

1 SENATE BILL NO. 30
 2 INTRODUCED BY HAZELBAKER

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

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

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

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

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

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

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

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

1 conduct to the requirements of law.

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

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

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

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

1 other expert selected by the one proposing the examination,
 2 the examiner shall be permitted to have reasonable access to
 3 the defendant for the purpose of the examination.

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

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

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

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

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

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

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

1 warrant, shall be in writing.

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

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

17 **(d)(4)** A warrant of arrest shall:

18 **(a)** Be ~~be~~ in writing in the name of the state of
19 Montana or in the name of a municipality if a violation of a
20 municipal ordinance is charged;

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

22 **(c)** Command ~~command~~ that the person against whom
23 the complaint was made be arrested and brought before the
24 court issuing the warrant ~~or~~ if he ~~the judge~~ is absent or
25 unable to act, before the nearest or most accessible court

1 ~~in the same county, if an arrest is made in a county other~~
2 ~~than the one in which the warrant was issued the arrested~~
3 ~~person shall be taken without unnecessary delay before the~~
4 ~~nearest and most accessible judge in the county where the~~
5 ~~arrest was made;~~

6 **(d)** Specify ~~specify~~ the name of the person to be
7 arrested ~~or~~ if his name is unknown, shall designate such
8 ~~the~~ person by any name or description by which he can be
9 identified with reasonable certainty;

10 **(e)** State ~~state~~ the date when issued and the
11 municipality or county where issued; and

12 **(f)** Be ~~be~~ signed by the judge of the court with the
13 title of his office.

14 **(5)** The warrant of arrest may specify the amount of
15 bail.

16 **(6)** The warrant shall be directed to all peace
17 officers in the state. It shall be executed by a peace
18 officer and may be executed in any county of the state.
19 However, warrants issued for the violation of city
20 ordinances cannot be executed outside the city limits,
21 except as otherwise provided by sections 11-927 and 11-960."

22 Section 7. Section 95-704, R.C.M. 1947, is amended to
23 read as follows:

24 "95-704. Grounds for search warrant. Any judge may
25 issue a search warrant upon the written application of any

1 person ~~that an offense has been committed~~, made under oath
2 or affirmation before ~~him the judge~~, which:

3 ~~(1) states that an offense has been committed;~~

4 ~~(2) States states~~ facts sufficient to show probable
5 cause for issuance of the warrant;*i*

6 ~~(3) Particularly particularly~~ describes the place
7 or things to be searched;*i* and

8 ~~(4) Particularly particularly~~ describes the things
9 to be seized."

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

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

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

24 (a) ~~the--peace--officer he~~ has reasonable cause to
25 suspect that the person has knowledge of material aid to the

1 investigation of the offense; or

2 (b) the stop is reasonably necessary to obtain or
3 verify the person's identity or an account of the offense.

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

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

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

12 (c) ~~(i)~~ the stop is reasonably necessary to obtain or
13 verify ~~his the person's~~ identity to determine whether to
14 arrest the person for the felony; or

15 ~~(ii)~~ the peace officer has reasonable cause to suspect
16 that the person was present at the scene of the offense, and
17 the stop is reasonably necessary to obtain or verify the
18 person's identity.

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

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

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

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

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

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

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

22 "95-1001. Right to counsel. (1) Every defendant
23 brought before the court must be informed by the court that
24 it is his right to have counsel before proceeding and must
25 be asked if he desires the aid of counsel. The defendant, if

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

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

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

18 "95-1005. Remuneration of appointed counsel. (1)
19 Whenever in a criminal ~~action~~ or proceeding, an attorney at
20 law represents or defends any person by order of the court,
21 on the ground that the person is financially unable to
22 employ counsel, such ~~the~~ attorney shall be paid for his
23 services such sum as a district court or justice of the
24 state supreme court certifies to be a reasonable
25 compensation therefor and shall be reimbursed for reasonable

1 costs incurred in the criminal proceeding.

2 ~~(2) Such costs shall be~~ The expense of implementing
3 subsection (1) is chargeable to the county in which the
4 proceeding arose, except that:

5 (a) in proceedings solely involving the violation of a
6 city ordinance or state statute prosecuted in a municipal
7 ~~or city or police court, wherein costs shall be~~ the expense
8 is chargeable to the city or town in which the proceeding
9 arose; and

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

16 Section 11. Section 95-1104, R.C.M. 1947, is amended
17 to read as follows:

18 "95-1104. ~~Setting and accepting bail under a warrant~~
19 of arrest. Bail set in warrant -- acceptance by peace
20 officer. A peace officer may accept cash bail in behalf of a
21 judge where whenever the warrant of arrest specifies the
22 amount of bail. ~~In the event the whenever~~ a peace officer
23 accepts bail, he shall give a signed receipt to the offender
24 setting forth the bail received. The peace officer shall
25 then deliver the bail to the justice of the peace or police

1 city judge before whom the offender is to appear, and the
2 justice of the peace or police city judge shall give a
3 receipt to the ~~police~~ peace officer for the bail delivered."

4 Section 12. Section 95-1118, R.C.M. 1947, is amended
5 to read as follows:

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

7 ~~(a)(1)~~ If a person is admitted to bail before conviction,
8 the conditions of bail ~~bond~~ shall be:

9 (a) that he will appear to answer in the court having
10 jurisdiction on a day certain and thereafter as ordered by
11 the court until discharged on final order of the court and
12 will not depart from this state without leave; and

13 (b) ~~subject to~~ any other conditions ~~as that~~ the court
14 may reasonably prescribe to assure his appearance when
15 required.

16 ~~(b)(2)~~ If the defendant is admitted to bail after
17 conviction, the conditions of bail ~~bond~~ shall be that:

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

19 ~~(2)(b)~~ He he will appear at such time and place as the
20 court may direct;

21 ~~(3)(c)~~ He he will not depart from this state without
22 leave of the court; and

23 ~~(4)(d)~~ If if the judgment is affirmed or the cause
24 reversed and remanded for a new trial, he will forthwith
25 surrender to the officer from whose custody he was bailed."

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

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

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

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

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

15 "95-1121. ~~Sureties for guaranteed~~ Guaranteed arrest
16 bond certificates ~~fitting of undertaking guaranteed arrest~~
17 ~~bond certificate.~~ ~~(a)(1)~~ Any A domestic or foreign surety
18 company which has qualified to transact surety business in
19 this state may, in any year, become surety in an amount not
20 ~~to exceed one hundred dollars exceeding~~ (\$100,000) with
21 respect to any guaranteed ~~guaranteed~~ arrest bond certificates
22 issued in such year by an automobile club or association or
23 by an insurance company authorized to write automobile
24 liability insurance within this state, by filing with the
25 commissioner of insurance an undertaking thus to become

1 surety.

2 ~~(b)(2)~~ Such ~~the~~ undertaking shall be in a form to be
3 prescribed by the commissioner and shall state the
4 following:

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

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

18 ~~(c)(3)~~ The term "guaranteed arrest bond certificate"
19 means any printed card or other certificate which:

20 (a) is issued by an automobile club, or association or
21 insurance company, to any of its members or insureds; and

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

1 company authorized to transact both automobile liability
2 insurance and surety business in the state of Montana;

3 (ii) guarantee the appearance of the person whose
4 signature appears on the card or certificate; and

5 (iii) that will, in the event of the failure of such
6 the person to appear in court at the time of trial, pay any
7 fine or forfeiture imposed on such the person in an amount
8 not to exceed one hundred dollars exceeding \$100.00."

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

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

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

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

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

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

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

17 ~~(c)(3)~~ When requested to do so by the grand jury of
 18 any county, the attorney general or county attorney may
 19 employ special counsel and investigators, ~~whose duty it who~~
 20 shall ~~be to~~ investigate and present the evidence ~~acquired~~ in
 21 such investigation to such ~~the~~ grand jury.

22 ~~(d)(4)~~ The grand jury or county attorney may require
 23 by subpoena the attendance of any person before the grand
 24 jury as interpreter. While his services are necessary, such
 25 ~~the~~ interpreter may be present at the examination of

1 witnesses before the grand jury. The compensation for ~~the~~
 2 services of such ~~the~~ interpreter constitutes a charge
 3 against the county, and shall be fixed by the grand jury, in
 4 an amount to be approved by the court, ~~and it shall be~~ paid
 5 out of the county treasury on a warrant of the county
 6 auditor upon an order of the judge of the district court.

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

15 ~~(2)(b)~~ The stenographer and any typist who transcribes
 16 the stenographer's notes or recordings shall be sworn by the
 17 foreman not to disclose any testimony or the names of any
 18 witnesses except when so ordered by the court.

19 ~~(c)~~ The stenographic reporter shall certify and file
 20 with the clerk of the district court an original
 21 transcription of his shorthand notes and a copy thereof and
 22 as many additional copies as there are defendants. The
 23 reporter shall complete such ~~the~~ certification and filing
 24 within ~~ten-(10)~~ days after the indictment has been found ~~or~~
 25 ~~the accusation-presented~~ unless the court for good cause

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

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

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

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

22 "95-1408. Reception of evidence. ~~(a)(1)~~ In the
 23 investigation of a charge, the grand jury shall receive no
 24 other evidence than that given by witnesses produced and
 25 sworn before ~~the--grand--jury~~ it or furnished by legal

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

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

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

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

16 "95-1502. Commencement of prosecutions. ~~(a)(1)~~ All
 17 prosecutions of offenses triable in the district courts
 18 shall be by indictment or information ~~except as otherwise~~
 19 ~~provided by chapter 55, title 94, R.C.M., 1947.~~

20 ~~(b)(2)~~ All other prosecutions of offenses may be by
 21 complaint."

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

24 "95-1504. Joinder and discharge of offenses and
 25 defendants. ~~(a)(1)~~ An indictment, information, or complaint

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

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

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

1 the same indictment or information if they are alleged to
 2 have participated in the same series of acts or transactions
 3 constituting an offense or offenses. Such defendants may be
 4 charged in one (1) or more counts together or separately,
 5 and all of the defendants need not be charged in each count.

6 ~~(c)(4)~~ If it appears that a defendant or the state is
 7 prejudiced by a joinder of related prosecutions or
 8 defendants in a single charge or by joinder of separate
 9 charges or defendants for trial, the court may order
 10 separate trials, grant a severance of defendants, or provide
 11 any other relief as justice may require.

12 ~~(d)(5)~~ When two or more persons are included in the
 13 same charge, the court may, at any time, before the
 14 defendants have gone into their defense, on the application
 15 of the county attorney, direct any defendant to be
 16 discharged, ~~so~~ that he may be a witness for the state.

17 ~~(e)(6)~~ When two or more persons are included in the
 18 same indictment or information, and the court is of the
 19 opinion that in regard to a particular defendant there is
 20 not sufficient evidence to put him on his defense, ~~it~~ the
 21 court must order him to be discharged before the evidence is
 22 closed, that he may be a witness for his codefendant."

23 Section 22. Section 95-1506, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-1506. Prior-conviction Procedural Requirements --

1 persistent felony offenders. (1) When If the state seeks
 2 increased-punishment treatment of the accused as a prior
 3 convicted--felon persistent felony offender under section
 4 94-4713 95-1507 or 95-2206.5 or both of those sections,
 5 notice of that fact must be given in writing to the accused
 6 or his attorney before the entry of a plea of guilty by the
 7 accused, or before the case is called for trial upon a plea
 8 of not guilty.

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

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

13 (b) The notice and the charges of prior convictions
 14 contained therein shall not be made public nor or in any
 15 manner be made known to the jury before the jury's verdict
 16 is returned upon the felony charge, provided that HOWEVER,
 17 if the defendant shall testify testifies in his own behalf,
 18 he shall--nevertheless--be is subject to impeachment as
 19 provided in section 93-1901-11y-Rv6-Mv-1947y-as-amended.

20 (c) (3) If the accused is convicted upon the felony
 21 charge, the notice, together with proper proof of timely
 22 service, shall be filed with the court before the time fixed
 23 for sentence sentencing. The court shall then fix a time for
 24 hearing with at least three-(3) days' notice to the accused.

25 (d) (4) The hearing shall be held before the court

1 alone. If the court finds any of the allegations of prior
 2 conviction true, the accused shall be sentenced under the
 3 provisions of section-94-4713 95-1507 and 95-2206.5."

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

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

13 (2) --A-persistent-felony-offender-shall--be--imprisoned
 14 in--the--state--prison--for-a-term-of-not-less-than-five-(5)
 15 years--nor-more-than-one-hundred-(100)--years--providing

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

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

1 ~~(c) the offender was more than twenty-one (21) years~~
2 ~~old at the time of the commission of the new offense.~~

3 ~~(3)(c) A previous felony conviction shall not be~~
4 ~~considered for the purpose of sentencing under this section~~
5 ~~if the offender has not been pardoned on the grounds ground~~
6 ~~of innocence or if and the conviction had has not been set~~
7 ~~aside in any post-conviction a postconviction hearing.~~

8 (2) A persistent felony offender shall be imprisoned
9 in the state prison for a term of not less than 5 years or
10 more than 190 years if he was 21 years of age or older at
11 the time of the commission of the present offense."

12 Section 24. Section 95-1704, R.C.M. 1947, is amended
13 to read as follows:

14 "95-1704. Time of making motion. The motion provided
15 for in 95-1701 and 95-1702 shall be made before the plea is
16 entered, but the court for cause may permit it to be made
17 within a reasonable time thereafter."

18 Section 25. Section 95-1706, R.C.M. 1947, is amended
19 to read as follows:

20 "95-1706. Effect of determination. (1) If a motion is
21 determined adversely to the defendant, he shall plead if he
22 has not previously pleaded. A plea previously entered shall
23 stand.

24 (2) If the court directs the action to be dismissed,
25 the defendant must, if in custody, be discharged therefrom

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

11 Section 26. Section 95-1707, R.C.M. 1947, is amended
12 to read as follows:

13 "95-1707. Transfer of trial. If the court determines
14 that the a motion to dismiss, based upon the grounds of lack
15 of jurisdiction or improper place of trial, is well founded,
16 it may, instead of ordering dismissal, order the cause
17 transferred to a court of competent jurisdiction or to a
18 proper place of trial."

19 Section 27. Section 95-1709, R.C.M. 1947, is amended
20 to read as follows:

21 "95-1709. Substitution of judge. (1) The defendant
22 or the prosecution may move the court in writing for a
23 substitution of the judge on the ground that he the movant
24 cannot have a fair and impartial hearing or trial before
25 said the judge. The motion shall be made at least fifteen

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

3 {2} Upon the filing of such a ~~the~~ motion, the judge
4 against whom the motion is filed shall be without authority
5 to act further in the criminal action, motion, or
6 proceeding, ~~but the provisions of this section do not apply~~
7 ~~except in regard~~ to the arrangement of the calendar, the
8 regulation of the order of business, the power of
9 transferring the criminal action or proceeding to some other
10 court, ~~nor to and~~ the power of calling in another judge to
11 sit and act in such ~~the~~ criminal action or proceeding, ~~and~~
12 ~~providing that no~~ No judge shall ~~may~~ so arrange the calendar
13 as to defeat the purposes of this section.

14 {3} Not ~~no~~ more than one {1} judge can ~~may~~ be
15 disqualified in the criminal action or proceeding, at the
16 instance of the prosecution and ~~not no~~ more than one {1}
17 judge at the instance of the defendant or defendants.

18 {4} ~~If either~~ A party in any matter above mentioned
19 shall file the who files a motion as herein provided, such
20 party under subsection (1) may not complain of any
21 reasonable delay as the result thereof.

22 {5} ~~The provision of this~~ this section shall ~~be~~ is
23 inapplicable to any person in any cause involving a direct
24 contempt of court.

25 {b}{6} In addition to the ~~provision~~ provisions of

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

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

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

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

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

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

21 (i) it is established by proof of the same or less
22 than all the facts required to establish the commission of
23 the offense charged; or

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

1 or

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

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

- 12 (a) one offense is included in the other; or
13 (b) one offense consists only of a conspiracy or other
14 form of preparation to commit the other; or
15 (c) inconsistent findings of fact are required to
16 establish the commission of the offenses;
17 (d) the offenses differ only in that one is defined to
18 prohibit a designated kind of conduct generally and the
19 other to prohibit a specific instance of such conduct; or
20 (e) the offense is defined to prohibit a continuing
21 course of conduct and the defendant's course of conduct was
22 interrupted, and unless the law provides that the specific
23 periods of such conduct constitute separate offenses.

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

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

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

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

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

1 resulted in:

2 (i) a judgment of conviction which has not been
3 reversed or vacated; or

4 (ii) a verdict of guilty which has not been set aside
5 and which is capable of supporting a judgment, so long as
6 failure to enter judgment was for a reason other than a
7 motion of the defendant; or

8 (iii) a plea of guilty accepted by the court, so long
9 as failure to enter judgment was for a reason other than a
10 motion of the defendant.

11 (d) The former prosecution was improperly terminated.
12 Except as provided in this subsection ~~(d)~~, there is an
13 improper termination of a prosecution ~~if~~ whenever the
14 termination is for reasons not amounting to an acquittal,
15 and it takes place after the first witness is sworn but
16 before verdict. Termination under any either of the
17 following circumstances is not improper:

18 (i) ~~the~~ the defendant consents to the termination or
19 waives his right to object to the termination; or

20 (ii) ~~the~~ the trial court, in the exercise of its
21 discretion, finds that the termination is necessary because:

22 (A) it is physically impossible to proceed with the
23 trial in conformity with law; or

24 (B) there is a legal defect in the proceedings which
25 would make any judgment entered upon a verdict reversible as

1 a matter of law; or

2 (C) prejudicial conduct in or outside the courtroom
3 makes it impossible to proceed with the trial without
4 manifest injustice to either the defendant or the state; or

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

6 (E) false statements of a juror on voir dire prevent a
7 fair trial.

8 ~~(4) Former prosecution in another jurisdiction when a~~
9 ~~bar.~~ When conduct constitutes an offense within the
10 concurrent jurisdiction of this state and of the United
11 States or another state or of two courts of separate ~~and/or~~
12 overlapping, or concurrent jurisdiction in this state, a
13 prosecution in any such other jurisdiction is a bar to a
14 subsequent prosecution in this state under the following
15 circumstances:

16 (a) The first prosecution resulted in an acquittal or
17 in a conviction as defined in subsection (3) and the
18 subsequent prosecution is based on an offense arising out of
19 the same transaction.

20 (b) The former prosecution was terminated, after the
21 complaint has had been filed on a misdemeanor charge, or
22 after the information was had been filed or the indictment
23 found on a felony charge, by an acquittal or by a final
24 order or judgment for the defendant which has not been set
25 aside, reversed, or vacated; and ~~which~~ the acquittal, final

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

5 ~~(5) Former prosecution before court lacking~~
6 ~~jurisdiction or when fraudulently procured by the defendant.~~

7 A prosecution is not a bar within the meaning of subsections
8 (3) and (4) under any one or more of the following
9 circumstances:

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

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

17 (c) the the former prosecution resulted in a judgment
18 of conviction which was held invalid in any post-conviction
19 a postconviction hearing."

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

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

25 ~~(a) List of witnesses:~~

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

9 ~~(2) The requirement of subsection (a)(1) of this~~
10 ~~section shall~~ this subsection does not apply to rebuttal
11 witnesses.

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

14 ~~(c)(2) (a)~~ On motion of any party within a reasonable
15 time before trial, ~~all parties~~ each party shall produce at a
16 reasonable time and place designated by the court all
17 documents, papers, or things which each party ~~it~~ intends to
18 introduce in evidence. ~~Thereupon any~~ Each party shall, in
19 the presence of a person designated by the court, be
20 permitted to inspect or copy any such documents, papers, or
21 things. The order shall specify the time, place, and manner
22 of making the inspection and of taking the copies or
23 photographs and may prescribe such terms and conditions as
24 are just. If the evidence relates to scientific tests or
25 experiments, the opposing party shall, if practicable, be

1 permitted to be present during the tests and to inspect the
2 results thereof. Upon a sufficient showing, the court may at
3 any time order that the discovery or inspection be denied,
4 restricted, or deferred, or make other appropriate orders.

5 (b) If, subsequent to compliance with an order issued
6 pursuant to this rule, and prior to or during trial, a party
7 discovers additional material previously requested which is
8 subject to discovery or inspection under ~~the~~ this rule, he
9 shall promptly notify the other party or his attorney or the
10 court of the existence of the additional material. The court
11 shall exclude any evidence not presented for inspection or
12 copying pursuant to this rule, unless good cause is shown
13 for failure to comply. In the latter case the opposing party
14 ~~shall--be~~ is entitled to a recess or a continuance
15 continuance during which it may inspect or copy the evidence
16 in the manner provided for above in this subsection (2).

17 ~~(d)(3)~~ (a) For purpose of notice only and to prevent
18 surprise, the defendant shall furnish to the prosecution and
19 file with the clerk of the court, at the time of entering
20 his plea of not guilty or within ~~ten~~ (10) days thereafter or
21 at such later time as the court may for good cause permit, a
22 statement of intention to interpose the defense of insanity
23 mental disease or defect, self-defense, or alibi.

24 (b) If the defendant intends to interpose any of these
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court, the names and addresses of all
2 witnesses to be called by the defense in support thereof.
3 ~~The~~ Prior to trial the defendant may, ~~prior to trial~~, upon
4 motion and showing of good cause, add to the list of
5 witnesses the names of any additional witnesses. After the
6 trial commences, no witnesses may be called by the defendant
7 in support of these defenses, unless the name of the witness
8 is included on such the list, except upon good cause shown.

9 ~~(e)(4)~~ All matters which are privileged upon the
10 trial, are privileged against disclosure through any
11 discovery procedure."

12 Section 30. Section 95-1810, R.C.M. 1947, is amended
13 to read as follows:

14 "95-1810. Witness from another state summoned to
15 testify in this state. (1) If ~~Whenever~~ a person in any
16 state, which by its laws has made provision for commanding
17 persons within its borders to attend and testify in criminal
18 prosecutions, or grand jury investigations ~~commenced or~~
19 ~~about to commence~~ in this state, is a material witness in a
20 prosecution pending in a court of record in this state, or
21 in a grand jury investigation, which has commenced or is
22 about to commence, a judge of such the court may issue a
23 certificate under the seal of the court stating these facts
24 and specifying the number of days the witness will be
25 required. ~~this~~ The certificate ~~will~~ shall be presented to a

1 judge of a court of record in the county in which the
2 witness is found.

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

18 (3) ~~if the~~ Whenever a witness is summoned to attend
19 and testify in this state, he shall be tendered the sum of
20 ~~ten cents (10¢) cents~~ a mile for each mile and ~~five dollars~~
21 ~~(\$5.00)~~ for each day that he is required to travel and
22 attend as a witness, ~~provided further that in those cases~~
23 ~~in which~~ If the state wherein the witness is found has by
24 statutory enactment required that the summoned witness be
25 paid an amount ~~or amounts~~ in excess of the amount

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

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

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

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

19 "95-1909. Trial jurors. ~~(a)(1)~~ The clerk of court
20 shall make available to the parties a list of prospective
21 jurors with their addresses when the names have been drawn.

22 ~~(b)(2)~~ ~~(a)~~ The qualifications of jurors, and who
23 ~~will be exempted,~~ exemptions from jury duty are found
24 prescribed in sections 93-1301 through 93-1307, ~~of the Civil~~
25 ~~Code which by reference are made a part of this code.~~

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

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

10 ~~(d)(4)~~ ~~(1)(a)~~ Each party may challenge jurors for
11 cause, and each challenge must be tried by the court.

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

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

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

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

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

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

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

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

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

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

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

1 the parties, which ~~will~~ would prevent him from acting with
 2 entire impartiality and without prejudice to the substantial
 3 rights of either party.

4 ~~(e)(5)~~ All challenges must be interposed before the
 5 jury is sworn, unless the cause of challenge ~~be~~ is
 6 discovered after the jury is sworn and before the
 7 introduction of any evidence, ~~when in which case~~ the court,
 8 in its discretion, may allow the challenge to be interposed.

9 ~~(f)(6)~~ Each defendant shall be allowed eight ~~(8)~~
 10 peremptory challenges in capital cases, six ~~(6)~~ in all other
 11 cases tried in the district court before a ~~twelve-(12)~~
 12 ~~person 12-person jury, and three-(3) in all cases--tried--in~~
 13 ~~justice--of-the-peace-or-police-courts. However, there there~~
 14 may not be additional challenges for separate counts charged
 15 in the indictment or information. If the indictment or
 16 information charges a capital offense, as well as lesser
 17 offenses in separate counts, the maximum number of
 18 challenges ~~shall be~~ is eight ~~(8)~~. The state shall be allowed
 19 the same number of peremptory challenges as all of the
 20 defendants. In a ~~civil--or~~ criminal case tried in the
 21 district court before a ~~six-(6)-person six-person~~ jury, the
 22 state and all the defendants shall be allowed three ~~(3)~~
 23 peremptory challenges each. When the partners in a criminal
 24 case in the district court agree upon a jury consisting of a
 25 number of persons other than 6 or 12, they shall also agree

1 in writing upon the number of peremptory challenges to be
 2 allowed.

3 ~~(g)(7)~~ After the jury is impaneled and sworn, the
 4 court may direct ~~the selection of that~~ one or more alternate
 5 jurors, be selected in the same manner as principal jurors, ~~and~~
 6 who The alternate jurors shall take the same oath as the
 7 principal jurors. Each party shall have one additional
 8 peremptory challenge for each alternate juror. Alternate
 9 jurors in the order in which they are called shall replace
 10 jurors who, prior to the time the jury arrives at its ~~verdict~~
 11 verdict, become unable or disqualified to perform their
 12 duties. An alternate juror ~~shall~~ may not join the jury in
 13 its deliberation unless called upon by the court to replace
 14 a member of the jury. His conduct during the period in which
 15 the jury is considering its verdict shall be regulated by
 16 instructions of the trial court. An alternate juror who does
 17 not replace a principal juror shall be discharged after the
 18 jury arrives at its verdict.

19 ~~(h)(8)~~ The jury shall return a general verdict to each
 20 offense charged.

21 ~~(i)(9)~~ When, at the close of the state's evidence or
 22 at the close of all the evidence, the evidence is
 23 insufficient to support a finding or verdict of guilty, the
 24 court may on its own motion or on the motion of the
 25 defendant, dismiss the action and discharge the defendant.

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

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

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

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

16 ~~(c)(3) Conviction--of--a--lesser--offense.~~ The defendant
17 may be found guilty of an offense necessarily included in
18 the offense charged, or of an attempt to commit either the
19 offense charged or an offense necessarily included therein
20 if the attempt is an offense.

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

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

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

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

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

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

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

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

18 ~~(b)(2)~~ Plea of Guilty guilty. Before or during trial,
19 a plea of guilty may be accepted when:

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

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

25 ~~(c)(3)~~ Presence of Defendant defendant. The Whenever

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

6 ~~(d)(4) Time to Prepare prepare for trial. After~~
 7 ~~the plea the defendant shall be is~~ entitled to a reasonable
 8 time to prepare for trial."

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

11 "95-2005. Formation of trial jury. ~~(a)--Number--of~~
 12 ~~jurors--A jury in justice or police court shall consist of~~
 13 ~~six--(6)--persons; but the parties may agree to a number less~~
 14 ~~than six--(6)--(b)(1) Formation of trial jury--The At the~~
 15 ~~time of preparing the district court jury list, the county~~
 16 ~~jury commission--at the time of preparing the district court~~
 17 ~~jury lists shall prepare a jury list for each justice~~
 18 ~~justice's and police city court within the county. Each list~~
 19 shall consist of residents of the appropriate county, city,
 20 or town. ~~Such list The lists~~ shall be selected in any
 21 reasonable manner which ~~shall ensure ensures~~ fairness, and
 22 ~~it each~~ shall include a number of names sufficient to meet
 23 the annual jury requirements of the respective court.
 24 Additional lists may be prepared if required. The ~~list lists~~
 25 shall be filed in the office of the clerk of the district

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

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

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

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

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

23 "95-2006. Verdict. ~~(a)(1) Return~~ The verdict of the
 24 jury must in all cases be general. It shall be returned by
 25 the jury to the judge in open court, who must enter it or

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

3 ~~(b)(2) Several-defendants.~~ When several defendants are
4 tried together, ~~if and~~ the jury cannot agree upon a verdict
5 as to all, ~~they the jury~~ may render a verdict as to those in
6 regard to whom ~~they do it does~~ agree, ~~on which a~~ A judgment
7 must be entered accordingly ~~on the verdict~~, and the case as
8 to the rest may be tried by another jury.

9 ~~(c)(3) Poll-of-jury.~~ When a verdict is returned, the
10 jury shall be polled at the request of any party or upon the
11 court's own motion. If upon the poll there is not a
12 unanimous concurrence, the jury may be directed to retire
13 for further deliberations or may be discharged.

14 ~~(d)(4) Discharge--of--jury.~~ The jury cannot be
15 discharged after the cause is submitted to them until they
16 have agreed upon and rendered their verdict, unless for good
17 cause the court sooner discharges them."

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

20 "95-2007. Sentence and judgment. ~~(a)(1)~~ If a judgment
21 of acquittal is rendered, the defendant must be immediately
22 discharged.

23 ~~(b)(2)~~ After a plea or verdict of guilty, or after a
24 judgment against the defendant, the court must designate a
25 time for sentencing, which must be within a reasonable time

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

4 ~~(c)(3)~~ If the defendant pleads guilty, or is convicted
5 either by the court or by a jury, the court must impose a
6 sentence ~~of--fine--or--imprisonment--or--both--as--the--case--may~~
7 ~~be--The--court--may--suspend--the--execution--of--the--sentence--up~~
8 ~~to--the--maximum--sentence--allowed--for--the--particular--offense~~
9 ~~The--court--may--impose--any--reasonable--conditions--or~~
10 ~~restrictions--on--the--sentence--which--it--deems--necessary--as~~
11 ~~provided--in--95-2206, 95-2206.1 through 95-2206.4, and~~
12 ~~95-2207.~~ If alcohol or other drugs are involved, the court
13 may impose such rehabilitative measures as it ~~deems~~
14 considers advisable under the circumstances.

15 ~~(d)(4)~~ The determination and imposition of sentence
16 ~~shall be~~ are the exclusive duty of the court."

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

19 "95-2009. Appeal. ~~(a)(1)~~ All cases on appeal from
20 justices' or police city courts must be tried anew in the
21 district court and may be tried before a jury of six ~~(6)~~
22 ~~which may be drawn from either the regular panel or jury box~~
23 ~~Now--3 selected as provided in Title 93, chapter 50.~~

24 ~~(b)(2)~~ The defendant may appeal to the district court
25 by giving written notice of his intention to appeal within

1 ~~ten-days-(10)~~ days after judgment.

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

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

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

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

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

6 (3) ~~Not~~ No more than one ~~(1)-justice~~ magistrate or
7 justice of the peace ~~can~~ may be disqualified in the criminal
8 action or proceeding at the instance of the prosecution and
9 ~~not~~ no more than one ~~(1)-justice~~ magistrate or justice of
10 the peace at the instance of the defendant or defendants.

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

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

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

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

1 to read as follows:

2 "95-2101. New trial. ~~{a}(1)~~ ~~Definition and Effects.~~ A
3 new trial is a re-examination ~~reexamination~~ of the issue in
4 the same court, before another jury, after a verdict or
5 finding has been rendered, ~~and the~~ the granting of a new
6 trial places the parties in the same position as if there
7 had been no trial.

8 ~~{b}(2)~~ ~~Motion for a New Trial.~~ ~~{a}~~ Following a
9 verdict or finding of guilty, the court may grant the
10 defendant a new trial if required in the interest of
11 justice.

12 ~~{b}~~ ~~(b)~~ The motion for a new trial shall be in writing
13 and shall specify the grounds therefor. It shall be filed by
14 the defendant within ~~thirty~~ ~~{30}~~ days following a verdict or
15 finding of guilty. Reasonable notice of the motion shall be
16 served ~~upon~~ on the state.

17 ~~{3}~~ ~~The motion for a new trial shall specify the~~
18 ~~grounds therefor.~~

19 ~~(c) Alternative Authority of the Court on Hearing~~
20 ~~Motion for New Trial.~~ On hearing the motion for a new trial,
21 if justified by law and the weight of the evidence, the
22 court may:

23 ~~1~~ ~~(i)~~ Deny deny the motion; ~~i~~

24 ~~2~~ ~~(ii)~~ Grant grant a new trial; ~~ii~~ or

25 ~~3~~ ~~(iii)~~ Modify modify or change the verdict or finding

1 by ~~finding the defendant guilty of a lesser degree of the~~
2 ~~crime charged,~~ finding the defendant guilty of a lesser
3 included crime or finding the defendant not guilty."

4 Section 40. Section 95-2202, R.C.M. 1947, is amended
5 to read as follows:

6 "95-2202. Sentence ~~and~~ Rendering judgment and
7 pronouncing sentence. ~~{a}(1)~~ The judgment shall be rendered
8 in open court.

9 ~~{b}(2)~~ If the verdict or finding is not guilty,
10 judgment shall be rendered immediately and the defendant
11 shall be discharged from custody or from the obligation of
12 his bail bond, except as provided in 95-1916.

13 ~~{a}(3)~~ If the verdict or finding is guilty, sentence
14 shall be pronounced and judgment rendered within a
15 reasonable time."

16 Section 41. Section 95-2206, R.C.M. 1947, is amended
17 to read as follows:

18 "95-2206. Sentence. ~~{1}~~ Whenever any a person has been
19 found guilty of a crime or an offense upon a verdict or a
20 plea of guilty, the court may:

21 ~~{a}~~ ~~(a)~~ Defer defer imposition of sentence for a period
22 not to exceed one exceeding ~~{1}~~ year for any misdemeanor or
23 for a period not to exceed three exceeding ~~{3}~~ years for any
24 felony. The sentencing judge may impose upon the defendant
25 any reasonable restrictions or conditions during the period

1 of the deferred imposition. Such reasonable restrictions or
2 conditions may include:

- 3 ~~(a)~~(i) jail base release;
4 ~~(b)~~(iii) jail time not to-exceed-ninety ~~exceeding~~ (90)
5 days;
6 ~~(c)~~(iii) conditions for probation;
7 ~~(d)~~(iv) restitution;
8 ~~(e)~~(v) any other reasonable conditions deemed
9 considered necessary for rehabilitation or for the
10 protection of society; or

11 ~~(f)~~(vi) any combination of the above;
12 ~~(2)~~(b) ~~Suspend~~ ~~suspend~~ execution of sentence up to the
13 maximum sentence allowed for the particular offense. The
14 sentencing judge may impose on the defendant any reasonable
15 restrictions during the period of suspended sentence. Such
16 reasonable restrictions may include:

- 17 ~~(a)~~(i) jail base release;
18 ~~(b)~~(iii) jail time not to-exceed ~~exceeding~~ (90) days;
19 ~~(c)~~(iii) conditions for probation;
20 ~~(d)~~(iv) restitution;
21 ~~(e)~~(v) any other reasonable conditions deemed
22 considered necessary for rehabilitation or for the
23 protection of society;

24 ~~(f)~~(vi) any combination of the above;
25 ~~if-any-restrictions-or-conditions-are-violated-y-any~~

1 ~~elapsed-time-except-jail-time-shall-not-be-a-credit~~
2 ~~against-the-sentence-unless-the-court-shall-otherwise~~
3 ~~order.~~

4 ~~(3)~~(c) ~~impose~~ impose a fine as provided by law for the
5 offense;

6 ~~(4)~~(d) ~~Commit~~ commit the defendant to a correctional
7 institution with or without a fine as provided by law for
8 the offense;

9 ~~(5)~~(e) ~~impose~~ impose any combination of subsections
10 ~~(2)~~ (1)(b), ~~(3)~~ (1)(c), or ~~(4)~~ and (1)(d) above.

11 (2) If any restrictions or conditions imposed under
12 subsection (1)(a) or (1)(b) are violated, any elapsed time,
13 except jail time, shall not be a credit against the
14 sentence, unless the court orders otherwise.

15 ~~(6)~~(3) (a) The district court may also impose any of
16 the following restrictions or conditions on the above
17 sentence provided for in subsection (1) which it deems
18 considers necessary to obtain the objective objectives of
19 rehabilitation and the protection of society:

20 ~~(a)~~(i) prohibit the defendant the right to hold public
21 office;

22 ~~(b)~~(iii) prohibit the defendant the right to own or
23 carry a dangerous weapon;

24 ~~(c)~~(iii) prohibit freedom of association;

25 ~~(d)~~(iv) prohibit freedom of movement;

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

4 ~~f)(b)~~ The judge in the ~~justice a justice's, city, or~~
5 municipal court ~~shall~~ does not have the authority to
6 restrict an individual's rights as enumerated in subsection
7 ~~f)(3)(a)~~.

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

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

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

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

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

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

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

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

20 (i) ~~the previous felony conviction, or~~
21 (ii) ~~the offender's release on parole or otherwise from~~
22 ~~prison or other commitment imposed as a result of the~~
23 ~~previous felony conviction; and~~

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

1 offense.

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

7 {3}{2} A judicial determination of that an offender is
8 a persistent felony offender under this section may be made
9 only when the conviction for the present offense occurs
10 after July 1, 1975."

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

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

20 (1) ~~The~~ the indictment or information and a copy of
21 the minutes of the arraignment, pleas, and motions;

22 (2) ~~A~~ a copy of the minutes of the trial;

23 (3) ~~The~~ the instructions given or refused and the
24 endorsements thereon;

25 (4) ~~A~~ a copy of the judgment."

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

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

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

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

1 which the offense occurred and at the end of each month
2 distributed as follows:

3 ~~(c)(1)~~ fines Fines collected as the result of
4 summonses issued by city police ~~peace~~ officers shall be
5 distributed to the city in which the police ~~peace~~ officer is
6 employed, and credited to the city general fund~~s~~.

7 ~~(b)(2)~~ fines Fines collected as the result of
8 summonses issued by county peace officers shall be retained
9 by the county treasurer and credited to the county road
10 fund~~s~~.

11 ~~(c)(3)~~ fines Fines collected as the result of
12 summonses issued by state highway patrolmen shall be paid to
13 the state treasurer of Montana~~s~~ and-by-him-credited ~~who~~
14 shall credit them to the general fund of the state~~s~~.

15 ~~(d)(4)~~ that ~~that~~ portion of the fines~~s-as-provided-for~~
16 which is specified in section 75-7903~~s~~ shall be paid to the
17 state treasurer of Montana~~s~~ and-by-him-credited who shall
18 credit it to the automobile driver education account in the
19 earmarked revenue fund.~~s~~

20 Section 47. Section 95-2403, R.C.M. 1947, is amended
21 to read as follows:

22 "95-2403. Scope of appeal by state. ~~(c)(1)~~ Except as
23 authorized by this code title, the state may not appeal in a
24 criminal case.

25 ~~(b)(2)~~ The state may appeal from any court order or

1 judgment the substantive effect of which results in:

2 ~~(1)(a)~~ dismissing a case;

3 ~~(2)(b)~~ modifying or changing the verdict as provided
4 in section 95-2101 ~~(c)-(3)~~;

5 ~~(3)(c)~~ granting a new trial;

6 ~~(4)(d)~~ quashing an arrest or search warrant;

7 ~~(5)(e)~~ suppressing evidence;

8 ~~(6)(f)~~ suppressing a confession or admission; or

9 ~~(7)(g)~~ granting or denying change of venue."

10 Section 48. Section 95-2426, R.C.M. 1947, is amended
11 to read as follows:

12 "~~95-2426. Determination--of--appeal~~ Action reviewing
13 court may take. On appeal the reviewing court may:

14 (1) Reverse ~~reverse~~, affirm~~s~~ or modify the judgment or
15 order from which the appeal is taken;

16 (2) Set ~~set~~ aside, affirm~~s~~ or modify any or all of the
17 proceedings subsequent to or dependent upon the judgment or
18 order from which the appeal is taken;

19 (3) Reduce-the-degree-of ~~reduce~~ the offense of which
20 the appellant was convicted to a lesser included offense;

21 (4) Reduce ~~reduce~~ the punishment imposed by the trial
22 court; or

23 (5) Order ~~order~~ a new trial if justice so requires."

24 Section 49. Section 95-2601, R.C.M. 1947, is amended
25 to read as follows:

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

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

18 "95-2604. When motion petition may be made filed. A
 19 motion petition for such relief may be made filed at any
 20 time after conviction."

21 Section 51. Section 95-2605, R.C.M. 1947, is amended
 22 to read as follows:

23 "95-2605. Proceedings on the petition. (1) Unless the
 24 motion petition and the files and records of the case
 25 conclusively show that the prisoner petitioner is entitled

1 to no relief, the court shall cause notice thereof to be
 2 served upon the county attorney in the county in which the
 3 conviction took place, grant a prompt hearing thereon,
 4 determine the issue, and make findings of fact and
 5 conclusions with respect thereto.

6 (2) The court may receive proof by affidavits,
 7 depositions, oral testimony, or other evidence. In its
 8 discretion the court may order the petitioner brought before
 9 the court for the hearing.

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

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

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

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

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

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

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

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

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

16 "95-3004. ~~The burden~~ Burden of the state in a homicide
17 trial. ~~(b)(1)~~ In a homicide trial, before an extrajudicial
18 confession may be admitted into evidence, the state must
19 introduce independent evidence tending to establish the
20 death, and the fact that the death was caused by a criminal
21 agency.

22 ~~(b)(2)~~ In a deliberate homicide, knowledge or purpose
23 may be inferred from the fact that the accused committed a
24 homicide and no circumstances or of mitigation, excuse, or

1 justification appear."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 "95-3117. Extension of time of commitment adjournment.
 15 If the accused is not arrested under the warrant of the
 16 governor by the expiration of the time specified in the
 17 warrant, bond, or undertaking, a judge or magistrate may
 18 discharge him or may recommit him for a further period of
 19 sixty-{60} days or a supreme court justice or county
 20 district court judge may again take bail for his appearance
 21 and surrender, as provided in section 95-3116, but-with for
 22 a period not to exceed sixty-{60} days after the date of
 23 such the new bond or undertaking."

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

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

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

12 "95-3123. Application for issuance of requisition--by
 13 whom-made--contents. If (1) When the return to this state of
 14 a person charged with a crime in this state is required, the
 15 prosecuting attorney shall present to the governor his
 16 written application for a requisition for the return of the
 17 person charged, in--which The application shall state the
 18 name of the person so charged, the crime charged against
 19 him, the approximate time, place, and circumstances of its
 20 commission, and the state in which he is believed to be,
 21 including the location of the accused therein at the time
 22 the application is made, and--certifying It shall certify
 23 that, in the opinion of the said prosecuting attorney the
 24 ends of justice require the arrest and return of the accused
 25 to this state for trial and that the proceeding is not being

1 instituted to enforce a private claim.

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

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

- 20 (a) indictment returned, or
- 21 (b) information and affidavit filed, or of the
- 22 (c) complaint made to the judge or magistrate, stating
- 23 the offense with which the accused is charged, or of the
- 24 (d) judgment of conviction, or
- 25 (e) of the sentence.

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

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

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

15 "95-3125. No fee to be paid to public officer
16 procuring surrender Restrictions on compensation for
17 assisting return of fugitive. No compensation, fee, or
18 reward of any kind can may be paid to or received by a
19 public officer of this state or other person for a service
20 rendered in procuring from the governor the demand mentioned
21 in section 95-3124, or for the surrender of the fugitive, or
22 for conveying him to this state or detaining him therein,
23 except as provided for in such section 95-3134 and
24 95-3134.1."

25 Section 64. Section 95-3129, R.C.M. 1947, is amended

1 to read as follows:

2 "95-3129. Nonwaiver by this state. Nothing contained
3 in this act ~~contained-shall~~ may be deemed ~~to-constitute~~
4 considered a waiver by this state of its right, power, or
5 privilege to try such the demanded person from for a crime
6 committed within this state, or of its right, power, or
7 privilege to regain custody of such the person by
8 extradition proceedings or otherwise for the purpose of
9 trial, a sentence, or punishment for any a crime committed
10 within this state, nor shall may any proceedings had under
11 this act which result in, or fail to result in, extradition
12 be deemed considered in any way a waiver by this state of
13 any of its rights, privileges, or jurisdiction ~~in any way~~
14 whatsoever."

15 Section 65. Section 95-3206, R.C.M. 1947, is amended
16 to read as follows:

17 "95-3206. Orders, records, report ~~---reviewability,~~
18 confidentiality. (1) Decisions of the board shall be by
19 majority vote. The orders of the board are not reviewable
20 except as to compliance of with the terms of this act.

21 (2) The department ~~of-institutions~~ shall keep a record
22 of the board's acts and decisions available to the public.
23 However, all social records, including the pre-sentence
24 presentence report, the pre-parole preparole report, and the
25 supervision history obtained in the discharge of official

1 duty by the department, shall be confidential and shall not
2 be disclosed directly or indirectly to anyone other than the
3 members of the board or a judge. The board or a court may in
4 its discretion, when the best interest interests or welfare
5 of a particular defendant or prisoner makes such action
6 desirable or helpful, permit the inspection of the report or
7 any parts thereof by the prisoner or his attorney."

8 Section 66. Section 95-3214, R.C.M. 1947, is amended
9 to read as follows:

10 "95-3214. Parole authority and procedure. (1) The
11 Subject to the following restrictions, the board shall
12 release on parole, by appropriate order, any person confined
13 in the Montana state prison, except persons under sentence
14 of death, when in its opinion there is reasonable
15 probability that the prisoner can be released without
16 detriment to himself or to the community, ~~provided:~~

17 (a) ~~That--no~~ No convict serving a time sentence shall
18 may be paroled until he has served at least one-quarter
19 ~~(1/4)~~ of his full term, less the good time ~~allowances-offy~~
20 as allowance provided for in section 80-1905, or 12-1/2
21 years upon his term, whichever is less, ~~except that--no~~ No
22 convict designated a persistent felony offender under
23 section 95-2206.5 may be paroled until he has served at
24 least one-third ~~(1/3)~~ of his full term, less the good time
25 ~~allowances---offy--as~~ allowance provided for in section

1 80-1905, or 17 1/2 years upon his term, whichever is less. A
 2 first-offender serving a time sentence may be paroled after
 3 he has served upon his term of sentence, twelve and
 4 one-half (12-1/2) years. A persistent felony offender as
 5 defined in section 95-2206.5 may be paroled after he has
 6 served upon his term of sentence, seventeen and one-half
 7 (17-1/2) years.

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

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

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

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

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

6 (4) (a) Every prisoner while on parole shall remain in
 7 the legal custody of the institution from which he was
 8 released, but shall be subject to the orders of the board.

9 (b) When an order for parole is issued, it shall
 10 recite the conditions thereof.

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

17 Section 07. Section 95-3215, R.C.M. 1947, is amended
 18 to read as follows:

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

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

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

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

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

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

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

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

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

1 to read as follows:

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

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

1 violation.

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

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

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

1 probable cause to hold the parolee for the final decision of
2 the board of pardons as specified provided in section
3 95-3217 subsection (3).

4 (3) (a) If the hearings officer determines that there
5 is probable cause to believe that the prisoner has violated
6 a condition of his parole, the probation and parole officer
7 shall immediately notify the board and shall submit in
8 writing a report showing in what manner the prisoner has
9 violated the conditions of release, and-this this report
10 shall be accompanied by the findings of the hearings
11 officer.

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

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

1 ~~sentences shall be determined by the board.~~

2 (4) A prisoner for whose return a warrant has been
3 issued shall, after the issuance of the warrant, if it is
4 found that the warrant cannot be served, be considered a
5 fugitive or to have fled from justice."

6 Section 70. Repealer. Sections 16-2615, 16-3403,
7 95-103 through 95-108, 95-2211, and 95-3233, R.C.M. 1947,
8 are repealed.

-End-

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LC 0040

1977 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 30

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

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

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

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

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

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

Section 5. 95-509. Admissibility of statements made
during examination or treatment. Rewritten for clarity.
Changed the internal reference to 95-505, 95-506, and 95-508
to a reference to the chapter - apparent error, 95-507(b)
also provides for examination of the defendant and there is
no apparent reason for a distinction. "This chapter", rather
than a list of sections, was used for simplicity and to pro-
vide for future amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by Committee
on Judiciary

SENATE BILL NO. 30

INTRODUCED BY HAZELBAKER

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

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

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

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

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

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

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

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

conduct to the requirements of law.

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

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

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

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

1 other expert, selected by the one proposing the examination,
2 the examiner shall be permitted to have reasonable access to
3 the defendant for the purpose of the examination.

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

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

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

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

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

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

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

1 warrant, shall be in writing.

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

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

17 ~~(d)(4)~~ A warrant of arrest shall:

18 ~~(1)(a)~~ ~~be~~ be in writing in the name of the state of
 19 Montana or in the name of a municipality if a violation of a
 20 municipal ordinance is charged;

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

22 ~~(3)(c)~~ ~~Command~~ command that the person against whom
 23 the complaint was made be arrested and brought before the
 24 court issuing the warrant, or, if ~~he~~ the judge is absent or
 25 unable to act, before the nearest or most accessible court

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

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

15 ~~(5)(e)~~ State state the date when issued and the
 16 municipality or county where issued; and

17 ~~(6)(f)~~ Be be signed by the judge of the court with the
 18 title of his office.

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

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

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

2 Section 7. Section 95-704, F.C.M. 1947, is amended to
3 read as follows:

4 "95-704. Grounds for search warrant. Any judge may
5 issue a search warrant upon the written application of any
6 person ~~that an offense has been committed~~, made under oath
7 or affirmation before ~~him~~ the judge, which:

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

9 ~~(a)(2)~~ states states facts sufficient to show probable
10 cause for issuance of the warrant;

11 ~~(b)(3)~~ Particularly particularly describes the place
12 or things to be searched; and

13 ~~(c)(4)~~ Particularly particularly describes the things
14 to be seized."

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

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

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

4 (a) ~~the peace officer~~ he has reasonable cause to
5 suspect that the person has knowledge of material aid to the
6 investigation of the offense; or

7 (b) the stop is reasonably necessary to obtain or
8 verify the person's identity or an account of the offense.

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

12 (a) the offense is a felony involving the use or the
13 attempted use of force against a person or theft, damage, or
14 destruction of property; and

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

17 (c) (i) the stop is reasonably necessary to obtain or
18 verify ~~his~~ the person's identity to determine whether to
19 arrest the person for the felony; or

20 (ii) the peace officer has reasonable cause to suspect
21 that the person was present at the scene of the offense, and
22 the stop is reasonably necessary to obtain or verify the
23 person's identity.

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

1 (a) frisk ~~that~~ the person and take other reasonably
 2 necessary steps for protection if ~~the peace officer he~~ has
 3 reasonable cause to suspect that the person is armed and
 4 presently dangerous to ~~the peace officer him~~ or another
 5 person present; and

6 (b) take possession of any object that ~~the peace~~
 7 ~~officer he~~ discovers during the course of the frisk if ~~the~~
 8 ~~peace officer he~~ has probable cause to believe the object is
 9 a deadly weapon.

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

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

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

25 ~~Section 9. Section 95-1001, R.C.M. 1947, is amended to~~

1 ~~read as follows:~~

2 ~~"95-1001. Right to counsel. (1) Every defendant~~
 3 ~~brought before the court must be informed by the court that~~
 4 ~~it is his right to have counsel before proceeding and must~~
 5 ~~be asked if he desires the aid of counsel. The defendant, if~~
 6 ~~charged with a felony, must be advised that counsel will be~~
 7 ~~furnished at state expense if he is unable to employ~~
 8 ~~counsel. If the offense charged is a felony and if the~~
 9 ~~defendant desires counsel and is unable to employ counsel, a~~
 10 ~~the court of record must assign counsel to defend him. If~~
 11 ~~the offense charged is a misdemeanor and if the defendant~~
 12 ~~desires counsel and is unable to employ counsel, a the court~~
 13 ~~of record, in the interest of justice, may assign counsel to~~
 14 ~~defend him.~~

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

21 Section 9. Section 95-1005, R.C.M. 1947, is amended to
 22 read as follows:

23 "95-1005. Remuneration of appointed counsel. (1)
 24 Whenever, in a criminal ~~action or~~ proceeding, an attorney at
 25 law represents or defends any person by order of the court,

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

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

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

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

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

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

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

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

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

14 (a) that he will appear to answer in the court having
 15 jurisdiction on a day certain and thereafter as ordered by
 16 the court until discharged on final order of the court and
 17 will not depart from this state without leave; and

18 (b) ~~subject to~~ any other conditions ~~as~~ that the court
 19 may reasonably prescribe to assure his appearance when
 20 required.

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

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

24 ~~(2)(b)~~ He he will appear at such time and place as the
 25 court may direct;

1 ~~(2)(c)~~ He he will not depart from this state without
2 leave of the court; and

3 ~~(4)(d)~~ If if the judgment is affirmed or the cause
4 reversed and remanded for a new trial, he will forthwith
5 surrender to the officer from whose custody he was bailed."

6 Section 12. Section 95-1119, R.C.M. 1947, is amended
7 to read as follows:

8 "95-1119. Bail on a new trial. If the judgment of
9 conviction is reversed and the cause remanded for a new
10 trial, the trial court may order that the bail stand pending
11 such trial, or substitute, reduce, or increase bail."

12 ~~Section 14. Section 95-1120, R.C.M. 1947, is amended~~
13 ~~to read as follows:~~

14 ~~"95-1120. Persons prohibited from furnishing bail~~
15 ~~security. No attorney at law and no official authorized to~~
16 ~~admit another to bail shall acting in an official or~~
17 ~~professional capacity act as surety or furnish bail."~~

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

20 "95-1121. ~~Sureties for guaranteed~~ Guaranteed arrest
21 bond certificates ~~filing of undertaking guaranteed arrest~~
22 ~~bond certificate.~~ ~~(2)(1)~~ Any a domestic or foreign surety
23 company which has qualified to transact surety business in
24 this state may, in any year, become surety in an amount not
25 ~~to exceed one hundred dollars exceeding~~ exceeding ~~(\$100.00)~~ with

1 respect to any ~~guaranteed~~ guaranteed arrest bond certificates
2 issued in such year by an automobile club or association or
3 by an insurance company authorized to write automobile
4 liability insurance within this state, by filing with the
5 commissioner of insurance an undertaking thus to become
6 surety.

7 ~~(2)(2)~~ Such The undertaking shall be in a form to be
8 prescribed by the commissioner and shall state the
9 following:

10 ~~(4)(a)~~ ~~The~~ the name and address of the automobile club
11 ~~or clubs, automobile association associations, or insurance~~
12 ~~company or companies, or associations with respect to which~~
13 issued the guaranteed arrest bond certificates ~~of with~~
14 respect to which the surety company undertakes to be
15 surety; and

16 ~~(2)(b)~~ The the unqualified obligation of the surety
17 company to pay the fine or forfeiture in an amount not ~~to~~
18 ~~exceed one hundred dollars exceeding~~ exceeding ~~(\$100.00)~~ of any person
19 who, after posting a guaranteed arrest bond certificate with
20 respect to which the surety company has undertaken to be
21 surety, fails to make the appearance to guarantee which the
22 guaranteed arrest bond certificate was posted.

23 ~~(2)(3)~~ The term "guaranteed arrest bond certificate"
24 means any printed card or other certificate which:

25 (a) is issued by an automobile club, or association or

1 insurance company, to any of its members or insureds; and
 2 ~~(b) which said card or certificate~~ is signed by ~~such~~
 3 ~~the~~ member or insured and contains a printed statement that
 4 ~~such the~~ automobile club, automobile association, or
 5 insurance company and a surety company, or an insurance
 6 company authorized to transact both automobile liability
 7 insurance and surety business in the state of Montana;

8 (i) guarantee the appearance of the person whose
 9 signature appears on the card or certificate; and

10 (ii) ~~that~~ will, in the event of ~~the~~ failure of ~~such~~
 11 ~~the~~ person to appear in court at the time of trial, pay any
 12 fine or forfeiture imposed on ~~such the~~ person in an amount
 13 ~~not to exceed one hundred dollars exceeding~~ (\$100.00)."

14 Section 14. Section 95-1122, R.C.M. 1947, is amended
 15 to read as follows:

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

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

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

21 "95-1406. ~~When and from when they may ask advice and~~
 22 ~~who may be present during their sessions~~ advice and
 23 assistance to grand jury -- who may be present --
 24 stenographer, transcript of testimony. ~~(*)~~ (i) The grand
 25 jury may, at all times, ask the advice of the court, or the

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

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

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

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

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

12 ~~(e)(5) Transcript of Testimony.~~ ~~(4)(a)~~ The grand jury
 13 may appoint a stenographer to take in shorthand the
 14 testimony of witnesses, or the testimony may be taken by a
 15 recording device, but the record so made shall include the
 16 testimony of all witnesses on that particular investigation.
 17 The shorthand notes or the recordings and transcript of the
 18 same, if any, shall be delivered to and retained by the
 19 clerk of the district court.

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

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

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

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

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

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

1 to read as follows:

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

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

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

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

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

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

1 complaint."

2 Section 19. Section 95-1504, B.C.B. 1947, is amended
3 to read as follows:

4 "95-1504. Joinder and discharge of offenses and
5 defendants. ~~(1)~~ (1) An indictment, information, or complaint
6 ~~or accusation~~ may charge two (2) or more different offenses
7 connected together in their commission, ~~or~~ different
8 statements of the same offense, or two (2) or more different
9 offenses of the same class ~~of crimes or offenses~~, under
10 separate counts, ~~and if~~ if two (2) or more indictments,
11 informations, or complaints ~~or accusations~~ are filed in such
12 cases in the same court, the court may order them to be
13 consolidated. Allegations made in one count may be
14 incorporated by reference in another count. The prosecution
15 is not required to elect between the different offenses or
16 counts set forth in the indictment, information, or
17 complaint ~~or accusation~~, but and the defendant may be
18 convicted of any number of the offenses charged, ~~and each~~
19 Each offense of which the defendant is convicted must be
20 stated in the verdict or the finding of the court.

21 (2) ~~provided, that the~~ The court in which the case is
22 triable, in the interests of justice and for good cause
23 shown, may in its discretion order that the different
24 offenses or counts set forth in the indictment, information,
25 or complaint ~~and accusation~~ be tried separately or divided

1 into two ~~(2)~~ or more groups and each of ~~said~~ the groups
2 tried separately. An acquittal of one ~~(1)~~ or more counts
3 shall not be ~~deemed~~ considered an acquittal of any other
4 count.

5 ~~(3)~~ (3) Two ~~(2)~~ or more defendants may be charged in
6 the same indictment or information if they are alleged to
7 have participated in the same series of acts or transactions
8 constituting an offense or offenses. Such defendants may be
9 charged in one ~~(1)~~ or more counts together or separately,
10 and all of the defendants need not be charged in each count.

11 ~~(4)~~ (4) If it appears that a defendant or the state is
12 prejudiced by a joinder of related prosecutions or
13 defendants in a single charge or by joinder of separate
14 charges or defendants for trial, the court may order
15 separate trials, grant a severance of defendants, or provide
16 any other relief as justice may require.

17 ~~(5)~~ (5) When two or more persons are included in the
18 same charge, the court may, at any time, before the
19 defendants have gone into their defense, on the application
20 of the county attorney, direct any defendant to be
21 discharged, so that he may be a witness for the state.

22 ~~(6)~~ (6) When two or more persons are included in the
23 same indictment or information, and the court is of the
24 opinion that in regard to a particular defendant there is
25 not sufficient evidence to put him on his defense, ~~it~~ the

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

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

5 "~~95-1506. Prior conviction Procedural requirements --~~
6 persistent felony offenders. (1) When If the state seeks
7 ~~increased punishment treatment~~ of the accused as a ~~prior~~
8 ~~convicted felon persistent felony offender~~ under ~~section~~
9 ~~94-4743 95-1507 or 95-2206.5 or both of those sections,~~
10 notice of that fact must be given in writing to the accused
11 or his attorney before the entry of a plea of guilty by the
12 accused, or before the case is called for trial upon a plea
13 of not guilty.

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

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

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

25 ~~(c)~~ (3) If the accused is convicted upon the felony

1 charge, the notice, together with proper proof of timely
2 service, shall be filed with the court before the time fixed
3 for ~~sentence~~ sentencing. The court shall then fix a time for
4 hearing with at least ~~three~~ (3) days' notice to the accused.

5 ~~(4)~~ (4) The hearing shall be held before the court
6 alone. If the court finds any of the allegations of prior
7 conviction true, the accused shall be sentenced under the
8 provisions of ~~section 94-4743 95-1507 and 95-2206.5."~~

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

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

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

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

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

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

6 ~~(e) the offender was more than twenty-one (21) years~~
 7 ~~old at the time of the commission of the new offense.~~

8 ~~(3)(C) A previous felony conviction shall not be~~
 9 ~~considered for the purpose of sentencing under this section~~
 10 if the offender has not been pardoned on the grounds ground
 11 of innocence, ~~or if~~ and the conviction ~~had~~ has not been set
 12 aside in ~~any post conviction~~ a postconviction hearing.

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

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

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

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

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

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

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

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

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

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

1 ~~95-1709. Substitution of judge. (a) (1) The defendant~~
 2 ~~or the prosecution may move the court in writing for a~~
 3 ~~substitution of the judge on the ground that he the jurant~~
 4 ~~cannot have a fair and impartial hearing or trial before~~
 5 ~~said the judge. The motion shall be made at least fifteen~~
 6 ~~(15) days prior to the trial of the case, or any retrial~~
 7 ~~thereof after appeal, except for good cause shown.~~

8 ~~(2) Upon the filing of such a the notice, the judge~~
 9 ~~against whom the motion is filed shall be without authority~~
 10 ~~to act further in the criminal action, motion, or~~
 11 ~~proceeding, but the provisions of this section do not apply~~
 12 ~~except in regard to the arrangement of the calendar, the~~
 13 ~~regulation of the order of business, the power of~~
 14 ~~transferring the criminal action or proceeding to some other~~
 15 ~~court, nor to and the power of calling in another judge to~~
 16 ~~sit and act in such the criminal action or proceeding,;~~
 17 ~~providing that no the judge shall may so arrange the calendar~~
 18 ~~as to defeat the purposes of this section.~~

19 ~~(3) Not the more than one (1) judge can may be~~
 20 ~~disqualified in the criminal action or proceeding, at the~~
 21 ~~instance of the prosecution and not so more than one (1)~~
 22 ~~judge at the instance of the defendant or defendants.~~

23 ~~(4) If either a party in any matter above mentioned~~
 24 ~~shall file the the filing a motion as herein provided such~~
 25 ~~party under subsection (1) may not complain of any~~

1 ~~reasonable delay as the result thereof.~~

2 ~~(5) The provision of this This section shall be is~~
 3 ~~inapplicable to any person in any cause involving a direct~~
 4 ~~contempt of court.~~

5 ~~(b) (6) In addition to the provision provisions of~~
 6 ~~subsection (a) subsections (1) through (5), any a defendant~~
 7 ~~may move at any time for a substitution of the judge for~~
 8 ~~cause, supported by affidavit. Upon the filing of such the~~
 9 ~~motion, the court shall conduct a hearing and determine the~~
 10 ~~merits of the motion."~~

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

13 "95-1711. Effect of former prosecution and multiple
 14 multiple charges and former prosecutions. (1) Definitions of
 15 terms. (a) The term "same transaction" includes conduct
 16 consisting of:

17 (i) a series of acts or omissions which are motivated
 18 by a purpose to accomplish a criminal objective, and which
 19 are necessary or incidental to the accomplishment of that
 20 objective; or

21 (ii) a series of acts or omissions which are motivated
 22 by a common purpose or plan and which result in the repeated
 23 commission of the same offense or affect the same person or
 24 the same persons or the property thereof.

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

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

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

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

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

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

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

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

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

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

1 course of conduct and the defendant's course of conduct was
2 interrupted, and unless the law provides that the specific
3 periods of such conduct constitute separate offenses.

4 (3) ~~When prosecution is barred by former prosecution.~~
5 ~~Provided if~~ the offenses, ~~if more than one,~~ were known to
6 the attorney prosecuting upon sufficient evidence to justify
7 the filing of an information or the issuance of a warrant of
8 arrest and were consummated prior to the original charge,
9 and ~~provided if~~ the jurisdiction and venue of the several
10 offenses lie in a single court, a prosecution based upon the
11 same transaction as a former prosecution is barred by such
12 former prosecution under the following circumstances:

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

21 (b) The former prosecution was terminated, after a
22 complaint had been filed on a misdemeanor charge, ~~or~~ after
23 an information had been filed or an indictment found on a
24 felony charge, by a final order of judgment for the
25 defendant, which has not been set aside, reversed, or

1 vacated and which necessarily required a determination
2 inconsistent with a fact or a legal proposition that must be
3 established for conviction of the offense.

4 (c) The former prosecution resulted in a conviction.
5 There ~~is~~ has been a conviction ~~if~~ whenever the prosecution
6 resulted in:

7 (i) a judgment of conviction which has not been
8 reversed or vacated; ~~or~~

9 (ii) a verdict of guilty which has not been set aside
10 and which is capable of supporting a judgment, so long as
11 failure to enter judgment was for a reason other than a
12 motion of the defendant; or

13 (iii) a plea of guilty accepted by the court, so long
14 as failure to enter judgment was for a reason other than a
15 motion of the defendant.

16 (d) The former prosecution was improperly terminated.
17 Except as provided in this subsection (d), there is an
18 improper termination of a prosecution ~~if~~ whenever the
19 termination is for reasons not amounting to an acquittal,
20 and ~~it~~ takes place after the first witness is sworn but
21 before verdict. Termination under ~~any~~ either of the
22 following circumstances is not improper:

23 (i) ~~the~~ The defendant consents to the termination or
24 waives his right to object to the termination; ~~or~~

25 (ii) ~~the~~ The trial court, in the exercise of its

1 discretion, finds that the termination is necessary because:

2 (A) it is physically impossible to proceed with the
3 trial in conformity with law; ~~or~~

4 (B) there is a legal defect in the proceedings which
5 would make any judgment entered upon a verdict reversible as
6 a matter of law; ~~or~~

7 (C) prejudicial conduct, in or outside the courtroom,
8 makes it impossible to proceed with the trial without
9 manifest injustice to either the defendant or the state; ~~or~~

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

11 (E) false statements of a juror en voir dire prevent a
12 fair trial.

13 (4) ~~Former prosecution in another jurisdiction when a~~
14 ~~bar.~~ When conduct constitutes an offense within the
15 concurrent jurisdiction of this state and of the United
16 States or another state or of two courts of separate ~~and/or~~
17 overlapping, or concurrent jurisdiction in this state, a
18 prosecution in any such other jurisdiction is a bar to a
19 subsequent prosecution in this state under the following
20 circumstances:

21 (a) The first prosecution resulted in an acquittal or
22 in a conviction as defined in subsection (3) and the
23 subsequent prosecution is based on an offense arising out of
24 the same transaction.

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

1 complaint ~~has had~~ been filed on a misdemeanor charge, ~~or~~
 2 after the information ~~was had been~~ filed or the indictment
 3 found on a felony charge, by an acquittal or by a final
 4 order or judgment for the defendant which has not been set
 5 aside, reversed, or vacated; and ~~which the~~ acquittal, final
 6 order, or judgment necessarily required a determination
 7 inconsistent with a fact which must be established for
 8 conviction of the offense ~~of~~ for which the defendant is
 9 subsequently prosecuted.

10 (5) ~~Former prosecution before court lacking~~
 11 ~~jurisdiction or when fraudulently procured by the defendant.~~
 12 A prosecution is not a bar within the meaning of subsections
 13 (3) and (4) under any one or more of the following
 14 circumstances:

15 (a) ~~the~~ The former prosecution was before a court
 16 which lacked jurisdiction over the defendant or the
 17 offense, ~~or~~

18 (b) ~~the~~ The former prosecution was procured by the
 19 defendant without the knowledge of the proper prosecuting
 20 officer or with the purpose of avoiding the sentence which
 21 might otherwise be imposed, ~~or~~

22 (c) ~~the~~ The former prosecution resulted in a judgment
 23 of conviction which was held invalid in ~~any post-conviction~~
 24 a postconviction hearing."

25 Section 26. Section 95-1803, R.C.M. 1947, is amended

1 to read as follows:

2 "95-1803. Discovery, inspection, and notice. In all
 3 criminal cases originally triable in district court the
 4 following rules shall apply:

5 ~~(a) List of Witnesses.~~

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

14 ~~(2) The requirement of subsection (a)(1), of this~~
 15 ~~section, shall~~ This subsection does not apply to rebuttal
 16 witnesses.

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

19 ~~(c) (2) (a)~~ (a) On motion of any party within a reasonable
 20 time before trial, ~~all parties~~ each party shall produce at a
 21 reasonable time and place designated by the court all
 22 documents, papers, or things which ~~each party~~ it intends to
 23 introduce in evidence. ~~Thereupon any~~ Each party shall, in
 24 the presence of a person designated by the court, be
 25 permitted to inspect or copy any such documents, papers, or

1 things. The order shall specify the time, place, and manner
 2 of making the inspection and of taking the copies or
 3 photographs and may prescribe such terms and conditions as
 4 are just. If the evidence relates to scientific tests or
 5 experiments, the opposing party shall, if practicable, be
 6 permitted to be present during the tests and to inspect the
 7 results thereof. Upon a sufficient showing, the court may at
 8 any time order that the discovery or inspection be denied,
 9 restricted, or deferred, or make other appropriate orders.

10 (b) If, subsequent to compliance with an order issued
 11 pursuant to this rule, and prior to or during trial, a party
 12 discovers additional material previously requested which is
 13 subject to discovery or inspection under ~~the~~ this rule, he
 14 shall promptly notify the other party or his attorney or the
 15 court of the existence of the additional material. The court
 16 shall exclude any evidence not presented for inspection or
 17 copying pursuant to this rule, unless good cause is shown
 18 for failure to comply. In the latter case the opposing party
 19 ~~shall be~~ is entitled to a recess or a ~~continuance~~
 20 continuance during which it may inspect or copy the evidence
 21 in the manner provided for ~~above~~ in this subsection (2).

22 ~~(4) (3)~~ (a) For purpose of notice only and to prevent
 23 surprise, the defendant shall furnish to the prosecution and
 24 file with the clerk of the court, at the time of entering
 25 his plea of not guilty or within ~~ten~~ (10) days thereafter or

1 at such later time as the court may for good cause permit, a
 2 statement of intention to interpose the defense of ~~insanity~~
 3 mental disease or defect, self-defense, or alibi.

4 (b) If the defendant intends to interpose any of these
 5 defenses, he shall also furnish to the prosecution and file
 6 with the clerk of the court, the names and addresses of all
 7 witnesses to be called by the defense in support thereof.
 8 ~~The~~ Prior to trial the defendant may, ~~prior to trial~~, upon
 9 motion and showing of good cause, add to the list of
 10 witnesses the names of any additional witnesses. After the
 11 trial commences, no witnesses may be called by the defendant
 12 in support of these defenses, unless the name of the witness
 13 is included on ~~each~~ the list, except upon good cause shown.

14 ~~(4) (4)~~ All matters which are privileged upon the
 15 trial, are privileged against disclosure through any
 16 discovery procedure."

17 Section 27. Section 95-1810, R.C.M. 1947, is amended
 18 to read as follows:

19 "95-1810. Witness from another state summoned to
 20 testify in this state. (1) If ~~Whenever~~ a person in any
 21 state, which by its laws has made provision for commanding
 22 persons within its borders to attend and testify in criminal
 23 prosecutions, or grand jury investigations ~~conducted or~~
 24 ~~about to commence~~, in this state, is a material witness in a
 25 prosecution pending in a court of record in this state, or

1 in a grand jury investigation, which has commenced or is
 2 about to commence, a judge of ~~such~~ the court may issue a
 3 certificate under the seal of the court stating these facts
 4 and specifying the number of days the witness will be
 5 required. ~~This~~ The certificate ~~will~~ shall be presented to a
 6 judge of a court of record in the county in which the
 7 witness is found.

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

23 (3) ~~If~~ Whenever a witness is summoned to attend
 24 and testify in this state, he shall be tendered the sum of
 25 ~~ten cents (10¢)~~ cents a mile for each mile and ~~five dollars~~

1 ~~(\$5.00)~~ for each day that he is required to travel and
 2 attend as a witness, ~~provided further that in these cases~~
 3 ~~in which~~ If the state wherein the witness is found has by
 4 statutory enactment required that the summoned witness be
 5 paid an amount ~~or amounts~~ in excess of the amount
 6 ~~hereinbefore in this paragraph provided~~ specified in the
 7 preceding sentence, ~~then said~~ the witness may be tendered
 8 ~~said~~ the amount ~~or amounts~~ so required by ~~said~~ that state ~~to~~
 9 ~~be tendered though the said amount or amounts so required to~~
 10 ~~be tendered are in excess of the said amounts in this~~
 11 ~~paragraph provided for.~~

12 (4) A witness who has appeared in accordance with the
 13 provisions of the summons ~~shall~~ may not be required to
 14 remain within this state for a longer period of time than
 15 the period mentioned in the certificate, unless otherwise
 16 ordered by the court.

17 (5) If ~~such~~ the witness fails without good cause to
 18 attend and testify as directed in the summons, he shall be
 19 punished in the manner provided for the punishment of any
 20 witness who disobeys a summons issued from a court of record
 21 in this state."

22 Section 28. Section 95-1909, R.C.M. 1947, is amended
 23 to read as follows:

24 "95-1909. Trial jurors. ~~(a)~~ (1) The clerk of court
 25 shall make available to the parties a list of prospective

1 jurors with their addresses when the names have been drawn.

2 ~~(b) (2)~~ ~~(4) (a)~~ The qualifications of jurors, and ~~who~~
3 ~~will be exempted,~~ exemptions from jury duty are ~~found~~
4 prescribed in ~~sections 93-1301 through 93-1307, of the Civil~~
5 ~~Code, which by reference are made a part of this code.~~

6 ~~(2) (b)~~ An exemption from service on a jury is not a
7 cause of challenge, but the privilege of the person
8 exempted.

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

15 ~~(4) (2)~~ ~~(4) (a)~~ Each party may challenge jurors for
16 cause, and each challenge must be tried by the court.

17 ~~(2) (b)~~ A challenge for cause may be taken for all or
18 any of the following reasons, or for any other reason which
19 the court determines:

20 (i) ~~Consanguinity~~ consanguinity or relationship to the
21 defendant or to the person who is alleged to be injured by
22 the offense charged, or on whose complaint the prosecution
23 was instituted, ~~or to the defendant.~~

24 (ii) ~~Standing~~ standing in the relation of guardian and
25 ward, attorney and client, master and servant, ~~or~~ landlord

1 and tenant, or debtor and creditor with, or being a member
2 of the family or in the employment of, the defendant, or of
3 the person who is alleged to be injured by the offense
4 charged, or on whose complaint the prosecution was
5 instituted, ~~or in his employment.~~

6 (iii) ~~Being~~ being a party adverse to the defendant in a
7 civil action, or having complained against or been accused
8 by him in a criminal prosecution.

9 (iv) ~~Having~~ having served on the grand jury which found
10 the indictment, or on a coroner's jury which inquired into
11 the death of a person whose death is the subject of the
12 indictment or information.

13 (v) ~~Having~~ having served on a trial jury which ~~has~~
14 tried another person for the offense charged.

15 (vi) ~~Having~~ having been ~~one~~ a member of a jury formerly
16 sworn to try the same charge, ~~and whose the verdict of which~~
17 was set aside or which was discharged without verdict, after
18 the case was submitted to it.

19 (vii) ~~Having~~ having served as a juror in a civil action
20 brought against the defendant for the act charged as an
21 offense.

22 (viii) ~~If~~ if the offense charged ~~be~~ is punishable with
23 death, ~~with estereaining of~~ having such conscientious
24 opinions as would preclude his finding the defendant
25 guilty, in which case he must neither be permitted nor

1 compelled to serve as a juror;

2 (ix) ~~Having~~ having a belief that the punishment fixed

3 by law is too severe for the offense charged;

4 (x) ~~For the existence of~~ having a state of mind on the

5 ~~part of the juror~~ in reference to the case, or to either of

6 the parties, which ~~will~~ would prevent him from acting with

7 entire impartiality and without prejudice to the substantial

8 rights of either party.

9 ~~(4)~~ (5) All challenges must be interposed before the

10 jury is sworn, unless the cause of challenge ~~be~~ is

11 discovered after the jury is sworn and before the

12 introduction of any evidence, ~~when in which case~~ the court,

13 in its discretion, may allow the challenge to be interposed.

14 ~~(4)~~ (6) Each defendant shall be allowed eight ~~(8)~~

15 peremptory challenges in capital cases, six ~~(6)~~ in all other

16 cases tried in the district court before a ~~twelve (12)~~

17 ~~person~~ 12-person jury, ~~and three (3) in all cases tried in~~

18 ~~justice of the peace or police courts. However, there~~ There

19 may not be additional challenges for separate counts charged

20 in the indictment or information. If the indictment or

21 information charges a capital offense, as well as lesser

22 offenses in separate counts, the maximum number of

23 challenges ~~shall be~~ is eight ~~(8)~~. The state shall be allowed

24 the same number of peremptory challenges as all of the

25 defendants. In a ~~civil or~~ criminal case tried in the

1 district court before a ~~six (6) person~~ six-person jury, the

2 state and all the defendants shall be allowed three ~~(3)~~

3 peremptory challenges each. When the parties ~~parties~~ PARTIES in a

4 criminal case in the district court agree upon a jury

5 consisting of a number of persons other than 6 or 12, they

6 shall also agree in writing upon the number of peremptory

7 challenges to be allowed.

8 ~~(4)~~ (7) After the jury is impaneled and sworn, the

9 court may direct ~~the selection of that~~ one or more alternate

10 jurors, be selected in the same manner as principal jurors,

11 ~~the~~ The alternate jurors shall take the same oath as the

12 principal jurors. Each party shall have one additional

13 peremptory challenge for each alternate juror. Alternate

14 jurors in the order in which they are called shall replace

15 jurors who, prior to the time the jury arrives at its ~~verdict~~

16 verdict, become unable or disqualified to perform their

17 duties. An alternate juror ~~shall~~ may not join the jury in

18 its deliberation unless called upon by the court to replace

19 a member of the jury. His conduct during the period in which

20 the jury is considering its verdict shall be regulated by

21 instructions of the trial court. An alternate juror who does

22 not replace a principal juror shall be discharged after the

23 jury arrives at its verdict.

24 ~~(4)~~ (8) The jury shall return a general verdict to each

25 offense charged.

1 ~~(i)~~ (9) When, at the close of the state's evidence or
 2 at the close of all the evidence, the evidence is
 3 insufficient to support a finding or verdict of guilty, the
 4 court may on its own motion or on the motion of the
 5 defendant, dismiss the action and discharge the defendant.
 6 However, the court may allow the case to be reopened for
 7 good cause shown."

8 Section 29. Section 95-1915, R.C.M. 1947, is amended
 9 to read as follows:

10 "95-1915. Verdict. ~~(a)~~ (1) ~~Return.~~ The verdict shall
 11 must be unanimous in all criminal actions. ~~Such~~ The verdict
 12 shall be signed by the foreman and returned by the jury to
 13 the judge in open court.

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

21 ~~(c)~~ (3) ~~Conviction of a Lesser Offense.~~ The defendant
 22 may be found guilty of an offense necessarily included in
 23 the offense charged, or of an attempt to commit either the
 24 offense charged or an offense necessarily included therein
 25 if the attempt is an offense.

1 ~~Whenever a crime is distinguished into degrees, the~~
 2 ~~jury, if they convict the defendant, must find the degree of~~
 3 ~~the crime of which he is guilty.~~

4 ~~(4)~~ (4) ~~Poll of Jury.~~ When a verdict is returned, the
 5 jury shall be polled at the request of any party or upon the
 6 court's own motion. If upon the poll there is not the
 7 required concurrence, the jury may be directed to retire for
 8 further deliberations or may be discharged."

9 Section 30. Section 95-2004, R.C.M. 1947, is amended
 10 to read as follows:

11 "95-2004. Trial in justice justices' and police city
 12 courts. ~~(a)~~ (1) Method of Trial trial:

13 ~~(1)~~ (a) The defendant is entitled to a jury of six ~~(6)~~
 14 qualified persons, but ~~may consent to a lesser number~~ the
 15 parties may agree to a number less than six.

16 ~~(2)~~ (b) A trial by jury may be waived by the consent of
 17 both parties expressed in open court and entered in the
 18 docket.

19 ~~(3)~~ (c) Questions of law shall be decided by the court
 20 and questions of fact by the jury except that, when a jury
 21 trial is waived, ~~then~~ the court shall determine both
 22 questions of law and questions of fact.

23 ~~(b)~~ (2) Plea of ~~Guilty~~ guilty. Before or during trial,
 24 a plea of guilty may be accepted when:

25 ~~(1)~~ (a) ~~The~~ the defendant enters a plea of guilty in

1 open court, and

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

5 ~~(c)(3)~~ Presence of ~~Defendant~~ defendant. ~~The~~ ~~Whenever~~
6 ~~THE~~ ~~the~~ ~~offense~~ ~~charged~~ ~~carries~~ ~~a~~ ~~penalty~~ ~~of~~ ~~a~~ ~~fine~~ ~~only~~,
7 ~~the~~ trial may be had in the absence of the defendant, but,
8 if his presence is necessary for any purpose, the court may
9 require the personal attendance of the defendant at the
10 trial.

11 ~~(4)(4)~~ Time to ~~Prepare~~ prepare for ~~trial~~ trial. After
12 ~~the~~ plea the defendant ~~shall be~~ is entitled to a reasonable
13 time to prepare for trial."

14 Section 31. Section 95-2005, R.C.M. 1947, is amended
15 to read as follows:

16 "95-2005. Formation of trial jury. ~~(a)~~ ~~Number~~ ~~of~~
17 ~~Jurors. A jury in justice or police court shall consist of~~
18 ~~six (6) persons, but the parties may agree to a number less~~
19 ~~than six (6).~~ ~~(b)(1)~~ ~~Formation of Trial Jury. The~~ At the
20 time of preparing the district court jury list, the county
21 jury commission, ~~at the time of preparing the district court~~
22 ~~jury list,~~ shall prepare a jury list for each justice
23 justice's and police city court within the county. Each list
24 shall consist of residents of the appropriate county, city,
25 or town. ~~Such list~~ The lists shall be selected in any

1 reasonable manner which ~~shall ensure~~ ensures fairness, and
2 ~~it~~ each shall include a number of names sufficient to meet
3 the annual jury requirements of the respective court.
4 Additional lists may be prepared if required. ~~The list~~ lists
5 shall be filed in the office of the clerk of the district
6 court, ~~and the~~ The appropriate list shall be posted in a
7 public place in each ~~such~~ county, city, or town, and such
8 list shall comprise the trial jury list for the ensuing year
9 for such county, city, or town.

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

13 (3) The prosecuting attorney and the defendant or his
14 attorney shall conduct the examination of prospective
15 jurors. The court may conduct an additional examination. The
16 court may limit the examination by the defendant, his
17 attorney, or the prosecuting attorney if the court believes
18 such examination to be improper.

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

1 Section 32. Section 95-2006, R.C.E. 1947, is amended
2 to read as follows:

3 "95-2006. Verdict. ~~(a)(1) Return.~~ The verdict of the
4 jury must in all cases be general. It shall be returned by
5 the jury to the judge in open court, who must enter, it or
6 cause it to be entered in the minutes. The verdict of the
7 jury must be unanimous.

8 ~~(b)(2) Several defendants.~~ When several defendants are
9 tried together, if and the jury cannot agree upon a verdict
10 as to all, they the jury may render a verdict as to those in
11 regard to whom they do agree, ~~on which a~~ judgment
12 must be entered accordingly on the record, and the case as
13 to the rest may be tried by another jury.

14 ~~(c)(3) Poll of jury.~~ When a verdict is returned, the
15 jury shall be polled at the request of any party or upon the
16 court's own motion. If upon the poll there is not a
17 unanimous concurrence, the jury may be directed to retire
18 for further deliberations or may be discharged.

19 ~~(d)(4) Discharge of jury.~~ The jury cannot be
20 discharged after the cause is submitted to them, until they
21 have agreed upon and rendered their verdict, unless for good
22 cause the court sooner discharges them."

23 Section 33. Section 95-2007, R.C.E. 1947, is amended
24 to read as follows:

25 "95-2007. Sentence and judgment. ~~(a)(1)~~ If a judgment

1 of acquittal is rendered, the defendant must be immediately
2 discharged.

3 ~~(b)(2)~~ After a plea or verdict of guilty, or after a
4 judgment against the defendant, the court must designate a
5 time for sentencing, which must be within a reasonable time
6 after the rendering of the verdict or judgment ~~is rendered~~.
7 The sentence must be entered in the minutes of the court as
8 soon as it is imposed.

9 ~~(c)(3)~~ If the defendant pleads guilty, or is convicted
10 either by the court or by a jury, the court must impose a
11 sentence ~~of fine or imprisonment or both, as the case may~~
12 ~~be. The court may suspend the execution of the sentence up~~
13 ~~to the maximum sentence allowed for the particular offense.~~
14 ~~The court may impose any reasonable conditions or~~
15 ~~restrictions on the sentence which it deems necessary as~~
16 ~~provided in 95-2206, 95-2206.1 through 95-2206.4, and~~
17 ~~95-2207. If alcohol or other drugs are involved, the court~~
18 may impose such rehabilitative measures as it ~~deems~~
19 ~~considers~~ advisable under the circumstances.

20 ~~(d)(4)~~ The determination and imposition of sentence
21 ~~shall be~~ are the exclusive duty of the court."

22 Section 34. Section 95-2009, R.C.E. 1947, is amended
23 to read as follows:

24 "95-2009. Appeal. ~~(a)(1)~~ All cases on appeal from
25 justices' or police city courts must be tried anew in the

1 district court and may be tried before a jury of six ~~(6)~~
2 ~~which may be drawn from either the regular panel or jury box~~
3 ~~no. 3 selected as provided in Title 93, chapter 50.~~

4 ~~(b)(2)~~ The defendant may appeal to the district court
5 by giving written notice of his intention to appeal within
6 ~~ten days (10) days~~ after judgment.

7 ~~(c)(3)~~ Within ~~thirty (30) days~~, the entire record of
8 the ~~justice justice's~~ or ~~police city~~ court proceedings shall
9 be transferred to the district court or the appeal shall be
10 dismissed. It ~~shall be is~~ the duty of the defendant to
11 perfect the appeal."

12 ~~Section 28. Section 95-2010, R.C.M. 1947, is amended~~
13 ~~to read as follows:~~

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

23 ~~(2) Upon the filing of such a the motion, the justice,~~
24 ~~magistrate, or justice of the peace against whom the action~~
25 ~~is filed shall be without authority to act further in the~~

1 ~~original action, motion, or proceeding, but the provisions~~
2 ~~of this section do not apply except in regard to the~~
3 ~~arrangement of the calendar, the regulation of the order of~~
4 ~~business, the power of transferring the criminal action or~~
5 ~~proceeding to some other court, nor to and the power of~~
6 ~~calling in another justice, magistrate, or justice of the~~
7 ~~peace to sit and act in such the criminal action or~~
8 ~~proceeding, providing that no justice, no magistrate, or~~
9 ~~justice of the peace shall may so arrange the calendar as to~~
10 ~~defeat the purposes of this section.~~

11 ~~(3) Not no more than one (1) justice, magistrate, or~~
12 ~~justice of the peace can may be disqualified in the criminal~~
13 ~~action or proceeding, at the instance of the prosecution and~~
14 ~~not no more than one (1) justice, magistrate, or justice of~~
15 ~~the peace at the instance of the defendant or defendants.~~

16 ~~(4) If either a party in any matter above mentioned~~
17 ~~shall file the who files a motion as herein provided such~~
18 ~~party under subsection (1) may not complain of any~~
19 ~~reasonable delay as the result thereof.~~

20 ~~(5) The provisions of this This section shall be is~~
21 ~~inapplicable to any person in any cause involving a direct~~
22 ~~contempt of court.~~

23 ~~(2)(5) In addition to the provision provisions of~~
24 ~~subsection (1) any subsections (1) through (5), a defendant~~
25 ~~may move at any time for the disqualification of a justice,~~

1 ~~magistrate, or justice of the peace for cause, supported by~~
 2 ~~affidavit. Upon the filing of such the notice, the court~~
 3 ~~shall conduct a hearing and determine the merits of the~~
 4 ~~motion."~~

5 Section 35. Section 95-2101, R.C.M. 1947, is amended
 6 to read as follows:

7 "95-2101. New trial. ~~(a) (1) Definition and Effect.~~ A
 8 new trial is a ~~re-examination~~ reevaluation of the issue in
 9 the same court, before another jury, after a verdict or
 10 finding has been rendered, ~~and the~~ The granting of a new
 11 trial places the parties in the same position as if there
 12 had been no trial.

13 ~~(b) (2) Motion for a New Trial.~~ ~~(1) (a)~~ Following a
 14 verdict or finding of guilty, the court may grant the
 15 defendant a new trial if required in the interest of
 16 justice.

17 ~~(2) (b)~~ The motion for a new trial shall be in writing
 18 and shall specify the grounds therefor. It shall be filed by
 19 the defendant within ~~thirty~~ ~~(30)~~ days following a verdict or
 20 finding of guilty. Reasonable notice of the motion shall be
 21 served upon on the state.

22 ~~(3) The motion for a new trial shall specify the~~
 23 ~~grounds therefor.~~

24 ~~(c) Alternative Authority of the Court on Hearing~~
 25 ~~Motion for New Trial.~~ On hearing the motion for a new trial,

1 if justified by law and the weight of the evidence, the
 2 court may:

3 1. ~~(i)~~ Deny deny the motion;

4 2. ~~(ii)~~ Grant grant a new trial; or

5 3. ~~(iii)~~ Modify modify or change the verdict or finding
 6 by ~~finding the defendant guilty of a lesser degree of the~~
 7 ~~crime charged,~~ finding the defendant guilty of a lesser
 8 included crime or finding the defendant not guilty."

9 ~~Section 40. Section 95-2202, R.C.M. 1947, is amended~~
 10 ~~to read as follows:~~

11 ~~"95-2202. Sentence and Rendering judgment and~~
 12 ~~pronouncing sentence. (a) (1) The judgment shall be rendered~~
 13 ~~in open court.~~

14 ~~(b) (2) If the verdict or finding is not guilty,~~
 15 ~~judgment shall be rendered immediately and the defendant~~
 16 ~~shall be discharged from custody or from the obligation of~~
 17 ~~his bail bond, except as provided in 95-1916.~~

18 ~~(c) (3) If the verdict or finding is guilty, sentence~~
 19 ~~shall be pronounced and judgment rendered within a~~
 20 ~~reasonable time."~~

21 Section 36. Section 95-2206, R.C.M. 1947, is amended
 22 to read as follows:

23 "95-2206. Sentence. (1) Whenever ~~any~~ a person has been
 24 found guilty of ~~a crime or an~~ offense upon a verdict or a
 25 plea of guilty, the court may:

1 ~~(1)~~ (a) ~~Defer~~ defer imposition of sentence for a period
 2 not ~~to exceed one~~ exceeding (1) year for any misdemeanor, or
 3 for a period not ~~to exceed three~~ exceeding (3) years for any
 4 felony. The sentencing judge may impose upon the defendant
 5 any reasonable restrictions or conditions during the period
 6 of the deferred imposition. Such reasonable restrictions or
 7 conditions may include:

- 8 ~~(a)~~ (i) jail base release;
- 9 ~~(b)~~ (ii) jail time not ~~to exceed ninety~~ exceeding (90)
 10 days;

- 11 ~~(c)~~ (iii) conditions for probation;
- 12 ~~(d)~~ (iv) restitution;
- 13 ~~(e)~~ (v) any other reasonable conditions ~~deemed~~
 14 considered necessary for rehabilitation or for the
 15 protection of society; or

16 ~~(f)~~ (vi) any combination of the above;

17 (2) (b) ~~Suspend~~ suspend execution of sentence up to the
 18 maximum sentence allowed for the particular offense. The
 19 sentencing judge may impose on the defendant any reasonable
 20 restrictions during the period of suspended sentence. Such
 21 reasonable restrictions may include:

- 22 ~~(a)~~ (i) jail base release;
- 23 ~~(b)~~ (ii) jail time not ~~to exceed~~ exceeding (90) days;
- 24 ~~(c)~~ (iii) conditions for probation;
- 25 ~~(d)~~ (iv) restitution;

1 ~~(e)~~ (v) any other reasonable conditions ~~deemed~~
 2 considered necessary for rehabilitation or for the
 3 protection of society;

4 ~~(f)~~ (vi) any combination of the above;
 5 ~~If any restrictions or conditions are violated, any~~
 6 ~~elapsed time, except jail time, shall not be a credit~~
 7 ~~against the sentence, unless the court shall otherwise~~
 8 ~~order.~~

9 (3) (c) ~~Impose~~ impose a fine as provided by law for the
 10 offense;

11 ~~(4)~~ (d) ~~Commit~~ commit the defendant to a correctional
 12 institution with or without a fine as provided by law for
 13 the offense;

14 (5) (e) ~~Impose~~ impose any combination of subsections
 15 ~~(2) (1) (b), (3) (1) (c), or (4) and (1) (d) above.~~

16 (2) If any restrictions or conditions imposed under
 17 subsection (1) (a) or (1) (b) are violated, any elapsed time,
 18 except jail time, shall not be a credit against the
 19 sentence, unless the court orders otherwise.

20 ~~(6)~~ (3) (a) The district court may also impose any of
 21 the following restrictions or conditions on the ~~above~~
 22 sentence provided for in subsection (1) which it ~~deems~~
 23 considers necessary to obtain the ~~objective~~ objectives of
 24 rehabilitation and the protection of society;

25 ~~(a)~~ (i) prohibit the defendant the right to hold public

1 office;

2 ~~(b)(ii)~~ prohibit the defendant the right to own or

3 carry a dangerous weapon;

4 ~~(c)(iii)~~ prohibit freedom of association;

5 ~~(d)(iv)~~ prohibit freedom of movement;

6 ~~(e)(v)~~ any other limitation reasonably related to the

7 objectives of rehabilitation ~~or~~ and the protection of

8 society.

9 ~~(7)(b)~~ The judge in ~~the justice a justice's, city, or~~

10 municipal court ~~shall does~~ not have the authority to

11 restrict an individual's rights as enumerated in subsection

12 ~~(6) (3)(a).~~

13 ~~(4) say~~ A judge, magistrate, or justice of the peace

14 who has suspended the execution of a sentence or deferred

15 the imposition of a sentence of imprisonment under this

16 section, or his successor, is authorized ~~thereafter, in his~~

17 discretion, during the period of ~~such the~~ suspended sentence

18 or deferred imposition of sentence, in his discretion, to

19 revoke ~~such the~~ suspension or impose sentence and order ~~such~~

20 the person committed, ~~or He say also~~, in his discretion,

21 order the prisoner placed under the jurisdiction of the

22 state board of pardons as provided by law, or retain such

23 jurisdiction with ~~this his~~ court. Prior to the revocation of

24 an order suspending or deferring the imposition of sentence,

25 the person affected shall be given a hearing."

1 Section 37. Section 95-2206.1, R.C.M. 1947, is amended

2 to read as follows:

3 "95-2206.1. Sentence to death. ~~When Whenever~~ a person

4 ~~is convicted of an~~ has been found guilty of an offense upon

5 a verdict or plea of guilty, the court may, if the offense

6 is punishable by death or imprisonment, ~~the court may~~

7 sentence the offender to death or imprisonment."

8 Section 38. Section 95-2206.5, R.C.M. 1947, is amended

9 to read as follows:

10 "95-2206.5. ~~Judicial designation~~ Designation of

11 persistent felony ~~offenders~~ offender for purposes of parole

12 eligibility. (1) ~~When an offender has been previously~~

13 ~~convicted of a felony and the present offense is a second~~

14 ~~felony committed on a different occasion than the first, the~~

15 The sentencing court shall designate ~~the an~~ offender a

16 persistent felony offender for purposes of eligibility for

17 parole under ~~section 95-3214, provided if the offender:~~

18 (a) ~~the previous felony conviction was for an offense~~

19 ~~committed in this state or any other jurisdiction for which~~

20 ~~a sentence to a term of imprisonment in excess of one (1)~~

21 ~~year could have been imposed, and is defined as a persistent~~

22 felony offender in 95-1507(1); and

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

24 ~~commission of the present offense and either:~~

25 ~~(i) the previous felony conviction, or~~

~~(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and~~

~~(c)(b) the offender was more than eighteen (18) years of age or older at the time of the commission of the present offense.~~

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

~~(2)(2) A judicial determination of that an offender is a persistent felony offender under this section may be made only when the conviction for the present offense occurs after July 1, 1975."~~

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

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

~~(1) The the indictment or information and a copy of~~

~~the minutes of the arraignment, pleas, and motions;~~

~~(2) A a copy of the minutes of the trial;~~

~~(3) The the instructions given or refused and the endorsements thereon;~~

~~(4) A a copy of the judgment."~~

Section 39. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"95-2224. Prisoner not agent, or ~~Penalty for treating prisoner as PRISONER NOT AGENT OR~~ involuntary servant. No prisoner in the community under the provisions of this act shall be deemed to be an agent, or involuntary servant of the department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R.C.M. 1947. in officer or employee of the department or of the supervising agency who treats a prisoner participating in the furlough program as an involuntary servant is guilty of official misconduct and is punishable as provided in 94-7-401, NC PRISONER IN THE COMMUNITY UNDER THE PROVISIONS OF THIS ACT MAY BE CONSIDERED TO BE AN AGENT OR INVOLUNTARY SERVANT OF THE DEPARTMENT OR OF THE SUPERVISING AGENCY WHILE RELEASED FROM CONFINEMENT PURSUANT TO THE TERMS OF THE FURLOUGH PROGRAM. ABUSE OF AUTHORITY OVER A PRISONER IS OFFICIAL MISCONDUCT PUNISHABLE AS PROVIDED IN 94-7-401."

1 Section 40. Section 95-2229, R.C.M. 1947, is amended
2 to read as follows:

3 "95-2229. Traffic Disposition of traffic fines
4 collected from ~~juvenile offenders disposition juveniles.~~
5 All fines collected by the district courts from children
6 under ~~eighteen~~ (18) years of age for unlawful operation of
7 motor vehicles ~~resulting from~~ as the result of traffic
8 summonses issued by ~~the~~ peace officers of ~~the~~ cities, or
9 counties, or by highway patrolmen, together with that
10 portion of the fines which is specified in ~~section~~ 75-7903,
11 shall be retained by the county treasurer of the county in
12 which the offense occurred and at the end of each month
13 distributed as follows:

14 ~~(a)(1)~~ fines Fines collected as the result of
15 summonses issued by city ~~police~~ peace officers shall be
16 distributed to the city in which the ~~police~~ peace officer is
17 employed, and credited to the city general fund₁.

18 ~~(b)(2)~~ fines Fines collected as the result of
19 summonses issued by county peace officers shall be retained
20 by the county treasurer and credited to the county road
21 fund₁.

22 ~~(c)(3)~~ fines Fines collected as the result of
23 summonses issued by state highway patrolmen shall be paid to
24 the state treasurer of Montana, ~~and by him credited who~~
25 shall credit them to the general fund of the state₁.

1 ~~(d)(4)~~ That That portion of the fines, ~~as provided for~~
2 which is specified in section 75-7903, shall be paid to the
3 state treasurer of Montana, ~~and by him credited who shall~~
4 credit it to the automobile driver education account in the
5 earmarked revenue fund."

6 Section 41. Section 95-2403, R.C.M. 1947, is amended
7 to read as follows:

8 "95-2403. Scope of appeal by state. ~~(a)(1)~~ Except as
9 OTHERWISE SPECIFICALLY authorized by ~~this code title,~~ the
10 state may not appeal in a criminal case.

11 ~~(b)(2)~~ The state may appeal from any court order or
12 judgment the substantive effect of which results in:

- 13 ~~(1)~~ (a) dismissing a case;
14 ~~(2)~~ (b) modifying or changing the verdict as provided
15 in ~~section~~ 95-2101 ~~(c)(3)~~ (2)(C)(III);
16 ~~(3)~~ (c) granting a new trial;
17 ~~(4)~~ (d) quashing an arrest or search warrant;
18 ~~(5)~~ (e) suppressing evidence;
19 ~~(6)~~ (f) suppressing a confession or admission; or
20 ~~(7)~~ (g) granting or denying change of venue."

21 Section 42. Section 95-2426, R.C.M. 1947, is amended
22 to read as follows:

23 "95-2426. ~~Determination of appeal~~ Action reviewing
24 court may take. On appeal the reviewing court may:

- 25 (1) Reverse reverse, affirm, or modify the judgment or

1 order from which the appeal is taken;

2 (2) ~~Set set~~ aside, affirm, or modify any or all of the
3 proceedings subsequent to or dependent upon the judgment or
4 order from which the appeal is taken;

5 (3) ~~Reduce the degree of~~ reduce the offense of which
6 the appellant was convicted to a lesser included offense;

7 (4) ~~Reduce~~ reduce the punishment imposed by the trial
8 court; or

9 (5) ~~Order~~ order a new trial if justice so requires."

10 Section 43. Section 95-2601, R.C.M. 1947, is amended
11 to read as follows:

12 "95-2601. ~~Petition in the trial court~~ Circumstances in
13 which validity of sentence may be challenged. ~~Any~~ A person
14 adjudged guilty of an offense in a court of record who has
15 no adequate remedy of appeal and who claims that sentence
16 was imposed in violation of the constitution or the laws of
17 this state or the ~~Constitution~~ constitution of the United
18 States, ~~or~~ that the court was without jurisdiction to impose
19 ~~such~~ the sentence, or that the sentence was in excess of the
20 ~~maximum~~ authorized by law, or is otherwise subject to
21 collateral attack, upon any ground of alleged error
22 available under a writ of habeas corpus, writ of coram
23 nobis, or other ~~common-law~~ common law or statutory remedy
24 ~~may~~ petition the court which imposed the sentence, ~~or~~
25 the supreme court, or any justice of the supreme court to

1 vacate, set aside, or correct the sentence."

2 Section 44. Section 95-2604, R.C.M. 1947, is amended
3 to read as follows:

4 "95-2604. When ~~motion~~ petition may be ~~made~~ filed. A
5 ~~motion~~ petition for such relief may be ~~made~~ filed at any
6 time after conviction."

7 Section 45. Section 95-2605, R.C.M. 1947, is amended
8 to read as follows:

9 "95-2605. Proceedings on the petition. (1) Unless the
10 ~~motion~~ petition and the files and records of the case
11 conclusively show that the ~~prisoner~~ petitioner is entitled
12 to no relief, the court shall cause notice thereof to be
13 served upon the county attorney in the county in which the
14 conviction took place, grant a prompt hearing thereon,
15 determine the issue, and make findings of fact and
16 conclusions with respect thereto.

17 (2) The court may receive proof by affidavits,
18 depositions, oral testimony, or other evidence. In its
19 discretion the court may order the petitioner brought before
20 the court for the hearing.

21 (3) If the court finds in favor of the petitioner, it
22 shall enter an appropriate order with respect to the
23 judgment or sentence in the former proceedings and such
24 supplementary orders as to reassignment, retrial, custody,
25 bail, or discharge as may be necessary and proper. If the

1 court finds for the state, the petitioner shall be returned
2 to the custody of the person to whom the writ was directed."

3 Section 46. Section 95-2606, R.C.M. 1947, is amended
4 to read as follows:

5 "95-2606. Record must be kept. A court which
6 entertains a ~~motion~~ petition pursuant to this chapter must
7 keep a record of the proceedings and enter its findings and
8 conclusions."

9 Section 47. Section 95-2608, R.C.M. 1947, is amended
10 to read as follows:

11 "95-2608. Review. Either the petitioner or the state
12 may appeal to the supreme court of Montana from an order
13 entered on the ~~motion~~ petition. The appeal shall ~~be~~ must be
14 taken within ~~six~~ (6) months from the entry of the order."

15 Section 48. Section 95-2902, R.C.M. 1947, is amended
16 to read as follows:

17 "95-2902. Reasonable doubt as to ~~degree~~ which offense
18 convicts only of ~~lowest~~ least offense. When it appears
19 beyond a reasonable doubt that the defendant has committed a
20 public an offense, and but there is reasonable ~~ground~~
21 doubt in which of two or more degrees as to whether he is
22 guilty of a given offense or one or more lesser included
23 offenses, he can may only be convicted of the ~~lowest of such~~
24 degrees only greatest included offense about which there is
25 no reasonable doubt."

1 Section 49. Section 95-3004, R.C.M. 1947, is amended
2 to read as follows:

3 "95-3004. ~~The burden~~ Burden of the state in a homicide
4 trial. ~~(a) (1)~~ In a homicide trial, before an extrajudicial
5 confession may be admitted into evidence, the state must
6 introduce independent evidence tending to establish the
7 death, and the fact that the death was caused by a criminal
8 agency.

9 ~~(b) (2)~~ In a deliberate homicide, knowledge or purpose
10 may be inferred from the fact that the accused committed a
11 homicide and no circumstances ~~of~~ of mitigation, excuse, or
12 justification appear."

13 Section 50. Section 95-3011, R.C.M. 1947, is amended
14 to read as follows:

15 "95-3011. Competency of ~~husband and wife as witnesses~~
16 spouses. Except with the consent of both, or in cases of
17 criminal violence ~~upon one~~ by one upon the other, ~~or in case~~
18 ~~of~~ abandonment, or neglect of children by either party, or
19 ~~of~~ abandonment or neglect of ~~the wife~~ one by the ~~husband~~
20 other, neither ~~husband nor wife~~ spouse is a competent
21 witness for or against the other in a criminal action or
22 proceeding to which one or both are parties."

23 Section 51. Section 95-3012, R.C.M. 1947, is amended
24 to read as follows:

25 "95-3012. Testimony of person legally accountable. A

1 conviction cannot be had on the testimony of one responsible
 2 or legally accountable for the same offense, as defined in
 3 section 94-2-106, unless ~~be~~ the testimony is corroborated by
 4 other evidence, which in itself, and without the aid of the
 5 testimony of the one responsible or legally accountable for
 6 the same offense, tends to connect the defendant with the
 7 commission of the offense, ~~and the~~ the corroboraticn is not
 8 sufficient, if it merely shows the commission of the
 9 offense, or the circumstances thereof."

10 Section 52. Section 95-3110, B.C.S. 1947, is amended
 11 to read as follows:

12 "95-3110. Rights of accused persons -- ~~application for~~
 13 ~~writ of~~ habeas corpus. (1) No person arrested upon such
 14 warrant ~~shall~~ may be delivered over to the agent whom the
 15 executive authority demanding him ~~shall have~~ has appointed
 16 to receive him unless he ~~shall be~~ is first taken ~~forthwith~~
 17 without delay before a judge of a court of record in this
 18 state, who shall inform him of the demand made for his
 19 surrender and of the crime with which he is charged, and
 20 ~~what that~~ he has the right to demand and procure legal
 21 counsel.

22 (2) ~~and if~~ If the prisoner or his counsel ~~shall state~~
 23 states that he or they desire to test the legality of his
 24 arrest, the judge of ~~such the~~ court of record shall fix a
 25 reasonable time to be allowed him within which to apply for

1 a writ of habeas corpus. When ~~such the~~ writ is applied for,
 2 notice thereof, and of the time and place of hearing
 3 thereon, shall be given to the prosecuting officer of the
 4 county in which the arrest ~~is~~ was made and in which the
 5 accused is in custody, and to the ~~said~~ agent of the
 6 demanding state."

7 Section 53. Section 95-3113, B.C.S. 1947, is amended
 8 to read as follows:

9 "95-3113. Arrest of accused before making of
 10 requisition. (1) A judge or magistrate of this state shall
 11 issue a warrant directed to any peace officer commanding the
 12 officer to apprehend the person named therein wherever the
 13 person may be found in this state and to bring the person
 14 before the same or any other judge, magistrate, or court who
 15 or which may be available in or convenient of access to the
 16 place where the arrest is made to answer the charge or
 17 complaint and affidavit whenever; whenever

18 (a) ~~any a~~ person within this state ~~shall be~~ is charged
 19 on the oath of ~~any a~~ credible person before ~~any the~~ judge or
 20 magistrate ~~of this state~~ with the commission of ~~any a~~ crime
 21 in ~~any other~~ another state, and, except in cases arising
 22 under section 95-3106, with having fled from justice, or,
 23 with having been convicted of a crime in that state and
 24 having escaped from confinement, or having broken the terms
 25 of his bail, probation, or parole; or

1 ~~(b) whenever a complaint shall have been~~ is made
 2 before ~~any the~~ judge or magistrate ~~in this state~~ setting
 3 forth on the affidavit of ~~any a~~ credible person in another
 4 state that a crime has been committed in ~~such the~~ other
 5 state and that the accused is believed to be in this state
 6 and has been charged in ~~such the other~~ state with:

7 (i) the commission of the crime, and, except in cases
 8 arising under ~~section~~ 95-3106, ~~has having~~ fled from
 9 justice, or

10 (ii) ~~with~~ having been convicted of a crime in that
 11 state and having escaped from bail, probation, or parole,
 12 ~~and is believed to be in this state, the judge or magistrate~~
 13 ~~shall issue a warrant directed to any peace officer~~
 14 ~~commanding him to apprehend the person named therein,~~
 15 ~~whenever he may be found in this state, and to bring him~~
 16 ~~before the same or any other judge, magistrate or court who~~
 17 ~~or which may be available in or convenient of access to the~~
 18 ~~place where the arrest may be made, to answer charge or~~
 19 ~~complaint and affidavit and a~~

20 (2) ~~A~~ certified copy of the sworn charge or complaint
 21 ~~or and~~ affidavit upon which the warrant is issued shall be
 22 attached to the warrant."

23 Section 54. Section 95-3117, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-3117. Extension of time of commitment adjournment.

1 If the accused is not arrested under the warrant of the
 2 governor by the expiration of the time specified in the
 3 warrant, bond, or undertaking, a judge or magistrate may
 4 discharge him or may recommit him for a further period of
 5 ~~sixty (60)~~ days or a supreme court justice or ~~county~~
 6 district court judge may again take bail for his appearance
 7 and surrender, as provided in ~~section~~ 95-3116, ~~but with for~~
 8 a period not to exceed ~~sixty (60)~~ days after the date of
 9 ~~such the~~ new bond or undertaking."

10 Section 55. Section 95-3120, R.C.M. 1947, is amended
 11 to read as follows:

12 "95-3120. Guilt or innocence of accused, when inquired
 13 into. The guilt or innocence of the accused as to the crime
 14 of which he is charged may not be inquired into by the
 15 governor, or in any proceeding after the demand for
 16 extradition accompanied by a charge of crime in legal form
 17 as above provided for in 95-3103 ~~shall have has~~ been
 18 presented to the governor, except as it may be involved in
 19 identifying the person held as the person charged with the
 20 crime."

21 Section 56. Section 95-3123, R.C.M. 1947, is amended
 22 to read as follows:

23 "95-3123. Application for issuance of requisition—~~by~~
 24 ~~who made contents. If (1)~~ When the return to this state of
 25 a person charged with a crime in this state is required, the

1 prosecuting attorney shall present to the governor his
 2 written application for a requisition for the return of the
 3 person charged, ~~in which~~ The application shall state the
 4 name of the person ~~so~~ charged, the crime charged against
 5 him, the approximate time, place, and circumstances of its
 6 commission, and the state in which he is believed to be,
 7 including the location of the accused therein at the time
 8 the application is made, ~~and certifying~~ It shall certify
 9 that, in the opinion of the ~~said~~ prosecuting attorney the
 10 ends of justice require the arrest and return of the accused
 11 to this state for trial and that the proceeding is not being
 12 instituted to enforce a private claim.

13 II-(2) When the return to this state is required of a
 14 person who has been convicted of a crime in this state and
 15 has escaped from confinement or broken the terms of his
 16 bail, probation, or parole, the prosecuting attorney of the
 17 county in which the offense was committed, the parole board,
 18 or the warden of the institution or sheriff of the county
 19 from which the escape was made, shall present to the
 20 governor a written application for a requisition for the
 21 return of ~~such~~ the person, ~~in which~~ the application shall
 22 ~~be stated~~ state the name of the person, the crime of which
 23 he was convicted, the circumstances of his escape from
 24 confinement or of the breach of the terms of his bail,
 25 probation, or parole, and the state in which he is believed

1 to be, including the location of the person therein at the
 2 time the application is made.

3 III-(3) The application shall be verified by
 4 affidavit, ~~shall be~~ executed in duplicate, and ~~shall be~~
 5 accompanied by two certified copies of the:

- 6 (a) indictment returned; ~~or~~
- 7 (b) information and affidavit filed; ~~or of the~~
- 8 (c) complaint made to the judge or magistrate, stating
 9 the offense with which the accused is charged; ~~or of the~~
- 10 (d) judgment of conviction; or
- 11 (e) ~~of the~~ sentence.

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

16 (5) One copy of the application, with the action of
 17 the government indicated by endorsement thereon, and one of
 18 the certified copies of the indictment, complaint,
 19 information, and affidavits, ~~or of the~~ judgment of
 20 conviction, or ~~of the~~ sentence shall be filed in the office
 21 of the secretary of state to remain of record in that
 22 office. The other copies of all papers shall be forwarded
 23 with the governor's requisition."

24 Section 57. Section 95-3125, B.C.M. 1947, is amended
 25 to read as follows:

1 "95-3125. ~~No fee to be paid to public officer~~
 2 ~~procuring surrender~~ Restrictions on compensation for
 3 assisting return of fugitive. No compensation, fee, or
 4 reward of any kind ~~can~~ may be paid to or received by a
 5 public officer of this state, or other person, for a service
 6 rendered in procuring from the governor the demand mentioned
 7 in ~~section~~ 95-3124, ~~or~~ for the surrender of the fugitive, or
 8 for conveying him to this state, or detaining him therein,
 9 except as provided ~~for~~ in ~~such section~~ 95-3124 and 95-3124.1
 10 95-3124 AND 95-3124.1."

11 Section 58. Section 95-3129, R.C.M. 1947, is amended
 12 to read as follows:

13 "95-3129. Nonwaiver by this state. Nothing contained
 14 in this act ~~contained shall~~ may be ~~deemed to constitute~~
 15 considered a waiver by this state of its right, power, or
 16 privilege to try ~~such the~~ demanded person ~~from~~ for a crime
 17 committed within this state, or of its right, power, or
 18 privilege to regain custody of ~~such the~~ person by
 19 extradition proceedings or otherwise for the purpose of
 20 trial, a sentence, or punishment for ~~any a~~ crime committed
 21 within this state, nor ~~shall~~ may any proceedings had under
 22 this act which result in, or fail to result in, extradition
 23 be ~~deemed~~ considered in any way a waiver by this state of
 24 any of its rights, privileges, or jurisdiction ~~in any way~~
 25 ~~whatsoever."~~

1 Section 59. Section 95-3206, R.C.M. 1947, is amended
 2 to read as follows:

3 "95-3206. Orders, records, report ~~of~~ reviewability,
 4 confidentiality. (1) Decisions of the board shall be by
 5 majority vote. The orders of the board are not reviewable
 6 except as to compliance ~~of~~ with the terms of this act.

7 (2) The department ~~of institutions~~ shall keep a record
 8 of the board's acts and decisions available to the public.
 9 However, all social records, including the ~~pre-sentence~~
 10 presentence report, the ~~pre-parole~~ preparole report, and the
 11 supervision history obtained in the discharge of official
 12 duty by the department, shall be confidential and shall not
 13 be disclosed directly or indirectly to anyone other than the
 14 members of the board or a judge. The board or a court may in
 15 its discretion, when the best ~~interest~~ interests or welfare
 16 of a particular defendant or prisoner makes such action
 17 desirable or helpful, permit the inspection of the report or
 18 any parts thereof by the prisoner or his attorney."

19 Section 60. Section 95-3214, R.C.M. 1947, is amended
 20 to read as follows:

21 "95-3214. Parole authority and procedure. (1) ~~The~~
 22 Subject to the following restrictions, the board shall
 23 release on parole, by appropriate order, any person confined
 24 in the Montana state prison, except persons under sentence
 25 of death, when in its opinion there is reasonable

1 probability that the prisoner can be released without
2 detriment to himself or to the community, ~~provided:~~

3 (a) ~~That no~~ No convict serving a time sentence shall
4 ~~may~~ be paroled until he has served at least one-quarter
5 ~~(1/4)~~ of his full term, less the good time allowances ~~off,~~
6 ~~as allowance~~ provided for in ~~section~~ 80-1905, or 12 1/2
7 years upon his term, whichever is less, except that no No
8 convict designated a persistent felony offender under
9 ~~section~~ 95-2206.5 may be paroled until he has served at
10 least one-third ~~(1/3)~~ of his full term, less the good time
11 ~~allowances off, as allowance~~ provided for in ~~section~~
12 80-1905, or 17 1/2 years upon his term, whichever is less. A
13 ~~first offender serving a time sentence may be paroled after~~
14 ~~he has served, upon his term of sentence, twelve and~~
15 ~~one half (12 1/2) years. A persistent felony offender as~~
16 ~~defined in section 95-2206.5 may be paroled after he has~~
17 ~~served, upon his term of sentence, seventeen and one half~~
18 ~~(17 1/2) years.~~

19 (b) No convict serving a life sentence shall ~~may~~ be
20 paroled until he has served ~~thirty (30)~~ years, less the good
21 time ~~allowances off, as allowance~~ provided for in ~~section~~
22 80-1905.

23 (2) A parole shall be ordered only for the best
24 interests of society and not as an award of clemency or a
25 reduction of sentence or pardon. A prisoner shall be placed

1 on parole only when the board believes that he is able and
2 willing to fulfill the obligations of a law-abiding citizen.

3 ~~(2)(3)~~ (a) Within ~~two (2)~~ months after his admission
4 and at such intervals thereafter as it determines, the board
5 shall consider all pertinent information regarding each
6 prisoner, including the circumstances of his offense, his
7 previous social history and criminal record, his conduct,
8 employment, and attitude in prison, and the reports of ~~and~~
9 ~~any~~ physical and mental examinations which have been made.

10 ~~(3)(b)~~ (b) Before ordering the parole of any prisoner, the
11 board shall interview him. ~~A parole shall be ordered only~~
12 ~~for the best interest of society, not as an award of~~
13 ~~clemency or a reduction of sentence or pardon. A prisoner~~
14 ~~shall be placed on parole only when the board believes that~~
15 ~~he is able and willing to fulfill the obligations of a~~
16 ~~law-abiding citizen.~~

17 (4) (a) Every prisoner while on parole shall remain in
18 the legal custody of the institution from which he was
19 released, but shall be subject to the orders of the board.

20 (b) When an order for parole is issued, it shall
21 recite the conditions thereof.

22 ~~(4)(5)~~ (5) The board may adopt any other rules it
23 considers proper or necessary, with respect to the
24 eligibility of prisoners for parole, and the conduct of
25 parole hearings, ~~or~~ and conditions to be imposed upon

1 parolees. ~~When an order for parole is issued it shall recite~~
2 ~~the conditions thereof."~~

3 Section 61. Section 95-3215, R.C.M. 1947, is amended
4 to read as follows:

5 "95-3215. ~~Conditional release~~ Duration of parole. A
6 prisoner on parole who has served one-fourth ~~(1/4)~~ of his
7 term or terms, less the good time ~~allowances~~ allowance, or a
8 persistent felony offender on parole who has served
9 one-third ~~(1/3)~~ of his term or terms, less the good time
10 ~~allowances~~ allowance, is considered released on parole until
11 the expiration of the maximum term or terms for which he was
12 sentenced, less the good time ~~allowances~~ as allowance
13 provided for in ~~section~~ 80-1905."

14 Section 62. Section 95-3306, R.C.M. 1947, is amended
15 to read as follows:

16 "95-3306. Supervision on parole. (1) The department
17 shall retain custody of all persons placed on parole and
18 shall supervise the persons during their parole period in
19 accord with the conditions set by the board.

20 (2) The department shall assign personnel to assist
21 persons eligible for parole in preparing a parole plan.
22 Department personnel shall make a report of their efforts
23 and findings to the board prior to its consideration of the
24 case of the eligible person.

25 (3) A copy of the conditions of his parole shall be

1 signed by the parolee and given to him and to his probation
2 and parole officer, who shall report on his progress under
3 the rules of the board.

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

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

11 Section 63. Section 95-3308, R.C.M. 1947, is amended
12 to read as follows:

13 "95-3308. Return of parole violator. (1) (a) At any
14 time during release on parole or conditional release, the
15 department may issue a warrant for the arrest of the
16 released prisoner for ~~violations~~ violation of any of the
17 conditions of release, or a notice to appear to answer to a
18 charge of violation. ~~Such~~ The notice shall be served
19 personally upon the prisoner. The warrant shall authorize
20 all officers named therein to return ~~such~~ the prisoner to
21 the actual custody of the penal institution from which he
22 was released, or to any other suitable detention facility
23 designated by the department.

24 (b) Any probation and parole officer may arrest ~~such~~
25 the prisoner without a warrant, or may deputize any other

1 officer with power to arrest to do so by giving him a
 2 written statement setting forth that the prisoner has, in
 3 the judgment of ~~said~~ the probation and parole officer,
 4 violated the conditions of his release. ~~Such~~ The written
 5 statement delivered with the prisoner by the arresting
 6 officer to the official in charge of the institution from
 7 which the prisoner was released or other place of detention,
 8 shall be sufficient warrant for the detention of the parolee
 9 or conditional releasee. The probation and parole officer,
 10 after making an arrest, shall present to the detaining
 11 authorities a similar statement of the circumstances of
 12 violation.

13 (c) Pending hearing, as ~~hereinafter~~ provided in
 14 subsections (2) and (3), upon any charge of violation, the
 15 prisoner may, if circumstances warrant, be incarcerated in
 16 ~~such~~ the institution.

17 (2) (a) After the arrest of ~~said~~ the prisoner, a
 18 hearing shall be held within a reasonable time, unless ~~such~~
 19 the hearing is waived by the parolee, to determine whether
 20 there is probable cause or reasonable grounds to believe
 21 that the arrested parolee has committed acts which would
 22 constitute a violation of parole conditions. An independent
 23 officer, who need not be a judicial officer, must preside
 24 over ~~this~~ the hearing. ~~This~~ The hearing must be conducted
 25 at or reasonably near the place of the alleged parole

1 violation or arrest and as promptly as convenient after
 2 arrest. The parolee must be given notice of ~~this~~ the
 3 hearing and must be allowed to appear and speak in his own
 4 behalf and introduce relevant information to the hearings
 5 officer.

6 ~~(2)~~ (b) The hearings officer shall make a summary of
 7 what transpires at the hearing in terms of the responses and
 8 position of the parolee and the substance of the documents
 9 or evidence given in support of parole revocation ~~and of the~~
 10 ~~parolee's position~~. Based on the information given to him,
 11 the hearings officer ~~must~~ shall determine whether there is
 12 probable cause to hold the parolee for the final decision of
 13 the board of pardons as specified provided in ~~section~~
 14 ~~95-3247~~ subsection (3).

15 (3) (a) If the hearings officer determines that there
 16 is probable cause to believe that the prisoner has violated
 17 a condition of his parole, the probation and parole officer
 18 shall immediately notify the board and shall submit in
 19 writing a report showing in what manner the prisoner has
 20 violated the conditions of release, ~~and this~~ This report
 21 shall be accompanied by the findings of the hearings
 22 officer.

23 (b) Thereupon, the board shall cause the prisoner to
 24 be promptly brought before it for a hearing on the violation
 25 charged, under such rules ~~and regulations~~ as the board may

1 adopt. If the violation is established, the board may
2 continue or revoke the parole or conditional release, or
3 enter such other order as it may see fit.

4 ~~(4) (c) A prisoner for whose return a warrant has been~~
5 ~~issued shall, after the issuance of such warrant, if it is~~
6 ~~found that the warrant cannot be served, be deemed a~~
7 ~~fugitive or to have fled from justice. If it shall appear~~
8 appears that he has violated the provisions of his release,
9 the board shall determine whether the time from the issuing
10 of ~~such~~ the warrant to the date of his arrest, or any part
11 of it, ~~shall~~ will be counted as time served under the
12 sentence, ~~shall be determined by the board.~~

13 ~~(4) A prisoner for whose return a warrant has been~~
14 ~~issued shall, after the issuance of the warrant, if it is~~
15 ~~found that the warrant cannot be served, be considered a~~
16 ~~fugitive or to have fled from justice."~~

17 Section 64. Repealer. Sections 16-2615, 16-3403,
18 95-103 through 95-108, 95-2211, and 95-3233, R.C.B. 1947,
19 are repealed.

-End-

SENATE BILL NO. 30

INTRODUCED BY HAZELBAKER

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

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

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

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

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

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

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

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

conduct to the requirements of law.

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

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

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

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

There are no changes in SB 30 and due to length will not be rerun. Please refer to yellow copy for complete text.

1 other expert, selected by the one proposing the examination,
2 the examiner shall be permitted to have reasonable access to
3 the defendant for the purpose of the examination.

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

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

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

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

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

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

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

1 SENATE BILL NO. 30

2 INTRODUCED BY HAZELBAKER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."6
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21 motion of the defendant shall enter judgment of acquittal on
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25 the defendant to be examined by a qualified psychiatrist or

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

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

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

1 warrant, shall be in writing.

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

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

17 ~~(d)~~ (4) A warrant of arrest shall:

18 ~~(1)~~ (a) Be be in writing in the name of the state of
19 Montana or in the name of a municipality if a violation of a
20 municipal ordinance is charged;

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

22 ~~(3)~~ (c) Command ~~command~~ that the person against whom
23 the complaint was made be arrested and brought before the
24 court issuing the warrant, or, if ~~he~~ the judge is absent or
25 unable to act, before the nearest or most accessible court

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

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

15 ~~(5)~~ (e) State ~~state~~ the date when issued and the
16 municipality or county where issued, and

17 ~~(6)~~ (f) Be be signed by the judge of the court with the
18 title of his office.

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

21 ~~(f)~~ (5) The warrant shall be directed to all peace
22 officers in the state. It shall be executed by a peace
23 officer and may be executed in any county of the state.
24 However, warrants issued for the violation of city
25 ordinances cannot be executed outside the city limits,

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

2 Section 7. Section 95-704, R.C.M. 1947, is amended to
3 read as follows:

4 "95-704. Grounds for search warrant. Any judge may
5 issue a search warrant upon the written application of any
6 person ~~that an offense has been committed~~, made under oath
7 or affirmation before ~~him~~ the judge, which:

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

9 ~~(a) (2) States states~~ facts sufficient to show probable
10 cause for issuance of the warrant_i;

11 ~~(b) (3) Particularly particularly~~ describes the place
12 or things to be searched_i; and

13 ~~(c) (4) Particularly particularly~~ describes the things
14 to be seized."

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

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

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

4 (a) ~~the peace officer~~ he has reasonable cause to
5 suspect that the person has knowledge of material aid to the
6 investigation of the offense; or

7 (b) the stop is reasonably necessary to obtain or
8 verify the person's identity or an account of the offense.

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

12 (a) the offense is a felony involving the use or the
13 attempted use of force against a person or theft, damage, or
14 destruction of property; and

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

17 (c) (i) the stop is reasonably necessary to obtain or
18 verify ~~his~~ the person's identity to determine whether to
19 arrest the person for the felony; or

20 (ii) the peace officer has reasonable cause to suspect
21 that the person was present at the scene of the offense, and
22 the stop is reasonably necessary to obtain or verify the
23 person's identity.

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

1 (a) frisk ~~that~~ the person and take other reasonably
2 necessary steps for protection if ~~the peace officer he~~ has
3 reasonable cause to suspect that the person is armed and
4 presently dangerous to ~~the peace officer him~~ or another
5 person present; and

6 (b) take possession of any object that ~~the peace~~
7 ~~officer he~~ discovers during the course of the frisk if ~~the~~
8 ~~peace officer he~~ has probable cause to believe the object is
9 a deadly weapon.

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

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

21 (7) After the authorized purpose of the stop has been
22 accomplished or ~~thirty~~ {30} minutes have elapsed, whichever
23 occurs first, the peace officer shall allow the person to go
24 unless he has arrested the person."

25 ~~Section 9. Section 95-1001, R.C.M., 1947, is amended to~~

1 ~~read as follows:~~

2 ~~"95-1001. Right to counsel. (1) Every defendant~~
3 ~~brought before the court must be informed by the court that~~
4 ~~it is his right to have counsel before proceeding and must~~
5 ~~be asked if he desires the aid of counsel. The defendant, if~~
6 ~~charged with a felony, must be advised that counsel will be~~
7 ~~furnished at state expense if he is unable to employ~~
8 ~~counsel. If the offense charged is a felony and if the~~
9 ~~defendant desires counsel and is unable to employ counsel, a~~
10 ~~the court of record must assign counsel to defend him. If~~
11 ~~the offense charged is a misdemeanor and if the defendant~~
12 ~~desires counsel and is unable to employ counsel, a the court~~
13 ~~of record, in the interest of justice, may assign counsel to~~
14 ~~defend him.~~

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

21 Section 9. Section 95-1005, R.C.M. 1947, is amended to
22 read as follows:

23 "95-1005. Remuneration of appointed counsel. (1)
24 Whenever, in a criminal ~~action or~~ proceeding, an attorney ~~at~~
25 law represents or defends any person by order of the court,

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

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

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

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

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

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

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

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

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

14 (a) that he will appear to answer in the court having
 15 jurisdiction on a day certain and thereafter as ordered by
 16 the court until discharged on final order of the court and
 17 will not depart from this state without leave; and

18 (b) subject to any other conditions as that the court
 19 may reasonably prescribe to assure his appearance when
 20 required.

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

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

24 (2) (b) ~~He~~ he will appear at such time and place as the
 25 court may direct;

1 ~~(3)~~ (C) He he will not depart from this state without
2 leave of the court; and

3 ~~(4)~~ (d) ~~if~~ if the judgment is affirmed or the cause
4 reversed and remanded for a new trial, he will forthwith
5 surrender to the officer from whose custody he was bailed."

6 Section 12. Section 95-1119, R.C.M. 1947, is amended
7 to read as follows:

8 "95-1119. Bail on a new trial. If the judgment of
9 conviction is reversed and the cause remanded for a new
10 trial, the trial court may order that the bail stand pending
11 such trial, or substitute, reduce, or increase bail."

12 ~~Section 14. Section 95-1120, R.C.M. 1947, is amended~~
13 ~~to read as follows:~~

14 ~~"95-1120. Persons prohibited from furnishing bail~~
15 ~~security. No attorney at law and no official authorized to~~
16 ~~admit another to bail shall acting in an official or~~
17 ~~professional capacity act as surety or furnish bail."~~

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

20 "95-1121. ~~Sureties for guaranteed~~ Guaranteed arrest
21 bond certificates ~~filing of undertaking guaranteed arrest~~
22 ~~bond certificate.~~ ~~(1)~~ 1 Any A domestic or foreign surety
23 company which has qualified to transact surety business in
24 this state may, in any year, become surety in an amount not
25 ~~to exceed one hundred dollars exceeding~~ exceeding ~~(\$100.00)~~ with

1 respect to any ~~guaranteed~~ guaranteed arrest bond certificates
2 issued in such year by an automobile club or association or
3 by an insurance company authorized to write automobile
4 liability insurance within this state, by filing with the
5 commissioner of insurance an undertaking thus to become
6 surety.

7 ~~(2)~~ 2 Such The undertaking shall be in a form to be
8 prescribed by the commissioner and shall state the
9 following:

10 ~~(1)~~ 1 ~~The~~ the name and address of the automobile club
11 ~~or clubs, automobile associations, or insurance~~
12 ~~company or companies, or associations with respect to which~~
13 issued the guaranteed arrest bond certificates ~~of~~ with
14 respect to which the surety company undertakes to be
15 surety; and

16 ~~(2)~~ 2 ~~The~~ the unqualified obligation of the surety
17 company to pay the fine or forfeiture in an amount not ~~to~~
18 ~~exceed one hundred dollars exceeding~~ exceeding ~~(\$100.00)~~ of any person
19 who, after posting a guaranteed arrest bond certificate with
20 respect to which the surety company has undertaken to be
21 surety, fails to make the appearance to guarantee which the
22 guaranteed arrest bond certificate was posted.

23 ~~(3)~~ 3 The term "guaranteed arrest bond certificate,"
24 means any printed card or other certificate which:

25 (a) is issued by an automobile club, or association or

1 insurance company, to any of its members or insureds; and
 2 ~~(b) which said card or certificate~~ is signed by ~~such~~
 3 ~~the~~ member or insured and contains a printed statement that
 4 ~~such the~~ automobile club, automobile association, or
 5 insurance company and a surety company, or an insurance
 6 company authorized to transact both automobile liability
 7 insurance and surety business in the state of Montana;

8 (i) guarantee the appearance of the person whose
 9 signature appears on the card or certificate; and

10 (ii) ~~that~~ will, in the event of the failure of ~~such~~
 11 the person to appear in court at the time of trial, pay any
 12 fine or forfeiture imposed on ~~such the~~ person in an amount
 13 not ~~to exceed one hundred dollars exceeding~~ (\$100.00)."

14 Section 14. Section 95-1122, R.C.M. 1947, is amended
 15 to read as follows:

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

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

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

21 "95-1406. ~~When and from whom they may ask advice and~~
 22 ~~who may be present during their sessions~~ Advice and
 23 assistance to grand jury -- who may be present --
 24 stenographer, transcript of testimony. ~~(a) (1)~~ The grand
 25 jury may, at all times, ask the advice of the court, or the

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

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

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

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

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

12 ~~(e)(5) Transcript of Testimony.~~ ~~(4)(a)~~ The grand jury
 13 may appoint a stenographer to take in shorthand the
 14 testimony of witnesses, or the testimony may be taken by a
 15 recording device, but the record so made shall include the
 16 testimony of all witnesses on that particular investigation.
 17 The shorthand notes or the recordings and transcript of the
 18 same, if any, shall be delivered to and retained by the
 19 clerk of the district court.

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

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

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

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

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

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

1 to read as follows:

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

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

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

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

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

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

1 complaint."

2 Section 19. Section 95-1504, R.C.M. 1947, is amended
3 to read as follows:

4 "95-1504. Joinder and discharge of offenses and
5 defendants. ~~(a)~~ (1) An indictment, information, or complaint
6 ~~or accusation~~ may charge two (2) or more different offenses
7 connected together in their commission, ~~or~~ different
8 statements of the same offense, or two (2) or more different
9 offenses of the same class ~~of crimes or offenses~~, under
10 separate counts, ~~and if~~ if two (2) or more indictments,
11 informations, or complaints ~~or accusations~~ are filed in such
12 cases in the same court, the court may order them to be
13 consolidated. Allegations made in one count may be
14 incorporated by reference in another count. The prosecution
15 is not required to elect between the different offenses or
16 counts set forth in the indictment, information, or
17 complaint ~~or accusation~~, but and the defendant may be
18 convicted of any number of the offenses charged, ~~and each~~
19 Each offense of which the defendant is convicted must be
20 stated in the verdict or the finding of the court.

21 (2) ~~provided, that the~~ The court in which the case is
22 triable, in the interests of justice and for good cause
23 shown, may in its discretion order that the different
24 offenses or counts set forth in the indictment, information,
25 or complaint ~~and accusation~~ be tried separately or divided

1 into two (2) or more groups and each of ~~said the~~ the groups
2 tried separately. An acquittal of one (1) or more counts
3 shall not be ~~deemed~~ considered an acquittal of any other
4 count.

5 ~~(b)~~ (3) Two (2) or more defendants may be charged in
6 the same indictment or information if they are alleged to
7 have participated in the same series of acts or transactions
8 constituting an offense or offenses. Such defendants may be
9 charged in one (1) or more counts together or separately,
10 and all of the defendants need not be charged in each count.

11 ~~(c)~~ (4) If it appears that a defendant or the state is
12 prejudiced by a joinder of related prosecutions or
13 defendants in a single charge or by joinder of separate
14 charges or defendants for trial, the court may order
15 separate trials, grant a severance of defendants, or provide
16 any other relief as justice may require.

17 ~~(d)~~ (5) When two or more persons are included in the
18 same charge, the court may, at any time, before the
19 defendants have gone into their defense, on the application
20 of the county attorney, direct any defendant to be
21 discharged, so that he may be a witness for the state.

22 ~~(e)~~ (6) When two or more persons are included in the
23 same indictment or information, and the court is of the
24 opinion that in regard to a particular defendant there is
25 not sufficient evidence to put him on his defense, ~~it the~~

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

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

5 "95-1506. ~~Prior-conviction~~ Procedural requirements --
6 persistent felony offenders. (1) ~~When~~ If the state seeks
7 ~~increased-punishment treatment~~ of the accused as a ~~prior~~
8 ~~convicted felon~~ persistent felony offender under ~~section~~
9 ~~94-4743 95-1507 or 95-2206.5 or both of those sections,~~
10 notice of that fact must be given in writing to the accused
11 or his attorney before the entry of a plea of guilty by the
12 accused, or before the case is called for trial upon a plea
13 of not guilty.

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

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

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

25 ~~(e)~~ (3) If the accused is convicted upon the felony

1 charge, the notice, together with proper proof of timely
2 service, shall be filed with the court before the time fixed
3 for ~~sentence~~ sentencing. The court shall then fix a time for
4 hearing with at least ~~three~~ (3) days' notice to the accused.

5 ~~(d)~~ (4) The hearing shall be held before the court
6 alone. If the court finds any of the allegations of prior
7 conviction true, the accused shall be sentenced under the
8 provisions of ~~section 94-4743~~ 95-1507 and 95-2206.5."

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

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

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

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

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

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

6 ~~(e) the offender was more than twenty-one (21) years~~
 7 ~~old at the time of the commission of the new offense.~~

8 ~~(3)(c) A previous felony conviction shall not be~~
 9 ~~considered for the purpose of sentencing under this section~~
 10 ~~if the offender has not been pardoned on the grounds ground~~
 11 ~~of innocence, or if and the conviction had has not been set~~
 12 ~~aside in any post-conviction a postconviction hearing.~~

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

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

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

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

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

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

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

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

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

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

~~95-1709. Substitution of judge. (a) (1) The defendant or the prosecution may move the court in writing for a substitution of the judge on the ground that he the jurant cannot have a fair and impartial hearing or trial before said the judge. The motion shall be made at least fifteen (15) days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown.~~

~~(2) Upon the filing of such a the motion, the judge against whom the motion is filed shall be without authority to act further in the criminal action, motion, or proceeding, but the provisions of this section do not apply except in regard to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to and the power of calling in another judge to sit and act in such the criminal action or proceeding, providing that no judge shall may so arrange the calendar as to defeat the purposes of this section.~~

~~(3) Not more than one (1) judge can may be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one (1) judge at the instance of the defendant or defendants.~~

~~(4) If either a party in any matter above mentioned shall file the who files a motion as herein provided such party under subsection (1) may not complain of any~~

~~reasonable delay as the result thereof.~~

~~(5) The provision of this this section shall be is inapplicable to any person in any cause involving a direct contempt of court.~~

~~(b) (6) In addition to the provision provisions of subsection (a) subsections (3) through (5), any a defendant may move at any time for a substitution of the judge for cause, supported by affidavit. Upon the filing of such the motion, the court shall conduct a hearing and determine the merits of the motion."~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 course of conduct and the defendant's course of conduct was
2 interrupted, ~~and~~ unless the law provides that the specific
3 periods of such conduct constitute separate offenses.

4 (3) ~~When prosecution barred by former prosecution.~~
5 ~~Provided~~ If the offenses, ~~if more than one,~~ were known to
6 the attorney prosecuting upon sufficient evidence to justify
7 the filing of an information or the issuance of a warrant of
8 arrest and were consummated prior to the original charge,
9 and ~~provided~~ if the jurisdiction and venue of the several
10 offenses lie in a single court, a prosecution based upon the
11 same transaction as a former prosecution is barred by such
12 former prosecution under the following circumstances:

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

21 (b) The former prosecution was terminated, after a
22 complaint had been filed on a misdemeanor charge, or after
23 an information had been filed or an indictment found on a
24 felony charge, by a final order of judgment for the
25 defendant, which has not been set aside, reversed, or

1 vacated and which necessarily required a determination
2 inconsistent with a fact or a legal proposition that must be
3 established for conviction of the offense.

4 (c) The former prosecution resulted in a conviction.
5 There ~~is~~ has been a conviction ~~if~~ whenever the prosecution
6 resulted in:

7 (i) a judgment of conviction which has not been
8 reversed or vacated; ~~or~~

9 (ii) a verdict of guilty which has not been set aside
10 and which is capable of supporting a judgment, so long as
11 failure to enter judgment was for a reason other than a
12 motion of the defendant; or

13 (iii) a plea of guilty accepted by the court, so long
14 as failure to enter judgment was for a reason other than a
15 motion of the defendant.

16 (d) The former prosecution was improperly terminated.
17 Except as provided in this subsection (d), there is an
18 improper termination of a prosecution ~~if~~ whenever the
19 termination is for reasons not amounting to an acquittal,
20 and ~~it~~ takes place after the first witness is sworn but
21 before verdict. Termination under ~~any~~ either of the
22 following circumstances is not improper:

23 (i) ~~the~~ The defendant consents to the termination or
24 waives his right to object to the termination; ~~or~~

25 (ii) ~~the~~ The trial court, in the exercise of its

1 discretion, finds that the termination is necessary because:

2 (A) it is physically impossible to proceed with the
3 trial in conformity with law; ~~or~~

4 (B) there is a legal defect in the proceedings which
5 would make any judgment entered upon a verdict reversible as
6 a matter of law; ~~or~~

7 (C) prejudicial conduct, in or outside the courtroom,
8 makes it impossible to proceed with the trial without
9 manifest injustice to either the defendant or the state; ~~or~~

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

11 (E) false statements of a juror on voir dire prevent a
12 fair trial.

13 (4) ~~Former prosecution in another jurisdiction is a~~
14 ~~bar.~~ When conduct constitutes an offense within the
15 concurrent jurisdiction of this state and of the United
16 States or another state or of two courts of separate, ~~and/or~~
17 overlapping, or concurrent jurisdiction in this state, a
18 prosecution in any such other jurisdiction is a bar to a
19 subsequent prosecution in this state under the following
20 circumstances:

21 (a) The first prosecution resulted in an acquittal or
22 in a conviction as defined in subsection (3) and the
23 subsequent prosecution is based on an offense arising out of
24 the same transaction.

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

1 complaint ~~has had~~ been filed on a misdemeanor charge, or
 2 after the information ~~was had been~~ filed or the indictment
 3 found on a felony charge, by an acquittal or by a final
 4 order or judgment for the defendant which has not been set
 5 aside, reversed, or vacated; and ~~which the~~ acquittal, final
 6 order, or judgment necessarily required a determination
 7 inconsistent with a fact which must be established for
 8 conviction of the offense ~~of~~ for which the defendant is
 9 subsequently prosecuted.

10 (5) ~~Person prosecution before court lacking~~
 11 ~~jurisdiction or when fraudulently procured by the defendant.~~

12 A prosecution is not a bar within the meaning of subsections
 13 (3) and (4) under any one or more of the following
 14 circumstances:

15 (a) ~~the~~ The former prosecution was before a court
 16 which lacked jurisdiction over the defendant or the
 17 offense, ~~or~~

18 (b) ~~the~~ The former prosecution was procured by the
 19 defendant without the knowledge of the proper prosecuting
 20 officer or with the purpose of avoiding the sentence which
 21 might otherwise be imposed, ~~or~~

22 (c) ~~the~~ The former prosecution resulted in a judgment
 23 of conviction which was held invalid in ~~any post-conviction~~
 24 a postconviction hearing."

25 Section 26. Section 95-1803, R.C.M. 1947, is amended

1 to read as follows:

2 "95-1803. Discovery, inspection, and notice. In all
 3 criminal cases originally triable in district court the
 4 following rules ~~shall~~ apply:

5 ~~(a) List of Witnesses:~~

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

14 ~~(2) The requirement of subsection (a)(1), of this~~
 15 ~~section, shall~~ This subsection does not apply to rebuttal
 16 witnesses.

17 ~~(b) Subpoenas may be used as a discovery device as~~
 18 ~~provided for under section 95-1801(d).~~

19 ~~(c) (2)~~ (a) On motion of any party within a reasonable
 20 time before trial, ~~all parties~~ each party shall produce at a
 21 reasonable time and place designated by the court all
 22 documents, papers, or things which ~~each party~~ it intends to
 23 introduce in evidence. ~~Thereupon any~~ Each party shall, in
 24 the presence of a person designated by the court, be
 25 permitted to inspect or copy any such documents, papers, or

1 things. The order shall specify the time, place, and manner
 2 of making the inspection and of taking the copies or
 3 photographs and may prescribe such terms and conditions as
 4 are just. If the evidence relates to scientific tests or
 5 experiments, the opposing party shall, if practicable, be
 6 permitted to be present during the tests and to inspect the
 7 results thereof. Upon a sufficient showing, the court may at
 8 any time order that the discovery or inspection be denied,
 9 restricted, or deferred, or make other appropriate orders.

10 (b) If, subsequent to compliance with an order issued
 11 pursuant to this rule, and prior to or during trial, a party
 12 discovers additional material previously requested which is
 13 subject to discovery or inspection under ~~the~~ this rule, he
 14 shall promptly notify the other party or his attorney or the
 15 court of the existence of the additional material. The court
 16 shall exclude any evidence not presented for inspection or
 17 copying pursuant to this rule, unless good cause is shown
 18 for failure to comply. In the latter case the opposing party
 19 ~~shall be~~ is entitled to a recess or a ~~continuance~~
 20 continuance during which it may inspect or copy the evidence
 21 in the manner provided for ~~above~~ in this subsection (2).

22 ~~(4) (3)~~ (a) For purpose of notice only and to prevent
 23 surprise, the defendant shall furnish to the prosecution and
 24 file with the clerk of the court, at the time of entering
 25 his plea of not guilty or within ~~ten~~ (10) days thereafter or

1 at such later time as the court may for good cause permit, a
 2 statement of intention to interpose the defense of ~~insanity~~
 3 mental disease or defect, self-defense, or alibi.

4 (b) If the defendant intends to interpose any of these
 5 defenses, he shall also furnish to the prosecution and file
 6 with the clerk of the court, the names and addresses of all
 7 witnesses to be called by the defense in support thereof.
 8 ~~The Prior to trial the~~ defendant may, ~~prior to trial~~, upon
 9 motion and showing of good cause, add to the list of
 10 witnesses the names of any additional witnesses. After the
 11 trial commences, no witnesses may be called by the defendant
 12 in support of these defenses, unless the name of the witness
 13 is included on ~~such~~ the list, except upon good cause shown.

14 ~~(4) (4)~~ All matters which are privileged upon the
 15 trial, are privileged against disclosure through any
 16 discovery procedure."

17 Section 27. Section 95-1810, R.C.M. 1947, is amended
 18 to read as follows:

19 "95-1810. Witness from another state summoned to
 20 testify in this state. (1) ~~If~~ Whenever a person in any
 21 state, which by its laws has made provision for commanding
 22 persons within its borders to attend and testify in criminal
 23 prosecutions, or grand jury investigations ~~commenced or~~
 24 ~~about to commence~~, in this state, is a material witness in a
 25 prosecution pending in a court of record in this state, or

1 in a grand jury investigation, which has commenced or is
 2 about to commence, a judge of ~~such~~ the court may issue a
 3 certificate under the seal of the court stating these facts
 4 and specifying the number of days the witness will be
 5 required. ~~This~~ The certificate ~~will~~ shall be presented to a
 6 judge of a court of record in the county in which the
 7 witness is found.

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

23 (3) ~~If the~~ Whenever a witness is summoned to attend
 24 and testify in this state, he shall be tendered the sum of
 25 ~~ten cents (10¢)~~ cents a mile for each mile and ~~five dollars~~

1 ~~(\$5.00)~~ for each day that he is required to travel and
 2 attend as a witness, ~~provided further that in these cases~~
 3 ~~in which~~ If the state wherein the witness is found has by
 4 statutory enactment required that the summoned witness be
 5 paid an amount ~~or amounts~~ in excess of the amount
 6 ~~hereinbefore in this paragraph provided~~ specified in the
 7 preceding sentence, then said the witness may be tendered
 8 ~~said the~~ amount ~~or amounts so~~ required by ~~said that~~ state to
 9 ~~be tendered though the said amount or amounts so required to~~
 10 ~~be tendered are in excess of the said amount in this~~
 11 ~~paragraph provided for.~~

12 (4) A witness who has appeared in accordance with the
 13 provisions of the summons ~~shall~~ may not be required to
 14 remain within this state for a longer period of time than
 15 the period mentioned in the certificate, unless otherwise
 16 ordered by the court.

17 (5) If ~~such~~ the witness fails without good cause to
 18 attend and testify as directed in the summons, he shall be
 19 punished in the manner provided for the punishment of any
 20 witness who disobeys a summons issued from a court of record
 21 in this state."

22 Section 28. Section 95-1909, R.C.M. 1947, is amended
 23 to read as follows:

24 "95-1909. Trial jurors. ~~(a)~~ (1) The clerk of court
 25 shall make available to the parties a list of prospective

1 jurors with their addresses when the names have been drawn.

2 ~~(b)(2)~~ ~~(4)(a)~~ The qualifications of jurors, and ~~who~~
3 ~~will be exempted, exemptions from jury duty~~ are found
4 ~~prescribed in sections 93-1301 through 93-1307, of the Civil~~
5 ~~Code, which by reference are made a part of this code.~~

6 ~~(2)(b)~~ An exemption from service on a jury is not a
7 cause of challenge, but the privilege of the person
8 exempted.

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

15 ~~(4)(4)~~ ~~(4)(a)~~ Each party may challenge jurors for
16 cause, and each challenge must be tried by the court.

17 ~~(2)(b)~~ A challenge for cause may be taken for all or
18 any of the following reasons, or for any other reason which
19 the court determines:

20 (i) ~~Consanguinity~~ consanguinity or relationship to the
21 defendant or to the person who is alleged to be injured by
22 the offense charged, or on whose complaint the prosecution
23 was instituted, ~~or to the defendant.~~

24 (ii) ~~Standing~~ standing in the relation of guardian and
25 ward, attorney and client, master and servant, ~~or~~ landlord

1 and tenant, ~~or~~ debtor and creditor with, or being a member
2 of the family or in the employment of, the defendant, or ~~of~~
3 the person who is alleged to be injured by the offense
4 charged, or on whose complaint the prosecution was
5 instituted, ~~or in his employment.~~

6 (iii) ~~Being~~ being a party adverse to the defendant in a
7 civil action, or having complained against or been accused
8 by him in a criminal prosecution.

9 (iv) ~~Having~~ having served on the grand jury which found
10 the indictment, or on a coroner's jury which inquired into
11 the death of a person whose death is the subject of the
12 indictment or information.

13 (v) ~~Having~~ having served on a trial jury which ~~has~~
14 tried another person for the offense charged.

15 (vi) ~~Having~~ having been ~~one a member~~ of a jury formerly
16 sworn to try the same charge, ~~and whose the~~ verdict of which
17 was set aside or which was discharged without verdict, after
18 the case was submitted to it.

19 (vii) ~~Having~~ having served as a juror in a civil action
20 brought against the defendant for the act charged as an
21 offense.

22 (viii) ~~If~~ if the offense charged ~~be is~~ punishable with
23 death, ~~with entertaining of~~ having such conscientious
24 opinions as would preclude his finding the defendant
25 guilty, in which case he must neither be permitted nor

1 compelled to serve as a juror;

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

4 (x) ~~For the existence of~~ having a state of mind ~~on the~~
5 ~~part of the juror~~ in reference to the case, or to either of
6 the parties, which ~~will~~ would prevent him from acting with
7 entire impartiality and without prejudice to the substantial
8 rights of either party.

9 ~~(e)~~ (5) All challenges must be interposed before the
10 jury is sworn, unless the cause of challenge ~~be~~ is
11 discovered after the jury is sworn and before the
12 introduction of any evidence, ~~when in which case~~ the court,
13 in its discretion, may allow the challenge to be interposed.

14 ~~(f)~~ (6) Each defendant shall be allowed eight ~~(8)~~
15 peremptory challenges in capital cases, six ~~(6)~~ in all other
16 cases tried in the district court before a ~~twelve~~ ~~(12)~~
17 ~~person~~ 12-person jury, and three ~~(3)~~ ~~in all cases tried in~~
18 ~~justice of the peace or police courts. However, there~~ There
19 may not be additional challenges for separate counts charged
20 in the indictment or information. If the indictment or
21 information charges a capital offense, as well as lesser
22 offenses in separate counts, the maximum number of
23 challenges ~~shall be~~ is eight ~~(8)~~. The state shall be allowed
24 the same number of peremptory challenges as all of the
25 defendants. In a ~~civil or~~ criminal case tried in the

1 district court before a ~~six~~ ~~(6)~~ ~~person~~ six-person jury, the
2 state and all the defendants shall be allowed three ~~(3)~~
3 peremptory challenges each. When the parties PARTIES in a
4 criminal case in the district court agree upon a jury
5 consisting of a number of persons other than 6 or 12, they
6 shall also agree in writing upon the number of peremptory
7 challenges to be allowed.

8 ~~(g)~~ (7) After the jury is impaneled and sworn, the
9 court may direct ~~the selection of that~~ one or more alternate
10 jurors, be selected in the same manner as principal jurors,
11 ~~who~~ The alternate jurors shall take the same oath as the
12 principal jurors. Each party shall have one additional
13 peremptory challenge for each alternate juror. Alternate
14 jurors in the order in which they are called shall replace
15 jurors who, prior to the time the jury arrives at its ~~verdict~~
16 verdict, become unable or disqualified to perform their
17 duties. An alternate juror ~~shall~~ may not join the jury in
18 its deliberation unless called upon by the court to replace
19 a member of the jury. His conduct during the period in which
20 the jury is considering its verdict shall be regulated by
21 instructions of the trial court. An alternate juror who does
22 not replace a principal juror shall be discharged after the
23 jury arrives at its verdict.

24 ~~(h)~~ (8) The jury shall return a general verdict to each
25 offense charged.

1 ~~(1)(9)~~ When, at the close of the state's evidence or
 2 at the close of all the evidence, the evidence is
 3 insufficient to support a finding or verdict of guilty, the
 4 court may on its own motion or on the motion of the
 5 defendant, dismiss the action and discharge the defendant.
 6 However, the court may allow the case to be reopened for
 7 good cause shown."

8 Section 29. Section 95-1915, R.C.M. 1947, is amended
 9 to read as follows:

10 "95-1915. Verdict. ~~(1)(1) Return.~~ The verdict shall
 11 must be unanimous in all criminal actions. ~~Such~~ The verdict
 12 shall be signed by the foreman and returned by the jury to
 13 the judge in open court.

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

21 ~~(c)(3) Conviction of a Lesser Offense.~~ The defendant
 22 may be found guilty of an offense necessarily included in
 23 the offense charged, or of an attempt to commit either the
 24 offense charged or an offense necessarily included therein
 25 if the attempt is an offense.

1 ~~Whenever a crime is distinguished into degrees, the~~
 2 ~~jury, if they convict the defendant, must find the degree of~~
 3 ~~the crime of which he is guilty.~~

4 ~~(4)(4) Poll of Jury.~~ When a verdict is returned, the
 5 jury shall be polled at the request of any party or upon the
 6 court's own motion. If upon the poll there is not the
 7 required concurrence, the jury may be directed to retire for
 8 further deliberations or may be discharged."

9 Section 30. Section 95-2004, R.C.M. 1947, is amended
 10 to read as follows:

11 "95-2004. Trial in justice justices' and police city
 12 courts. ~~(1)(1) Method of Trial trial:~~

13 ~~(1)(a)~~ The defendant is entitled to a jury of six ~~(6)~~
 14 qualified persons, but ~~may consent to a lesser number~~ the
 15 parties may agree to a number less than six.

16 ~~(2)(b)~~ A trial by jury may be waived by the consent of
 17 both parties expressed in open court and entered in the
 18 docket.

19 ~~(3)(c)~~ Questions of law shall be decided by the court
 20 and questions of fact by the jury except that, when a jury
 21 trial is waived, ~~then~~ the court shall determine both
 22 questions of law and questions of fact.

23 ~~(b)(2)~~ Plea of Guilty guilty. Before or during trial,
 24 a plea of guilty may be accepted when:

25 ~~(1)(a)~~ The the defendant enters a plea of guilty in

1 open court; and
 2 ~~(2)(b)~~ ~~The~~ the court has informed the defendant of the
 3 consequences of his plea and of the maximum penalty provided
 4 by law which may be imposed upon acceptance of such plea.

5 ~~(c)(3)~~ Presence of ~~Defendant~~ defendant. ~~The whenever~~
 6 ~~THE the offense charged carries a penalty of a fine only,~~
 7 ~~the~~ trial may be had in the absence of the defendant, but,
 8 if his presence is necessary for any purpose, the court may
 9 require the personal attendance of the defendant at the
 10 trial.

11 ~~(d)(4)~~ Time to ~~Prepare~~ prepare for ~~Trial~~ trial. After
 12 ~~the~~ plea the defendant ~~shall be~~ is entitled to a reasonable
 13 time to prepare for trial."

14 Section 31. Section 95-2005, R.C.M. 1947, is amended
 15 to read as follows:

16 "95-2005. Formation of trial jury. ~~(a) Number of~~
 17 ~~Jurors. A jury in justice or police court shall consist of~~
 18 ~~six (6) persons, but the parties may agree to a number less~~
 19 ~~than six (6).~~ ~~(b)(1) Formation of Trial Jury. The~~ At the
 20 time of preparing the district court jury list, the county
 21 jury commission, ~~at the time of preparing the district court~~
 22 ~~jury list,~~ shall prepare a jury list for each ~~justice~~
 23 justice's and ~~police~~ city court within the county. Each list
 24 shall consist of residents of the appropriate county, city,
 25 or town. ~~Such list~~ The lists shall be selected in any

1 reasonable manner which ~~shall ensure~~ ensures fairness, and
 2 ~~it~~ each shall include a number of names sufficient to meet
 3 the annual jury requirements of the respective court.
 4 Additional lists may be prepared if required. The ~~list lists~~
 5 shall be filed in the office of the clerk of the district
 6 court, ~~and the~~ The appropriate list shall be posted in a
 7 public place in each ~~such~~ county, city, or town, and such
 8 list shall comprise the trial jury list for the ensuing year
 9 for such county, city, or town.

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

13 (3) The prosecuting attorney and the defendant or his
 14 attorney shall conduct the examination of prospective
 15 jurors. The court may conduct an additional examination. The
 16 court may limit the examination by the defendant, his
 17 attorney, or the prosecuting attorney if the court believes
 18 such examination to be improper.

19 (4) Each party may challenge jurors for cause, and
 20 each challenge must be tried by the court. The challenge may
 21 be for any cause enumerated in ~~section 95-1909(d)-(3)~~ (4)(b)
 22 ~~of this code~~. Each defendant shall be allowed three ~~(3)~~
 23 peremptory challenges, and the state shall be allowed the
 24 same number of peremptory challenges as all of the
 25 defendants."

1 Section 32. Section 95-2006, R.C.M. 1947, is amended
2 to read as follows:

3 "95-2006. Verdict. ~~(a)(1) Return.~~ The verdict of the
4 jury must in all cases be general. It shall be returned by
5 the jury to the judge in open court, who must enter, it or
6 cause it to be entered in the minutes. The verdict of the
7 jury must be unanimous.

8 ~~(b)(2) Several defendants.~~ When several defendants are
9 tried together, ~~if~~ and the jury cannot agree upon a verdict
10 as to all, ~~they~~ the jury may render a verdict as to those in
11 regard to whom ~~they do it does~~ agree, ~~on which a~~ judgment
12 must be entered accordingly on the verdict, and the case as
13 to the rest may be tried by another jury.

14 ~~(c)(3) Poll of jury.~~ When a verdict is returned, the
15 jury shall be polled at the request of any party or upon the
16 court's own motion. If upon the poll there is not a
17 unanimous concurrence, the jury may be directed to retire
18 for further deliberations or may be discharged.

19 ~~(d)(3) Discharge of jury.~~ The jury cannot be
20 discharged after the cause is submitted to them, until they
21 have agreed upon and rendered their verdict, unless for good
22 cause the court sooner discharges them."

23 Section 33. Section 95-2007, R.C.M. 1947, is amended
24 to read as follows:

25 "95-2007. Sentence and judgment. ~~(a)(1)~~ If a judgment

1 of acquittal is rendered, the defendant must be immediately
2 discharged.

3 ~~(b)(2)~~ After a plea or verdict of guilty, or after a
4 judgment against the defendant, the court must designate a
5 time for sentencing, which must be within a reasonable time
6 after the rendering of the verdict or judgment ~~is rendered~~.
7 The sentence must be entered in the minutes of the court as
8 soon as it is imposed.

9 ~~(c)(3)~~ If the defendant pleads guilty, or is convicted
10 either by the court or by a jury, the court must impose a
11 sentence ~~of fine or imprisonment or both, as the case may~~
12 ~~be. The court may suspend the execution of the sentence up~~
13 ~~to the maximum sentence allowed for the particular offense.~~
14 ~~The court may impose any reasonable conditions or~~
15 ~~restrictions on the sentence which it deems necessary as~~
16 provided in 95-2206, 95-2206.1 through 95-2206.4, and
17 95-2207. If alcohol or other drugs are involved, the court
18 may impose such rehabilitative measures as it ~~deems~~
19 considers advisable under the circumstances.

20 ~~(d)(4)~~ The determination and imposition of sentence
21 shall be are the exclusive duty of the court."

22 Section 34. Section 95-2009, R.C.M. 1947, is amended
23 to read as follows:

24 "95-2009. Appeal. ~~(a)(1)~~ All cases on appeal from
25 justices' or police city courts must be tried anew in the

1 district court and may be tried before a jury of six ~~(6)~~
2 ~~which may be drawn from either the regular panel or jury box~~
3 ~~no. 3 selected as provided in Title 93, chapter 50.~~

4 ~~(b)(2)~~ The defendant may appeal to the district court
5 by giving written notice of his intention to appeal within
6 ~~ten days (10) days~~ after judgment.

7 ~~(c)(3)~~ Within ~~thirty (30) days~~, the entire record of
8 the justice justice's or police city court proceedings shall
9 be transferred to the district court or the appeal shall be
10 dismissed. It shall be is the duty of the defendant to
11 perfect the appeal."

12 ~~Section 38. Section 95-2010, R.C.M. 1947, is amended~~
13 ~~to read as follows:~~

14 ~~"95-2010. Disqualification of justice, magistrate, or~~
15 ~~justice of the peace. (1) The defendant or the prosecution~~
16 ~~may move the court in writing for the disqualification of a~~
17 ~~justice, magistrate, or justice of the peace on the ground~~
18 ~~that he the jurant cannot have a fair and impartial hearing~~
19 ~~or trial before the justice, magistrate, or justice of the~~
20 ~~peace. The motion shall be made at least fifteen (15) days~~
21 ~~prior to the trial of the case, or any retrial thereof after~~
22 ~~appeal, except for good cause shown.~~

23 ~~(2) Upon the filing of such a the motion, the justice,~~
24 ~~magistrate, or justice of the peace against whom the motion~~
25 ~~is filed shall be without authority to act further in the~~

1 ~~criminal action, motion, or proceeding, but the provisions~~
2 ~~of this section do not apply except in regard to the~~
3 ~~arrangement of the calendar, the regulation of the order of~~
4 ~~business, the power of transferring the original action or~~
5 ~~proceeding to some other court, nor to and the power of~~
6 ~~calling in another justice, magistrate, or justice of the~~
7 ~~peace to sit and act in such the criminal action or~~
8 ~~proceeding, providing that no justice, no magistrate, or~~
9 ~~justice of the peace shall not so arrange the calendar as to~~
10 ~~defeat the purposes of this section.~~

11 ~~(3) Not no more than one (1) justice, magistrate, or~~
12 ~~justice of the peace can may be disqualified in the criminal~~
13 ~~action or proceeding, at the instance of the prosecution and~~
14 ~~not no more than one (1) justice, magistrate, or justice of~~
15 ~~the peace at the instance of the defendant or defendants.~~

16 ~~(4) If either a party in any matter above mentioned~~
17 ~~shall file the who files a motion as herein provided, such~~
18 ~~party under subsection (1) may not complain of any~~
19 ~~reasonable delay as the result thereof.~~

20 ~~(5) The provision of this This section shall be is~~
21 ~~inapplicable to any person in any cause involving a direct~~
22 ~~contempt of court.~~

23 ~~(2)(5) In addition to the provision provisions of~~
24 ~~subsection (1) any subsections (1) through (5), a defendant~~
25 ~~may move at any time for the disqualification of a justice,~~

1 ~~magistrate, or justice of the peace for cause, supported by~~
 2 ~~affidavit. Upon the filing of such the motion, the court~~
 3 ~~shall conduct a hearing and determine the merits of the~~
 4 ~~motion."~~

5 Section 35. Section 95-2101, R.C.M. 1947, is amended
 6 to read as follows:

7 "95-2101. New trial. ~~(a) (1) Definition and Effect.~~ A
 8 new trial is a ~~re-examination~~ reexamination of the issue in
 9 the same court, before another jury, after a verdict or
 10 finding has been rendered, and the The granting of a new
 11 trial places the parties in the same position as if there
 12 had been no trial.

13 ~~(b) (2) Motion for a New Trial.~~ (1) (a) Following a
 14 verdict or finding of guilty, the court may grant the
 15 defendant a new trial if required in the interest of
 16 justice.

17 ~~(2) (b)~~ The motion for a new trial shall be in writing
 18 and shall specify the grounds therefor. It shall be filed by
 19 the defendant within ~~thirty~~ (30) days following a verdict or
 20 finding of guilty. Reasonable notice of the motion shall be
 21 served upon on the state.

22 ~~(3) The motion for a new trial shall specify the~~
 23 ~~grounds therefor.~~

24 ~~(c) Alternative Authority of the Court on Hearing~~
 25 ~~Motion for New Trial.~~ On hearing the motion for a new trial,

1 if justified by law and the weight of the evidence, the
 2 court may:

- 3 1. ~~(i)~~ Deny ~~deny~~ the motion;
- 4 2. ~~(ii)~~ Grant ~~grant~~ a new trial; or
- 5 3. ~~(iii)~~ Modify ~~modify~~ or change the verdict or finding
 6 by ~~finding the defendant guilty of a lesser degree of the~~
 7 ~~crime charged,~~ finding the defendant guilty of a lesser
 8 included crime or finding the defendant not guilty."

9 ~~Section 40. Section 95-2202, R.C.M. 1947, is amended~~
 10 ~~to read as follows:~~

11 ~~"95-2202. Sentence and Rendering Judgment and~~
 12 ~~pronouncing sentence. (a) (1) The judgment shall be rendered~~
 13 ~~in open court.~~

14 ~~(b) (2) If the verdict or finding is not guilty,~~
 15 ~~judgment shall be rendered immediately and the defendant~~
 16 ~~shall be discharged from custody or from the obligation of~~
 17 ~~his bail bond, except as provided in 95-1216.~~

18 ~~(c) (2) If the verdict or finding is guilty, sentence~~
 19 ~~shall be pronounced and judgment rendered within a~~
 20 ~~reasonable time."~~

21 Section 36. Section 95-2206, R.C.M. 1947, is amended
 22 to read as follows:

23 "95-2206. Sentence. (1) Whenever ~~any~~ a person has been
 24 found guilty of ~~a crime or an~~ offense upon a verdict or a
 25 plea of guilty, the court may:

1 ~~(1)~~ (a) ~~Defer~~ defer imposition of sentence for a period
 2 not ~~to exceed one~~ exceeding ~~(1)~~ year for any misdemeanor; or
 3 for a period not ~~to exceed three~~ exceeding ~~(3)~~ years for any
 4 felony. The sentencing judge may impose upon the defendant
 5 any reasonable restrictions or conditions during the period
 6 of the deferred imposition. Such reasonable restrictions or
 7 conditions may include:

8 ~~(a)~~ (i) jail base release;

9 ~~(a)~~ (ii) jail time not ~~to exceed ninety~~ exceeding ~~(90)~~
 10 days;

11 ~~(a)~~ (iii) conditions for probation;

12 ~~(a)~~ (iv) restitution;

13 ~~(a)~~ (v) any other reasonable conditions ~~deemed~~
 14 considered necessary for rehabilitation or for the
 15 protection of society; or

16 ~~(a)~~ (vi) any combination of the above;

17 ~~(2)~~ (b) ~~Suspend~~ suspend execution of sentence up to the
 18 maximum sentence allowed for the particular offense. The
 19 sentencing judge may impose on the defendant any reasonable
 20 restrictions during the period of suspended sentence. Such
 21 reasonable restrictions may include:

22 ~~(a)~~ (i) jail base release;

23 ~~(a)~~ (ii) jail time not ~~to exceed~~ exceeding ~~(90)~~ days;

24 ~~(a)~~ (iii) conditions for probation;

25 ~~(a)~~ (iv) restitution;

1 ~~(a)~~ (v) any other reasonable conditions ~~deemed~~
 2 considered necessary for rehabilitation or for the
 3 protection of society;

4 ~~(a)~~ (vi) any combination of the above;

5 ~~If any restrictions or conditions are violated, any~~
 6 ~~elapsed time, except jail time, shall not be a credit~~
 7 ~~against the sentence, unless the court shall otherwise~~
 8 ~~order.~~

9 ~~(3)~~ (c) ~~Impose~~ impose a fine as provided by law for the
 10 offense;

11 ~~(4)~~ (d) ~~Commit~~ commit the defendant to a correctional
 12 institution with or without a fine as provided by law for
 13 the offense;

14 ~~(5)~~ (e) ~~Impose~~ impose any combination of subsections
 15 ~~(2) (1)(b), (2) (1)(c), or (4) and (1)(d) above.~~

16 ~~(2) If any restrictions or conditions imposed under~~
 17 ~~subsection (1)(a) or (1)(b) are violated, any elapsed time,~~
 18 ~~except jail time, shall not be a credit against the~~
 19 ~~sentence, unless the court orders otherwise.~~

20 ~~(6)~~ (3) (a) The district court may also impose any of
 21 the following restrictions or conditions on the ~~above~~
 22 sentence provided for in subsection (1) which it ~~deems~~
 23 considers necessary to obtain the ~~objective objectives~~ of
 24 rehabilitation and the protection of society;

25 ~~(a)~~ (i) prohibit the defendant the right to hold public

1 office;

2 ~~(b)~~ (iii) prohibit the defendant the right to own or

3 carry a dangerous weapon;

4 ~~(c)~~ (iii) prohibit freedom of association;

5 ~~(d)~~ (iv) prohibit freedom of movement;

6 ~~(e)~~ (v) any other limitation reasonably related to the

7 objectives of rehabilitation ~~or~~ and the protection of

8 society.

9 ~~(7)~~ (b) The judge in ~~the justice a justice's, city, or~~

10 municipal court ~~shall does~~ not have the authority to

11 restrict an individual's rights as enumerated in subsection

12 ~~(6)~~ (3)(a).

13 (4) ~~any a~~ judge, magistrate, or justice of the peace

14 who has suspended the execution of a sentence or deferred

15 the imposition of a sentence of imprisonment under this

16 section, or his successor, is authorized ~~thereafter, in his~~

17 discretion, during the period of ~~such the~~ suspended sentence

18 or deferred imposition of sentence, in his discretion, to

19 revoke ~~such the~~ suspension or impose sentence and order ~~such~~

20 the person committed, ~~or He~~ may also, in his discretion,

21 order the prisoner placed under the jurisdiction of the

22 ~~state~~ board of pardons as provided by law, or retain such

23 jurisdiction with ~~this his~~ court. Prior to the revocation of

24 an order suspending or deferring the imposition of sentence,

25 the person affected shall be given a hearing."

1 Section 37. Section 95-2206.1, R.C.M. 1947, is amended

2 to read as follows:

3 "95-2206.1. Sentence to death. ~~When Whenever~~ a person

4 ~~is convicted of an~~ has been found guilty of an offense upon

5 a verdict or plea of guilty, the court may, if the offense

6 is punishable by death or imprisonment, ~~the court may~~

7 sentence the offender to death or imprisonment."

8 Section 38. Section 95-2206.5, R.C.M. 1947, is amended

9 to read as follows:

10 "95-2206.5. ~~Judicial designation~~ Designation of

11 persistent felony offenders offender for purposes of parole

12 eligibility. (1) ~~When an offender has been previously~~

13 ~~convicted of a felony and the present offense is a second~~

14 ~~felony committed on a different occasion than the first, the~~

15 The sentencing court shall designate ~~the an~~ offender a

16 persistent felony offender for purposes of eligibility for

17 parole under ~~section 95-3214, provided if the offender:~~

18 (a) ~~the previous felony conviction was for an offense~~

19 ~~committed in this state or any other jurisdiction for which~~

20 ~~a sentence to a term of imprisonment in excess of one (1)~~

21 ~~year could have been imposed, and is defined as a persistent~~

22 felony offender in 95-1507(1); and

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

24 ~~commission of the present offense and either;~~

25 ~~(i) the previous felony conviction, or~~

~~(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and~~

~~(c) (b) the offender was more than eighteen (18) years of age or older at the time of the commission of the present offense.~~

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

~~(3) (2) A judicial determination of that an offender is a persistent felony offender under this section may be made only when the conviction for the present offense occurs after July 1, 1975."~~

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

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

~~(1) The the indictment or information and a copy of~~

~~the minutes of the arraignment, pleas, and motions;~~

~~(2) A a copy of the minutes of the trial;~~

~~(3) The the instructions given or refused and the endorsements thereon;~~

~~(4) A a copy of the judgment."~~

Section 39. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"95-2224. Prisoner not agent, or ~~Penalty for treating prisoner as PRISONER NOT AGENT OR~~ involuntary servant. No prisoner in the community under the provisions of this act shall be deemed to be an agent, or involuntary servant of the department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R.C.M. 1947. ~~An officer or employee of the department or of the supervising agency who treats a prisoner participating in the furlough program as an involuntary servant is guilty of official misconduct and is punishable as provided in 94-7-401. NO PRISONER IN THE COMMUNITY UNDER THE PROVISIONS OF THIS ACT MAY BE CONSIDERED TO BE AN AGENT OR INVOLUNTARY SERVANT OF THE DEPARTMENT OR OF THE SUPERVISING AGENCY WHILE RELEASED FROM CONFINEMENT PURSUANT TO THE TERMS OF THE FURLOUGH PROGRAM. ABUSE OF AUTHORITY OVER A PRISONER IS OFFICIAL MISCONDUCT PUNISHABLE AS PROVIDED IN 94-7-401."~~

1 Section 40. Section 95-2229, R.C.M. 1947, is amended
2 to read as follows:

3 "95-2229. Traffic Disposition of traffic fines
4 collected from ~~juvenile offenders disposition juveniles.~~
5 All fines collected by the district courts from children
6 under ~~eighteen~~ (18) years of age for unlawful operation of
7 motor vehicles ~~resulting from~~ as the result of traffic
8 summonses issued by ~~the~~ peace officers of ~~the~~ cities, ~~or~~
9 counties, or by highway patrolmen, together with that
10 portion of the fines which is specified in ~~section~~ 75-7903,
11 shall be retained by the county treasurer of the county in
12 which the offense occurred and at the end of each month
13 distributed as follows:

14 ~~(a)~~ (1) fines fines collected as the result of
15 summonses issued by city ~~police~~ peace officers shall be
16 distributed to the city in which the ~~police~~ peace officer is
17 employed, and credited to the city general fund.

18 ~~(b)~~ (2) fines fines collected as the result of
19 summonses issued by county peace officers shall be retained
20 by the county treasurer and credited to the county road
21 fund.

22 ~~(c)~~ (3) fines fines collected as the result of
23 summonses issued by state highway patrolmen shall be paid to
24 the state treasurer of Montana, ~~and by him credited who~~
25 shall credit them to the general fund of the state.

1 ~~(d)~~ (4) ~~that~~ That portion of the fines, ~~as provided for~~
2 which is specified in section 75-7903, shall be paid to the
3 state treasurer of Montana, ~~and by him credited who shall~~
4 credit it to the automobile driver education account in the
5 earmarked revenue fund."

6 Section 41. Section 95-2403, R.C.M. 1947, is amended
7 to read as follows:

8 "95-2403. Scope of appeal by state. ~~(a)~~ (1) Except as
9 OTHERWISE SPECIFICALLY authorized ~~by this code title,~~ the
10 state may not appeal in a criminal case.

11 ~~(b)~~ (2) The state may appeal from any court order or
12 judgment the substantive effect of which results in:

13 ~~(1)~~ (a) dismissing a case;

14 ~~(2)~~ (b) modifying or changing the verdict as provided

15 in ~~section~~ 95-2101 ~~(a)~~ (3) (2) (C) (III);

16 ~~(3)~~ (c) granting a new trial;

17 ~~(4)~~ (d) quashing an arrest or search warrant;

18 ~~(5)~~ (e) suppressing evidence;

19 ~~(6)~~ (f) suppressing a confession or admission; or

20 ~~(7)~~ (g) granting or denying change of venue."

21 Section 42. Section 95-2426, R.C.M. 1947, is amended
22 to read as follows:

23 "95-2426. ~~Determination of appeal~~ Action reviewing
24 court may take. On appeal the reviewing court may:

25 (1) ~~Reverse reverse,~~ affirm, or modify the judgment or

1 order from which the appeal is taken;

2 (2) ~~Set~~ set aside, affirm, or modify any or all of the
3 proceedings subsequent to or dependent upon the judgment or
4 order from which the appeal is taken;

5 (3) ~~Reduce the degree of~~ reduce the offense of which
6 the appellant was convicted to a lesser included offense;

7 (4) ~~Reduce~~ reduce the punishment imposed by the trial
8 court; or

9 (5) ~~Order~~ order a new trial if justice so requires."

10 Section 43. Section 95-2601, R.C.M. 1947, is amended
11 to read as follows:

12 "95-2601. ~~Petition in the trial court~~ Circumstances in
13 which validity of sentence may be challenged. ~~Any~~ A person
14 adjudged guilty of an offense in a court of record who has
15 no adequate remedy of appeal and who claims that sentence
16 was imposed in violation of the constitution or the laws of
17 this state or the ~~Constitution~~ constitution of the United
18 States, ~~or~~ that the court was without jurisdiction to impose
19 ~~such~~ the sentence, or that the sentence was in excess of the
20 maximum authorized by law, or is otherwise subject to
21 collateral attack, upon any ground of alleged error
22 available under a writ of habeas corpus, writ of coram
23 nobis, or other ~~common-law~~ common law or statutory remedy
24 may ~~move~~ petition the court which imposed the sentence, ~~or~~
25 the supreme court, or any justice of the supreme court to

1 vacate, set aside, or correct the sentence."

2 Section 44. Section 95-2604, R.C.M. 1947, is amended
3 to read as follows:

4 "95-2604. When ~~motion~~ petition may be ~~made~~ filed. A
5 ~~motion~~ petition for such relief may be ~~made~~ filed at any
6 time after conviction."

7 Section 45. Section 95-2605, R.C.M. 1947, is amended
8 to read as follows:

9 "95-2605. Proceedings on the petition. (1) Unless the
10 ~~motion~~ petition and the files and records of the case
11 conclusively show that the ~~prisoner~~ petitioner is entitled
12 to no relief, the court shall cause notice thereof to be
13 served upon the county attorney in the county in which the
14 conviction took place, grant a prompt hearing thereon,
15 determine the issue, and make findings of fact and
16 conclusions with respect thereto.

17 (2) The court may receive proof by affidavits,
18 depositions, oral testimony, or other evidence. In its
19 discretion the court may order the petitioner brought before
20 the court for the hearing.

21 (3) If the court finds in favor of the petitioner, it
22 shall enter an appropriate order with respect to the
23 judgment or sentence in the former proceedings and such
24 supplementary orders as to reassignment, retrial, custody,
25 bail, or discharge as may be necessary and proper. If the

1 court finds for the state, the petitioner shall be returned
 2 to the custody of the person to whom the writ was directed."

3 Section 46. Section 95-2606, R.C.M. 1947, is amended
 4 to read as follows:

5 "95-2606. Record must be kept. A court which
 6 entertains a ~~motion~~ petition pursuant to this chapter must
 7 keep a record of the proceedings and enter its findings and
 8 conclusions."

9 Section 47. Section 95-2608, R.C.M. 1947, is amended
 10 to read as follows:

11 "95-2608. Review. Either the petitioner or the state
 12 may appeal to the supreme court of Montana from an order
 13 entered on the ~~motion~~ petition. The appeal shall ~~shall~~ must be
 14 taken within ~~six~~ (6) months from the entry of the order."

15 Section 48. Section 95-2902, R.C.M. 1947, is amended
 16 to read as follows:

17 "95-2902. Reasonable doubt as to ~~degree~~ which offense
 18 convicts only of ~~lowest~~ least offense. When it appears
 19 beyond a reasonable doubt that the defendant has committed a
 20 public an offense, and but there is reasonable ~~ground~~ of
 21 doubt in which of two or more degrees as to whether he is
 22 guilty of a given offense or one or more lesser included
 23 offenses, he ~~can~~ may only be convicted of the ~~lowest of such~~
 24 degrees only greatest included offense about which there is
 25 no reasonable doubt."

1 Section 49. Section 95-3004, R.C.M. 1947, is amended
 2 to read as follows:

3 "95-3004. ~~The burden~~ Burden of the state in a homicide
 4 trial. ~~(a) (1)~~ In a homicide trial, before an extrajudicial
 5 confession may be admitted into evidence, the state must
 6 introduce independent evidence tending to establish the
 7 death, and the fact that the death was caused by a criminal
 8 agency.

9 ~~(b) (2)~~ In a deliberate homicide, knowledge or purpose
 10 may be inferred from the fact that the accused committed a
 11 homicide and no circumstances ~~of~~ of mitigation, excuse, or
 12 justification appear."

13 Section 50. Section 95-3011, R.C.M. 1947, is amended
 14 to read as follows:

15 "95-3011. Competency of ~~husband and wife as witnesses~~
 16 spouses. Except with the consent of both, or in cases of
 17 criminal violence ~~upon one~~ by one upon the other, ~~or in case~~
 18 ~~of~~ abandonment, or neglect of children by either party, or
 19 ~~of~~ abandonment or neglect of ~~the wife~~ one by the ~~husband~~
 20 other, neither ~~husband nor wife~~ spouse is a competent
 21 witness for or against the other in a criminal actica or
 22 proceeding to which one or both are parties."

23 Section 51. Section 95-3012, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-3012. Testimony of person legally accountable.

1 conviction cannot be had on the testimony of one responsible
 2 or legally accountable for the same offense, as defined in
 3 ~~section~~ 94-2-106, unless ~~he~~ the testimony is corroborated by
 4 other evidence, which in itself, and without the aid of the
 5 testimony of the one responsible or legally accountable for
 6 the same offense, tends to connect the defendant with the
 7 commission of the offense, ~~and the~~ The corroboration is not
 8 sufficient, if it merely shows the commission of the
 9 offense, or the circumstances thereof."

10 Section 52. Section 95-3110, R.C.M. 1947, is amended
 11 to read as follows:

12 "95-3110. Rights of accused persons — ~~application for~~
 13 ~~writ of~~ habeas corpus. (1) No person arrested upon such
 14 warrant ~~shall may~~ be delivered over to the agent whom the
 15 executive authority demanding him ~~shall have~~ has appointed
 16 to receive him unless he ~~shall be~~ is first taken ~~forthwith~~
 17 without delay before a judge of a court of record in this
 18 state, who shall inform him of the demand made for his
 19 surrender and of the crime with which he is charged, and
 20 ~~that that~~ he has the right to demand and procure legal
 21 counsel.

22 (2) ~~and if~~ if the prisoner or his counsel ~~shall state~~
 23 states that he or they desire to test the legality of his
 24 arrest, the judge of ~~such the~~ court of record shall fix a
 25 reasonable time to be allowed him within which to apply for

1 a writ of habeas corpus. When ~~such the~~ writ is applied for,
 2 notice thereof, and of the time and place of hearing
 3 thereon, shall be given to the prosecuting officer of the
 4 county in which the arrest ~~is was~~ made and in which the
 5 accused is in custody, and to the ~~said~~ agent of the
 6 demanding state."

7 Section 53. Section 95-3113, R.C.M. 1947, is amended
 8 to read as follows:

9 "95-3113. Arrest of accused before making of
 10 requisition. (1) A judge or magistrate of this state shall
 11 issue a warrant directed to any peace officer commanding the
 12 officer to apprehend the person named therein wherever the
 13 person may be found in this state and to bring the person
 14 before the same or any other judge, magistrate, or court who
 15 or which may be available in or convenient of access to the
 16 place where the arrest is made to answer the charge or
 17 complaint and affidavit whenever: whenever

18 (a) ~~any a~~ person within this state ~~shall be~~ is charged
 19 on the oath of ~~any a~~ credible person before ~~any the~~ judge or
 20 magistrate ~~of this state~~ with the commission of ~~any a~~ crime
 21 in ~~any other another~~ state, and, except in cases arising
 22 under section 95-3106, with having fled from justice, or
 23 with having been convicted of a crime in that state and
 24 having escaped from confinement, or having broken the terms
 25 of his bail, probation, or parole; or

1 ~~(b) whenever a complaint shall have been~~ is made
 2 before ~~any~~ the judge or magistrate ~~in this state~~ setting
 3 forth on the affidavit of ~~any~~ a credible person in another
 4 state that a crime has been committed in ~~such~~ the other
 5 state and that the accused is believed to be in this state
 6 and has been charged in such the other state with:

7 (i) the commission of the crime, and, except in cases
 8 arising under ~~section~~ 95-3106, ~~has~~ having fled from
 9 justice, or

10 (ii) ~~with~~ having been convicted of a crime in that
 11 state and having escaped from bail, probation, or parole,
 12 ~~and is believed to be in this state, the judge or magistrate~~
 13 ~~shall issue a warrant directed to any peace officer~~
 14 ~~commanding him to apprehend the person named therein,~~
 15 ~~wherever he may be found in this state, and to bring him~~
 16 ~~before the same or any other judge, magistrate or court who~~
 17 ~~or which may be available in or convenient of access to the~~
 18 ~~place where the arrest may be made, to answer charge or~~
 19 ~~complaint and affidavit and a~~

20 (2) A certified copy of the sworn charge or complaint
 21 ~~or~~ and affidavit upon which the warrant is issued shall be
 22 attached to the warrant."

23 Section 54. Section 95-3117, R.C.M. 1947, is amended
 24 to read as follows:

25 "95-3117. Extension of time of commitment adjournment.

1 If the accused is not arrested under the warrant of the
 2 governor by the expiration of the time specified in the
 3 warrant, bond, or undertaking, a judge or magistrate may
 4 discharge him or may recommit him for a further period of
 5 ~~sixty (60)~~ days or a supreme court justice or ~~county~~
 6 district court judge may again take bail for his appearance
 7 and surrender, as provided in ~~section~~ 95-3116, ~~but with~~ for
 8 a period not to exceed ~~sixty (60)~~ days after the date of
 9 ~~such~~ the new bond or undertaking."

10 Section 55. Section 95-3120, R.C.M. 1947, is amended
 11 to read as follows:

12 "95-3120. Guilt or innocence of accused, when inquired
 13 into. The guilt or innocence of the accused as to the crime
 14 of which he is charged may not be inquired into by the
 15 governor, or in any proceeding after the demand for
 16 extradition ~~accompanied by a charge of crime in legal form~~
 17 ~~as above~~ provided for in 95-3103 ~~shall have~~ has been
 18 presented to the governor, except as it may be involved in
 19 identifying the person held as the person charged with the
 20 crime."

21 Section 56. Section 95-3123, R.C.M. 1947, is amended
 22 to read as follows:

23 "95-3123. Application for issuance of requisition ~~by~~
 24 ~~when made contents. I, (1)~~ When the return to this state of
 25 a person charged with a crime in this state is required, the

1 prosecuting attorney shall present to the governor his
 2 written application for a requisition for the return of the
 3 person charged, ~~in which~~ The application shall state the
 4 name of the person ~~so~~ charged, the crime charged against
 5 him, the approximate time, place, and circumstances of its
 6 commission, and the state in which he is believed to be,
 7 including the location of the accused therein at the time
 8 the application is made, ~~and certifying~~ It shall certify
 9 that, in the opinion of the ~~said~~ prosecuting attorney the
 10 ends of justice require the arrest and return of the accused
 11 to this state for trial and that the proceeding is not being
 12 instituted to enforce a private claim.

13 If (2) When the return to this state is required of a
 14 person who has been convicted of a crime in this state and
 15 has escaped from confinement or broken the terms of his
 16 bail, probation, or parole, the prosecuting attorney of the
 17 county in which the offense was committed, the parole board,
 18 or the warden of the institution or sheriff of the county
 19 from which the escape was made, shall present to the
 20 governor a written application for a requisition for the
 21 return of ~~such the~~ person, ~~in which~~ The application shall
 22 ~~be stated~~ state the name of the person, the crime of which
 23 he was convicted, the circumstances of his escape from
 24 confinement or of the breach of the terms of his bail,
 25 probation, or parole, and the state in which he is believed

1 to be, including the location of the person therein at the
 2 time the application is made.

3 ~~It (3)~~ The application shall be verified by
 4 affidavit, ~~shall be~~ executed in duplicate, and ~~shall be~~
 5 accompanied by two certified copies of the:

6 (a) indictment returned; ~~or~~

7 (b) information and affidavit filed; ~~or of the~~

8 (c) complaint made to the judge or magistrate, stating
 9 the offense with which the accused is charged; ~~or of the~~

10 (d) judgment of conviction; or

11 (e) ~~of the~~ sentence.

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

16 (5) One copy of the application, with the action of
 17 the government indicated by endorsement thereon, and one of
 18 the certified copies of the indictment, complaint,
 19 information, and affidavits, ~~or of the~~ judgment of
 20 conviction, or ~~of the~~ sentence shall be filed in the office
 21 of the secretary of state to remain of record in that
 22 office. The other copies of all papers shall be forwarded
 23 with the governor's requisition."

24 Section 57. Section 95-3125, R.C.M. 1947, is amended
 25 to read as follows:

1 "95-3125. ~~No fee to be paid to public officer~~
 2 ~~procuring surrender~~ Restrictions on compensation for
 3 assisting return of fugitive. No compensation, fee, or
 4 reward of any kind ~~can~~ may be paid to or received by a
 5 public officer of this state, or other person, for a service
 6 rendered in procuring from the governor the demand mentioned
 7 in ~~section~~ 95-3124, ~~or~~ for the surrender of the fugitive, or
 8 for conveying him to this state, or detaining him therein,
 9 except as provided ~~for~~ in ~~such section~~ 95-3124 and 95-3124.1
 10 95-3124 AND 95-3124.1."

11 Section 58. Section 95-3129, R.C.M. 1947, is amended
 12 to read as follows:

13 "95-3129. Nonwaiver by this state. Nothing contained
 14 in this act ~~contained shall~~ may be ~~deemed to constitute~~
 15 considered a waiver by this state of its right, power, or
 16 privilege to try ~~such the~~ demanded person ~~from~~ for a crime
 17 committed within this state, or of its right, power, or
 18 privilege to regain custody of ~~such the~~ person by
 19 extradition proceedings or otherwise for the purpose of
 20 trial, a sentence, or punishment for ~~any a~~ crime committed
 21 within this state, nor ~~shall~~ may any proceedings had under
 22 this act which result in, or fail to result in, extradition
 23 be ~~deemed~~ considered in any way a waiver by this state of
 24 any of its rights, privileges, or jurisdiction ~~in any way~~
 25 whatsoever."

1 Section 59. Section 95-3206, R.C.M. 1947, is amended
 2 to read as follows:

3 "95-3206. Orders, records, report ~~and~~ reviewability,
 4 confidentiality. (1) Decisions of the board shall be by
 5 majority vote. The orders of the board are not reviewable
 6 except as to compliance ~~of~~ with the terms of this act.

7 (2) The department ~~of institutions~~ shall keep a record
 8 of the board's acts and decisions available to the public.
 9 However, all social records, including the ~~pre-sentence~~
 10 presentence report, the ~~pre-parole~~ preparole report, and the
 11 supervision history obtained in the discharge of official
 12 duty by the department, shall be confidential and shall not
 13 be disclosed directly or indirectly to anyone other than the
 14 members of the board or a judge. The board or a court ~~may~~ in
 15 its discretion, when the best ~~interest~~ interests or welfare
 16 of a particular defendant or prisoner makes such action
 17 desirable or helpful, permit the inspection of the report or
 18 any parts thereof by the prisoner or his attorney."

19 Section 60. Section 95-3214, R.C.M. 1947, is amended
 20 to read as follows:

21 "95-3214. Parole authority and procedure. (1) The
 22 subject to the following restrictions, the board shall
 23 release on parole, by appropriate order, any person confined
 24 in the Montana state prison, except persons under sentence
 25 of death, when in its opinion there is reasonable

1 probability that the prisoner can be released without
2 detriment to himself or to the community, ~~provided:~~

3 (a) ~~That no~~ No convict serving a time sentence shall
4 may be paroled until he has served at least one-quarter
5 ~~(1/4)~~ of his full term, less the good time allowances ~~off,~~
6 as allowance provided for in section 80-1905, or 12 1/2
7 years upon his term, whichever is less, except that no ~~No~~
8 convict designated a persistent felony offender under
9 section 95-2206.5 may be paroled until he has served at
10 least one-third ~~(1/3)~~ of his full term, less the good time
11 allowances ~~off,~~ as allowance provided for in section
12 80-1905, or 17 1/2 years upon his term, whichever is less. A
13 first offender serving a time sentence may be paroled after
14 he has served, upon his term of sentence, twelve and
15 one-half (12 1/2) years. A persistent felony offender as
16 defined in section 95-2206.5 may be paroled after he has
17 served, upon his term of sentence, seventeen and one-half
18 (17 1/2) years.

19 (b) No convict serving a life sentence shall may be
20 paroled until he has served ~~thirty~~ (30) years, less the good
21 time allowances ~~off,~~ as allowance provided for in section
22 80-1905.

23 (2) A parole shall be ordered only for the best
24 interests of society and not as an award of clemency or a
25 reduction of sentence or pardon. A prisoner shall be placed

1 on parole only when the board believes that he is able and
2 willing to fulfill the obligations of a law-abiding citizen.

3 ~~(2)(3)~~ (a) Within ~~two~~ (2) months after his admission
4 and at such intervals thereafter as it determines, the board
5 shall consider all pertinent information regarding each
6 prisoner, including the circumstances of his offense, his
7 previous social history and criminal record, his conduct,
8 employment, and attitude in prison, and the reports of ~~and~~
9 any physical and mental examinations which have been made.

10 ~~(3)(b)~~ Before ordering the parole of any prisoner, the
11 board shall interview him. ~~A parole shall be ordered only~~
12 ~~for the best interest of society, not as an award of~~
13 ~~clemency or a reduction of sentence or pardon. A prisoner~~
14 ~~shall be placed on parole only when the board believes that~~
15 ~~he is able and willing to fulfill the obligations of a~~
16 ~~law-abiding citizen.~~

17 (4) (a) Every prisoner while on parole shall remain in
18 the legal custody of the institution from which he was
19 released, but shall be subject to the orders of the board.

20 (b) When an order for parole is issued, it shall
21 recite the conditions thereof.

22 ~~(4)(5)~~ The board may adopt any other rules it
23 considers proper or necessary, with respect to the
24 eligibility of prisoners for parole, ~~and~~ the conduct of
25 parole hearings, ~~or~~ and conditions to be imposed upon

1 parolees. ~~When an order for parole is issued it shall recite~~
2 ~~the conditions thereof."~~

3 Section 61. Section 95-3215, R.C.M. 1947, is amended
4 to read as follows:

5 "95-3215. ~~Conditional release~~ Duration of parole. A
6 prisoner on parole who has served one-fourth ~~(1/4)~~ of his
7 term or terms, less the good time allowances allowance, or a
8 persistent felony offender on parole who has served
9 one-third ~~(1/3)~~ of his term or terms, less the good time
10 allowances allowance, is considered released on parole until
11 the expiration of the maximum term or terms for which he was
12 sentenced, less the good time allowances--as allowance
13 provided for in ~~section~~ 80-1905."

14 Section 62. Section 95-3306, R.C.M. 1947, is amended
15 to read as follows:

16 "95-3306. Supervision on parole. (1) The department
17 shall retain custody of all persons placed on parole and
18 shall supervise the persons during their parole period in
19 accord with the conditions set by the board.

20 (2) The department shall assign personnel to assist
21 persons eligible for parole in preparing a parole plan.
22 Department personnel shall make a report of their efforts
23 and findings to the board prior to its consideration of the
24 case of the eligible person.

25 (3) A copy of the conditions of his parole shall be

1 signed by the parolee and given to him and to his probation
2 and parole officer, who shall report on his progress under
3 the rules of the board.

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

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

11 Section 63. Section 95-3308, R.C.M. 1947, is amended
12 to read as follows:

13 "95-3308. Return of parole violator. (1) [a] At any
14 time during release on parole or conditional release, the
15 department may issue a warrant for the arrest of the
16 released prisoner for ~~violations~~ violation of any of the
17 conditions of release, or a notice to appear to answer to a
18 charge of violation. ~~Such~~ The notice shall be served
19 personally upon the prisoner. The warrant shall authorize
20 all officers named therein to return ~~such~~ the prisoner to
21 the actual custody of the penal institution from which he
22 was released, or to any other suitable detention facility
23 designated by the department.

24 [b] Any probation and parole officer may arrest ~~such~~
25 the prisoner without a warrant, or may deputize any other

1 officer with power to arrest to do so by giving him a
 2 written statement setting forth that the prisoner has, in
 3 the judgment of ~~said the~~ probation and parole officer,
 4 violated the conditions of his release. ~~Such The~~ written
 5 statement delivered with the prisoner by the arresting
 6 officer to the official in charge of the institution from
 7 which the prisoner was released or other place of detention,
 8 shall be sufficient warrant for the detention of the parolee
 9 or conditional releasee. The probation and parole officer,
 10 after making an arrest, shall present to the detaining
 11 authorities a similar statement of the circumstances of
 12 violation.

13 (c) Pending hearing, as ~~hereinafter~~ provided in
 14 subsections (2) and (3), upon any charge of violation, the
 15 prisoner ~~may~~, if circumstances warrant, be incarcerated in
 16 ~~such the~~ institution.

17 (2) (a) After the arrest of ~~said the~~ prisoner, a
 18 hearing shall be held within a reasonable time, unless ~~such~~
 19 ~~the~~ hearing is waived by the parolee, to determine whether
 20 there is probable cause or reasonable grounds to believe
 21 that the arrested parolee has committed acts which would
 22 constitute a violation of parole conditions. An independent
 23 officer, who need not be a judicial officer, must preside
 24 over ~~this the~~ hearing. ~~This The~~ hearing must be conducted
 25 at or reasonably near the place of the alleged parole

1 violation or arrest and as promptly as convenient after
 2 arrest. The parolee must be given notice of ~~this the~~
 3 hearing and must be allowed to appear and speak in his own
 4 behalf and introduce relevant information to the hearings
 5 officer.

6 ~~(3)(b)~~ The hearings officer shall make a summary of
 7 what transpires at the hearing in terms of the responses and
 8 position of the parolee and the substance of the documents
 9 or evidence given in support of parole revocation ~~and of the~~
 10 ~~parolee's position~~. Based on the information given to him,
 11 the hearings officer ~~must shall~~ determine whether there is
 12 probable cause to hold the parolee for the final decision of
 13 the board of pardons as specified provided in section
 14 95-3247 subsection (3).

15 (3) (a) If the hearings officer determines that there
 16 is probable cause to believe that the prisoner has violated
 17 a condition of his parole, the probation and parole officer
 18 shall immediately notify the board and shall submit in
 19 writing a report showing in what manner the prisoner has
 20 violated the conditions of release, ~~and this~~ This report
 21 shall be accompanied by the findings of the hearings
 22 officer.

23 (b) Thereupon, the board shall cause the prisoner to
 24 be promptly brought before it for a hearing on the violation
 25 charged, under such rules ~~and regulations~~ as the board may

1 adopt. If the violation is established, the board may
2 continue or revoke the parole or conditional release, or
3 enter such other order as it may see fit.

4 ~~(4)(c) A prisoner for whose return a warrant has been~~
5 ~~issued shall, after the issuance of such warrant, if it is~~
6 ~~found that the warrant cannot be served, be deemed a~~
7 ~~fugitive or to have fled from justice. If it shall appear~~
8 appears that he has violated the provisions of his release,
9 the board shall determine whether the time from the issuing
10 of ~~such~~ the warrant to the date of his arrest, or any part
11 of it, ~~shall~~ will be counted as time served under the
12 sentence, ~~shall be determined by the board.~~

13 (4) A prisoner for whose return a warrant has been
14 issued shall, after the issuance of the warrant, if it is
15 found that the warrant cannot be served, be considered a
16 fugitive or to have fled from justice."

17 Section 64. Repealer. Sections 16-2615, 16-3403,
18 95-103 through 95-108, 95-2211, and 95-3233, R.C.M. 1947,
19 are repealed.

-End-