Motor Vehicle Division.

Dated this _____ day of _____, 20____.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

TRIAL DATE SETTING

Case No. _____

* * * * *

You are hereby notified that the above entitled case has been set for trial before

_____ a Judge, or

_____ a Jury

in the above styled Court at _____:_____, _____ M. on the _____ day of _____, 20____.

Trial will be held in the:

____ Justice Courtroom located in the _____ County Courthouse.

____ Justice Courtroom located at _____.

____ City Courtroom located at _____.

Date

Judge

By: _____
Clerk

xc: _____ City Attorney
_____ County Attorney
_____ Defendant or Defense Attorney

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

ORDER RESETTING TRIAL

Case No. _____

* * * * *

Upon motion of the _____ and good cause appearing, IT IS
HEREBY ORDERED that the trial set in the above matter has been **vacated and reset** for trial
before:

_____ a Judge, or
_____ a Jury

The trial will take place at ____:____. M. on the ____ day of _____, 20____,
in the above styled Court.

Trial will be held in the:

- ___ Justice Courtroom located in the _____ County Courthouse.
- ___ Justice Courtroom located at _____.
- ___ City Courtroom located at _____.

Date

Judge

By: _____
Clerk

- xc: ___ City Attorney
- ___ County Attorney
- ___ Defendant or Defense Attorney

HANDOUT FOR PRO SE DEFENDANT / BENCH TRIAL

1. Judge will announce the case and give a general review of the trial process.
2. State/City will make opening statement. (This statement may be waived). This statement is not testimony. You may also make an opening statement. This statement must be an overview of what you expect to show by the testimony from you or your witnesses. It is not testimony and can be waived without any effect on your case.
3. State/City will call a witness who will be placed under oath.
 - (a) State/City will question witness.
 - (b) You may question the witness about information just covered.
 - (c) State/City will question witness again. (Can be omitted)
 - (d) You may question the witness again PROVIDING THE STATE/CITY DID SO.This procedure will be followed for each witness. The State/City will rest their case after all their witnesses have testified.
4. You, the Defendant, will call your first witness. The witness will be placed under oath.
 - (a) Defendant will question witness.
 - (b) The State/City will ask questions.
 - (c) You may ask questions again. (The Judge may ask questions for clarification).
 - (d) The State/City may again ask questions.
5. You still have the right to remain silent and this right cannot be held against you. IF YOU DECIDE TO TESTIFY in your own behalf, come forward and be sworn. (Remember that you will be required to answer the State/City questions). You will generally be allowed to tell your side in story form. Keep your statements to the pertinent facts of this case which is the cause for your being in Court.
 - (a) Defendant will testify.
 - (b) The State/City will question you. (Only if you choose to testify in your own behalf).
 - (c) You may add items forgotten before, if relevant.
 - (d) The State/City may question you again. You will then rest your case after all your witnesses have testified.
6. The State/City may call additional (rebuttal) witnesses.
7. The State/City will give their initial closing statement. This statement is not testimony and may be waived by the State/City. The Court **WILL NOT** make a decision based on closing or opening statements.
8. You may give a closing statement. This is not testimony, nor is testimony allowed here. This statement is simply a conclusion of the testimony and evidence already presented. For example, your statement could be, "From the testimony given here today, I ask the Court to find me not guilty of this charge. Thank you."
9. The State/City will give their final closing statement.
10. The Court will make a decision.

***** FAILURE TO APPEAR FOR TRIAL may result in a warrant for your arrest and the trial may be held in your absence.**

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

STATE OF MONTANA)

Plaintiff)

vs)

Defendant)

**CONDITIONS OF RELEASE
ORDER**

Case No. _____

The above named Defendant will be released on \$ _____ bail, posted
by _____, with these conditions:

- _____ 1) Defendant must appear in Court each and every time he/she is required to, and must personally appear. ****** DEFENDANT'S PERSONAL PRESENCE IN COURT IS REQUIRED AT ALL TIMES UNLESS SPECIFICALLY EXEMPTED FROM APPEARANCE BY THIS COURT.**
- _____ 2) Defendant must not leave THIS COUNTY / STATE OF MONTANA unless given express permission by this Court to do so.
- _____ 3) Defendant must remain in contact with his/her attorney at all times; and must contact the attorney _____.
- _____ 4) Defendant must not change place of address, telephone number, or place of employment without immediate notification to the Court and to Defense Attorney.
- _____ 5) Defendant must not be involved in any criminal activities nor be convicted of any criminal offense pending disposition of this case.
- _____ 6) Defendant must attend _____.
- _____ 7) Defendant must not contact any witnesses or victims associated with this case.
- _____ 8) Defendant must not consume any alcohol or drugs and must not frequent any bars, taverns, or other business facilities where alcohol is the chief item of sale.
- _____ 9) Defendant must submit to a test for alcohol/drugs at the request of the Court or Law Enforcement ON DEMAND. Presence of any alcohol or drugs or refusal to submit to a test will cause immediate violation of this Order.
- _____ 10) Other Conditions (Interlock / Curfew / No weapons / Seek employment / etc.):

Any violation of any conditions listed herein will be cause for the immediate arrest of the Defendant and bond will be set in the amount of \$ _____.

Date

Judge

SENTENCING SCRIPT FORM, CRIMINAL ACTION

Good Morning / Afternoon! This is the time set for sentencing in the case of the State of Montana versus _____. The Defendant was tried by jury / tried by the Court / plead guilty or nolo contendere to the charge of _____ in violation of Section _____, MCA.

Is there any reason that the Court should not continue sentencing at this time? (Asked of both the prosecutor and the defense. Generally, the answer is no as the sentencing would have been previously set).

Does the City/State have a recommendation for sentencing?
(It may be helpful to take notes)

Does the Defense have a recommendation for sentencing?

If there is a written plea agreement, you may agree to sentence exactly to the recommendations listed. You are not bound to accept the plea agreement. Section 46-12-211 MCA sets out the criteria for plea agreements.

Pronounce sentence in open court. Verify that the Defendant understands **exactly** what the sentence is. How the sentence is pronounced is the foundation for any future revocation or contempt proceedings. If, for example, you do not tell the Defendant that completion of the ACT program is required and do not set up dates to enroll or comply, **you cannot revoke any sentence** for a failure to attend ACT classes.

It is extremely important that you record the sentence exactly as you have recited it in Court. Although we are not "courts of record," an accurate docket is required per statute and for enhancement proceedings. Our dockets are being scrutinized more often all the time by higher courts and other parties.

The sentence of the Court is as follows: _____

Again, be certain that each facet of the sentence is clearly stated to the Defendant and that the Defendant understands the sentence. It is recommended that you require the Defendant to sign the daily appearance sheet, minutes of appearance, or some form acknowledging the sentence.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**JUVENILE
SENTENCE AND ORDER**

Case No. _____

* * * * *

The above named Defendant, a youth under the age of 18, having been this day found guilty of _____ in violation of _____ MCA / City Code.

IT IS ORDERED:

_____ Defendant is assessed a fine of \$ _____, payable within _____ days.

_____ Defendant's driver's license is (revoked) / (suspended) for the period of _____.

_____ That the fine assessed is suspended upon completion of _____ hours of public service under supervision of _____.

_____ The Defendant is to report to _____ within five (5) days to make arrangements for the completion of this service.

_____ That the vehicle owned/solely driven by the Defendant is ordered impounded by: _____ for _____ days.

_____ That the Defendant is ordered to _____

IT IS FURTHER ORDERED:

_____ That the Defendant's failure to comply with this order shall be treated as Contempt of Court.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

SENTENCE AND ORDER

Case No. _____

* * * * *

The above named Defendant having been this day found to be guilty of _____
in violation of _____ MCA / City Code.

IT IS ORDERED:

- 1) Defendant is assessed a fine of \$ _____ payable in monthly installments of \$ _____.
Fine is to be paid in full by _____.
- 2) Defendant is assessed restitution of \$ _____ payable in monthly installments of
\$ _____ and paid in full by _____.
- 3) Defendant shall serve _____ days in jail; of which ____ hours must be consecutive;
____ days may be broken up at the Sheriff's discretion.
- 4) That ____ of the fine and ____ days of imprisonment are suspended upon the condition that

IT IS FURTHER ORDERED:

- 1) That Defendant's failure to comply with the above conditions may be grounds for revocation
of the suspended sentence and fine, and Defendant may serve the full jail sentence and pay
the full amount of fine imposed.
- 2) Failure to comply with this Order shall be treated as Contempt of Court pursuant to 3-10-401
and 3-11-303 MCA.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
(Form A)

*	*	*	*	*	*	*
STATE OF MONTANA)			
Plaintiff)	ALTERNATE		
)	SENTENCE AND ORDER		
vs)			
)	Case No. _____		
_____)			
Defendant)			
*	*	*	*	*	*	*

The Defendant having been found guilty of _____
_____ in violation of Section _____ MCA;

IT IS HEREBY ORDERED that the Defendant be sentenced as follows:

That the Defendant be fined \$_____ plus a surcharge of \$_____ for a total of \$_____;
and in addition,

That the Defendant be sentenced to _____ days in jail. _____ of the jail term is
suspended for _____ on the following conditions:

- _____ 1. Complete jail / jail alternatives.
- _____ 2. Pay fine and surcharges.
- _____ 3. Pay restitution of \$_____.
- _____ 4. Pay attorney fees of \$_____.
- _____ 5. Pay jury costs of \$_____.
- _____ 6. Pay costs of home arrest at \$_____ per day.
- _____ 7. Pay for costs of in jail service at \$_____ per day.
- _____ 8. Attend and complete:
 - _____ a. ACT.
 - _____ b. Treatment after ACT.
 - _____ c. Counseling for domestic abuse.
 - _____ d. In-patient alcoholic treatment at _____.
 - _____ e. Other _____.
- _____ 9. No consumption of alcohol/drugs nor frequenting bars/taverns.
- _____ 10. Loss of license/privilege to hunt/fish/trap for _____.

- _____ 11. No convictions for violation of Montana laws/City codes.
- _____ 12. Keep address and phone number current with the Court.
- _____ 13. Inform insurance company of conviction.
- _____ 14. Defendant ordered to submit to booking procedure.
- _____ 15. Other: _____

JAIL OR JAIL ALTERNATIVES:

- _____ 1. No choice given to Defendant by the Court.
- _____ 2. Defendant offered choice of serving _____ days in jail or:
 - a. Serve _____ days in jail and _____ days community service..
 - b. Serve _____ days jail and _____ days home arrest.
 - c. Serve _____ days jail, _____ days home arrest, and _____,
 - d. Other _____

SENTENCING CHOICE:

The Justice/City Court has offered me a choice of an alternate sentence. I understand the sentence and agree to its imposition.

I understand my sentence and the responsibilities which have been placed upon me. I will reappear for a sentence audit, before this Court, on _____.

Date

Defendant

The Defendant has been warned of possible loss of driver’s license, under 61-5-214 MCA, and Contempt of Court pursuant to 3-10-401 and 3-11-303 MCA.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

(Form B) To be placed on back of Minutes of Appearance.

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

**ALTERNATE SENTENCE
AND ORDER**
Case No. _____

* * * * *

The Defendant having been found guilty of _____ in violation of
Section _____ MCA;

IT IS HEREBY ORDERED that the Defendant be sentenced as follows:

That the Defendant be fined \$ _____ plus a surcharge of \$ _____ for a total of \$ _____; and in
addition,

That Defendant be sentenced to _____ days in jail; _____ of jail term is suspended for _____ on
the following conditions:

- _____ 1. Complete jail / jail alternatives.
- _____ 2. Pay fines and surcharge.
- _____ 3. Pay restitution of \$ _____.
- _____ 4. Pay attorney fees of \$ _____.
- _____ 5. Pay jury costs of \$ _____.
- _____ 6. Pay costs of home arrest at \$ _____ per day.
- _____ 7. Pay for costs of in jail service at \$ _____ per day.
- _____ 8. Attend and complete:
 - _____ a. ACT.
 - _____ b. Treatment after ACT.
 - _____ c. Counseling for domestic abuse.
 - _____ d. In-patient alcohol treatment at _____.
 - _____ e. Other: _____
- _____ 9. No consumption of alcohol/drugs nor frequenting bars/taverns.
- _____ 10. Loss of license/privilege to hunt/fish/trap for _____.
- _____ 11. No convictions for violation of Montana laws/City codes.
- _____ 12. Keep address and phone number current with the Court.
- _____ 13. Inform insurance company of conviction.
- _____ 14. Defendant ordered to submit to booking procedure.
- _____ 15. Other: _____

JAIL OR JAIL ALTERNATIVES:

- _____ 1. No choice given to Defendant by the Court.
- _____ 2. Defendant offered choice of serving _____ days in jail , or:
 - a. Serve _____ days in jail and _____ days of community service.
 - b. Serve _____ days jail and _____ days home arrest.
 - c. Serve _____ days jail, _____ days home arrest, and _____.
 - d. Other: _____

SENTENCING CHOICE

The Justice/City Court has offered me a choice of an alternative sentence. I understand the sentence and agree to its imposition.

I understand my sentence and the responsibilities which have been placed up me. I will reappear for a sentence audit, before this Court, on _____. I have been warned of possible loss of driver's license under 61-5-214 MCA and Contempt of Court pursuant to 3-10-401 MCA (Justice Court) or 3-11-303 MCA (City Court) .

Date

Defendant

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**PARTNER OR FAMILY
MEMBER ASSAULT AUDIT**

Case No. _____

* * * * *

_____, the above named Defendant, having been ordered to enroll, attend , and complete _____ hours of partner or family member assault or family member abuse counseling before Judge _____, Justice of the Peace/City Judge. In addition, an alcohol evaluation, counseling, and treatment if necessary, must be completed and prior to domestic abuse counseling.

Defendant has:

- _____ submitted to an alcohol/drug evaluation.
- _____ enrolled / failed to enroll in alcohol/drug treatment.
- _____ enrolled / failed to enroll for partner or family member abuse treatment.
- _____ attended / failed to attend counseling sessions as ordered for alcohol/drug treatment or partner or family member abuse treatment.
- _____ completed / failed to complete counseling by:
 - _____ failing to attend sessions.
 - _____ failing to pay for sessions.
 - _____ failing to comply with counseling recommendations.

Notice is given to the Court of Jurisdiction and the Defendant of the status of this referral.

_____, 20____.

Date

Counselor

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**ORDER FOR
FORFEITURE OF VEHICLE**

Case No. _____

* * * * *

Pursuant to Section 61-8-733 MCA, it is mandated that any vehicle owned and operated by the above named Defendant at the time of violation of 61-8-401 MCA or 61-8-406 MCA was committed **SHALL BE SEIZED** by the arresting agency and subjected to the procedure provided under 61-8-421 MCA.

THEREFORE, IT IS HEREBY ORDERED

that _____ shall seize and begin forfeiture proceedings on the motor vehicle described below according to the procedure provided under 61-8-421 MCA. The motor vehicle is described as follows:

and located at:
_____.

Dated this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)

Plaintiff)

vs)

Defendant)

**PETITION TO REVOKE and
NOTICE OF HEARING**

Case No. _____

* * * * *

On the ____ day of _____, 20____, the Defendant,

_____, appeared before Judge _____

and was found guilty of the offense(s) of _____.

The sentence imposed was _____

It has been brought to the attention of this office that the Defendant has failed to:

Based on the foregoing, the City/County Attorney petitions the Court to revoke the

Dated this ____ day of _____, 20____.

City/County Attorney

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

ORDER TO SHOW CAUSE

Case No. _____

* * * * *

YOU ARE HEREBY ORDERED to appear before the above-styled court at ____:____
o'clock ____ M., on the ____ day of _____, 20____, to show cause why an order
should not be made finding you in Contempt of this Court for _____.

**YOU ARE REQUIRED TO CONTACT THE COURT PRIOR TO THE HEARING
TO CONFIRM YOUR RECEIPT OF THIS SHOW CAUSE FORM AND TO APPEAR
AT THE SCHEDULED TIME.**

UPON FAILURE TO APPEAR OR RESPOND, a Bench Warrant will be issued for
your arrest.

Date

Judge

R E T U R N

I HEREBY CERTIFY that I served the above ORDER TO SHOW CAUSE on the
Defendant, _____, on _____, 20____,
at _____.
Location

Signature and Title

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)

Plaintiff)

vs)

COMMITMENT ORDER

)Case No. _____

_____,)
Defendant)

* * * * *

The above named Defendant, having been convicted in the above entitled Court for the offense of _____, in violation of Section _____, MCA, committed on or about the ____ day of _____, 20__.

IT IS ORDERED THAT THE DEFENDANT BE INCARCERATED for a period of _____. The Defendant shall serve ____ days in jail; of which ____ hours must be consecutive; ____ days may be broken up at the Sheriff's discretion.

YOU ARE HEREBY COMMANDED to take and receive said prisoner for the above period of time or until legally discharged.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

DEFENDANT RELEASE ORDER

Case No. _____

* * * * *

TO: THE CITY POLICE CHIEF / COUNTY SHERIFF OF _____
STATE OF MONTANA:

_____, is hereby ordered to be released from custody,
effective _____ at ____:____ AM/PM.

_____ \$_____ bond posted.

_____ Own Recognizance.

_____ Charge(s) Dismissed.

_____ Other _____

Dated this ____ day of _____, 20__.

Judge

INFORMATION SHEET FOR MITTIMUS INMATES

1. This information sheet is provided to help reduce inconvenience to persons being confined in the _____ County/City Jail. Only the items listed below may be brought into the jail. It is recommended that all other items such as wallet, rings, keys, etc., be left at home.
2. Items allowed when confined are as follows:
 - A. Money. Change is suggested since items must be bought from machines or on _____ when the Jailer makes Commissary Runs.
 - B. Three (3) books.
 - C. Writing Material – paper, envelopes, stamps. (No spiral ring notebooks); pen (soft plastic type; 1 pencil.
 - D. Medicine. Must be prescription drug with label on bottle showing instructions for administering and the doctor’s name.
 - E. Prescription glasses.
 - F. Legal Papers.
 - G. Small family photograph without frame or backing.
 - H. If jail time is over 48 hours, a change of socks and underclothing.

**** **Note:** This is only a sample information sheet. Check with your City/County Jailer to confirm procedures. ****

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

*	*	*	*	*	*	*
STATE OF MONTANA)					
Plaintiff)			SUBPOENA		
)			SUBPOENA DUCES TECUM		
vs)					
)			Case No. _____		
_____)					
Defendant)					
*	*	*	*	*	*	*

TO: _____

I HEREBY COMMAND you that all business and excuses being laid aside, you appear and attend the hearing in the above entitled matter which shall be held at my Court in _____ County of _____, State of Montana, on the _____ day of _____, 20____, at the time of ____:____, __. M., then and there to testify in the above action, now pending. You are further commanded to bring with you AND PRODUCE in evidence the following documents: _____

DISOBEDIENCE OF THIS ORDER will be punished as a Contempt of Court.

Dated this ____ day of _____, 20__.

Judge

STATE OF MONTANA)
 vs) : ss
 COUNTY OF _____)

I HEREBY CERTIFY THAT I served the within Subpoena/Subpoena Duces Tecum on the _____ day of _____, 20____, upon _____, being the witness named in said Subpoena/Subpoena Duces Tecum, by showing the original to said witness personally and delivering to him/her a copy thereof.

Dated this ____ day of _____, 20__.

Service	\$ _____	_____
Mileage	\$ _____	_____
TOTAL	\$ _____	_____

Sheriff/Constable/Levying Officer

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**ORDER CALLING IN
SUBSTITUTE JUDGE**

Case No. _____

* * * * *

Whereas the undersigned Judge has on his/her own Motion disqualified himself/herself from sitting or acting in the above captioned action;

IT IS HEREBY ORDERED pursuant to Sections 3-6-204, 3-10-231, and 3-11-203, MCA, that Judge _____, Justice of the Peace/City Judge is called to act instead of the undersigned Judge and act as Judge in the above captioned case.

Date

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**ORDER FOR
SUBSTITUTE JUDGE**

Case No. _____

* * * * *

A MOTION FOR SUBSTITUTION OF JUDGE AND AFFIDAVIT having been made and presented before the judge of jurisdiction, _____, a Justice of the Peace/City Judge;

THEREFORE, IT IS HEREBY ORDERED THAT _____, a Justice of the Peace/City Court Judge, is called to hear such disqualification proceedings of the above entitled cause pursuant to Section 3-1-805 MCA.

Date

District Judge

BENCH TRIAL SCRIPT / CRIMINAL

“The Justice/City Court of _____ County/City is now in session. My name is Judge _____. Is the State/City ready to proceed? Defense?”

(**** For Pro Se Defendants – ask if it is necessary to review court procedure. If the Defendant says yes, or seems unsure, the Judge should give an overview of the HANDOUT FOR PRO SE DEFENDANT / BENCH TRIALS. If the Defendant seems comfortable with the procedure, continue with the case. ****)

“In this case, the Defendant is charged with the offense of (Read from complaint / NTA): _____. If you, _____, the Defendant, choose to remain silent and not testify, this will not be held against you. If you do decide to testify, you will be placed under oath, and will be treated as any other witness in this case.”

“Are there any pre-trial motions?” (Handle each motion separately)

“(County/City Attorney) _____, do you wish to give an opening statement?”

“(Defendant) _____ do you wish to give an opening statement or reserve it until later?”

TO STATE/CITY: “Call your first witness.”

Each witness will be placed under oath by the Judge, or Bailiff if you have one. Each witness will testify under direct examination, cross examination by the Defense, redirect examination, and recross. After each witness goes through the examination process, tell the witness he/she may step down.

Continue with all the State/City witnesses. The State/City will then “rest” their case.

The Defendant may make an opening statement, if reserved. If opening statement has already been given by the Defense, proceed with the Defense witnesses. Again, you or the Bailiff will place the witness under oath and the order of testimony will proceed as listed above.

If a Defendant is acting without an attorney and wishes to testify, let him/her tell the story under direct and redirect.

After the Defense calls all their witnesses, they will rest their case.

The State/City may then call witnesses on Rebuttal. The same rules for witnesses apply here. The State/City will again rest their case.

“This concludes the testimony of the trial. Are both parties ready to give closing arguments?”

State/City is allowed to close first, then the Defense. Final closing may be given by the State/City.

You may now give a verdict or take a brief recess to consider all the testimony and evidence presented to you. This recess is not necessary, however, it may help to leave the courtroom and gather your thoughts before you make a decision.

After returning to the courtroom, have the Defendant and his attorney stand.

**** NOT GUILTY ****

“This Court finds you not guilty of the offense of _____.
The charge is dismissed and you are excused.” (If bail has been posted, release the bail at this time.)

**** GUILTY ****

“This Court finds you guilty of the offense of _____.
Is there any reason the Court should not sentence you at this time, or do you wish to have a continuance for sentencing?” (If the Defendant wants to wait, set a date and time certain for sentencing, request bail if necessary, and advise the Defendant of the consequences of failing to appear for sentencing.)

“Before sentence is given, are there any recommendations from the State/City?”

“Are there any recommendations or statements from the Defendant?”

“After consideration of these recommendations, it is the sentence of this Court that

(This is the time to set up payment arrangements for a fine, restitution, etc. Also, verify that the Defendant understands each part of the sentence you gave, including counseling, community service, or other conditions you have imposed and you may give the Defendant a copy of the judgment and sentence. **Remember**, you **must give** the Defendant a written copy of the sentence in a Partner or Family Member Assault case. This is also a good time to inform the Defendant of the right of appeal.

“Court is adjourned.”

NOTICE TO JURORS FORM

This is official notification that you have been selected for duty on a jury panel during the upcoming term of this Court. You will be contacted by mail. You are required to come to Court for jury selection. This term is for one year.

The fact that you have been called to serve does not mean that you must be on call or on duty all of the term. The average trial lasts about one day and you will be one of a jury panel of 15 to 30 persons.

Jury service is both a duty and a privilege. However, every duty imposes some inconvenience. The Judge will grant excuses for lawful reasons only, and not for matters of inconvenience.

Please fill out the enclosed questionnaire and return it to this Court. Obtaining this information in advance serves to expedite the selection of a jury and will save time and money for all concerned.

PLEASE USE BLACK INK OR A TYPEWRITER WHEN FILLING OUT THE QUESTIONNAIRE AND/OR AFFIDAVIT.

The following is taken from the Montana Codes Annotated and is the law with regard to excusing any jurors from jury duty service:

MCA 3-15-313. Who may be excused – affidavit to claim excuse – permanent exclusion for chronically incapacitated. (1) The court or jury commissioner with the approval of the court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for the person or the public served, the person may make and transmit an affidavit to the jury commissioner for which the person is summoned, stating the person's occupation or other facts that the person believes will excuse the person from jury service. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person who is chronically incapacitated by illness or injury may request a permanent exclusion from jury service by making and transmitting an affidavit to the jury commissioner of the person's place of residence. The affidavit must include a certification by the person's physician that the person is chronically incapacitated by illness or injury. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may permanently excuse a prospective juror from jury service if the prospective juror satisfies the provisions of this subsection (3).

(4) For purposes of subsection (3), a person is chronically incapacitated if the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special transportation or the assistance of another person, or that causes leaving home to be medically contraindicated. Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to the following:

- (a) paralysis by a stroke or other cause;
- (b) blindness;
- (c) senility;
- (d) loss of the use of a person's extremities requiring the assistance of another in leaving the person's place of residence;
- (e) arteriosclerotic heart disease of such severity that a person must avoid all stress and physical activity; or
- (f) a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would not be considered safe for the person to leave home unattended, even if there are no physical limitations.

An affidavit to claim excuse is provided. Please sign in the presence of a notary public, a court clerk, or before the judge.

Date

Judge

AFFIDAVIT TO BE EXCUSED FROM JURY SERVICE

I, _____ ask to be excused from jury service for the following reasons: _____

Signature

Address

Telephone

SUBSCRIBED and SWORN TO before me on this ____ day of _____, 20__.

Judge

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____.

JURY QUESTIONNAIRE FORM

PLEASE FILL OUT & RETURN THIS QUESTIONNAIRE WITHIN SEVEN (7) DAYS TO:

Please print or type)

1. Name _____
2. Address _____
3. If you live outside the city limits, please state the round trip mileage from your home to the courthouse _____.
4. How long have you resided there? _____ Years in State? _____
5. Telephone: Home _____ Work _____
6. Married _____ Single _____ Age _____ Sex _____
7. Do you have children? _____ Ages _____
8. What education have you had? _____
9. Are you presently employed? _____ Occupation? _____
10. Employer's Name _____ Address _____
11. a. If married, name of spouse _____
b. If married, occupation of spouse _____
c. If retired, give last occupation _____
d. If married, give spouse's employer _____
12. Have you ever served as a juror? _____ What court? _____
13. Have you or any member of your immediate family ever been injured in an accident? _____
What type? _____
14. Have you or any member of your immediate family ever been a party in a lawsuit? _____
What type? _____
15. Are you or any member of your immediate family involved in law enforcement in any official capacity? _____ If so, briefly explain _____
16. Are you or your spouse related to any attorney? _____ If so, give name and address _____
17. Are you or your spouse presently being represented by an attorney? _____ If so, give name and address _____
18. Do you have any disability which you feel would make it difficult to serve on a jury? _____
Briefly explain _____
19. In order to serve as a trial juror, you must be a registered elector whose name appears on the most recent list of all registered electors as prepared by the county registrar, **AND** not have been convicted of any felony, malfeasance in office, or any high crime without having rights restored.
20. Do you feel you should be excused from serving as a juror? _____
If you answer "yes", complete the affidavit on the back of this form and have your signature notarized and return within seven (7) days to the Clerk of Justice/City Court.

I certify that the foregoing statements are true to the best of my knowledge and belief.

Date

Signature

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

JURY SERVICE MEMO

Case No. _____

* * * * *

TO WHOM IT MAY CONCERN:

_____ served as a juror as follows:

_____ day(s) on the jury panel at \$12.00 per day.

_____ day(s) as a trial juror at \$25.00 per day.

_____ miles were traveled and reimbursed in the amount of \$_____.

Date

Judge

JURY TRIAL SCRIPT / CRIMINAL

It is highly recommended that you have a bailiff for all jury trials. A bailiff is very helpful in organizing jurors, swearing in witnesses, and sitting while the jury is deliberating.

Prior to the day of trial, review with your bailiff exactly what you expect from him/her and what they can expect from you. This should include how you will seat the jurors, how to handle preemptory challenges, etc. There shouldn't be any surprises between the two of you.

Before you begin, make sure all the prospective jurors have arrived. While you are waiting, take the attorneys into chambers and hear all pre-trial motions. Make your decisions on matters of excluding witnesses and other Motions in Limine at this time.

The Bailiff will announce the Court and the Judge while you are coming in. Ask everyone to be seated.

“Good Morning/Good Afternoon, Ladies and Gentlemen. The first function today is to call a roll of the jury panel. Please answer as your name is called.” (Bailiff will read the names; you should check them off on your list at the same time.)

“Thank you for coming today. You have been called in to take part in one of the highest duties of citizenship. The Court appreciates your participation. The trial should be completed in _____ (days / today.) Every effort will be made to see that your time is not wasted.

Six jurors, and possibly one alternate, will be chosen to decide whether the Defendant is not guilty or guilty, based on the law, the evidence presented, and my instructions. Before we begin to hear the evidence of this case, there are some preliminary matters that must be taken care of.

I will give you an oath and then I have certain questions to ask you to determine your qualifications to serve as jurors in this case.”

(JUDGE or BAILIFF) – administer the oath: (with right hands raised)

“Do you and each of you, solemnly swear that you will make true answers to the questions that may be asked of you, as to your qualifications to serve on the panel of jurors during this term of Court, SO HELP YOU GOD?” “You may be seated.”

“In order to serve as a qualified juror today, you must be:

- **At least 18 years of age;**
- **Currently registered to vote in the State of Montana, County of _____, or City of _____;**
- **Must not have ever been convicted of a felony, malfeasance in office, or other high crime AND NOT have had your civil rights restored.”**

“In addition, do you have a health problem that may interfere with your ability to serve on this case? Do you have any other reason to believe that you are not qualified to serve on this case?”

“If, in response to any of the reasons I have recited, you feel you are not qualified, you may be excused. If you have any questions, please step forward and we will discuss the matter in chambers.”

If no one needs to be excused, you should pass the jury for cause by stating, **“The Court passes the jury panel for cause.”**

“The attorneys for today’s trial are County/City Attorney _____ and Defense Attorney _____. The Bailiff is _____ and (he/she) will help both the Court and the Jury during the course of the trial.”

You will now ask the Bailiff to read the names of the prospective jurors (from a list similar to the JURY LIST FORM) to seat the jury panel. Explain to the panel that as their name is called, they will be seated in turn, until all jurors are seated. It is less time consuming and confusing if ALL prospective jury members are seated and go through the “voir dire” process at the same time. This way, if any juror is excused “for cause”, you will not have to stop the voir dire and have the attorneys “catch up” on questioning the newly seated juror.

“As the Bailiff reads your name, please have a seat as I have indicated. After you have all been seated, both attorneys will be asking questions of you. This is known as “voir dire” and means to speak the truth. The purpose is to obtain six (6) persons who will impartially try the issues of this case. This examination is to determine if your decision in this case would be influenced, in any way, by opinions you may have, personal experiences, or special knowledge about this case. This questioning process is not for the purpose of

prying into your private affairs for personal reasons, but rather to get an impartial jury. Remember that we will only need six jurors to stay and hear this case. Some of you will be excused for any number of reasons or perhaps for no reason at all. This decision is based on several factors, not on you personally.”

“The trial will be conducted as follows: First, the Plaintiff is allowed to give a brief opening statement. The Defendant may give an opening statement also, or reserve the statement to a later time in the trial. Following the opening statements, witnesses will testify and exhibits may be introduced. When all the evidence and testimony have been given, the parties will argue the merits of each of their cases. The opening statements and the closing arguments are not evidence. Then the case will be submitted to you for your deliberation.”

“County/City Attorney: Are you ready to proceed?”

The Prosecutor will go through a series of questions, then say, “The State/City passes the jury for cause.” There may be a juror that has been excused earlier, so his acceptance is for the jurors still present.

“Defense Attorney: Are you ready to proceed?”

The Defense Attorney will go through his series of questions, and as above, will “pass the jury for cause.”

Now the peremptory challenges are exercised by the attorneys. The procedure should be for the Bailiff to take the Judge’s list of jurors, hand it first to the prosecutor, then to the defense attorney, until they have exercised or waived each of their three challenges. After the defense attorney makes his last choice, the bailiff should show that choice to the prosecutor and then give the list back to the Judge. The first six (6) names NOT CHALLENGED will be the jury chosen. You should ask the attorneys whether they feel an alternate is necessary before you read the list of chosen jurors. If the trial is a one-day trial, an alternate is usually not necessary. Then you should read the list of chosen jurors aloud.

While the peremptory challenges are being exercised, the courtroom is “quiet as a tomb.” It is not necessary to just sit there. You should advise the jury panel that the attorneys are exercising their options, by law, to get a jury they each feel will best “listen” to their case. You should try to set the jury at ease. The whole proceeding is foreign to the jury and they would like to know what’s happening. This is a good time to explain the jury process and show the public why we are the “people’s court.”

Also, this is a good time to tell the jury panel that if their name is not called, they are welcome to stay and listen to the trial and take the opportunity to see “their” court in action. Thank them for being present, whether they get chosen this time or not. This helps put you in charge, makes everyone more comfortable, more informed, and usually ready to listen more attentively and take part in the process.

When the bailiff returns the jury list to you, with all the peremptory challenges, carefully review the names of the jurors chosen, then read them. Advise the chosen jurors that they will stay to hear the case. Excuse those not chosen and explain that they will not be called upon again during this jury term (July 1 to June 30), but may be called upon to serve during some future term. Thank the excused jurors, and advise them that they may stay and listen.

Reseat the jurors so they are in order, as chosen, and in the front row of the jury box. After they are seated, ask the attorneys:

“Do you stipulate that these are the chosen jurors?”

Ask the chosen jurors to stand, raise their right hand, and administer the following oath:

“Do you and each of you solemnly swear (or affirm) that you will well and truly try the case now at issue and a true verdict render according to the Law and the evidence, SO HELP YOU GOD?” Please be seated.”

You should explain to the jury that you will be reading some preliminary instructions. The instructions will be sent into the deliberation room with them for review. The instructions are given now to assist the jury on how they should listen to the evidence and give them an overview of the trial procedure. Read preliminary instructions:

(MONTANA CRIMINAL JURY INSTRUCTION (MCJI) INSTRUCT. # 1-001)

It is important that as jurors and officers of this Court you obey the following instructions at any time you leave the jury box whether it be for recesses of the Court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of this trial. In fairness to the defendant and to the State of Montana/City of _____, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instructions, and after the attorneys’ final arguments. You may only enter into discussions about this case with the other members of the jury after it is submitted to you for your decision. All such discussion should take place in the jury room.

Page 4 of 12 Pages

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the Judge as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened. You should not talk to your fellow jurors about anything that you feel necessary to bring to the attention of the Judge.

Third, although it is a normal human tendency to talk and visit with people, both at home and in public, you may not, during the time you serve on this jury, talk with any of the parties or their attorneys or any witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial you may not make any investigation of this case or inquiry outside of the courtroom on your own. You may not go to any place mentioned in the testimony without explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, or other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. News accounts are often inaccurate and may contain matters which are not proper evidence for your consideration. You must base your verdict solely on what is presented in Court and not upon newspaper, radio, television, or any other version of what may have happened. You are now sworn jurors in this case, and you will hear the evidence and thus be in a better position than anyone else to know the true facts than anyone else.

(MCJI INSTRUCT. # 1-002)

“Ladies and Gentlemen of the Jury:

You have now been selected to sit and serve as jurors in this case. This act of citizenship makes you a part of our American system of justice. It places upon you duties and responsibilities both to the State/City and to the defendant which must be exercised strictly in accordance with your oath as jurors.

It is the duty of the Judge to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

By no remark made by the Judge during the trial nor by these instructions, does the Judge express any opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from my instructions alone. You should not give any weight to statements of counsel or of anyone else as to what the law is, nor should you allow yourselves to decide this case contrary to these instructions, even though you might believe that the law ought to be otherwise. Counsel, however, can comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction, or idea is stated in varying ways, no emphasis thereon is intended by me, none must be inferred by you. You are not to single out any certain sentence, or any individual point or instruction, and ignore the others. You are to consider all of the instructions as a whole, and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the charge(s) filed in this Court by the State/City and the defendant's plea of "not guilty" to the charge(s). This duty you should perform uninfluenced by passion or prejudice. You must not be biased against a defendant because he has been arrested for this offense, or because charges have been filed against him, or because he has been brought before the Court to stand trial. None of these facts is evidence of his guilt, and you are not permitted to infer or to speculate from any or all of them that the defendant is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling. Both the State/City and the defendant have a right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

(MCJI INSTRUCT. # 1-003)

You are the sole judges of the credibility of all the witnesses testifying in this case, and of the weight to be given their testimony. In judging the effect of evidence you must be fair and impartial and not arbitrary. While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The direct evidence of one witness who is entitled to full credit is sufficient for the proof of any fact in this case.

You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in this case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this, you should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. You may consider:

1. The appearance of each witness on the stand, his manner of testifying, his apparent candor or lack of candor, his apparent fairness or lack of fairness, his apparent intelligence or lack of intelligence, his knowledge and means of knowledge of the subject upon which he testifies.
2. Any relation which each witness may bear to the State/City or to the defendant, and the manner in which each witness might be affected by the verdict.
3. The extent to which each witness is either supported or contradicted by other evidence in the case or may have previously said or done something inconsistent with his testimony in Court.
4. The lack of capacity of the witness to perceive, to recall, or to communicate any matter about which he testifies.
5. Proof that the witness has a bad character for truthfulness.
6. All the other circumstances appearing in evidence on the trial.

If you believe that any witness who has willfully testified falsely as to any material matter in the case, you must reject such of his testimony as you believe to have been false and you have the right to view the rest of his testimony with distrust and in your discretion disregard it, unless, after examination of all the evidence, you find such testimony worthy of belief. You need not find a witness's testimony false if, he or she while testifying:

1. unintentionally commits an error in his or her testimony, or
2. is unintentionally mistaken as to some matters or facts about which he or she testifies, or
3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.

(MCJI INSTRUCT. # 1-004)

There has been filed in this Court an information charging the defendant, _____, with the offense of _____, alleged to have been committed in _____ County/City, State of Montana, on or about _____, 20____. To this charge the defendant has pleaded not guilty. The jury's task in this case is to decide whether the defendant is guilty or not guilty based upon the evidence presented and Judge's instructions. These are some of the rules of law that you must follow:

1. The filing of an information against this defendant is simply a part of the legal process to bring this case into Court for trial and telling the defendant what the charge against him is. Neither the information or the charge contained therein is to be taken by you as any indication, evidence or proof that he is guilty of any offense.
2. By his plea of not guilty, the defendant denies every material allegation against him.
3. The State/City has the burden of proving the guilt of the defendant beyond a reasonable doubt.
4. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
5. The defendant is presumed to be innocent of the charge(s) against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty. The defendant is not required to prove his innocence.

(MCJI INSTRUCT. # 1-005)

During your deliberations, a bailiff will be appointed to keep you together and prevent conversations between you and any other persons. He will provide you requirements such as meals and lodging, if necessary. The bailiff cannot answer any questions about this case or provide you with any information, books, or materials, as I have strictly forbidden him to do so.

Judges are frequently asked questions about the case by jurors during their deliberations. As it often turns out, I cannot answer those questions. However, I am free to tell you that if there is any disagreement among you as to the testimony of any particular witness or witnesses or if you desire to be informed on any point of law arising in the case, you may write what part of the testimony you disagree about or the point of law you wish to be instructed about on a piece of paper, hand it to the bailiff and I will convene the Court, which includes the defendant, attorneys, court reporter, clerk, jury and myself for consideration of the question.

SOURCE: MCA 46-16-503 (1991). COMMENT: This instruction has been revised to provide less encouragement for the jury to ask questions during deliberations which cannot be answered. If the jury does find it necessary to ask a question, the instruction and the statute provides a standardized procedure for ensuring the question and answer are preserved in writing for the record.

“The attorneys will now begin with their opening statements and then we will proceed to the testimony of the witnesses. The defendant may or may not testify. This is a constitutional choice and no inference is allowed to be made whether he/she testifies or not. After all the testimony and evidence is received, I will read final instructions. The attorneys will then be allowed to give their closing arguments before the case is given to you for deliberation.”

“(County/City Attorney)_____ , you may proceed.” The prosecutor will make an opening statement. The defense attorney may also wish to give an opening statement now, or may reserve it until before the first defense witness is called.

“(Defense Attorney)_____ , do you wish to give your opening statement at this time?”

“State/City, please call your first witness. The witness will be sworn by the bailiff.”

The Bailiff will swear in the witness:

Oath – **“Do you solemnly swear that the testimony you give in this cause will be the truth, the whole truth, and nothing but the truth, SO HELP YOU GOD?”**

and the witness should be directed to sit in the witness chair. Each side is allowed to question each witness twice, i.e., direct, cross examination, redirect, and recross.

Don't let it go any further than that. When each witness has finished their testimony, tell them, **"You may step down."** You should also inquire of the attorneys if the witness can be excused and allowed to leave the premises.

The Prosecution will continue to call witnesses. After the last witness has testified, the Prosecutor will say, **"I rest my case."** It is then time for the Defense to present their "case-in-chief." Occasionally, the Defense will make a Motion to Dismiss at this time for the failure of the State/City to prove their case.

GRANT THE MOTION if the State/City did fail to prove the case or has failed to present enough evidence for the jury to make a decision.

DENY THE MOTION if you feel enough evidence was presented and the case should go to the jury for deliberation. Continue the trial.

Ask the Defense attorney to make his open statement, unless already given.

"(Defense Attorney) _____, call your first witness." The same procedure for witnesses and taking testimony will be used, including the oath by the Bailiff. After the Defense has presented all of their witnesses and evidence, they will rest their case.

The State/City has the opportunity to call "rebuttal" witnesses since they have the burden of proof.

"(County/City Attorney) _____, do you have any rebuttal witnesses?" The procedure is the same for rebuttal witnesses.

"This concludes the testimony and evidence. We will now take a recess to settle on instructions that will be read to you." Don't forget to admonish the jury during this recess, as you should for every recess.

In chambers, the attorneys will submit proposed instructions to be read to the jury. Listen to their arguments and YOU MAKE the decision on which instructions to include. You should refer to the statutes and the Montana Criminal Jury Instruction forms. Sign each instruction that will be read to the jury. The copy to be given to the jury SHOULD NOT include the references or cites.

You should also set the amount of time each attorney may use for closing arguments. Put your instructions in order. You are ready to continue the trial.

"Do the attorneys stipulate that this is the chosen jury?"

"Ladies and Gentlemen of the jury, the instructions that I will read to you now are to be regarded with the instructions that I read earlier."

Page 10 of 12 Pages

The law requires the jury verdict in this case to be unanimous. Thus, all six of your number must agree in order to reach a verdict (on each count) (upon the charge) contained in the information whether the verdict be guilty or not guilty.

When you are taken to the jury room to begin your deliberations, you should first select a foreperson. He or she should see to it that jury discussion goes forward in a sensible and orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

The attitude and conduct of jurors at the beginning of their deliberations is very important. At that time, it is usually not helpful for any juror to make a strong expression of his opinion or to say that he is going to stand for a certain verdict. Such a juror may be unwilling to change his opinion even if he later thinks it is incorrect.

The jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment. This means that you may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case together with the law which relates to this case as contained in the Judge's instructions.

In the course of deliberation, a juror has a right to re-examine his own views and change his opinion if he is convinced to do so by fair and honest discussion by any member or members of the jury, based upon the evidence the jury saw and heard in the trial and the law as given you in these instructions.

However, no juror should surrender his honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise, or for the purpose of returning a unanimous verdict or to prevent a mistrial.

Your foreperson must sign any verdict upon which you agree.

“County/City Attorney _____, you may proceed with closing.”

“Defense Attorney _____, you may close.”

“County/City Attorney _____, you may proceed with final closing.”

You will now place your bailiff under oath to take the jury to the deliberation room.

Oath – **“Do you solemnly swear that you will take charge of this jury and keep them together in some private place, and that you will not permit any person to speak to, or communicate with them, or do so yourself unless by order of the court.**

When they have agreed on a verdict, or when ordered by the court, you will return them to the court, SO HELP YOU GOD?”

When the bailiff notifies you that a verdict has been reached, call the attorneys and defendant to reassemble in the courtroom. After all parties are present, return the jury to the courtroom.

“Court is again in session. Would the attorneys stipulate this is the chosen jury? Would the foreperson of the jury please stand? Have you reached a verdict? Please hand your signed verdict to the bailiff, and you may be seated.”

The bailiff will hand the verdict to you, and you should note the verdict. You or the bailiff may read the verdict aloud. This decision should be made before the trial begins.

“Would the defendant and his counsel please stand for the reading of the verdict?” Either the bailiff or the judge may read the verdict aloud. Add the verdict form to the court file.

“Would either attorney like to have the jury polled?” If either attorney answers yes, then you must ask each juror if the verdict of (guilty/not guilty)_____ is their verdict. Each juror must agree with the signed verdict.

You may then dismiss the jurors and thank them for their participation. You should also tell the jury that they are not required to discuss the case with anyone. However, a question may arise and, IF they choose, they may discuss this case with the attorneys, the defendant, or other persons. This is entirely their decision. They are not required to discuss their experience with anyone. If any person persists in discussing the case over your objection, or becomes critical of your service, please report it to the court. (If you are going on to sentencing now, advise the jury that they may stay for sentencing).

IF THE VERDICT IS NOT GUILTY: “Defendant _____ you have been found not guilty on the charge of _____. This case is dismissed.” If there is a bond posted, advise the defendant that the bond is exonerated.

IF THE VERDICT IS GUILTY: A reasonable time may be allowed prior to sentencing. Ask the parties if they wish to proceed with sentencing now or set a future date for sentencing. If they request a continuance for sentencing, set a date certain and notify all parties. Otherwise, proceed to sentencing. (See Sentencing Script Form)

“Court is adjourned.”

JURY LIST FORM

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

_____ vs _____ Case No. _____

* * * * * * *

JURORS	STATE CHALLENGE	DEFENDANT CHALLENGE	EXCUSED FOR CAUSE	REMARKS
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				

Plaintiff Challenge Waived

1. _____ 2. _____ 3. _____

Defendant Challenge Waived

1. _____ 2. _____ 3. _____

JURY HANDOUT / ORDER OF TRIAL FORM

The Trial today will proceed as follows:

Voir dire of prospective jurors by the County/City Attorney.

Voir dire of prospective jurors by the Defense.

Preliminary instructions by the Court.

Opening statement by the County/City Attorney.

Opening statement by the Defense Attorney (may be reserved).

Testimony of County/City witnesses.

Opening statement by the Defense (if not given before).

Testimony of Defense witnesses.

Final instructions by the Court.

Closing argument by the County/City.

Closing argument by the Defense.

Final closing by the County/City.

Case submitted to the jury for deliberation.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE
* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)
* * * * *

MINUTES OF EVIDENCE

Case No. _____

PLAINTIFF

DEFENDANT

Atty: _____ Pro Se: _____

Atty: _____ Pro Se: _____

WITNESSES: (Sworn, Testified)

WITNESSES: (Sworn, Testified)

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

EXHIBITS:

EXHIBITS:

- 1. _____
- 2. _____
- 3. _____
- 4. _____

- 1. _____
- 2. _____
- 3. _____
- 4. _____

MOTIONS:

MOTIONS:

- 1. _____
- 2. _____
- 3. _____
- 4. _____

- 1. _____
- 2. _____
- 3. _____
- 4. _____

(Use Symbols "D" for Denied and "G" for Granted after each motion.)

Additional Notes: _____

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

VERDICT
Case No. _____

* * * * *

WE, THE JURY, duly impaneled and sworn to try the issues in the above entitled action,
unanimously find the Defendant:

_____ Not Guilty
_____ Guilty

Date

Jury Foreperson

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

NOTICE OF APPEAL

Case No. _____

* * * * *

The above named Defendant hereby appeals to the District Court of the above named county, from the Judgment of the above City/Justice Court entered on the ____ day of _____, 20__, wherein the Defendant was found guilty of the offense of _____ and received the following sentence: _____.

The Judge is requested to transmit the record on appeal to the District Court as provided by law.

Dated this ____ day of _____, 20__.

Signature of Appellant

* * * * *

The above named Defendant is entitled to be admitted to bail pending disposition of the appeal. Bail is hereby set in the amount of \$ _____; or _____ Released on Own Recognizance.

Bail posted on ____ day of _____, 20__, in the amount of \$ _____ by _____.

Bail not posted and the Defendant is ordered into custody this ____ day of _____, 20__.

Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

DISMISSAL ORDER

Case No. _____

* * * * *

The imposition of sentence in this cause having been deferred and the period of deferred imposition of sentence having been completed with all conditions imposed in connection with the deferred imposition of sentence, it is **sua sponte**.

ORDERED:

That the above captioned cause is dismissed.

Dated this ____ day of _____, 20__.

Judge

Mail to:
ITSD-CJIS
303 N. Roberts
P.O. Box 201406
Helena, MT 59620-1406

SEARCH AND SEIZURE SECTION

I. AUTHORITY

1. Searches and seizures – when authorized. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46, when a search is made:
 - (a) by the authority of a search warrant; or
 - (b) in accordance with recognized exceptions to the warrant requirement. 46-5-101 MCA.
2. Authority to issue search warrant:
 - (a) A search warrant may be issued by:
 - (1) a city judge, municipal judge, or justice of the peace within the judge's geographical jurisdiction; or
 - (2) a district judge within the state. 46-5-220 MCA.

II. GROUNDS

Grounds for search warrant: A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:

- (1) states facts sufficient to support probable cause to believe that an offense has been committed;
- (2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;
- (3) particularly describes the place, object, or persons to be searched; and
- (4) particularly describes who or what is to be seized. 46-5-221 MCA.

DO NOT FORGET THE “FOUR CORNERS DOCTRINE” !!!

III. APPLICATION — ISSUANCE AND SERVICE OF THE WARRANT

- (1) The application should not be filed until the search warrant has been served and returned. 46-5-310 MCA.
- (2) The warrant must be directed to a specific peace officer.
- (3) The warrant must conform with the descriptions on the application/affidavit.
- (4) The warrant must be signed and dated, and should include the time of issuance.
- (5) The warrant must be served within 10 days.
- (6) The warrant may be served day or night. 46-5-223, 46-5-225, and 46-5-226 MCA.

IV. RETURN OF WARRANT AND CUSTODY OF SEIZED PROPERTY

Sections 46-5-301 MCA and 46-5-312 MCA discuss and explain the procedure for the return of the warrant, custody of the seized property, and disposition of the property.

GLOSSARY — SEARCH AND SEIZURE

COERCION: Improper persuasion. Actual coercion may result from acts or words intended to persuade improperly. Implied coercion may result not from specific acts or words, but rather from the situation as a whole.

CONTEMPORANEOUS: Occurring at the time of the arrest, or occurring soon thereafter as part of a continuous, uninterrupted, lawful investigation.

CONTRABAND: Property which may not lawfully be possessed (e.g., narcotics).

CURTILAGE: The open space surrounding a dwelling which an average person would consider a part of the dwelling.

EVIDENTIARY ITEMS: Items connected with a crime, but not as contraband, fruits, instrumentalities, or weapons.

FORFEITURE: A punishment for the illegal use or possession of a specific property by which one loses to the Government his rights and interest in that property.

FRUITS: The objects (e.g., money) for which a crime was committed.

INSTRUMENTALITIES: The means (e.g., a gun) by which a crime was committed.

PROBABLE CAUSE: Facts and circumstances sufficiently strong in themselves to lead a cautious agent to believe that a person is guilty of a particular crime, and to believe that the place to be searched contains evidence of the crime.

PLAIN VIEW: Property/Contraband in plain sight when an officer has legal authorization to search premises; may be seized without a warrant.

REASONABLE FORCE: Force no greater than that which is necessary.

SEARCH INCIDENTAL TO ARREST: A search intended to aid in the arresting process which is made at the place of the arrest and contemporaneously with the arrest, its purpose being to allow the agent to protect himself, to prevent escape, and to prevent the possible destruction of evidence.

WAIVER: The intended and understood giving up of a known right.

CHECKLIST: SEARCH AND SEIZURE

When an officer first requests that you issue a search warrant:

1. Check to see if the City/County Attorney has given preliminary approval (if they have policy or procedure for review before the application goes to the Court).
2. Put the officer under oath. This is required by statute.
3. Thoroughly read the application for search warrant.
(DO NOT TALK TO THE OFFICER DURING THIS TIME)
4. If you decide there is sufficient probable cause in the application itself, (four corners doctrine) issue the search warrant. Verify that the description of the place to be searched and the items to be seized are identical with the application.
5. Keep the original application. The officer will take copies of the application, the original search warrant and copies, and receipt and return forms.
6. DO NOT FILE the application for search warrant in the Criminal Docket until return has been made upon the warrant. (MCA 46-5-310) (No fee is charged for this administrative procedure.)
7. When the officer is ready to make return on the search warrant, set a time certain. The Court should make an inventory of the seized items and determine that all items are listed correctly on the Return. Only then should you sign that you have received these items. Return must be made under oath.
8. Issue an Order to Secure for the safekeeping and preservation of the items seized until the matter is finally adjudicated. Do not take personal control of the items seized.
9. The Court will have the original Search Warrant, the original Return, a copy of the Receipt, and the original Order to Secure. These papers will be filed, together with the Application for Search Warrant already in your possession, in the Criminal Docket.
10. Do a docket entry showing the return of the search warrant. (It is not necessary to list on the docket page the items seized as long as you file the entire set of papers together.)
11. A Search Warrant is to be returned to the Court within 10 days of its issuance. It is acceptable to remind the officer to make a timely return. Even if the Warrant has not been served, it must be returned within 10 days.
12. If you feel there is not sufficient probable cause to issue the warrant, DO NOT ISSUE the warrant. If the officer asks, you may tell him where the application is insufficient. If you feel this compromises your position as an impartial magistrate, just refuse to issue it.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

IN THE MATTER OF THE APPLICATION OF)
_____))
FOR A SEARCH WARRANT TO SEARCH)
THE FOLLOWING PREMISES:)
_____))
_____))
_____))
_____))

**AFFIDAVIT FOR
SEARCH WARRANT**

Case No. _____

* * * * *

STATE OF MONTANA)
:SS)
CITY/COUNTY OF _____)

_____, under oath, deposes and says that:

- 1. I am the applicant herein.

- 2. There is reasonable cause to believe that certain property, hereinafter described, may be found at the following premises: _____

- 3. The property referred to, sought to be seized is:
(a) Stolen property, consisting of (Identify as explicitly as possible):

- (b) Property, unlawfully possessed, to wit (Identify as explicitly as possible):

- (c) Property that has been used to commit an offense, to wit (Identify as explicitly as possible): _____

(d) Property constituting evidence of crime, tending to demonstrate that an offense was committed, to wit (Describe the property constituting evidence and in what manner it demonstrates the commission of an offense): _____

_____.

(e) Property tending to demonstrate that _____ participated in the commission of the offense of _____, to wit (Describe the manner in which the property connects the suspect with the offense):

_____.

4. In support of my assertion as to the existence of probable cause, the following facts are offered, based upon my personal knowledge (Set forth, as explicitly as possible, the supporting facts, using dates, places, and names): _____

_____.

IF AN UNDISCLOSED INFORMANT IS USED, ALLEGE AS FOLLOWS:

I have received information from a reliable, confidential informant, who told me that (Specify the facts, using names, dates, and places to the extent possible): _____

_____.

The said informant is known to me to be reliable because _____

_____.

The information conveyed to me by the informant is based on the informant's personal knowledge and direct observations, to wit: _____

_____.

IF APPROPRIATE:

Moreover, members of this department, including myself, have independently, confirmed the confidential informant's assertions in the following respect, and to the following degree:

IF FACTS ARE FURNISHED BY A "CITIZEN" WHO WANTS ANONYMITY (AS OPPOSED TO A RELIABLE CONFIDENTIAL "POLICE" INFORMANT), THAT CITIZEN ALLEGES AS FOLLOWS:

I have received information from an individual who is not a regular police informant but is an ordinary citizen who, owing to fear of involvement or reprisal, wished to remain anonymous. The said individual told me the following: _____

This individual is known to me to be reliable because _____

The above information that the individual furnished to me is the product of the individual's direct and personal knowledge, to wit: _____

IF APPROPRIATE:

Moreover, members of this department, including myself, have independently confirmed the truth of the individual's assertions in the following respects, and to the following degree:

IF APPROPRIATE:

Additional grounds exist establishing probable cause, namely, the prior record of the individual (who) (whose premises) (whose car) is (are) to be searched. The prior record consists of the following: _____

_____.

The foregoing represents the grounds for my belief.

WHEREFORE, your deponent requests that the Court issue a search warrant directing a search for and seizure of the property set out in paragraph 3 above.

Deponent

Sworn to before me this ____ day of _____, 20____, at ____:____.M.

Justice of the Peace/City Judge

Approved by:

City/County Attorney

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

IN THE MATTER OF THE APPLICATION OF)
_____)
FOR A SEARCH WARRANT TO SEARCH)
THE FOLLOWING PREMISES:)
_____)
_____)
_____)

SEARCH WARRANT

Case No. _____

* * * * *

THE STATE OF MONTANA TO _____
(Name of Specific Peace Officer)

A sworn application having been made before me by _____ that
he has reason to believe that on certain premises or persons in the County of _____,
State of Montana, and particularly described as: _____

there are now located certain items of personal property particularly described as being:

I am satisfied that there is probable cause to believe that the property described is upon
the said premises or person.

You are hereby commanded to serve this warrant and search the place described above
for the property specified above, and if the property is found there, give a receipt for it, prepare a
written inventory verified by you of the property seized and bring the property before me, all in
the manner required by law.

DATED this ____ day of _____, 20____, ____: ____ .M.

Justice of the Peace/City Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

IN THE MATTER OF THE APPLICATION OF)
_____))
FOR A SEARCH WARRANT TO SEARCH)
THE FOLLOWING PREMISES:)
_____))
_____))
_____))
_____))

RECEIPT

Case No. _____

* * * * *

I, _____, by authority of a Search Warrant, a copy of which is attached, have searched the premises at _____

named in the warrant, and have seized the following items of personal property:

A copy of this Receipt has been given to: _____ or
(Person)

left at: _____
(Location)

Dated this ____ day of _____, 20__.

Signature and Title

I, _____, acknowledge the above listed property is
(Signature of Person at Location, if obtainable)
all that was taken under the Warrant.

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

IN THE MATTER OF THE APPLICATION OF)
_____))
FOR A SEARCH WARRANT TO SEARCH)
THE FOLLOWING PREMISES:)
_____))
_____))
_____))
_____))

RETURN

Case No. _____

* * * * *

I received the attached Search Warrant on the _____ day of _____, 20____,
and have executed it as follows:

On _____, 20____, at _____: _____M., I searched _____

described in the Warrant, and I left a copy of the Warrant with _____
together with a Receipt for the items seized.

The following is an inventory of property taken pursuant to the Warrant:

_____.

I swear that this inventory is a true and detailed account of all property taken by me on
this Warrant.

Signature and Title

SUBSCRIBED AND SWORN to and returned before me this _____ day of
_____, 20____ at _____: _____M.

Justice of the Peace/City Judge

All items seized were viewed and inventoried by the Court and left in the safekeeping of
the _____ Department this _____ day of _____, 20____ at
_____: _____M.

Justice of the Peace/City Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____)
Defendant)

ORDER TO SECURE

Case No. _____

* * * * *

Pursuant to Section 46-5-311 MCA, IT IS HEREBY ORDERED that the property seized and listed on the attached Return of Search Warrant BE HELD IN CUSTODY by the _____ pending the final disposition of this matter.

Given under my hand this ____ day of _____, 20__.

Justice of the Peace/City Judge

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA

BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)
Plaintiff)
vs)
_____,)
Defendant)

**PETITION FOR RETURN
OF SEIZED PROPERTY**

Case No. _____

* * * * *

Pursuant to Section 46-5-312 MCA, I, _____
hereby petition the above entitled Court to return the following listed property, seized as
evidence on the ____ day of _____, 20__:

_____.

Further, I request the Court to set a hearing to determine my rightful ownership.

Dated this ____ day of _____, 20__.

Petitioner

IN THE _____ COURT OF _____ CITY/COUNTY, STATE OF MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE

* * * * *

STATE OF MONTANA)	NOTICE OF HEARING AND ORDER —PROPERTY OWNERSHIP AND DISPOSITION
Plaintiff)	
vs)	
)	
_____ ,)	
Defendant)	

Case No. _____

* * * * *

Pursuant to Section 46-5-312 MCA and the filing of the attached petition of _____, NOTICE IS HEREBY GIVEN to all interested parties that a hearing is set before this Court on the ____ day of _____, 20____, at the hour of ____:____.M, in the _____ Court, _____, Montana, _____ County, to then and there determine the ownership and disposition of the property listed in the attached petition.

Given under my hand this ____ day of _____, 20____.

Justice of the Peace/City Judge

ORDER

After consideration of all the evidence presented and applying the pertinent statutes, IT IS HEREBY ORDERED that the property be returned to _____ this date.

Given under my hand this ____ day of _____, 20____.

Justice of the Peace/City Judge