SENATE BILL NO. 30 ι INTRODUCED BY _____ HAZELBAKER 1 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND 4 CLARIEV THE LAWS RELATING TO CRIMINAL PROCEDURE." 5 5 SE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 7 Section 1. Section 95-101, R.C.M. 1947, is amended to 8 read as follows: 9 "95-101. Scope Application. These-provisions Ihis 10 title shall govern the procedure in <u>all</u> the courts of 11 Montana in all criminal proceedings except where provision 12 for a different procedure is specifically provided by law." 13 Section 2. There is a new R.C.M. section numbered 14 15 95-302.1 that reads as follows: 95-302-1. Jurisdiction of justices' courts. The 16 justices! courts have criminal jurisdiction as authorized by 17 93-410 and 95-302. 18 Section 3. Section 95-501, R.C.M. 1947, is amended to 19 read as follows: 20 "95-501. Mental disease or defect excluding 21 responsibility. (a)(1) A person is not responsible for 22 criminal conduct if at the time of such conduct as a result 23 of mental disease or defect he is unable either to 24 appreciate the criminality of his conduct or to conform his 25

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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 disease or defect which rendered him unable to appreciate 15 16 the criminality of his conduct or to conform his conduct to 17 the requirements of lawy and the court, after a hearing if a hearing is requested by the attorney prosecuting or the 18 19 defendant, is satisfied that the mental disease or defect 20 was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on 21 the ground of mental disease or defect excluding 22 23 responsibility.

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

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other experty selected by the one proposing the examination;
 the examiner shall be permitted to have reasonable access to
 the defendant for the purpose of the examination.

(3) Upon the trial, any psychiatrist who reported 4 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 gualified 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 scientific propositions stated by another witness. 15

17 (4) When a psychiatrist or other expert who has 18 examined the defendant cestifies concerning his the 19 defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental 20 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: or to conform his conduct to the requirements of laws or to 24 25 have a particular state of mind which is an element of the

offense charged. He The expert may make any explanation Ł reasonably serving to clarify his diagnosis and opinion and 2 3 may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis 4 or opinion." 5 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 except-on-issue-of-mentol-condition. A statement made by--b 10 11 person---subjected---to for the purposes of psychiatric examination or treatment pursuant--to--sections---95-505v 12 13 95-586y--95-588--for--the--purposes--of provided for in this chapter by a person subjected to such examination or 14 treatment shall is not be admissible in evidence against him 15 in any criminal proceeding on any issue other than that of 16 his mental condition. but-it-shell-be It is admissible upon 17 that on the issue of his mental condition, whether or not it 18 would be otherwise deemed be considered a privileged 19 communication: unless such--statement it constitutes an 20 21 admission of quilt of the crime charged." 22 Section 6. Section 95-603, R.C.M. 1947, is amended to

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

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read as follows:

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.

(c)(3) If it appears from the contents of the 6 complaint and the examination of the complainant and other 7 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 td)141 , A warrant of arrest shall:

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

21 f2)(b) Set set forth the nature of the offense;

22 (3)(c) Gemmand command that the person against whom 23 the complaint was made be arrested and brought before the 24 court issuing the warranty 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 nearest--and--most--accessible-judge-in-the-county-where-the 4 5 orrest-was-made; (4)(d) Specify specify the name of the person to be 6 arrested org if his name is unknown, shall designate such 7 the person by any name or description by which he can be 8 identified with reasonable certainty; 9 10 (5)(e) State state the date when issued and the municipality or county where issuedy; and 11 12 totifi Be be signed by the judge of the court with the 13 title of his office. 14 (e)(5) The warrant of arrest may specify the amount of 15 bail. 16 tfild) The warrant shall be directed to all peace 17 officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. 18 19 However, warrants issued for the violation of city 20 ordinances cannot be executed outside the city limits, except as otherwise provided by sections 11-927 and 11-960." 21 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

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1 person that an offense has been committed, made under oath or affirmation before him the judger which: 2 A (1) states that an offense has been committed; (e+12) States states facts sufficient to show probable 4 5 cause for issuance of the warrant+: 6 (b)(3) Particularly particularly describes the place or things to be searchedy; and 7 я (c)(4) Perticularly particularly describes the things to be seized." 9 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, damages 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

investigation of the offense; or
 (b) the stop is reasonably necessary to obtain or
verify the person's identity or an account of the offense.
 (3) A peace officer may stop any person in connection
with an offense that the peace-officer he has probable cause
to believe has been committed if:
 (a) the offense is a felony involving the use or the
attempted use of force against a person or theft, damage, or
destruction of property; and
 (b) the-peace-officer he has reasonable cause to
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 offenser and

17 the stop is reasonably necessary to obtain or verify the

18 person's identity.

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

(a) frisk that the person and take other reasonably
 necessary steps for protection if the peace officer he has
 reasonable cause to suspect that the person is armed and

24 presently dangerous to the--peace--officer him or another

25 person present; and

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1 (b) take possession of any object that the-peace 2 officer <u>he</u> discovers during the course of the frisk if the 3 peace-officer <u>he</u> 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.

(6) A peace officer who has lawfully stopped a parson з under this section shall inform the person, as promptly as 9 nossible under the circumstances and in any case before 10 questioning the person, that he is a peace officers and that 11 the stop is not an arrest but rather a temporary detention 12 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. <u>(1)</u> 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 + 5 the court of-record must assign counsel to defend him. If 6 the offense charged is a misdemeanor and if the defendant 7 desires counsel and is unable to employ counsel, a the court 8 of-record, in the interest of justice, may assign counsel to 9 defend him. (2) Absent a knowing and intelligent waiver, no person 10 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." Section 10. Section 95-1005; R.C.M. 1947; is amended 15 to read as follows: 17 "95-1005. Remuneration of appointed counsel. (1) 18 19 Whenevery in a criminal action-or proceedingy an attorney at taw represents or defends any person by order of the courty 20 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 state supreme court certifies to be a reasonable 24 25 compensation therefor and shall be reimbursed for reasonable

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	contr incurred in the existent exceeding	1	<u>city</u> judge before whom the offender is to appear, and the
1	costs incurred in the criminal proceeding.		
2	121 Suchcostsshallbe The expense of implementing	2	justice of the peace or police <u>city</u> judge shall give a
3	<u>subsection [1] is</u> chargeable to the county in which the	3	receipt to the police <u>peace</u> officer for the bail delivered."
4	proceeding arose, except that:	4	Section 12. Section 95-1118, R.C.N. 1947, is amended
5	(a) in proceedings solely involving the violation of a	5	to read as follows:
6	city ordinance or state statute prosecuted in a municipaly	6	<pre>"95-1118. Conditions Form of conditions of bail.</pre>
7	or city o r police court <u>e</u> wherein-costs-shall-be <u>the expense</u>	7	<pre>fa}(1) If a person is admitted to bail before conviction,</pre>
8	is chargeable to the city or town in which the proceeding	8	the conditions of bail bond shall be <u>r</u>
9	arose vi and	9	<u>(a)</u> that he will appear to answer in the court having
10	(b) inarrests-in-criminal-proceedings when there has	10	jurisdiction on a day certain and thereafter as ordered by
11	<u>been an arrest</u> by agents of the department of fish and game	11	the court until discharged on final order of the court and
12	andarrestsby or agents of the department of justice, the	12	<u>will</u> not depart <u>from</u> this state without leave y; and
13	costs-tincluding-attorneys*-fees-af-attorneysappointed by	13	(b) subject-to any other conditions as that the court
14	thecourtforthe-defendant; expense must be borne by the	14	may reasonably prescribe to assure his appearance when
15	state agency causing the arrest."	15	required.
16	Section 11. Section 95-1104, R.C.M. 1947, is amended	16	<pre>tb)(2) If the defendant is admitted to bail after</pre>
17	to read as follows:	17	conviction, the conditions of bail bond shall be that:
18	95-1104. Settingandaccepting-bail-under-a-warrant	18	<pre>(1)(a) He he will duly prosecute his appeal;</pre>
19	of-arrest Bail_set_in_warrantacceptance_by_peace	19	(2)(b) He he will appear at such time and place as the
20	officer. A peace officer may accept cash bail in behalf of a	20	court may direct;
21	judge where <u>whenever</u> the warrant of arrest specifies the	21	(3)[c] He he will not depart <u>from</u> this state without
22	amount of bail. In the event the <u>Whenever</u> a peace officer	22	leave of the court; and
23	accepts bail, he shall give a signed receipt to the offender	23	<pre>{4+)(d) If if the judgment is affirmed or the cause</pre>
24	setting forth the bail received. The peace officer shall	24	reversed and remanded for a new trial, he will forthwith
25	then deliver the bail to the justice of the peace or police	25	surrender to the officer from whose custody he was bailed. n

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Z to read as follows: *95-1119. Bail on a new trial. If the judgment of 3 conviction is reversed and the cause remanded for a new 4 trial, the trial court may order that the bail stand pending 5 such trialy or substitute, reduce, or increase bail." 5 Section 14. Section 95-1120, R.C.M. 1947, is amended 7 8 to read as follows: 9 "95-1120. Persons prohibited from furnishing bail security. No attorney et-lew and no official authorized to 10 admit another to bail shall acting in an official or 11 professional capacity may act as surety or furnish bail." 12 Section 15. Section 95-1121, R.C.N. 1947, is amended 13 to read as follows: 14 15 "95-1121. Sureties-for--ouaranteed Guaranteed arrest bond certificates--filing-of-undertaking--guaranteed-arrest 16 17 bond-certificate. fat(1) Any A domestic or foreign surety company which has qualified to transact surety business in 18 this state may in any yeary become surety in an amount not 19 to--exceed--one--nundred--dollars exceeding (\$100+80) with 20 respect to any guranteed guaranteed arrest bond certificates 21 22 issued in such year by an automobile club or association or by an insurance company authorized to write automobile 23 liability insurance within this state, by filing with the 24 commissioner of insurance an undertaking thus to become

Section 13. Section 95-1119, R.C.M. 1947, is amended

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1 surety.

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

5 +1+(a) The the name and address of the automobile elub or clubs, automobile association associations, or insurance 6 7 company--or companiesy-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 <u>t2)(b)</u> The the ungualified obligation of the surety 12 company to pay the fine or forfeiture in an amount not to 13 exceed-one-hundred-dollars exceeding (\$100+00) of any person who, after posting a guaranteed arrest bond certificate with 14 respect to which the surety company has undertaken to be 15 surety, fails to make the appearance to quarantee which the 16 17 guaranteed arrest bond certificate was posted.

(c)(3) The term "quaranteed arrest bond certificater" 18 means any printed card or other certificate which: 19 20 <u>(a) is</u> issued by an automobile cluby or association or insurance companyy to any of its members or insuredsy: and 21

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

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company authorized to transact both automobile liability
 insurance and surety business in the state of Montanavi
 (i) guarantee the appearance of the person whose

4 signature appears on the card or certificate: and

<u>fiii</u> that will, in the event of the failure of such
<u>the</u> person to appear in court at the time of trial, pay any
fine or forfeiture imposed on such the person in an amount
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 quaranteed arrest bond certificate with respect to which a surety 14 15 company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to 16 17 transact both automobile liability insurance and surety 18 business within this statey as provided in section 95-1121y 19 hereofy shally 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) as a bail bond to guarantee the appearance of such the 22 23 persony in any court, including municipal courts, in this 24 state, at such time as may be required by the court, when such the person is was arrested for violation of any a motor 25

vehicle law of this state or ordinance of any a municipality . 2 in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date З of expiration shown on such the guaranteed arrest bond 4 certificate. so A guaranteed arrest bond certificate posted 5 as a bail bond in any a court in this state shall--be is -6 subject to the same forfeiture and enforcement provisions 7 я with-respect-to as bail bonds posted in criminal cases as 9 provided--by-law, and that-any-such a guaranteed arrest bond certificate posted as a bail bond in any a municipal court 10 11 in this state shall-be is subject to the forfeiture and 12 enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted." 13 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-esk--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. (a)(1) The grand 20 jury may at all times ask the advice of the court or the 21 judge thereof, or the attorney generals or of the county attorney. Unless such advice is asked, the judge of the 22 court shall not be present during the sessions of the grand 23

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

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1 attorney general may at all times appear before the grand 2 jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may 3 interrogate witnesses before the grand jury whenever he 4 5 thinks it necessary. When a charge against or involving the 5 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 county attorney, or deputy county attorney, or all or any 9 10 one or more of themy shall not be allowed to be present in 11 an official capacity before such the grand jury when such 12 the charge is being investigatedy, in-an-official-capacity but-only-as-a-witnessy-and-he They or he shall only be 13 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, wnose-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 subpoend 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

witnesses before the grand jury. The compensation for the 1 2 services of such the interpreter constitutes a charge against the countyy and shall be fixed by the grand juryy in 3 an amount to be approved by the court, and It shall be paid 4 out of the county treasury on a warrant of the county 5 6 auditor upon an order of the judge of the district court. 7 (c)(5) Transcript--of--Testimony+(1)(a) The grand jury R may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a 9 recording device, but the record so made shall include the 10 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 <u>(c)</u> The stenographic reporter shall certify and file 20 with the clark 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

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makes an order extending the time. The clerk of the district court shall deliver the original of the transcript so filed with him to the county attorney immediately upon his receipt thereof, shall retain one (1) copy for use only by judges in proceedings relating to the indictment or--accusation, and shall deliver a copy of such the transcript to each such 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 courty, for The subpoend may be directed to witnesses in the 15 statew 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.N. 1947, is amended 21 to read as follows:

22 **95-1408. Reception of evidence. <u>faf(1)</u> 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

documentary evidence, or the deposition of a witness in the 1 2 cases mentioned in section 95-1802. 3 fbf(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence 4 submitted to ity. and when If it has reason to believe other 5 6 evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that 7 purpose may require the county attorney to issue process for 8 witnesses. 9 10 fel(3) The grand jury shall find an indictment when all the evidence before ity taken together, if unexplained 11 or uncontradicted, wouldy in its judgmenty warrant a 12 conviction by a trial jury." 13 Section 20. Section 95-1502, R.C.M. 1947, is amended 14 15 to read as follows: "95-1502. Commencement of prosecutions. to)[1] All 16 17 prosecutions of offenses triable in the district courts shall be by indictment or information except-as-otherwise 18 19 provided-by-chepter-55y-Title-94y-Ry-Ex-Ma-1947. 20 fb1(2) All other prosecutions of offenses may be by 21 complaint." Section 21. Section 95~1504, R.C.N. 1947, is amended 22

24 "95-1504. Joinder and discharge of offenses and
 25 defendants. <u>tat11</u> An indictment, information, <u>or</u> complaint

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to read as follows:

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1 or-accusation may charge two f2; or more different offenses connected together in their commission, or different 2 statements of the same offense, or two f2; or more different 3 4 offenses of the same class of--crimes--of--offenses, under 5 separate countsy. and -- if If two f2; or more indictments, informations. or complaints or-accusations are filed in such 6 7 cases in the same court, the court may order them to be consolidated. Allegations made in one count may be 8 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 convicted of any number of the offenses chargedys and-each 13 Each offense of which the defendant is convicted must be 14 stated in the verdict or the finding of the court+ 15

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

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tbt[3] Two t2t or more defendants may be charged in

the same indictment or information if they are alleged to 1 2 have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be 3 charged in one (1) or more counts together or separately. 4 5 and all of the defendants need not be charged in each count. 6 f(r) If it appears that a defendant or the state is 7 prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate 8 9 charges or defendants for trials the court may order separate trials, grant a severance of defendants, or provide 10 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 informationy 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 closedy 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 M95-1506. Prior-conviction Procedural requirements ---

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1 cersistent 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 or his attorney before the entry of a plea of guilty by the 6 7 accusedy or before the case is called for trial upon a plea 8 of not quilty.

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

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

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

fc+131 If the accused is convicted upon the felony 20 charge, the notice, together with proper proof of timely 21 22 service, shall be filed with the court before the time fixed for sentence sentencing. The court shall then fix a time for 23 hearing with at least three-f3; days! notice to the accused. 24 25 td)[4] The hearing shall be held before the court

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alone. If the court finds any of the allegations of prior 1 conviction true, the accused shall be sentenced under the provisions of section-94-4713 95-1507 and 95-2206.5." З Section 23. Section 95-1507, R.C.M. 1947, is amended 4

to read as follows:

"95-1507. Sentence Sentencing of imprisonment---for 6 persistent felony offender. (1) A persistent felony 7 offender is an offender who has been previously been 8 convicted of a felony and the-present-offense-is who is 9 presently being sentenced for a second felony committed on a 10 different occasion than the first. An offender is considered 11 to have been previously convicted of a felony if: 12 t2)--*-persistent-felony-offender-shall--be--imprisoned 13 in--the--state--prison--for-a-term-of-not-less-than-five-(5) 14

years-nor-more-than-one-hundred-(100)-years-provising* 15

(a) the previous felony conviction was for an offense 16 committed in this state or any other jurisdiction for which 17 a sentence to a term of imprisonment in excess of one--(1) 18 year could have been imposed; and 19 (b) less than five-(5) years have elapsed between the 20

commission of the present offense and eithery (+) the 21 previous felony conviction or fiil the offenders-released 22 offender's release on parale or otherwise from a prison or 23 other commitment imposed as a result of the previous falony 24 25 conviction; and

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1	{c}the-offender-was-more-than-twenty-one{Zł}years
2	old-at-the-time-of-the-commission-of-the-new-offensem
3	{3}[<u>c]</u>
4	considered-for-the-purpose-of-sentencing-under-thissection
5	if the offender has <u>not</u> been pardoned on the grounds ground
5	of innocence y-or-if and the conviction had <u>has not</u> been set
7	aside in any-post-conviction a postconviction hearing.
8	12) 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 <u>provided</u>
15	for in 95-1701 and 95-1702 shall be made before the plea is
15	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	<pre>#95-1706. Effect of determination. (1) If a motion is</pre>
21	determined adversely to the defendant ${f 1}$ he shall plead if the
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 deposited instead of bail must-be refunded to him. However, 2 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 before judgment that a mistake has been made in charging the 6 proper offense, it the court may also order that the 7 8 defendant be held in custody or that his bail be continued 9 for a specified time pending the filing of a new complaint, indictments or information." 10 11 Section 26. Section 95-1707, R.C.N. 1947, is amended 12 to read as follows: 13 "95-1707. Transfer of trial. If the court determines 14 that the a motion to dismissy based upon the grounds of lack 15 of jurisdiction or improper place of trial \mathbf{v} is well founded. 16 it may, instead of <u>ordering</u> 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. (a) (1) The defendant or the prosecution may move the court in writing for a 22 substitution of the judge on the ground that he the movant 23

24 cannot have a fair and impartial hearing or trial before

25 said the judge. The motion shall be made at least fifteen

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f157 days prior to the trial of the case, or any retrial
 thereof after appeal, except for good cause shown.

12) Upon the filing of such-a the motion: the judge 3 against whom the motion is filed shall be without authority 4 5 to act further in the criminal action, motion, or proceeding, but-the-provisions-of-this-section-do-not-apply 6 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 court, nor-to and the power of calling in another judge to 10 11 sit and act in such the criminal action or proceedings. 12 providing-thet-no No judge shall may so arrange the calendar as to defeat the purposes of this section. 13

14 <u>(3)</u> Not No more than one <u>fit</u> judge can <u>may</u> be 15 disqualified in the criminal action or proceeding, at the 16 instance of the prosecution and not <u>no</u> more than one fit 17 judge at the instance of the defendant or defendants.

18 <u>(4)</u> if--either <u>A</u> party in-any-matter-above-mentioned shall-file-the <u>who files a</u> motion as--herein--provided--such 20 <u>party under_subsection_(1)</u> 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.

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ı	subsection(a) <u>subsections [1] through [5]</u> any a defendant
2	may move at any time for <u>a</u> substitution of <u>the</u> 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 formerprosecutionandmultiple
9	multiple charges and former prosecutions. (1) Befinitions-of
10	terms∓ (a) The term "same transaction" includes conduct
11	consisting of:
12	(i) a series of acts or omissions <u>which are</u> motivated
13	by a purpose to accomplish a criminal objective , and <u>which</u>
14	are necessary or incidental to the accomplishment of that
15	objective; or
16	(ii) a series of acts or omissions <u>which are</u> 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 Mincluded 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

24 (ii) it consists of an attempt to commit the offense

the offense charged; or

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25 charged or to commit an offense otherwise included therein;

(b)(6) In addition to the provision provisions of

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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--offensew 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

(b) one offense consists only of a conspiracy or other
 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
13 prohibit a designated kind of conduct generally and the
19 other to prohibit a specific instance of such conduct; or

(e) the offense is defined to prohibit a continuing
course of conduct and the defendant's course of conduct was
interrupted, and unless the law provides that the specific
periods of such conduct constitute separate offenses.

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

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1 the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of 2 3 arrest and were consummated prior to the original charges 4 and provided if the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the 5 same transaction as a former prosecution is barred by such А 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 inclusive offense that was charged. 15 16 (b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor chargey or after 17 an information had been filed or an indictment found on a 18

19 felony charge, by a final order of judgment for the 20 defendanty 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

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1 resulted in:

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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.

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

13 (i) the <u>The</u> defendant consents to the termination or
 19 waives his right to object to the termination termi

20 (ii) the <u>The</u> 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 which25 would make any judgment entered upon a verdict reversible as

a matter of law; or 1 (C) prejudicial conducty in or outside the courtroomy 2 makes it impossible to proceed with the trial without 3 manifest injustice to either the defendant or the state; or 4 (D) the jury is unable to agree upon a versict; or 5 (E) false statements of a juror on voir dire prevent a 5 fair trial. 7 8 (4) Former-prosecution-in-another-jurisdiction--when-a bars When conduct constitutes an offense within the 9 10 concurrent jurisdiction of this state and of the United 11 States or another state or of two courts of separate, and/or overlapping, or concurrent jurisdiction in this state, a 12 prosecution in any such other jurisdiction is a bar to a 13 subsequent prosecution in this state under the following 14 15 circumstances: (a) The first prosecution resulted in an acquittal or 16 17 in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of 18 19 the same transaction. 20 (b) The former prosecution was terminated, after the 21 complaint mes had been filed on a misdemeanor charges 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

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orders or judgment necessarily required a determination
 inconsistent with a fact which must be established for
 conviction of the offense of for which the defendant is
 subsequently prosecuted.

5 (5) Former---prosecution----before----court---lacking 6 jurisdiction-or-when-fraudulently-procured-by-the-defendantw 7 A prosecution is not a bar within the meaning of subsections 8 (3) and (4) under any <u>one_or_more</u> of the following 9 circumstances:

(a) the <u>The</u> former prosecution was before a court
 which lacked jurisdiction over the defendant or the
 offensets or

(b) the <u>The</u> former prosecution was procured by the
defendant without the knowledge of the proper prosecuting
officer or with the purpose of avoiding the sentence which
might otherwise be imposed to or

(c) the <u>The</u> former prosecution resulted in a jud;ment
 of conviction which was held invalid in any-post-conviction
 a postconviction hearing."

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

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

25 to)--bist-of-witnesses+

L (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 arraignmenty a list of the witnesses intended--to--be--called--by the 4 prosecution intends to call. The prosecution may, any time 5 after arraignment, add to the list the names of any ń 7 additional witnessesy upon a showing of good cause. The list 8 shall include the names and addresses of the witnesses. 9 t21--The--reguirement--of--subsection--taitliv--of-this 10 sections-shall Ihis subsection does not apply to rebuttal 11 witnesses. 12 tbt--Subpoends--may--be--used--as-a-discovery-device-as 13 provided-for-under-section-95-1801(d)+ 14 tel[2] (a) On motion of any party within a reasonable time before trials all parties each party shall produce at a 15 16 reasonable time and place designated by the court all 17 documents, papers, or things which each-party it intends to introduce in evidence. Thereupon-any Each party shall, in 18 19 the presence of a person designated by the court, be 20 permitted to inspect or copy any such documents, papers, or things. The order shall specify the time, place_ and _manner 21 of making the inspection and of taking the copies or 22 photographs and may prescribe such terms and conditions as 23 24 are just. If the evidence relates to scientific tests or

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experiments, the opposing party shall, if practicable, be

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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 rules 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 ruley unless good cause is shown 13 for failure to comply. In the latter case the opposing party shall--be is entitled to a recess or a continuation 14 15 continuance during which it may inspect or copy the evidence in the manner provided for above in this subsection (2). 16

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 his plea of not quilty or within ten-(10) days thereafter or 20 21 at such later time as the court may for good cause permit, a 22 statement of intention to interpose the defense of insenity 23 mental disease or defect, self-defense, or alibi.

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

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

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

(2) If said the certificate recommends that the 3 witness be taken into immediate custody and delivered to an 4 officer of this state to assure his attendance in this 5 state, such it is prima facie proof of the desirability of 6 such custody and delivery and the judge may direct that such 7 the witness be forthwith brought before himt immediately. 8 9 and If the judge being is satisfied of as to the desirability of such custody and delivery, for-which-such 10 determination-said-certificate-shall-be-prima--facie--proofy 11 he may order that said the witness be forthwith immediately 12 taken into custody and delivered to an officer of this 13 statey, which The order shall-be is sufficient authority to 14 such for the officer to take such the witness into custody 15 and hold him unless and until he may-be is released by bail, 16 recognizance, or order of the judge issuing the certificate. 17 (3) If--the Whenever a witness is summoned to attend 13 and testify in this state, he shall be tendered the sum of 19 ten--cents-(10g) cents a mile for each mile and five-dollars 20 + **5**- **6**+ **6**+ **6**+ **6**+ **5**+ **6**+ **6**+ **7**+ **8**ΖŁ attend as a witness, provided-further-that-in-those-cases 22 in-which If the state wherein the witness is found has by 23 statutory enactment required that the summoned witness be 24 paid an amount or-ramounts in excess of the amount 25

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ì	hereinbeforeinthisparagraphprovided specified in the
2	preceding sentence, then-sold the witness may be tendered
3	said <u>the</u> amount or-amounts-so required by said <u>that</u> state to
4	be-tendered-though-the-said-amount-or-amounts-so-required-to
5	betenderedareinexcessofthesaid-amounts-in-this
6	poragraph~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 <u>for</u> a longer period of time than
10	the period mentioned in the certificater unless otherwise
11	ordered by the court.
12	151 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. (0)(1) The clerk of court
20	shall make available to the parties a list of prospective
21	jurors with their addresses when <u>the names have been</u> drawn.
22	(b)[2] (1)[a] The qualifications of jurors , and w ho
23	will-beexemptedy exemptions from jury duty are found
24	prescribed in sections 93-1301 through 93-1307y-of-the-Civil
25	Eodev-which-by-reference-are-made-a-part-of-this-code.

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1 (2)(b) An exemption from service on a jury is not a 2 cause of challenger 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 reasonst or for any other reason which
 14 the court determines:

(i) Consenguinity consenguinity or relationship to the
defendant or to the person who is alleged to be injured by
the offense chargedy or on whose complaint the prosecution
was institutedy; or-to-the-defendanty

(ii) Standing standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or debtor and creditor with, or being a member of the family or in the employment of, the defendant, or of the person who is alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or -in-his-employment; (iii) Being being a party adverse to the defendant in a
 civil actiony or having complained against or been accused
 by him in a criminal prosecutiony:

4 (iv) Heving having served on the grand jury which found 5 the indictmenty 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 informationy;

8 {v} Having having served on a trial jury which has
9 tried another person for the offense chargedw;

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

(vii) Having having served as a juror in a civil action
brought against the defendant for the act charged as an
offensew:

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 guiltyt: in which case he must neither be permitted nor
21 compelled to serve as a juror=i

22 (ix) Having having a belief that the punishment fixed

23 by law is too severe for the offense chargedwi

24 (x) For-the-existence-of having a state of mind on-the

25 part-of-the-juror in reference to the cases or to either of

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

tet[5] All challenges must be interposed before the 4 jury is sworn, unless the cause of challenge be is 5 discovered after the jury is sworn and before the 6 introduction of any evidence, when in which case the court. 7 in its discretion: may allow the challenge to be interposed. 8 +f+(6) Each defendant shall be allowed eight t8+ 9 peremptory challenges in capital cases, six tot in all other 10 cases tried in the district court before a twelve-(12) 11 person <u>12-person</u> juryy-and-three-(3)-in-all-cases--tried--in 12 justice--of-the-peace-or-police-courts. Howevery-there Ihere 13 may not be additional challenges for separate counts charged 14 in the indictment or information. If the indictment or 15 information charges a capital offensey as well as lesser 16 offenses in separate counts, the maximum number of 17 challenges shall-be is eight to. The state shall be allowed 18 the same number of peremptory challenges as all of the 19 defendants. In a civil--or criminal case tried in the 20 district court before a six-(6)-person six-person jury, the 21 state and all the defendants shall be allowed three (3) 22 peremptory challenges each. When the partners in a criminal 23 case in the district court agree upon a jury consisting of a 24 number of persons other than 6 or 12, they shall also agree 25

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1 in_writing upon the number of peremptory_challenges_to_be
2 allowed.

tg)(7) After the jury is impaneled and sworn, the 3 court may direct the-selection-of that one or more alternate 4 5 jurorsy be selected in the same manner as principal jurorsy. who The alternate jurges shall take the same oath as the 6 principal jurors. Each party shall have one additional 7 peremptory challenge for each alternate juror. Alternate 8 jurors in the order in which they are called shall replace 9 10 jurors who, prior to the time the jury arrives at its vedict 11 yerdict, 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 the jury is considering its verdict shall be regulated by 15 16 instructions of the trial court. An alternate juror who does 17 not replace a principal juror shall be discharged after the jury arrives at its verdict. 18

19 (h)(18) The jury shall return a general verdict to each
 20 offense charged.

21 (i)(9) Wheny 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 Jefendant, dismiss the action and discharge the defendant.

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

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

⁵ "95-1915. Verdict. fa)[1] Return. The verdict shall
<u>must</u> be unanimous in all criminal actions. Such <u>The</u> verdict
7 shall be signed by the foreman and returned by the jury to
8 the judge in open court.

9 (b)121 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) Eonviction-of-a-tesser-Affenser The defendant 17 may be found guilty of an offense necessarily included in 18 the offense chargedy 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-degreesy-the
 22 juryy-if-they-convict-the-defendanty-must-find-the-degree-of
 23 the-crime-of-which-he-is-quiltyw

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

court's own motion. If upon the poll there is not the 1 required concurrences the jury may be directed to retir- for 2 further deliberations or may be discharged." 3 Section 33. Section 95+2004, R.C.M. 1947, is amended 4 to read as follows: 5 6 "95-2004. Irial in justices! and police city 7 courts. tat(1) Method of Friat trial: 8 fl+(a) The defendant is entitled to a jury of six to 9 qualified persons, but may-consent-to-a-lesser-number the 10 parties may agree to a number less that six. (2)(b) A trial by jury may be waived by the consent of 11 12 both parties expressed in open court and entered in the docket. 13 (f3)(c) Questions of law shall be decided by the court 14 and questions of fact by the jury except that, when a jury 15 trial is waived, then the court shall determine both 16 17 questions of law and guestions of fact. (b)(2) Plea of Guilty Guilty. Before or during trials 18 19 a plea of quilty may be accepted when: tty(a) The the uefendant enters a plea of guilty in 20 21 open courty; and (2)(b) The the court has informed the defendant of the 22 23 consequences of his plea and of the maximum penalty provided 24 by law which may be imposed upon acceptance of such ples. 25 (c)(3) Presence of Befendant defendant. The Whenever

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the offense charged carries a penalty of a fine only: the trial may be had in the absence of the defendant; but: if his presence is necessary for any purpose; the court may require the personal attendance of the defendant at the trial.

6 (d)[4] Time to Prepare prepare for Frial 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.N. 1947, is amended
10 to read as follows:

11 *95-2005. Formation of trial jury. tot--Number--of 12 Jurorsy-X-iury-in-justice-or-police-court-shall--consist--of 13 six--f6}-personsy-but-the-parties-may-agree-to-a-number-less than-six-t6)+tb)(1) Formation-of-Trial--Jurys--The At_the 14 15 time of preparing the district court jury list, the county 15 jury commissiony-at-the-time-of-preparing-the-district-court 17 iury-listy shall prepare a jury list for each justice justice's and police city court within the county. Each list 18 shall consist of residents of the appropriate county, city. 19 or town. Such-fist Ine lists shall be selected in any 20 reasonable manner which shall-ensure ensures fairness, and 21 22 it each shall include a number of names sufficient to meet the annual jury requirements of the respective court. 23 Additional lists may be prepared if required. The lists 24 shall be filed in the office of the clerk of the district 25

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1 court and the Ine 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 for such county, citys or town. 4 5 (2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the 6 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 attorneys or the prosecuting attorney if the court believes 12 13 such examination to be improper. 14 [4] Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may 15 be for any cause enumerated in section 95-1909(d)-(2) (411b) 16 17 of-this-code. Each defendant shall be allowed three (3) peremptory challenges, and the state shall be allowed the 18 19 same number of peremptory challenges as all of the 20 defendants." 21 Section 35. Section 95-2006, R.C.N. 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 enterv it or

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

3 (b)12) Several-defendants: When several defendants are 4 tried togethery-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 agreey: 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 jury shall be polled at the request of any party or upon the li court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire 13 for further deliberations or may be discharged.

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

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

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1	after the <u>rendering of the</u> verdict or judgment is-~rendered .
د	Ine sentance must be entered in the minutes of the court as
З	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 offineor-imprisonment-or-bothy-as-the-case-may
7	bea-The-court-may-suspend-the-execution-of-thesentenceup
8	tothe-maximum-sentence-allowed-for-the-particular-offense.
9	Thecourtmayimposeenyreasonableconditionsor
10	restrictionsonthesentencewhich-it-deems-necessary <u>as</u>
11	providedin95-2206+95-2206+1_through95-2236+4+and
12	<u>95-2207</u> . 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	<pre>(d)(4) The determination and imposition of sentence</pre>
16	shall-be are the exclusive duty of the court."
17	Section 37. Section 95-2009, R.C.N. 1947, is amended
13	to read as follows:
19	"95-2009, Appeal, [a][1] All cases on appeal from
20	justices" or police <u>city</u> courts must be tried anow in the
21	district court and may be tried before a jury of six (6)
22	which-may-be-drawn-from-either-the-regular-samel-sr-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

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I ten-days-(10) days after judgment.

2 (c)131 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 justice of the peace. (1) The defendant or the prosecution 10 11 may move the court in writing for the disgualification of a justice, magistrate, or justice of the peace on the ground 12 13 that he the movant cannot have a fair and impartial hearing 14 or trial before the instice, magistrate, or justice of the peace. The motion shall be made at least fifteen-(15) days 15 prior to the trial of the case, or any retrial thereof after 16 17 appeal, except for good cause shown.

18 (2) Upon the filing of such-a the motion, the justice, magistrater or justice of the peace against whom the motion 19 20 is filed shall be without authority to act further in the 21 criminal action, motion, or proceeding, but-the-provisions of-this-section--do--mot--apply except in regard to the 22 23 arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or 24 25 proceeding to some other court, nor-to and the power of

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1 calling in another justice, magistrate, or justice of the 2 peace to sit and act in such the criminal action or 3 proceedingy, providing-that-no-justicey No magistratey or 4 justice of the peace shall may so arrange the calendar as to defeat the purposes of this section. 5 6 (3) Not No more than one (1)-justicey magistratey or justice of the peace can may be disqualified in the criminal 7 я action or proceeding, at the instance of the prosecution and not no more than one (1)-justice, magistrate, or justice of 9 the peace at the instance of the defendant or defendants. 10 11 14) 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 Ihis section shall - be is
 16 inapplicable to any person in any cause involving a direct
 17 contempt of court.

18 (2)(5) In addition to the provision provisions of subsection--(1)-any subsections (1) through (5). a defendant may move at any time for the disqualification of a justicer magistrater or justice of the peace for causer supported by affidavit. Upon the filing of such the motion: the court shall conduct a hearing and determine the merits of the motion."

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

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1	to read as follows:	1	<pre>Dy findingthedefendant-guilty-of-a-lesser-degree-of-the</pre>
2	<pre>M95-2101. New trial. tat[] Befinition-and-Effects A</pre>	2	crime-chargedy finding the defendant guilty of a lasser
3	new trial is a re-examination <u>reexamination</u> of the issue in	3	included crime or finding the defendant not guilty."
4	the same courty before another juryy after a verdict or	4	Section 40. Section 95-2202, R.€.M. 1947, is am∈nded
5	finding has been rendered <u>.</u> and-the <u>The</u> granting of a new	5	to read as follows:
6	trial places the parties in the same position as if there	ó	#95-2202 . Sentence∵and <u>Rendering</u> judgment <u>end</u>
7	had been no trial.	7	pronouncing sentence. (a)(1) The judgment shall be rendered
8	<pre>(b)(2) MotionforaNewTrial*(1)(a) Following a</pre>	8	in open court.
9	verdict or finding of guilty, the court may grant the	9	(5)[2] If the verdict or finding is not guilty ₁
10	defendant a new trial if required in the interest of	10	judgment shall be rendered immediately and the defendant
11	justice.	11	shall be discharged from custody or from the obligation of
12	(2)<u>(b)</u> The motion for a new trial shall be in writing	12	his bail bond, except as provided in 95-1916.
13	and shall specify the grounds therefor. It shall be filed by	13	<pre>fcf(3) If the verdict or finding is guilty_ sentence</pre>
14	the defendant within thirty-{ 30] days following a verdict or	14	shall be pronounced and judgment rendered within a
15	finding of guilty. Reasonable notice of the motion shall be	15	reasonable time."
16	served upon <u>on</u> the state.	ló	Section 41. Section 95-2206, R.C.M. 1947, is amanded
17	{3}Themotionforanewtrialshall-specify-the	17	to read as follows:
18	grounds-thereforw	18	"95-2206• Sentence• <u>[1]</u> Whenever any <u>a</u> person has been
19	(c) Alternative-AuthorityoftheCourtonHearing	19	found guilty of a crime-or <u>an</u> offense upon a v erdict or a
20	Motion-for-New-Trials On hearing the motion for a new trial,	20	plea of guilty, the court may:
21	if justified by law and the weight of the evidence, the	21	(1)(a) Befer defer imposition of sentence for a period
22	court may:	22	not to-exceed-one exceeding (1) year for any misdemeanort or
23	tail Beny deny the motional	23	for a period not to-exceed-three <u>exceeding</u> (3) years for any
24	2=[[i] Grant g <u>rant</u> a new trial y; or	24	felony. The sentencing judge may impose upon the defendant
25	∃ ≠(iii) Hodify modify or change the verdict or finding	25	any reasonable restrictions or conditions during the period

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of the deferred imposition. Such reasonable restrictions or 1 2 conditions may include: 3 tatii jail base release; 4 (b)(ii) jail time not to-exceed-ninety exceeding (90) 5 days: tet(iii) conditions for probation; 6 7 fd)(iv) restitution; 8 reasonable conditions deemed tet(v) any other considered necessary for rehabilitation or for the 9 protection of society; or 10 11 +f+(vi) any combination of the above+1 (2)(b) Suspend suspend execution of sentence up to the 12 13 maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable 14 15 restrictions during the period of suspended sentence. Such reasonable restrictions may include: 15 17 tet(i) jail base release; +b+(ii) iail time not to-exceed exceeding (90+ days; 18 19 tet(iii) conditions for probation; 20 td (iv) restitution; tet(v) any other reasonable conditions 21 deemed considered necessary for rehabilitation or for the **Z**2 23 protection of society; ff+(vi) any combination of the abover: 24 If-any-restrictions-or--conditions--are--violatedy--any 25

1 etapsed--timey--except--jait+-timey--shatt--not--be-a-credit 2 against-the--sentencey--unless--the--court--shall--otherwise 3 orders 4 (3)(c) Impose impose a fine as provided by law for the 5 offense#: (4)(d) Commit commit the defendant to a correctional 6 institution with or without a fine as provided by law for 7 я the offenser; 9 (5)(e) impose impose any combination of subsections 10 fet (1)(b), tet (1)(c), or-f4t and (1)(d) above. 11 [2] If any restrictions or conditions imposed under 12 subsection (1)(a) or (1)(b) are violated, any elansed 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 sentence provided for in subsection [1] which it deems 17 18 considers necessary to obtain the objective objectives of rehabilitation and the protection of society: 19 tatin prohibit the defendant the right to hold public 20 office; 21 22 te)(ii) prohibit the defendant the right to own or 23 carry a dangerous weapon; 24 fef(iii) prohibit freedom of association; 25 tet(iv) prohibit freedom of movement;

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fef(v) any other limitation reasonably related to the
 objectives of rehabilitation or and the protection of
 society.

4 (7)(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 (6) (3)(a).

141 Any A judge, magistrate, or justice of the peace 8 9 who has suspended the execution of a sentence or deferred 10 the imposition of a sentence of imprisonment under this 11 sectiony or his successory is authorized thereaftery-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 ve 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 lawy or retain such 18 jurisdiction with this his court. Prior to the revocation of 19 an order suspending or deferring the imposition of sentence. the person affected shall be given a hearing." 20

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

23 "95-2206.1. Sentence to death. When <u>Whenever</u> a person
 24 is-convicted-of-an <u>has been found guilty of an offense upon</u>
 25 a_verdict_or_plea of guilty. the court_way. if the offense

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1	is punishable by death or imprisonment, thecourtmay
2	sentence the offender to death or imprisonment."
3	Section 43. Section 95-2206.5, R.C.M. 1947, is amanded
4	to read as follows:
5	*95-2206.5. Judicialdesignation Designation of
6	persistent felony offenders offender for purposes of parole
7	eligibility. (1) Whenanoffenderhasbeenpreviously
8	convicted-of-a-felony-and-the-present-offenseisasecond
9	felony-committed-on-a-different-occasion-than-the-firsty-the
10	<u>The</u> sentencing court shall designate the <u>an</u> offender a
11	persistent felony offender for purposes of eligibility for
12	parole under section 95-3214 v-provided <u>if the offender</u>:
13	(a) theprevious-felony-conviction-was-for-an-offense
14	committed-in-this-state-or-any-other-jurisdiction-forwhich
15	asentencetoa-term-of-imprisonment-in-excess-of-on{l}
16	year-could-have-been-imposed; and <u>is defined as a persistent</u>
17	felony_offender_in_95-1507(1): and
18	(b)less-than-five-(5)-years-have-elapsed-betweenthe
19	commission-of-the-present-offense-and-either+
20	(i)the-previous-felony-convictiony-or
21	{ii}-the-offend-r*s-release-on-parole-or-atherwise-from
22	prisonorethercommitmentimposedashresult-of-the
23	previous-fetony-conviction;-and
24	<u>{c}{b}</u> the-offender was more-than-eighteen-{18} years
25	of age <u>or older</u> at the time of the commission of the present

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1 offense.
2 (2)--A---previous---fetony---conviction--shall--not--be
3 considered-for-the-purposes-of-this-section-if-the--offender
4 has--been--pardoned--on--the-grounds-of-innocencey-or-if-the
5 conviction--had--been--set--aside--in--any---post-conviction
6 hearing*
7 fib(2) A judicial determination of that an offender is

7 (3)(2) A judicial determination of that an offender is
 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."

Section 44. Section 95-2209, R.C.M. 1947, is amended
 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 it in the minutes, stating briefly the offense for 16 which the conviction was had, and the fact of prior 17 convictions, tif anyly, and He must, within five-t5t days, 18 annex together and file the following papersy--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 copy of the minutes of the trial*;

23 (3) The the instructions given or refused and the

24 endorsements thereon*:

25 (4) * a copy of the judgment."

1 Section 45. Section 95-2224, R.C.M. 1947, is amended to read as follows: 2 3 "95-2224. Prisoner-not-agenty-or Penalty for treating prisoner_as involuntary servant. No--prisoner--in--the 4 5 community-under-the-provisions-of-this-act-shall--be--deemed 6 to--be-an-adenty-or-involuntary-servant-of-the-department-or 7 of-the-supervising-agency-white--released--from--confinement 8 pursuant--to--the--terms--of-the-furlough-programs--Abuse-of Q. this-section-shall-be-deemed-official-misconduct-pursuant-to 10 94-7-481y--RetaMa--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 involuntary servant is guilty of official misconduct and is 13 14 punishable as provided in 94-7-401." Section 46. Section 95-2229, R.C.M. 1947, is amended 15 to read as follows: 16 *95-2229. Traffic <u>Disposition of traffic</u> fines 17 18 collected from juvenile--offenders--disposition juveniles. 19 All fines collected by the district courts from children 20 under eighteen-(18) years of age for unlawful operation of 21 motor vehicles resulting--from as the result of traffic 22 summonses issued by the peace officers of the cities, or 23 counties, or by highway patrolmen, together with that 24 portion of the fines which is specified in section 75-7903.

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shall be retained by the county treasurer of the county in

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

3 (=)(1) fines <u>Fines</u> collected as the result of 4 summonses issued by city police <u>peace</u> officers shall be 5 distributed to the city in which the police <u>peace</u> officer is 6 employedy and credited to the city general fundt.

7 (b)(2) fines Eines 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 fundte

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

15 (d)(4) that <u>Ihat</u> portion of the finesy-as-provided-for 16 which is specified in section 75-7903y shall be paid to the 17 state treasurer of Montanay and-by-him-credited who shall 18 <u>credit it</u> to the automobile driver education account in the 19 earmarked revenue fund."

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

22 "95-2403. Scope of appeal <u>by state. (a)[1]</u> Except as
23 authorized by this code <u>title</u>, the state may not appeal in a
24 criminal case.

25 {b}[2] The state may appeal from any court order or

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- 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 t6t(f) suppressing a confession or admission; or
- 9 (7)(g) granting or denying change of venue."
- 10 Section 48. Section 95-2426, R.C.N. 1947, is amended
- 11 to read as follows:
- 12 #95-2426. Betermination-of--appeal Action_reviewing
- 13 <u>court may take</u>. On appeal the reviewing court may:
- 14 (1) Reverse reverse, affirm, or modify the judgment or
- 15 order from which the appeal is taken;

16 {2} Set set aside, affirm or modify any or all of the

- 17 proceedings subsequent to or dependent upon the judgment or
- 18 order from which the appeal is taken;

19 (3) Reduce-the-degree-of reduce the offense of which

20 the appellant was convicted to a lesser included offense;

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

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

24 Section 49. Section 95-2601, R.C.M. 1947, is amended

25 to read as follows:

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1	<pre>#95-2601. Petition-in-the-trial-court <u>Circumstances in</u></pre>
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 <u>that</u> santance
5	was imposed in violation of the constitution or the laws of
6	this state or the Constitution <u>constitution</u> of the United
۲	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 lawy or is otherwise subject to
10	collateral attack y upon any ground of alleged error
11	available under <u>a</u> writ of habeas corpus, writ of coram
12	nobis , or other common-law <u>common_law</u> 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."
15	Section 50. Section 95-2604, R.C.M. 1947, is amended
17	to read as follows:
18	"95-26)4. When m otion <u>petition</u> may be made <u>filad</u>. A
19	m otion <u>petition</u> for such relief may be made <u>filed</u> 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 <u>potition</u> and the files and records of the case
25	conclusively show that the prisoner <u>patitioner</u> is entitled

to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place, grant a prompt hearing thereon, determine the issues and make findings of fact and

conclusions with respect thereto. 6 [2] The court may receive proof by affidavits,

7 depositions, oral testimony_ or other evidence. In its 3 discretion the court may order the petitioner brought before 9 the court for the hearing.

[3] If the court finds in favor of the petitioner, it 10 11 shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such 12 13 supplementary orders as to reassignment, retrial, custody, 14 bails 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 to read as follows: 18

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

23 Section 53. Section 95-2608, R.C.M. 1947, is amended

24 to read as follows:

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

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ı may appeal to the supreme court of Montana from an order z entered on the motion petition. The appeal shall must be taken within six-+6+ months from the entry of the order." 3 4 Section 54. Section 95-2902, R.C.M. 1947, is amended

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 offensey-and but there is reasonable ground-of 10 doubt in--which--of-two-or-more-degrees as to whether he is 11 quilty of a given offense or one or more lesser included 12 offenses, he can may only be convicted of the lowest-of-such 13 degrees--only greatest included offense about which there is

14 no_reasonable_doubt."

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to read as follows:

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

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

23 tb?(2) In a deliberate homicide, knowledge or purpose 24 may be inferred from the fact that the accused committed a 25 homicide and no circumstances or of mitigation, excuser or LC 0040/01

iustification appear." 1

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

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

proceeding to which one or both are parties." 11

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

"95-3012. Testimony of person legally accountable. A 14 15 conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 16 17 section 94-2-106, unless he the testimony is corroborated by other evidence, which in itself, and without the aid of the 18 19 testimony of the one responsible or legally accountable for the same offensey tends to connect the defendant with the 20 commission of the offense; end-the The corroboration is not 21 sufficienty if it merely shows the commission of the 22 23 offensey or the circumstances thereof." Section 58. Section 95-3110, R.C.M. 1947, is amended 24

to read as follows: Z5

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

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

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

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

1 officer to apprehend the person named therein wherever the 2 person may be found in this state and to bring the person 3 before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the 4 5 place where the arrest is made to answer the charge or complaint and affidavit whenever: Whenever 6 7 (a) any a person within this state shall-be is charged on the oath of any a credible person before any the judge or 8

9 magistrate of-this-state with the commission of any a crime in any-other another states and, except in cases arising under section 95-3106, with having fled from justices ory with having been convicted of a crime in that state and having escaped from confinements or having broken the terms of his bail, probation, or paroles; 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:

<u>(i)</u> the commission of the crimer and, except in cases
 arising under section 95-3106, has having fled from
 justicer; or

24 <u>(ii)</u> with having been convicted of a crime in that 25 state and having escaped from bail, probation, or paroles

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1 and-is-believed-to-be-in-this-states-the-judge-or-magistrate Z shall---issue--a--warrant--directed--to--any--peace--officer commanding--him--to--apprehend--the--person--named--thereiny 3 4 wherever--he--may--be--found-in-this-statey-and-to-bring-him before-the-same-or-any-other-judgey-magistrate-or-court--who 5 or--which-may-be-available-in-or-convenient-of-access-to-the 6 7 place-where-the-orrest-may-be--madey--to--answer--charge--or 8 complaint-and-affidavit-and-a (2) A certified copy of the sworn charge or complaint 9 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:

*95-3117. Extension of time of commitment adjournment. 14 15 If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the 16 17 warrant, bond, or undertaking, a judge or magistrate may 13 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 a period not to exceed sixty-(60) days after the date of 22 such the new bond or undertaking." 23

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

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

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

#95-3123. Application for issuance of requisition--by 12 whom-made--contents. Iw(1) When the return to this state of 13 a person charged with a crime in this state is required, the 14 prosecuting attorney shall present to the governor his 15 written application for a requisition for the return of the 16 person chargedy, in--which The application shall state the 17 name of the person so charged, the crime charged against 81 him, the approximate time, place, and circumstances of its 19 commission, and the state in which he is believed to be, 20 including the location of the accused therein at the time 21 the application is made and -certifying It shall certify 22 that, in the opinion of the said prosecuting attorney the 23 ends of justice require the arrest and return of the accused 24 to this state for trial and that the proceeding is not peing 25

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instituted to enforce a private claim.

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

17 <u>HITU(3)</u> The application shall be verified by 18 affidavit, shall-be executed in duplicates and shall-be 19 accompanied by two certified copies of these

20 <u>(a)</u> indictment returnedy: or

21 (5) information and affidavit filedy: or-of-the

22 (c) complaint made to the judge or magistrates stating

23 the offense with which the accused is chargedy; or-of-the

24 (d) judgment of conviction; or

25 (e) of-the sentence.

<u>(4)</u> The prosecuting officer, parole board, warden, or
 sheriff may also attach such further affidevits and other
 documents in duplicate as he shall-deem considers proper to
 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 informationy and affidavity, 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."

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

*\$5-3125- No--fee--to--psid--to--public--officer 15 procuring---surrender <u>Restrictions on compensation for</u> 16 17 assisting return of fugitive. No compensation, feer or reward of any kind can may be paid to ar received by a 18 19 public officer of this stater or other persony for a service rendered in procuring from the governor the demand mentioned 20 21 in section 95-3124; or for the surrender of the fugitiv., 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, K-C-M. 1947, is amended

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1 to read as follows:

Z M95-3129. Nonwaiver by this state. Nothing contained 3 in this act contained-shall may be deemed--to--constitute considered a waiver by this state of its right, power, or 4 5 privilege to try such the demanded person from for a crime committed within this statey or of its right, powery or 6 privilege to regain custody of such the person by 7 8 extradition proceedings or otherwise for the purpose of 9 trial, a sentence, or punishment for any a crime committed 10 within this statey; nor shall may any proceedings had under this act which result inv or fail to result inv extradition 11 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 whatspever."

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

17 "95-3206. Drders, records, report <u>reviewability</u>.
18 <u>confidentiality</u>. (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 <u>(2)</u> 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 duty by the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest interests or welfara of a particular defendant or prisoner makes such action desirable or nelpful, permit the inspection of the report or 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 <u>Subject to the following restrictions, the</u> board shall 12 release on paroley by appropriate ordery 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 may be paroled until he has served at least one-quarter 18 19 (174) of his full term, less the good time allowances-offy 20 es allowance provided for in section 80-1905; or 12.1/2 years upon his term, whichever is less, except-that-no No 21 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 allowances---offy--as allowance provided for in section 25

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1	80-1905 <u>, or 17 1/2 years upon his term, whichever is less</u> . *
2	first-offender-serving-a-time-sentence-may-be-paroledafter
3	hehasservedyuponhistermofsentenceytwelve-and
4	one-half-{ll-l/l}-yearswA-persistentfelonyoffenderes
5	definedinsection95-2206*5may-be-paraled-after-he-has
ò	servedy-upon-his-term-of-sentenceyseventeenandone-half
7	117-1/2)-years .

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

(2) A parole shall be ordered only for the best 12 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 parcle 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 and at such intervals thereafter as it determines, the board 1.1 shall consider all pertinent information regarding each 19 20 prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, 21 employment, and attitude in prison, and the reports of and 22 any physical and mental examinations which have been made. 23 (3) Before ordering the parole of any prisonery the 24 board shall interview him. A-parole-shall--be--ordered--only 25

1 for--the--best--interest--of--societyy--not--as--so-award-of 2 clemency-or-a-reduction-of-sentence-or--pardona--A--prisoner 3 shall--be-blaced-on-parole-only-when-the-board-pelieves-that 4 he-is-able-and-willing--to--fulfill--the--anlightions--af--a 5 law-abiding-citizen. A. (4) (a) Every prisoner while on parole shall remain in 7 the legal custody of the institution from which he was releasedy but shall be subject to the orders of the board. 8 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 parolees. When-an-order-for-parole-is-issued-it-shall-recite 15 the-conditions-thereofy" 16 17 Section o7. 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 (11/4) of his 21 term or terms, less the good time allowances allowance, or a 22 persistent felony offender on parole who has sarved 23 one-third {+++++ of his term or terms, less the good time 24 allowances allowances is considered released on parole until the expiration of the maximum term or terms for which he was 25

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1 sentenced, less <u>the</u> yood time allowances--as <u>allowance</u> 2 provided <u>for</u> in section 80-1905."

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

*95-3306. Supervision on parole. (1) The department
 shall retain custody of all persons placed on parole and
 shall supervise the persons during their parole period in
 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.

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

(5) The probation and parole officer shall keep such
records as the board or department may require. All records
shall be entered in the master file of the individual.ⁿ
Section 69. Section 95-3308. R.C.M. 1947, is amended

1 to read as follows:

#95-330. Return of parole violator. (1) (2) At ony 2 time during release on paroly or conditional releases the 3 department may issue a warrant for the arrest of the 4 released prisoner for violations violation of any of the 5 conditions of releaser or a notice to appear to answer to the 6 charge of violation. Such The notice shall be served 7 personally upon the prisoner. The warrant shall authorize 2 all officers named therein to return such the prisoner to 9 the actual custody of the penal institution from which he 10 was releasedy or to any other suitable detention facility 11 designated by the department. 12

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

1 violation.

2 (c) Pending hearing, as hereinafter provided in 3 <u>subsections (2) and (3)</u>, 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 over this the hearing. This Ine hearing must be conducted 13 14 at or reasonably near the place of the alleged parole 1.5 violation or arrest and as promptly as convenient after 15 arrest. The parolee must be given notice of this the nearing and must be allowed to appear and speak in his own 1.713 behalf and introduce relevant information to the hearings officer. 19

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

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probable cause to hold the parolee for the final decision of
 the board of pardons as specified provided in section
 95-3217 subsection [3].

(3) (a) If the hearings officer determines that there 4 5 is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer 6 . 7 shall immediately notify the board and shall submit in R writing a report showing in what manner the prisoner has violated the conditions of release. and-this This report 9 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 f4)(c) A--prisoner-for-whose-return-a-warrant-has-been issund-shally-after-the-issuance-af-such-warranty-if--it--is 19 26 found--that--the--warrant--cannot--be--servedy--be--deemed-s 21 fugitive-or-to-have-fled-from-justical If (t shail--accear appears that he has violated the provisions of his release, 22 23 the board shall determine whether the time from the issuin-24 of such the warrant to the date of his arresty or any part 25 of ity-shall will be counted as time served under the

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

-End-

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Montana Legislative Council

State Capitol Helena, 59601

LC 0040

1977 Legislature Code Commissioner Bill - Summary

SenateBill 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 provide for future amendments.

Section 6. <u>95-603</u>. 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 clarify and correct apparent error.

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ROBERT PERSON DIRECTOR, RESEARCH



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

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

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

Section 11. <u>95-104</u>. Bail set in warrant - acceptance by peace officer. Changed "police" to "peace" in last sentence consistent terminology.

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

Section 13. <u>95-1119</u>. 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. <u>95-1121</u>. Guaranteed arrest bond certificates. Rewrote subsection (2) (a) to <u>clarify</u>. In subsection (3) (a), added "or" to <u>clarify</u>. In subsection (3) (b), deleted "which ... certificate" as <u>superfluous</u> and added "automobile" to <u>clarify</u>. In subsection (3) (b) (ii), deleted "that" - <u>clarify</u> and <u>apparent</u> <u>error</u>.

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

Section 17. <u>95-1406</u>. Advice and assistance to grand jury - who may be present - stenographer, transcript of testimony. In subsection (2), deleted "of the county" as <u>superfluous</u> and rewrote the subsection to <u>clarify</u>. In subsection (3), added "acquired" to <u>clarify</u>. In subsection (5) (c), deleted two <u>obsolete references</u> to "accusation" complaint, information and indictment are the only current methods for bringing a criminal **action**. Section 18. <u>95-1407</u>. Subpoena of witnesses. Added "foreman of the" to <u>clarify</u> who signs the subpoena. Rewrote the last sentence to <u>clarify</u>, deleting "upon...them" as <u>superfluous</u>.

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

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

Section 21. <u>95-1504</u>. 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. <u>95-1506</u>. Procedural requirements - persistent felony offenders. Changed "prior convicted felon" to "persistent felony offender" - <u>update terminology</u>. Changed reference to 94-4713, which has been <u>repealed</u>, 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 <u>apparently an oversight</u> and including both should <u>avoid challenges as to</u> constitutionality.

Section 23. <u>95-1507</u>. Sentencing of persistent felony offender. Rewrote and reorganized section to separate out definition of persistent felony offender to <u>aid recodification</u> <u>and clarify</u>. (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. <u>95-1709</u>. Substitution of judge. Changed "but...apply" to "except in regard" to <u>clarify</u>. Rewrote subsection (4) to simplify and clarify its application.

Section 28. <u>95-1711</u>. 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 felong 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. <u>95-1803</u>. Discovery, inspection, and notice. Deleted subsection (b), <u>unnecessary and redundant</u>. In subsection (2) (b), changed "the" to "this" to <u>clarify</u> what rule, changed "continuation" to "continuance" - <u>apparent error</u>, and <u>clarified</u> "above". In subsection (3) (a), changed "insanity" to "mental disease or defect" - <u>obsolete terminology</u>. In subsection added "of the witness" to clarify.

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

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

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

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

Section 34. <u>95-2005</u>. 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. <u>95-2006</u>. Verdict. In subsection (1), added "it" to clarify. Reworded subsection (2) to clarify.

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

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

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

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

Section 40. <u>95-2202</u>. Rendering judgment and pronouncing sentence. Qualified subsection (2) to <u>avoid conflict</u> 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. subsection (1)(e), changed "or" to "and" - apparent error. In 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. <u>95-2206.1</u>. Sentence to death. Reworded to <u>aid recodification</u>; this section will be incorporated into 93-2206.

Section 43. <u>95-2206.5</u>. Designation of persistent felong offender for purposes of parole eligibility. Deleted <u>redun-</u> <u>dancies</u> with <u>95-1507</u> and reworded to <u>aid recodification</u>. In subsection (2), <u>clarified</u> "of".

Section 44. <u>95-2209</u>. Entry of judgment. Deleted reference to "judgment roll" to <u>update</u>. 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. <u>95-2229</u>. Disposition of traffic fines collected from juveniles. In the first paragraph, <u>clarified</u> "resulting from" and added "or" to <u>clarify</u>. In subsection (1), changed "police" to "peace" in two places for <u>consistent</u> <u>terminology</u>. Minor rewording of subsections (3) and (4) to <u>clarify</u>.

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. <u>95-2426</u>. Action reviewing court may take. In subsection (3), changed reference to degree of crime to reference to included offense - update terminology. ø

Section 49 through 53. <u>95-2601, 95-2604, 95-2605, 95-2606, 95-2608</u>. 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 <u>obsolete references</u> to degrees of an offense and replace them with references to included offenses. Added "beyond a reasonable doubt" in the first clause to <u>clarify</u>. Deleted "public" and "ground of" as meaningless.

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

Section 56. <u>95-3011</u>. Competency of spouses. Corrected discriminatory phrase "neglect...".

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

Section 58. <u>95-3110</u>. 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. <u>95-3117</u>. Extension of time of commitment adjournment. Added "the" to clarify. Changed "county" to "district court" - <u>apparent error</u>. Changed "but with" to "for" to <u>clarify</u>.

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

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

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

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

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

Section 66. <u>95-3214</u>. Parole authority and procedure. Added "Subject..." to <u>clarify</u>. Rewrote subsection (1)(a) to <u>clarify</u> 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 <u>clarify</u> the reference to the good time allowance provided for in 80-1905. Moved part of former subsection (3) to new subsection (2) to <u>aid recodification and clarify</u>. In subsection (3)(a), changed "and" to "any" - <u>apparent error</u>. Moved part of old subsection (4) to new subsection (5), added "any" to <u>clarify</u> and <u>changed</u> "or" to "and" - <u>apparent error</u>.

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

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

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

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

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

Sections <u>95-103</u> through <u>95-108</u>. Adoption of rules of criminal procedure (formerly <u>95-2801</u> through <u>95-2806</u>) 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.

45th Legislature

Approved by Committee on Judiciary

1	SENATE BILL NC. 30	1	cond
2	INTRODUCED BY HAZELBAKER	2	
3		· 3	dise
4	A BILL POB AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	4	∎anj
5	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."	5	ethe
6		6	
7	BE IT PNACTED BY THE LEGISLATURE OF THE STATE OF BOBTANA:	7	read
8	Section 1. Section 95-101, R.C.H. 1947, is amended to	8	
9	read as follows:	9	repo
10	"95-101. Scope <u>Application</u> . These-provisions <u>This</u>	10	otoi
11	<u>title</u> shall govern the procedure in <u>all</u> the courts of	11	defe
12	Montana in all criminal proceedings except where provision	12	01-1
13	for a different procedure is specifically provided by law."	13	file
14	Section 2. There is a new B.C.B. section numbered	14	time
15	95-302.1 that reads as follows:	15	dise
16	95-302.1. Jurisdiction of justices' courts. The	16	the
17	justices' courts have criminal jurisdiction as authorized by	17	the
18	93-410 and 95-302.	18	hear
19	Section 3. Section 95-501, R.C.M. 1947, is amended to	19	defe
20	read as follows:	20	Vas
21	"95-501. Mental disease or defect excluding	21	∎oti
22	responsibility. <u>{a}[]</u> a person is not responsible for	22	the
23	criminal conduct if at the time of such conduct as a result	23	resp
24	of sental disease or defect he is unable either to	24	
25	appreciate the criminality of his conduct or to conform his	25	the

conduct to the requirements of law.

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

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

"95-507. Determination of irresponsibility on basis of ort --- access-te-defendant-by--psychintrist--ef--his--een ise examination by psychiatrist chosen by state or <u>endant -- form-of emport psychiatric</u> testimony when isoue responsibility is tried upon trial. (1) If the report ed under soction 95-505 finds that the defendant at the e of the criminal conduct charged suffered from a mental ease or defect which rendered him unable to appreciate criminality of his conduct or to conform his conduct to requirements of law, and the court, after a hearing if a ring is requested by the attorney prosecuting or the endant, is satisfied that the mental disease or defect sufficient to exclude responsibility, the court on ion of the defendant shall enter judgment of acquittal on ground of mental disease or defect excluding ponsibility.

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

SECOND READING

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ther experty selected by the one proposing the examination,
 the examiner shall be permitted to have reasonable access to
 the defendant for the purpose of the examination.

ñ. (3) Opon 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 bospital. Both the prosecution and the defense may summon any other qualified 10 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 \mathbf{y} or the general 16 scientific propositions stated by another witness.

17 (4) When a psychiatrist or other expert who has examined the defendant testifies concerning his the 18 defendant's mental condition, he may make a statement as to 19 20 the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of 21 the offense charged, and his cpinion as to the ability of 22 23 the defendant to appreciate the criminality of his conduct, 24 or to confor his conduct to the requirements of law, or to 25 have a particular state of mind which is an element of the SB CC30/02

offense charged. He <u>The expert</u> may make any explanation
 reasonably serving to clarify his diagnosis and opinion and
 may be cross-examined as to any matter bearing on his
 competency or credibility or the validity of his diagnosis
 or opinion."

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

8 "95-509. Statements -- for -- purposes of ldmissibility of 9 statements made during examination or treatment imadmissible 10 except on issue of montal condition. A statement made by -- a person subjected for the purposes of psychiatric 11 12 examination or treatment pursuant -- to -- costions --- 35-535, 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 deceed be considered a privileged 20 communication, unless such-statesont it constitutes an 21 admission of guilt of the crime charged."

Section 6. Section 95-603, B.C.M. 1947, is abended to
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

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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 -fe+(3) If it appears from the contents of the 7 complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe 8 9 that the person against whom the complaint was made has 10 consitted an offense, a warrant shall be issued by the court 11 for the arrest of the person complained against. In the The court, in its discretion of the court or uses the request of 12 the county attorney, may issue a summons instead of a 13 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) Bo be in writing in the name of the state of
 Montana or in the name of a municipality if a violation of a
 municipal ordinance is charged;

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

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1 in-the-came-county-lf-an-arrest-is-mado-in-a--county--other 2 3 percon-shall-bo-takon-without-wanecessary-delay--befere--the 4 Rearest-and--most--accessible-Audgo-in-the-gounty-there-the 5 arrest-was-made; IN THE SAME COUNTY OR THE ADJOINING COUNTY. б IP AN ARREST IS NADE IN A COUNTY OTHER THAN THE OBE IN WHICH 7 THE WARBANT WAS ISSUED THE ARRESTED PERSON SHALL BE TAKEN 8 WITHOUT UNNECESSARY DELAY BEFORE THE NEABEST AND MOST 9 ACCESSIBLE JUDGE IN THE COUNTY WHEBE THE ARREST WAS HADE OF 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 the person by any name or description by which he can be 13 14 identified with reasonable certainty: 15 -{5} (e) State the date when issued and the 16 sunicipality or county where issued; and 17 (6) (f) Be be signed by the judge of the court with the 10 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,

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except as otherwise provided by sestions 11-927 and 11-960."
 Section 7. Section 95-704, F.C.M. 1947, is amended to
 read as follows:

95-704. Grounds for search warrant. Any judge may
issue a search warrant upon the written application of any
person that an offense has been committed, made under oath
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 warrabty;

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

13 (0) (4) Particularly particularly describes the things
 14 to be seized."

15 Section 8. Section 95-719, R.C.E. 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 effense 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 cr verify an account 24 of the person's presence or conduct or to determine whether 25 to arrest the person.

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

4 (a) the pease officer <u>be</u> has reasonable cause to 5 suspect that the person has knowledge of material aid to the 6 investigation of the offense; cr

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 way 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 cr the13 attempted use of force against a person or theft, damage, or

14 destruction of property; and

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

(c) (i) the stop is reasonably necessary to obtain or
verify his the person's identity to determine whether to
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 offensey 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:

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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

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

19 (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.

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

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

25 Section-9---Section 95-1001, B-C-8-- 1947, is-apended-to

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25

1	read-as-follovs:
2	295-1001Righttocoursel <u>fi</u> t ======defemdent
3	broughtbofore-tho-court-must-be-informed-by-the-court-that
4	<u>it-is-bis-right-to-bave-coubsel before-proseedingandmust</u>
5	bo-asked-if-be-desiros-the-aid-of-counsely-The-defendanty-if
6	chargodwith-a-folom7y-must-be-advised-that-seamcel-will-be
7	furniched-atstateorperseifheiswhableteemploy
8	counselIftheoffenseshargedisa-felony-and-if-the
9	defendant-desires-seancel-and-is-anable-te-employ-counsely a
10	the court-of-record-suct-acsigs-coursel-tedefeadhisIf
11	theoffensechargedis-a-bisdeseanor-and-if-the-defendast
12	desires-counsel-and-is-usable-to-employ-soursely a the sourt
13	of-record, in-the-interest-of-justica, may assign counsel-to
14	defeed-his.
15	12}bbcent_a_knowing_and_intelligent_vaiverz_mo-person
16	<u>may_be_imprisoned_for_any_offencer_yhether_glassifiedgo</u> g
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19	prosocutionsincludingprosocutionsforgiolnticksof
20	<u>tunicipal-ordinanges."</u>
21	Section 9. Section 95-1005, R.C.M. 1947, is amended to
22	read as follows:
23	<pre>"95-1005, Remuneration of appointed counsel. <u>(1)</u></pre>
24	Whenever, in a criminal action or proceeding, an attorney at

 $\frac{1}{1}$ represents or defends any person by order of the court

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

7 <u>(2) Such costs shall be The expense of implementing</u> 8 <u>subsection (1) is</u> 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 municipaly
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 arcser; and

15 (b) in-arrests-in-criminal-proceedings when there has 16 <u>been an arrest</u> 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) foos of attorneys appointed by 19 the court for the defendant) expense must be borne by the 20 state agency causing the arrest."

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

23 #95-1104. Setting and accepting bail adder a varrant
 24 of acceptance by prace
 25 officer, A peace officer may accept cash bail in behalf of a

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1 judge where whenewer 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 ħ. setting forth the bail received. The peace officer shall 5 then deliver the bail to the justice of the peace or pelice 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.H. 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 bend shall be:

14 <u>(a)</u> 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 leaver; and

10 (b) subject to any other conditions as that the court
12 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 bend shall be that:

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

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24 <u>(2) (b)</u> We be will appear at such time and place as the 25 court may direct;

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(2) (c) So he will not depart from this state without
 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.E. 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, <u>or</u> substitute, reduce, or increase bail."

12 Section 14. Section 95-1120, B.C.B. 1947, is another

 14
 #95-1120...Porgong...prohibited.from.furnishing.bail

 15
 Geowrity...No-attornoy-at-law_and-no-official_atthorised.to

 16
 admit__another__to__bail__shall-_acting__im_app_official_org

 17
 profeosional_capecity_may

18 Section 13. Section 95-1121, R.C.H. 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. (a) (1) any 1 domestic or foreign surety 23 company which has gualified to transact surety business in 24 this state may, in any year, become surety in an amount not 25 to exceed one bundred dellars exceeding (\$100,00) with

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

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

10 (1) (a) The the name and address of the automobile eleb 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 oxcool one hundred-dollars exceeding (\$100.00) of any person 19 who, after posting a guaranteed arrest bond certificate with 20 respect to which the surety company has undertaken to be 21 surety, fails to make the appearance to guarantee which the 22 guaranteed arrest bond certificate was posted.

23 (c) (3) The term <u>"guaranteed arrest bond certificater"</u>
24 means any printed card or other certificate <u>which:</u>

25 <u>(a) is issued by an automobile cluby or association or</u>

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insurance company, to any of its members or insureds, and <u>(b)</u> which said card-or certificate is signed by such <u>the</u> member or insured and contains a printed statement that <u>such the</u> automobile club, <u>automobile</u> association, or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Nontana;:

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

10 <u>(ii)</u> 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)."

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

16 M95-1122. Wielations of meter Motor vehicle laws 17 violations -- posting-of-quaranteed-arrest-bond-gertificate 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

arcunt not to orgood one hundred dellars exceeding (\$100-00) 1 2 as a bail bond to guarantee the appearance of such the persony in any court, including municipal courts, in this 3 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 vehicle law of this state or ordinance of any a municipality 6 in this state (except for the offense of driving while 7 8 intoricated 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 as a bail bond in any a court in this state shall be is 11 12 subject to the same forfeiture and enforcement provisions 13 with respect-to as bail bonds posted in criminal cases as provided by law, and that any each a quaranteed arrest bond 14 15 certificate posted as a bail bond in any a municipal court in this state shall be is subject to the forfeiture and 16 17 enforcement provisions of the chapter or ordinance of the 13 particular municipality pertaining to bail bonds posted." 12 Section 15. Section 95-1406, B.C.M. 1947, is amended 20 to read as follows: 21 22

23 <u>assistance to grand jury -- vbo may be present --</u> 24 <u>stenographer, transcript of testimony</u>. -(a)(1) The grand 25 jury may, at all times, ask the advice of the court, or the

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

5 -{b}-{2] The county attorney of --- the -- county or the 6 attorney general may at all times appear before the grand jury for the purpose of giving information or advice 7 relative to any matter cognizable by the grand jury, and may 8 9 interregate 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 employed by or connected with the cffice of the county 12 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, in an official capacity 18 but-obly-as-a-witness, and he They or he shall only be 19 present while a witness and after his -- appearance appearing as such a witness shall leave the place where the grand jury 20 21 is holding session.

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

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1 such investigation to such the grand jury.

2 -(d) (4) The grand tury or county attorney may require 3 by subpoena the attendance of any person before the grand fury as interpreter. While his services are necessary, such 4 5 the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the 6 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 (c) (5) Transcript of Testimony (1) (a) The grand fury 13 may appoint a stenographer to take in shorthand the 14 testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the 15 16 testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the 17 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 file25with the clerk of the district court an criginal

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1 transcription of his shorthand notes and a copy thereof and 2 as many additional copies as there are defendants. The - **२** reporter shall complete such the certification and filing A within ten-(10) days after the indictment has been found or 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 thereof, shall retain one (1) copy for use only by judges in 9 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.H. 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 fury 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 courty, for The subpoens 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 material in an investigation before the grand jury, and for 22 23 such other witnesses as the grand jury upon-invostigation 24 pending-hofers.thes may direct."

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

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25

1 to read as follows:

2 *95-1408. Beception of evidence. <u>(a)(1)</u> 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 <u>the grand jury</u>, <u>it or</u> 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_{τ_1} 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(e) (3)The grand jury shall find an indictment when16all the evidence before it, taken together, if unexplained17or uncontradicted, would, in its judgment, warrant a18conviction by a trial jury."

1° Section 18. Section 95-1502, R.C.H. 1947, is amended
20 to read as follows:

21 N95-1502. Commencement of prosecutions. (a)(1) All
22 prosecutions of offenses triable in the district courts
23 shall be by indictment or information casept-as-otherwise
24 provided by chapter 55, Title 94, B, C, H, 1947.

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

1 complaint."

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

*95-1504. Joinder and discharge of offenses and ш 5 defendants. (a) (1) An indictment, information, or complaint or--accusation may charge two (2) or more different offenses б 7 connected together in their commission, or different statements of the same offense, or two 424 or more different 8 9 offenses of the same class of grines or offenses, under 10 separate countsy, and if If two (2) or more indictments, informations, or complaints or acceptions are filed in such 11 12 cases in the same court, the court may order them to be consolidated. Allegations made in one count may be 13 incorporated by reference in another count. The prosecution 14 15 is not required to elect between the different offenses or counts set forth in the indictment, information, or 16 complaint or-accusation, but and the defendant may be 17 convicted of any number of the offenses chargedw. and-each 18 Each offense of which the defendant is convicted must be 19 20 stated in the verdict or the finding of the court+.

21 <u>(2)</u> 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 <u>or</u> complaint and accuration be tried separately or divided into two (2) or more groups and each of said the groups
 tried separately. An acquittal of one (1) or more counts
 shall not be deemed considered an acquittal of any other
 ccunt.

5 (3) Two (3) or more defendants may be charged in the same indictment or information if they are alleged to 6 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 sore counts together or separately. 10 and all of the defendants need not be charged in each count. (6) (4) If it appears that a defendant or the state is 11 12 prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate 13 charges or defendants for trial, the court may order 14 15 separate trials, grant a severance of defendants, or provide any other relief as justice may require. 16

17 (4) (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

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<u>court</u> must order him to be discharged before the evidence is
 closed_T that he may be a witness for his codefendant."

3 Section 20. Section 95-1506, R.C.H. 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 iscreased -- pusichased treatment of the accused as a prior 8 convisted felon persistent felony offender under section 9 94-4713 95-1507 or 95-2206.5 or both of those sections, 10 notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the 11 12 accusedy or before the case is called for trial upon a plea 13 of not quilty.

14 <u>(2) Such The</u> notice must conform to the following
 15 provisions:

16 (a) The notice must specify the prior convictions17 alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions
contained therein shall not be made public nor or in any
manner be made known to the jury before the jury's verdict
is returned upon the felony charge, provided that However,
if the defendant shall testify testifies in his cwn behalf,
be shall-novertheless be is subject to impeachment as
provided in section 93-1901-11, -Brows, -1947, -as ascaded.

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

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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 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_4713 95-1507 and_95-2206.5." 9 Section 21. Section 95-1507. R.C.M. 1947. is amended 10 to read as follows: "95-1507. Sontonce <u>Septencing</u> of imprisonment-for 11 12 persistent felony offender. (1) A persistent felony 13 offender is an offender who has been previously been 1 £ 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: 16 12 20 7cars-nor-sore-than-one-hundred-(100)-rears-previding+ 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 ene-{1} 24 year could have been imposed; and 25 (b) less than five-(5) years have elapsed between the

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

6 (c)--the-offender-was-more-than-twenty-ene-(21)-years 7 old-at-the time-of-the-conmission of the-new offencer

8 (2)(C) A -- provious folony -- scatistica -- shall -- be 9 concidered -- for the purpose of contensing under this scotion 10 if the offender has not been pardoned on the 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 clder at
16 the time of the commission of the present offense."

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

19 "95-1704. Time of making motion. The motion <u>provided</u>
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.H. 1947, is amended
24 to read as follows:

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

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

ш (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 momey 7 deposited instead of bail must be refunded to him. However, if the court grants a motion to dismiss based on a defect in 8 9 the institution of the prosecution or in the indictment, 10 information, or complainty or when if it appears at any time before judgment that a mistake has been made in charging the 11 proper offense, it the court may also order that the 12 defendant be held in custody or that his bail be continued 13 14 for a specified time pending the filing of a new complaint. indictment, or information." 15

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

18 "95-1707. Transfer of trial. If the court determines 19 that the <u>a</u> motion to dismiss, based upon the grounds of lack 20 of jurisdiction or improper place of trial, is well founded<u>.</u> 21 it may, instead of <u>ordering</u> dismissal, order the cause 22 transferred to a court of competent jurisdiction or to a 23 proper place of trial." 24 <u>Section 27. Section 95-1709, B.C.M. 1947, is amended</u>

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25 to-read-as-follows+

1	₽95-1709Eubetitution-of-judge(a) <u>/1}</u> The-defendent
2	OFtheprosecutionmaywovethecoust-in-writing-for-m
3	cubstitution-of <u>the</u> judge-on-the-ground-that-he <u>the</u>
4	cannothaveafairand_ispartial_hearing_or_trial_before
5	said the judge. The motion shall be and at least - fifteen
6	{15}da76-priortothe-trial-of-the-case,-or-ex7-retrial
7	thereof-after-appealy-except-for-good-sause-showa-
6	<u> 12}Upon-the-filing-of-such-a the</u> notion, thejudge
9	againstvhon-the-sotion-is-filed-shall-be-vithout-authority
10	40astfurther-in-thosrininglestimaestima
11	procoding, but the provisions of this section do not apply
12	ercept is regard to the arrangement of the calendary the
13	regalationoftheorderofbusiness,thepewcrof
14	transforring-the-criminal-action-or-proceeding-to-come-other
15	oovety-mor-to <u>and</u> the power-of-salling-in-anotherjudgete
16	sitandastinsuch the scinital action of proceeding,7
17	providing-that-no <u>Ho</u> judge-shall <u>may</u> so-arrange-the-calendar
18	as-to-defeat-the-purpeses-of-this-section-
19	<u>132</u> Hot <u>Bo</u> morethanone{1}judgecan <u>may</u> bo
20	disqualifiedisthescisizal-astice-sc-proceeding,-at-the
21	instance-of-the-prosecution-and-net go serethanone{}
22	judge-at-the-instance-of-the-defendant-or-defendants-
23	12Ifoither } party-in-any-mattor-above-sentioned
24	shall file the <u>the files</u> sation as berein provided on a

party <u>under_____pubgeotion___(1)</u> seg-___net---ceaplain---eag

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15) The provision of this This section -- shall -- be is inapplicable-to--amy-person-in-any-sause-involving-a-direct contonet-of-court-(b) (6) -- In-addition -- to -- the -- provision provision of subsection (a) subsections (1) through (5) any a defendant may-move-at-any-time-for a substitution-of the judge--for action, the court shall conduct a hearing and deterning the acrits-of-the-seties-" Section 25. Section 95-1711, B.C.M. 1947, is amended to read as follows: "95-1711. Effect of former-presecution--and--multiple sultiple charges and former prosecutions. (1) Definitions of torso, (a) The term "same transaction" includes conduct consisting of: (i) a series of acts or omissions which are motivated

reagenable delay-ag-the-result-thereof.

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(i) a series of acts or omissions <u>which are</u> motivated
by a purpose to accomplish a criminal objective, and <u>which</u>
<u>are</u> necessary or incidental to the accomplishment of that
objective; or
(ii) a series of acts or omissions <u>which are</u> motivated

by a common purpose or plan and which result in the repeated
commission of the same offense or affect the same person or

24 the same persons or the property thereof.

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

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

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

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

(2) Hotbod of -- prosocution -- whon -- sonduct -- sonstitutes
more -- than -- offonse. When the same transaction may
establish the commission of more than one offense, a person
charged with such conduct may be prosecuted for each such
offense. He may not, however, be convicted of more than one
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;

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

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

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

4 (3) #hea-proceestion--barred--by--former--procestiony 5 Provided If the offenses-if-agre-than-one, were known to the attorney prosecuting upon sufficient evidence to justify 6 7 the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charger 8 9 and provided if the jurisdiction and venue of the several 10 offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such 11 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 to warrant a conviction. A finding of guilty of a lesser 17 18 included offense than the offense charged which is subsequently set aside is an acquittal of the greater 19 inclusive offense that was charged. 20

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

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

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

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

9 (11) 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

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

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

23 (i) the <u>The</u> defendant consents to the termination or
24 waives his right to object to the terminatione, employed and the terminatione of the termination of termi

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

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discretion, finds that the termination is necessary because:
 (A) it is physically impossible to proceed with the
 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 cn voir dire prevent a12 fair trial.

13 (4) Forser-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 15 subsequent prosecution in this state under the following 20 circumstances:

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

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

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

10 (5) Portor procession before court lacking
11 jurisdiction or when fraudulently procured by the defendants
12 A prosecution is not a bar within the meaning of subsections
13 (3) and (4) under any <u>one or more</u> of the following
14 circumstances:

(a) the <u>The</u> former prosecution was before a court
which lacked jurisdiction over the defendant or the
cffenset.et

(b) the <u>The</u> former prosecution was procured by the
defendant without the knowledge of the proper prosecuting
officer or with the purpose of avoiding the sentence which
might otherwise be imposed +<u>.</u> et

(c) the <u>The</u> former prosecution resulted in a judgment
 of conviction which was held invalid in <u>any-pest-conviction</u>
 a <u>postconviction</u> hearing."

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

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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-Witnessest

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 be-be-galled by the 10 prosecution intends to call. The prosecution may, any time after arraignment, add to the list the names of any 11 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 sodtion,-shall This subsection does not apply to rebuttal
 16 witnesses.

17 (b)--Subpoones--may-be--used--as-a-disservery-device-as
 18 provided-for-under-section-95-1801(d).

19 (6) (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

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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 Ċ1 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 continuation 20 continuance during which it say 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 court₁ at the time of entering 25 his plea of not guilty or within $\frac{1}{10}$ days thereafter or

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

(b) If the defendant intends to interpose any of these ł. defenses, he shall also furnish to the prosecution and file 5 6 with the clerk of the courty the names and addresses of all witnesses to be called by the defense in suprort thereof. 7 8 The Prior to trial the defendant may--prior-to-trial, upon 9 notion and showing of good cause, add to the list of 10 witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant 11 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) All matters which are privileged upon the trial, are privileged against disclosure through any 15 discovery procedure." 16

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

12 "95-1810. Witness from another state summoned to 20 testify in this state. (1) If <u>Whenever</u> 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 commune, in this state, is a material witness in a 25 prosecution pending in a court of record in this state, or

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in a grand jury investigation, which has commenced or is about to commence, a judge of <u>such the</u> court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This The certificate will shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If said the certificate recommends that the 8 9 witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this 10 state, such it is prima facie procf of the desirability of 11 such custody and delivery and the judge way direct that such 12 13 the witness be forthwith brought before hist immediately. and <u>If</u> the judge being is satisfied of as to the 14 15 desirability of such custody and delivery, for which such detersination-said-sertificate-shall-be-prime--facie---profy 16 he may order that said the witness be forthwith immediately 17 18 taken into custody and delivered to an officer of this 19 staters 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-oents (104) cents a mile for each mile and five dollars

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1 +(\$5,-00) for each day that he is required to travel and 2 attend as a witness, provided further that in these cases in-which If the state wherein the witness is found has by 3 4 statutory enactment required that the summoned witness be 5 paid an arcunt or arounts in excess of the amount 6 hereisbefore -- is this paragraph provided specified in the 7 preceding sentence, then witness may be tendered а said the amount or-apounts so required by said that state to 9 be-tendered-theugh-the-gaid-aseunt-or-aseunte-co-required-te 10 be--- tondered --- are--- in-- excess--- of--- the--- said--asevate-in-this paragraph-provided-for. 11

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 <u>(5)</u> If seek 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."

Section 28. Section 95-1909, B.C.H. 1947, is amended
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

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jurors with their addresses when the pames have been drawn.
 (b)(2) (4)(a) The qualifications of jurors, and who
 will be excepted, exceptions from jury duty are found
 prescribed in sections 93-1301 through 93-1307, of the Civil
 Gode, 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 (9) (3) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

15 (4) (9) (4) (a) Bach 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 defendent.

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

and tenant, or debtor and creditor with, cr being a member
 of the family or in the employment of, the defendant, cr of
 the person who is alleged to be injured by the offense
 charged, or on whose complaint the prosecution was
 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 presecution.

9 (iv) <u>Baving having served on the grand jury which found</u>
10 the indictment_y 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_{y;}

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 verdicty after 16 the case was submitted to i_{τ} :

10 (vii) Having having served as a juror in a civil action
20 brought against the defendant for the act charged as an
21 offensev:

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

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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 jurer 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.

(e) (5) 111 challenges must be interposed before the 9 jury is sworn, unless the cause of challenge be is 10 discovered after the jury is sworn and before the 11 introduction of any evidence, when in which case the court, 12 in its discretion, may allow the challenge to be interposed. 13 (6) Bach defendant shall be allowed eight (8) 14 peremptory challenges in capital cases, six (6) in all other 15 cases tried in the district court before a twelve (12) 16 person 12-person jury-and-three-(3)-in-all-cases-tried-in 17 Austice of the peace or police courts. Heverer, there There 18 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 the same number of peremptory challenges as all of the 24 defendants. In a citil or crisinal case tried in the 25

district court before a <u>six (6) person gix-person</u> jury, the state and all the defendants shall be allowed three (3) peremptory challenges each. <u>When the pertense PARSIES in a</u> criminal case in the district court agree upon a jury consisting of a number of records other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

8 (9) (7) After the jury is impaneled and sworn, the 9 court may direct the selection of that one cr more alternate 10 jurorsy be selected in the same manner as principal jurorsy. 11 she The alternate jurges shall take the same cath as the 12 principal jurors. Each party shall have one additional 13 peremptory challenge for each alternate jurcr. 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 vedict 16 verdict, become unable or disqualified to perform their 17 duties. An alternate juror shall may not icin 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 the jury is considering its verdict shall be regulated by 20 instructions of the trial court. An alternate juror who does 21 22 not replace a principal juror shall be discharged after the 23 jury arrives at its verdict.

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

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1 (i) (9) Wheny 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, B.C.M. 1947, is amended
9 to read as follows:

10 "95-1915. Verdict. (a) (1) Peturn. The verdict shall
11 <u>must</u> be unanimous in all criminal actions. Such <u>The</u> 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 may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

Whenever-a-orize-is-distinguished-isto-degrees, the 1 inry.-if they convict the defendant, - puct find the degree of 2 З the-crize-of-which he is-quilty-(4) Poll-of-Jury, When a verdict is returned, the ίL 5 jury shall be polled at the request of any party or upon the court's cwn motion. If upon the poll there is not the 6 7 required concurrence, the jury may be directed to retire for A further deliberations or may be discharged." 9 Section 30. Section 95-2004, R.C.H. 1947, is amended 10 to read as follows: #95-2004. Trial is justice justices! and police city 11 12 courts. -{a} (1) Method of Trial trial: (4) (a) The defendant is entitled to a jury of six (6) 13 14 qualified persons, but any-concent-te-a-losser-ausber the 15 parties may agree to a number less that 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. (3) (c) Questions of law shall be decided by the court 19 and questions of fact by the jury except that, when a jury 20 21 trial is waiwed, 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

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1 open courty; 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 <u>defendant</u>. The <u>Pheneyer</u> 6 <u>THE the offence charged carries a penaltr of a fine optr</u> 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 frial trial. After
12 the plea the defendant shall be is entitled to a reasonable
13 time to prepare for trial."

Section 31. Section 95-2005, R.C.H. 1947, is amended
to read as follows:

"95-2005. Formation of trial jury. - (a) -- Rusber-- of 16 Jurore. A jury in justice or police court shall consist of 17 18 sis---{6}-personsy-but-the-parties-may-agree-to-a-humber-less 19 then-sig-(6)-(b) (1) Pormation-of-frial-Jurg--The At the 20 time_cf_preparing the district court jury_list, the county 21 22 tery list, shall prepare a jury list for each testing justice's and police city court within the county. Each list 23 shall consist of residents of the appropriate county, city, 24 or town. Such list The lists shall be selected in any 25

1 reasonable manner which shall-onsure ensures fairness, and 2 it each shall include a number of names sufficient to meet the annual fury requirements of the respective court. 3 ц Additional lists may be prepared if required. The 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, cr 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 attorney₄ or the prosecuting attorney if the court believes 18 such examination to be improper.

19 <u>(4)</u> 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) (2) (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."

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Section 32. Section 95-2006, R.C.E. 1947, is amended
 to read as follows:

3 *95-2006. Verdict. (a) (1) Beturny The verdict of the 4 jury must in all cases be general. It shall be returned by 5 the jury to the juage in open court, who must entery 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, see the a judgment 12 must be entered accordingly on the verging, and the case as 13 to the rest may be tried by another jury.

14 (*) (3) Poll-of-jury. When a verdicular 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 innected 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 scoper discharges thez,"

23 Section 33. Section 95+2007, 5.C.E. 1947, is amended
24 to read as follows:

25 P95-2007. Sentence and judgment. ++111 If a judgment

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of acquittal is rendered, the defendant must be immediately
 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 <u>readering of the</u> verdict or judgment is readered. 7 The sentence must be entered in the minutes of the court as 8 soon at it is imposed.

9 Heij] If the defendant pleads guilty, or is convicted 10 either by the court or by a jury, the court must impose a 11 12 13 74 15 16 provided in 95-2206, 95-2206, through 95-2206.4, and 25-2207. If alcohol or other draws are involved, the court 17 13 may impose such rehabilitative measures as it eccas 14 considers advisable under the divounstances. 20 -(4) (4) The determination and imposition of sentence 21 shali-be are the exclusive duty of the court." 22 Section 34. Section 95-2009, B.C.M. 1947. is amended 23 to read as follows:

24 "95-2009. Appeal. (a) (i) all cases on appeal from
25 justices or police city courts pust be tried above in the

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district court and may be tried before a jury of six (6)
 which may be drawn from either the regular panel or jury box
 Now-3 selected as provided in Title 93, chapter 50.

4 (b) (2) The defendant way appeal to the district court
 5 by giving written notice of his intention to appeal within
 6 ton-days (10) days after judgment.

7 (6) (3) Within thirty (30) days, the entire record of 8 the justice is 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 <u>Section-38.--Section-95-2010,--R.C.A.-1947,-is-amended</u> 13 to-read-am-followet

#95-2010.--Disqualification-of-justico,-magistrate,--or 14 15 may-move-the-court-in-veiting-for-the-disgualification-of--a 16 17 18 that-he the-poyant cannot-have-a-fair-and-ispartial--hearing or-trial-boforo-the-justice,-sagistrate,-or-justice-of-the 19 20 21 prior-to-tho-trial-of-the-case,-or-any-retrial-thereof-after appealy-except-for-good-cause-showa. 22

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1 orisinal-action, -- sotion, or - proceeding, but the -provisions of this section do not apply creept in regard to the 2 arrangement--of-the-calendary-the-regulation-of-the-order-of Э 4 basiness,-the-power-of-transforsing-the-criminal--action--er proceeding---to---cone--other--sourty--ner-to and the-power-of 5 6 7 peace--to--sit--asd--act--is--such the stisisi--action-or 8 procedingyr providing-that-no-justicey He segictratey--or 9 +ustice-of-the-peace-shall say co-arrange-the-calcadar-as-to 10 defeat-the-purposes-of-this-cestion,

11 13)--#0t #0 =0E0-then-one-(1)-485tidey-magistratey-or 12 Justice-of-the-peace-can may be-disqualified-is-the-crisical 13 action-or-proceeding,-at-the-instance-of-the-procession-and 14 BOT BE MOTO-than-one-(1) -tugtice-- accistrate--or-instine---of 15 the-pease at the instance of the defendant or defendants. 16 14)--If--either & party-in-any-matter-above-westioned 17 shall-file-the who-files-a action-as-hercin-provided--such 18 19 reaseable delay-as-the-result-thereef.

20 <u>151-The-provision of this This</u> continue that is inapplicable...to...any person in any cause intelving a direct
 22 contempt of court.

23 (2) <u>15</u>--In addition-to-the-provision provision of cuboostion-(1)-any subsections-(1)-through-(5), a defendant
 24 subsection-(1)-any subsections-(1)-through-(5), a defendant
 25 may move at any time for the disgualification of a justice,

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#agistrate, or justice of the peace for cause, supported by
 affidavit, Open the filing of such the sector, the court
 shall. cenduct. a bearing and determine the seciet of the
 sector, u

5	Section 35.	Section	95-2101,	B.C.M.	1947, is	amended
6	to read as follow:	s:				

7 "95-2101. New trial. (a) (1) Definition and Effect. A 8 new trial is a re-examination recramination 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) Notion for a New Trial (1) (a) Pollowing 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 <u>shall specify the grounds therefor. It</u> shall be filed by 19 the defendant within thirty (30) days following a wordict or 20 finding of guilty. Reasonable notice of the motion shall be 21 served upon on the state.

22 (3) -- The --motion---for---a--mov---trial---shall-specify-the 23 grounds-therefor.

 24
 (c) Alternative-Authority-of-the-Court-on-Rearing

 25
 Metion-for-New Trial.
 On hearing the meticn for a new trial.

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1 if justified by law and the weight of the evidence, the2 court may:

3 1-(i) Deny deny the motion;

4 2. <u>(ii) Grant grant</u> a new trial; or

5 3- (iii) #edify modify or change the verdict or finding 6 by finding--the--defendant-guilty-of-a-lesser-degree-of-the 7 orise-chargedy finding the defendant guilty of a lesser included crime or finding the defendant not guilty." 8 9 Section-40--- Section--- 95--2202--- 9-C.E. 1947-is-amended 10 to-read-ac-follows+ 11 #95-2202.-- Sentence---and Rendering Judgment ----12 PROBODAS AG-SCALOROG----(a) (1)-The-ludgsont-shall-be-readered 13 in-open-court. 14 (b) {2} -- If -- the -- to contain the -- or -- farding -- is -- not -- on the ---on the ----on the ---on the ----on the ---on the ----on the ----on the ---on the ---on the ---15 40dqscat-shall-bo-readered--immediately--and--the--defeadaat 16 shall--be--discherged-from-custody-or-from-the-obligation-of 17 his bail bond, except as provided in 95-1916. 16 (c) (2) -- If-the-replict-or-finding-is--guilty, sentence 19 shall-__be---pronounced---and--judgsest--rendered--withis--a 20 reasonable-tise." 21 Section 36. Section 95-2206, B.C.H. 1947, is amended 22 to read as follows: 23 "95-2206. Sentence. (1) Whenever any a person has been 24 found guilty of a origno or a perdict or a

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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 (e) (iii) conditions for probation;

12 (d) (iv) restitution;

13 (e)(v) any other reasonable conditions deemed
14 <u>considered</u> necessary for rehabilitation or for the
15 protection of society; <u>cr</u>

16 (£) (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;

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 1
 (a) [y] any other reasonable conditions decred

 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
 clapsed-time, orcept-jail-time, chall-set-bo-a-sredit

 7
 against-the-sectors-chall-stherwise

 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 offenser;

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 <u>provided for in subsection (1)</u> which it doese
23 considers necessary to obtain the objective of

24 rehabilitation and the protection of society:

25 (a) (i) prohibit the defendant the right to hold public

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3 carry a dangerous weapon; (c) (iii) prohibit freedom of association; 4 5 (d) (iv) prohibit freedom of movement; 6 -fel(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 unnicipal court shall does not have the authority to 11 restrict an individual's rights as enumerated in subsection 12 (6) (3) (a). (4) Any A judge, magistrate, or justice of the peace 13 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 conmittedy, 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."

(b)(ii) prohibit the defendant the right to own or

office:

1

2

to read as follows: 2 "95-2206.1. Sentence to death. When Whenever a person 3 is--convicted-of-an has been found quilty_cf_an_cffense_upon ħ. a verdict or plea of quilty, the court may, if the offense 5 6 is punishable by death or imprisonment, the--sourt-may 7 sentence the offender to death or imprisonment." Section 38. Section 95-2206.5, B.C.M. 1947, is amended 8 9 to read as follows: "95-2206.5. Judicial---designation Designation of 10 11 persistent felony offenders <u>offender</u> for purposes of parole 12 convicted---of---a-folony-and-the-present-offense-is-a-second 13 14 folony-consitted-on-a-different-occasion-than-the-firsty-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: 1£ (a) the provious folony ochaintion was for an -- offered 19 consitted--in-this-state-or-asy-other-jurisdistion-for-which 20 a-sontende-to-a-ters-of-imprisonment-in-excons--of--one--(1) 21 year could have been ispeced; 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

Section 37. Section 95-2206.1, R.C.M. 1947, is amended

24 consission-of-the-present-offense-and-eithers

25

1

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1	{ii}-the-offender¹5-release-sn-parele-or-ethervise-from
2	PEicon-oc-otheccompitmentimpecedacac-tecultefthe
3	providue-felony-conviction; and
4	(c)(b) the offender was more than eighteen (18) years
5	of age <u>or older</u> at the time of the commission of the present
6	offense.
7	{2}hproviousfelonyconvictionehallhotho
8	considered for the purposes of this section if the offender
9	hes-been-pardonod-on-the-grounds-of-ingosomseyorifthe
10	donviction had been coide in any pest-contiction
11	hearing.
12	(3) [2] A judicial determination of <u>that an offender</u> is
13	a persistent felony offender under this section may be made
14	only when the conviction for the present offense occurs
15	after July 1, 1975."
16	Seation-44Seation-95-2209,-R.C.M1947,18tststs-
17	40-2034-38-follows+
18	#95-2209BatryOfjudgsoat-and-judgsoat-rollHos
19	judgment-upon-a-conviction-is-readeredy the-clerk-aust-enter
20	the-same it is the minutes, stating briefly the offense- for
21	whichtheoonvictionwasbadyandthefastofprior
22	confictionsz (if-any) yr and He musty-fithin-fife{5}days,
23	annextogetherandfilethe-following-papersy-which-will
24	constitute-the-judgment-roll:
25	{1}The the indictment of information and a 6007of
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1 the-minutes-of-the-arraignmenty-pleasy and-motions-t 2 (2) -- h a copy-of-the-minutes-of-the-trial-+ 7 (3)--The the instructions--er--refused-and-the ą, endersements-thereen.+ 5 (4)--- a copy-of-the-indepent.# 6 Section 39. Section 95-2224, R.C.M. 1947, is amended 7 to read as follows: A *95-2224. Prisoner--- not-agenty-or Penalty-for-treating 9 prisoner_as PBISONER FOT AGENT OR involuntary servant. He 10 prisoner -- in -- the- consumity-under-the-provisions-of-this-act 11 12 the--department--or-of-the-supervising-ageney-while-released 13 fron-confinencet-pursuast--to---the---tores---the---the----14 #1600mdugt-pursuant-to-94-7-401,-R.C.E.-1947. 10-0fficer-or 15 16 esployee. of the department of of the covervising agency whe 17 treate-a priconer-participating in the furlench -- program--as 18 an involuntary servant is guilty of official sisconduct and 19 is publichable as provided in 94-7-401. NO PRISCHER IN THE 20 COBMUNITY UNDER THE PROVISIONS OF THIS ACT MAY BE CONSIDERED 21 TO BE AN AGENT OR INVOLUNTARY SERVANT OF THE DEPARTMENT OF OF THE SUPERVISING AGENCY WHILE RELEASED FROM CONFINEMENT 22 23 PURSUANT TO THE TERMS OF THE FUBLOUGH PROGRAM, ABUSE OF 24 AUTHORITY OVER A PRISONER IS OFFICIAL RISCONDUCT PUBLISHABLE 25 AS PROVIDED IN 94-7-401."

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Section 40. Section 95-2229, R.C.H. 1947, is amended
 to read as follows:

3 "95-2229. Traffic Disposition of traffic fines ы collected from javonile offenders-disposition juveniles. 5 All fines collected by the district courts from children 6 motor vehicles resulting-from as the result of traffic 7 summonses issued by the peace officers of the cities, or 8 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 cffense cccurred and at the end of each sonth 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 employedy and credited to the city general fundy.

18 (b)(2) fines Pines 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+1

22 (0) (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 bis credited who 25 shall credit them to the general fund of the state;.

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1	(d) (4) that That portion of the fines , as provided for
2	<u>which is specified</u> in section 75-7903, shall be paid to the
3	state treasurer of Nontana, and by him credited who shall
4	<u>credit it</u> to the automobile driver education account in the
5	earmarked revenue fund."
6	Section 41. Section 95-2403, R.C.H. 1947, is amended
7	to read as follows:
8	"95-2403. Scope of appeal <u>by state</u> . [a][1] Except as
9	<u>OTHERWISE SPECIFICALLY</u> authorized by this - gode <u>title</u> , the
10	state way not appeal in a criminal case.
11	(b) <u>(2)</u> The state may appeal from any court crder or
12	judgment the substantive effect of which results in:
13	(1) dismissing a case;
14	<pre>(2) nodifying or changing the verdict as provided</pre>
15	in mostion 95-2101 (0) (3) 12) (C) (III);
16	<pre>(3) (C) granting a new trial;</pre>
17	<pre>(4)(d) guashing an arrest or search warrant;</pre>
13	<pre>(5) (e) suppressing evidence;</pre>
14	<pre>(6)(f) suppressing a confession or admission; cr</pre>
20	<pre>(7) (g) granting or denying change of venue."</pre>
21	Section 42. Section 95-2426, R.C.M. 1947, is amended
22	to read as follows:
23	m95-2426. Beter≣ination of appeal <u>Acticn</u> reviewing
24	court may take. On appeal the reviewing court may:
25	(1) Reverse reverse, affirm, or modify the judgment or

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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) Boduce-the-degree of reduce the offense of which
6 the appellant was convicted to a lesser included offense;

7 (4) Boduce 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, B.C.M. 1947, is amended
 11 to read as follows:

12 *95-2601. Potition-in-the-trial-coust Circumstances in 13 which validity of sentence may be challenged. Any A person adjudged guilty of an offense in a court of record who has 14 15 nc adequate remedy of appeal and who claims that sentence 16 was imposed in violation of the constitution or the laws of this state or the Constitution <u>constitution</u> of the United 17 States, or that the court was without jurisdiction to impose 18 such the sentence, or that the sentence was in excess of the 19 maximum authorized by lawy or is otherwise subject to 20 21 collateral attack, upon any ground of alleged error 22 available under a writ of habeas corpus, writ of coras nobis. or other common law or statutory remedy 23 24 may sove petition the court which imposed the sentence. or the supreme court, or any justice of the supreme court to 25

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1 vacate, set aside, or correct the sentence."

2 Section 44. Section 95-2604, R.C.E. 1947, is amended
3 to read as follows:

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

7 Section 45. Section 95-2605, R.C.H. 1947, is amended
8 to read as follows:

9 *95-2605. Proceedings on the petition. (1) Unless the notion petition and the files and records of the case 10 11 conclusively show that the prisener 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 conviction took place, grant a prompt hearing thereon. 14 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 petiticner, 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

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court finds for the state, the petitioner shall be returned
 to the custody of the person to whom the writ was directed."
 Section 46. Section 95-2606, R.C.M. 1947, is amended
 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.H. 1947, is amended
10 to read as follows:

11 "95-2608. Review. Either the petitioner or the state
12 may appeal to the supreme court of Montana from an order
13 entered on the motion petition. The appeal shall must be
14 taken within sim (6) months from the entry of the order."

15 Section 48. Section 95-2902, R.C.H. 1947, is amended
16 to read as follows:

*95-2902. Reasonable doubt as to degree which offense 17 18 convicts only of levest least offense. When it appears 19 beyond a reasonable doubt that the defendant has committed a public an offense, and but there is reasonable ground of 20 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-cych 24 degrees only greatest included offense about which there is 25 nc_reasonable_doubt."

Section 49. Section 95-30C4, B.C.M. 1947, is amended
 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 or of mitigation, excuse, or
12 justification appear."

13 Section 50. Section 95-3011, R.C.M. 1947, is amended
14 to read as follows:

*95-3011. Competency of husband-and-wife-as-witnesses 15 sponses. Except with the consent of bothy or in cases of 16 17 criminal violence upon one by one upon the other, or-in-case of abandonment, or neglect of children by either party, or 18 19 of abandonment or neglect of the wife one by the husband other, neither husband-net-wife spouse is a competent 20 witness for or against the other in a criminal action or 21 22 proceeding to which one or both are parties."

23 Section 51. Section 95-3012, R.C.H. 1947, is amended
24 to read as follows:

25 "95-3012. Testimony of person legally accountable. &

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conviction cannot be had on the testimony of one responsible 1 or legally accountable for the same offense, as defined in 2 section 94-2-106, unless he the testimony is corroborated by 3 other evidence, which in itself, and withcut the aid of the 4 testimony of the one responsible or legally accountable for 5 the same offensey tends to connect the defendant with the 6 commission of the offenset. and the The corroboration is not 7 sufficient, if it merely shows the commission of the 8 offenser or the circumstances thereof." 9

Section 52. Section 95-3110, B.C.M. 1947, is amended 10 11 to read as follows:

"95-3110. Rights of accused persons -- application-fer 12 writ--of habeas corpus. (1) No person arrested upon such 13 warrant shall may be delivered over to the agent whom the 14 executive authority demanding him shall have has appointed 15 16 to receive him unless he shall be is first taken forthwith without delay before a judge of a court of record in this 17 state, who shall inform him of the demand made for his 18 surrender and of the crime with which he is charged, and 19 what that he has the right to demand and procure legal 20 21 counsel+.

(2) and if If the prisoner or his counsel chall-state 22 states that he or they desire to test the legality of his 23 arrest, the judge of such the court of record shall fix a 24 reasonable time to be allowed him within which to apply for 25

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21

1 a writ of habeas corpus. When cush the writ is applied for, notice thereof and of the time and place of hearing 2 3 thereony shall be given to the prosecuting officer of the Ħ county in which the arrest is was made and in which the accused is in custody, and to the said agent of the 5 6 demanding state."

7 Section 53. Section 95-3113. R.C.H. 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 converient of access to the 16 place where the arrest is made to apswer 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 in any other another state, and, except in cases arising

under section 95-3106, with having fled from justice, or, 22 23 with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms 24 of his bail, probation, or parole; cr 25

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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 state and having escaped from bail, probation, or parole. 11 12 and-ie-believed-to-bo-in-this-state,-the-tudge-or-magistrate 13 shall--issue-a-warrant--directed--te--asy--peace--efficer 14 15 whorever--he--may--be--found-in-this-state, and to-bring-his before-the-same-or-any-other-judgey-magistrate-or-court--vhe 16 17 or--which-may-be-available-in-or-convenient-of-accees-to-the 18 place-where-the-arrest-may-be--made,--to--arswer--sharge--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.H. 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 governor by the expiration of the time specified in the 2 warrant, bond, or undertaking, a judge or magistrate may ٦ discharge his or may recommit his for a further reriod of 5 sisty-(60) days or a supreme court justice or seams 6 district court judge may again take bail for his appearance 7 and surrender, as provided in section 95-3116, bet-with for a period not to exceed sisty (60) days after the date of 8 9 such the new bond or undertaking."

Section 55. Section 95-3120, R.C.B. 1947, is amended
to read as follows:

12 "95-3120. Guilt or innocence of accused, when inquired 13 into. The quilt 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 depand for 16 extradition accompanied-by-a-charge-of-crime-in-logal--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."

Section 56. Section 95-3123, R.C.M. 1947, is amended
to read as follows:

23 "95-3123. Application for issuance of requisition-by
 24 whom made contents. I. (1) When the return to this state of
 25 a person charged with a crime in this state is required, the

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presecuting attorney shall present to the governor his 1 2 written application for a requisition for the return of the person chargedy. in-which <u>The application shall state the</u> 3 4 name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its 5 commission, and the state in which he is believed to be, 6 7 including the location of the accused therein at the time the application is made, and -contifying It shall certify 8 9 that, in the opinion of the said prosecuting atterney the ends of justice require the arrest and return of the accused 10 to this state for trial and that the proceeding is not being 11 12 instituted to enforce a private claim.

 $H_{T_{T}}(2)$ when the return to this state is required of a 13 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 from which the escape was made_T shall present to the 19 20 governor a written application for a requisition for the 21 return of such the person, is which the application shall be stated state the name of the person, the crime of which 22 he was convicted, the circumstances of his escape from 23 24 confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed 25

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to be, including the location of the person therein at the
time the application is made.

3 **HIP** [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:

<u>(a)</u> indictment returnedy; or

(b) information and affidavit filed; or of the

8 <u>(c)</u> complaint made to the judge or magistrate, stating
 9 the offense with which the accused is charged, et-of-the

10 (d) judgment of conviction; or

11 (e) of the sentence.

6

7

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-doce 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 conviction, or of the sentence shall be filed in the office 20 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:

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1 **#95-3125** No--fee--to-be--paid--to--public--officer 2 procuring -- surrender Restrictions on compensation for З assisting return of fugitive. No compensation, fee, or reward of any kind can may be paid to or received by a a 5 public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned * 7 in sostion 95-3124, or for the surrender of the fugitive, or 8 for conveying his to this state- or detaining his therein. 9 except as provided for in such section 95-3134-and 95-3134-1 10 95-3124 AND 95-3124.1.*

11 Section 58. Section 95-3129, R.C.H. 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 free for a crime committed within this state, or of its right, power, or 17 privilege to regain custody of such the person by 18 19 extradition proceedings or otherwise for the purpose of 20 trial, a sentence, cr punishment for any a crime committed 21 within this state; nor shall may any proceedings had under this act which result iny or fail to result iny extradition 22 23 be decomed <u>considered in any way</u> a waiver by this state of any of its rights, privileges, or jurisdiction in-any-way 24 25 whatseever."

Section 59. Section 95-3206, R.C.H. 1947, is amended
 to read as follows:

3 "95-3206. Orders, records, report <u>reviewability.</u>
4 <u>confidentiality. (1)</u> Decisions of the board shall be by
5 majority wote. 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. However, all social records, including the pro-sentence 9 10 presentence report, the pre-parele preparcle report, and the supervision history obtained in the discharge of official 11 12 duty by the department, shall be confidential and shall not 13 be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in 14 15 its discretion, when the best interests or welfare of a particular defendant or priscner makes such action 16 desirable or helpful, permit the inspection of the report or 17 18 any parts thereof by the prischer or his attorney."

19 Section 60. Section 95-3214, B.C.M. 1947, is amended20 to read as follows:

**95-3214. Parole authority and procedure. (1) The
Subject to the following restrictions, the board shall
release on parole, by appropriate order, any person confined
in the Bontana state prison, except persons under sentence
of death, when in its opinion there is reasonable

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probability that the prisoner can be released without
 detriment to himself or to the community-provided:

3 (a) That-no No convict serving a time sentence shall may be paroled until he has served at least one-quarter n 5 (1/4) of his full term, less the good time allowences off, 6 as allowance provided for in section 80-1905+, or 12 1/2 7 years upon his term, whichever is less. escept--that--ne 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 41/3) of his full term, less the good time 11 allowanges-off, as allowance provided for in scotion 12 80-1905, or 17 1/2 years upon his term, whichever is less. 4 13 first---offender-serving-a-time-sentence-may-be-paroled-after ho-has-servedy--upon-his-ters-of-sentencey--twelve--aud 14 15 one-half---(12--1/2)--- years--- A-persistent-felony-offender-as defined is getion 95-2206.5-max-be--paroled--after--he--has 16 17 servedy--upon--his--ters-ef-sentensey-seventeen-and-one-half (17-1/2)- #ears+ 19

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

23 (2) <u>b parole shall be crdered coly for the best</u>
 24 interests of society and not as an award of clemency or a
 25 reduction of sentence or pardon. <u>b prisoner shall be placed</u>

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<u>on_parole_only_when the board_believes_that_he_is_able_and</u> willing to fulfill the obligations of a law-abiding_citizen.

3 (2)(3) (a) Within two (2) months after bis admission 4 and at such intervals thereafter as it determines, the board 5 shall consider all pertiment 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 cosiety, not as an avaid of 13 clemency or a reduction of contende or parden. A prisoner 14 shall be placed on parole only when the heard believes that 15 he is able and willing to fulfill the obligations of a 16 law-abiding sitisen.

17 <u>(4) (a)</u> Every prisoner while on parcle 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 <u>any</u> other rules it 23 considers proper or necessary, with respect to the 24 eligibility of prisoners for parcle, and the conduct of 25 parole hearings, or <u>and</u> conditions to be imposed upon

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1	parolees. When an	-order-f	or-parole	- <u>is-is</u> e	uod i t-	-shal	l-resite
2	the-conditions-th	e rcof, "					
2	Contine (1	Footion	05 3346		1087		

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 prisoner on parole who has served one-fourth -(1/4) of his 6 7 term or terms, less the good time allowances allowance, or a 8 persistent felony offender on parole who has served 9 one-third (4/3) of his term or terms, less the good time 10 allowances allowance, is considered released on parcle until 11 the expiration of the maximum term or terms for which he was 12 sentenced, less the good time allewances--as allewance 13 provided for in section 80-1905."

Section 62. Section 95-3306, R.C.M. 1947, is amended
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 parcle 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

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signed by the parolee and given to bim and to his probation
 and parole officer, who shall report on his progress under
 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."

Section 63. Section 95-3308, R.C.M. 1947, is amended
to read as follows:

13 "95-3308. Return of parole violator. (1) (a) at any time during release on parole or conditional release, the 14 15 department may issue a warrant for the arrest of the released prisoner for vielations viclation of any of the 16 conditions of release, or a notice to appear to answer to a 17 charge of violation. Such The notice shall be served 18 personally upon the prisoner. The warrant shall authorize 19 all officers named therein to return such the prisoner to 20 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.

<u>(b)</u> Any probation and parcle officer may arrest such
 <u>the</u> prisoner without a warrant, or may deputize any other

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1 officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in 2 the judgment of said the probation and parole officer, з violated the conditions of his release. Sech The written ш statement delivered with the prisoner by the arresting 5 officer to the official in charge of the institution from 6 which the prisoner was released or other place of detention-7 shall be sufficient warrant for the detention of the parolee 8 9 or conditional releases. The probation and parcle officer, after making an arrest, shall present to the detaining 10 11 authorities a similar statement of the circumstances of 12 violation.

13 (c) Pending hearing, as hereimafter provided in 14 <u>subsections (2) and (3)</u>, 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 the hearing is waived by the parolee, to determine whether 19 20 there is prohable cause or reasonable grounds to believe 21 that the arrested parolee has committed acts which would 22 constitute a violation of parcle conditions. An independent 23 officer, who need not be a judicial officer, must preside 24 over the the hearing. This The hearing sust be conducted at or reasonably near the place of the alleged parole 25

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viclatics or arrest and as promptly as convenient after
 arrest. The parolee must be given notice of this the
 hearing and must be allowed to appear and speak in his own
 behalf and introduce relevant information to the hearings
 officer.

6 (a) (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 parolocis-position. Based on the information given to him. 10 11 the hearings officer sust <u>shall</u> 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 95-3217 subsection (3).

15 (3) (a) If the hearings officer determines that there 16 is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer 17 shall immediately notify the board and shall submit in 18 19 writing a report showing in what manner the prisoner has 20 violated the conditions of release, and this This report shall be accompanied by the findings of the hearings 21 22 officer.

(b) Thereupon, the board shall cause the prisener to
be promptly brought before it for a hearing on the violation
charged, under such rules and-regulations as the board may

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adopt. If the violation is established, the board way
 continue or revoke the parole or conditional release, or
 enter such other order as it may see fit.

4 (4) (c) A-prisoner-for-whose-return-a-warrant-has--been issued--shall--after-the-issuesec-of-such-warrest--if-it-is 5 found-that-tho-warrant-cannot-be-nervedy-be-deesed-a б 7 fugitive-or-to-have-fled-from-justice. If it chall-appear appears that he has violated the provisions of his release, 8 9 the board shall determine whether the time from the issuing of such the warrant to the date of his arrest, or any part 10 of it-shall will be counted as time served under the 11 12 sentence, shall-be detersined-by the beard. 13

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.

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1	SEWATE BILL NC. 30	1	conduct to the requirements of law.
2	INTRODUCED BY HAZELBAKER	2	(b) (2) As used in this chapter, the terms term "mental
3		Э	disease or defect" does not include an abnormality
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GEBERALLY REVISE AND	4	manifested only by re-repeated <u>repeated</u> criminal or
5	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."	5	etherwise other antisocial conduct."
6		6	Section 4. Section 95-507, B.C.M. 1947, is amended to
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	7	read as follows:
8	Section 1. Section 95-101, R.C.W. 1947, is amended to	6	¶95-507. Deter∎ination of irresponsibility on basis of
9	read as follows:	9	report assess to defendent bypsychiatristofhisoun
10	"95-101. Scope Application. These provisions This	10	sholds examination by psychistrist chosen by state or
11	title shall govern the procedure in <u>all</u> the courts of	11	<u>defendant</u> form of expost <u>psychiatric</u> testimony when issue
12	Nontana in all criminal proceedings except where provision	12	of-responsibility is tried upon trial. (1) If the report
13	for a different procedure is specifically provided by law."	13	filed under section 95-505 finds that the defendant at the
14	Section 2. There is a new B.C.H. section numbered	14	time of the criminal conduct charged suffered from a mental
15	95-302.1 that reads as follows:	15	disease or defect which rendered him unable to appreciate
16	95-302.1. Jurisdiction of justices' courts. The	16	the criminality of his conduct or to conferm his conduct to
17	justices' courts have criminal jurisdiction as authorized by	17	the requirements of law_{7} and the court, after a bearing if a
18	93-410 and 95-302.	18	hearing is requested by the attorney prosecuting or the
19	Section 3. Section 95-501, R.C.M. 1947, is amended to	19	defendant, is satisfied that the mental disease or defect
20	read as follows:	20	was sufficient to exclude responsibility, the court on
21	"95-501. Mental disease or defect excluding	21	motion of the defendant shall enter judgment of acquittal on
22	responsibility. (a)(1) A person is not responsible for	22	the ground of mental disease or defect encluding
23	criminal conduct if at the time of such conduct as a result	23	responsibility.
24	of mental disease or defect he is unable either to	24	(2) Then <u>If</u> either the defendant or the state wishes
25	appreciate the criminality of his conduct or to conform his	25	the defendant to be examined by a qualified psychiatrist or
The∵+ a: be rorur	To no changes in $\underline{SB3D}$ and due to length will not 1 . Please refer to yellow copy for complete text.		-2- SB 30
	THIRD READING		

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other expert, selected by the one proposing the examination,
 the examiner shall be permitted to have reasonable access to
 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 convetent 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) Then a psychiatrist or other excert 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

offense charged. He <u>The_expert</u> may make any explanation
 reasonably serving to clarify his diagnosis and opinion and
 may be cross-examined as to any matter bearing on his
 competency or credibility or the validity of his diagnosis
 or opinion."

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

8 #95-509. Statements for purposes of Idmissibility of 9 statements made during examination or treatment imadmissible except-on-ispus-of-pental-condition. 1 statement made by----10 11 person subjected for the purposes of psychiatric 12 13 95-596, 95-598-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 his mental condition, but it shall be It is admissible upon 17 18 that on the issue of his mental condition, whether or not it 19 would be otherwise deemed be considered a privileged communication, unless such-statement it constitutes an 20 21 admission of quilt of the crime charged."

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

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

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1	SENATE BILL NO. 30	1	conduct to the requirements of law.
2	INTRODUCED BY HAZELBAKEB	2	(b) (2) As used in this chapter, the terms term "mental
3		3	disease or defect" does not include an abnormality
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	4	manifested only by re-repeated <u>repeated</u> criminal or
5	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE."	5	atherwise other antisocial conduct."
6		6	Section 4. Section 95-507, B.C.H. 1947, is amended to
7	BE IT FNACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	, 7	read as follows:
8	Section 1. Section 95-101, R.C.H. 1947, is amended to	8	"95-507. Determination of irresponsibility on basis of
9	read as follows:	9	report access to defendant by psychictrict of the
10	"95-101. Scope <u>Application</u> . These provisions <u>This</u>	10	shoise examination by psychiatrist chosen by state or
11	<u>title</u> shall govern the procedure in <u>all</u> the courts of	11	<u>defendant</u> form-of-export <u>psychiatric</u> testimony when issue
12	Montana in all criminal proceedings except where provision	12	of responsibility is tried upon trial. (1) If the report
13	for a different procedure is specifically provided by law."	13	filed under costion 95-505 finds that the defendant at the
14	Section 2. There is a new R.C.M. section numbered	14	time of the criminal conduct charged suffered from a mental
15	95-302.1 that reads as follows:	15	disease or defect which rendered him unable to appreciate
16	95-302.1. Jurisdiction of justices' courts. The	16	the criminality of his conduct or to conform his conduct to
17	justices' courts have criminal jurisdiction as authorized by	17	the requirements of law_{r} and the court, after a hearing if a
18	93-410 and 95-302.	18	hearing is requested by the attorney prosecuting or the
19	Section 3. Section 95-501, R.C.H. 1947, is amended to	19	defendant, is satisfied that the mental disease or defect
20	read as follows:	20	was sufficient to exclude responsibility, the court on
21	"95-501. Mental disease or defect excluding	21	motion of the defendant shall enter judgment of acquittal on
22	responsibility. (a)[]] A person is not responsible for	22	the ground of mental disease or defect excluding
23	criminal conduct if at the time of such conduct as a result	23	responsibility.
24	of mental disease or defect he is unable either to	24	(2) When <u>If</u> either the defendant or the state wishes
25	appreciate the criminality of his conduct or to conform his	25	the defendant to be examined by a qualified psychiatrist or
	REFERENCE BILL		-2- SB 30

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

4 (3) Upon the trial, any psychiatrist who reported 5 under sestion 95-505 may be called as a witness by the б 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 bospital. 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 erpert 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.

(4) When a psychiatrist or other expert who has 17 18 eramined the defendant testifies concerning his the defendant's mental condition, he may make a statement as to 19 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 have a particular state of wind which is an element of the 25

offense charged. He <u>The expert</u> may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

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

ß "95-509. Statements-for-purpeses of Admissibility of 9 statements made during examination or treatment inadmissible 10 ergept-on-iggue of montal-gondition. I statement made by---11 person -- subjected ---- for the purposes of psychiatric 12 examination or treatment pursuant to soctions 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 chall be It is admissible upon 18 that on the issue of his mental condition, whether or not it would be otherwise deemed be considered a privileged 19 20 communication, unless such-statement it constitutes an 21 admission of quilt 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. $\frac{1}{1}$ A complaint, as the basis of an arrest

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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.

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

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

in-the-same-county--If-an-arrest-is-made-in-a--county--other 1 2 than--the--one--in-which-the-wassast-was-issued-the-assested person-shall-be-taken-without-unaogessarr-delar-before--the 3 ш noarost--and---accessible--tudge-in-the-county-where-the arrost-was-maderIN THE SAME_COUNTY OR THE ADJOINING COUNTY. 5 IF AN AREEST IS MADE IN A COUNTY OTHER THAN THE ONE IN WHICH 7 THE WARRANT WAS ISSUED THE APRESTED PERSON SHALL BE TAKEN WITHOUT UNNECESSARY DELAY BEFORE THE MEAREST AND MOST 8 9 ACCESSIBLE JUDGE IN THE COUNTY WHERE THE ARREST WAS MADE OR THE ADJOINING COUNTY. 10 11 (4) (d) Specify specify the name of the person to be 12 arrested or, if his mame 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 issuedy; and (f) Be be signed by the judge of the court with the 17 18 title of his office. 19 (e) (5) The warrant of arrest may specify the amount of bail. 20 21 (f) [6] The warrant shall be directed to all peace 22 officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. 23 However, warrants issued for the violation of city 24 25 ordinances cannot be executed outside the city limits.

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1 except as otherwise provided by sestions 11-927 and 11-960." 2 Section 7. Section 95-704, R.C.S. 1947, is amended to 3 read as follows: ц "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 consisted, made under oath 7 or affirmation before him the judge, which: 8 (1) states that an offense has been committed; q -{a} (2) States states facts sufficient to show probable 10 cause for issuance of the warranty; (b) (3) Particularly particularly describes the place 11 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, R.C.H. 1947, is amended to read as follows: 16 17 "95-719. Stop and frisk. (1) A peace officer may stop 18 any person he observes in circumstances that give the the sease 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.

(2) A peace officer may stop any person he finds near 1 the scene of an offense that the peace-officer be has 2 reasonable cause to suspect has just been committed if: 3 (a) the peace officer he has reasonable cause to 4 suspect that the person has knowledge of material aid to the 5 6 investigation of the offense; or (b) the stop is reasonably necessary to obtain or 7 verify the person's identity or an account of the offense. А (3) A peace officer may stop any person in connection 9 with an offense that the peace officer he has probable cause 10 11 to believe has been committed if: (a) the offense is a felony involving the use or the 12 attempted use of force against a person or theft, damage, or 13 14 destruction of property: and (b) the peace officer he has reasonable cause to 15 16 suspect the person committed the felony; and (c) (i) the stop is reasonably necessary to obtain or 17 18 verify bis the person's identity to determine whether to 19 arrest the person for the felony; or (ii) the peace officer has reasonable cause to suspect 20 21 that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the 22 23 person's identity. 24 (4) A peace officer who has lawfully stopped a person 25 under this section may:

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1 (a) frisk that the person and take other reasonably 2 necessary steps for protection if the pease 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 posses
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.

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

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

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1 read-ac-follows

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2	#95-1001Righttecouncel <u>111</u> = Bvorydefendant
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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	$\frac{1}{1}$ represents or defends any person by order of the court,

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

7 <u>(2)</u> Such costs shall be The expense of implementing 8 <u>subsection (1) is</u> 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 municipaly
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 arcsey; and

(b) in arrests in griminal proceedings when there has
been an arrest by agents of the department of fish and game
and arrests by or agents of the department of justice, the
costs (including attorneys) fees of attorneys appointed by
the court for the defendant) expense must be torne by the
state agency causing the arrest."

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

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

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judge where whenever the warrant of arrest specifies the 1 asount of bail. In the event the Whenever a peace officer 2 accepts bail, he shall give a signed receipt to the offender 3 setting forth the bail received. The peace officer shall 4 5 then deliver the bail to the justice of the peace or polise city judge before whom the offender is to appear, and the 6 7 justice of the peace or police <u>city</u> judge shall give a receipt to the police peace officer for the bail delivered." 8 Section 11. Section 95-1118, R.C.B. 1947, is amended 9 10 to read as follows: 11 *95-1118. Genditions Form of conditions of bail. (1) If a person is admitted to bail before conviction. 12 13 the conditions of bail bond shall be: (a) that he will appear to answer in the court having 14 15 jurisdiction on a day certain and thereafter as ordered by 16 the court until discharged on final order of the court and will not depart from this state without leaver; and 17 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 bond shall be that: 23 (4) (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:

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3 -{++ {d} If the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith ū. surrender to the officer from whose custody he was bailed." 5 6 Section 12. Section 95-1119, R.C.H. 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 trialy or substitute, reduce, or increase bail.* 12 13 to-read-ac-follows+ 14 #95-1120---Persons---prohibited--from---farmishing---bail 15

 $\frac{1}{1}$ (c) He he will not depart from this state without

1

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leave of the court: and

16 admit--abother-to-bail-sotil-sotils_im-cam_sffigitler 17 professional-sapagity-may act-as surety-or-furmish-bail."

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

20 "95-1121. Surotion-for-guaranteed Guaranteed arrest 21 bond certificates-filing-of-undertaking-guaranteed-arrest 22 bond-certificate. (a) (1) Auy A domestic or foreign surety 23 company which has gualified to transact surety business in 24 this state may, in any year, become surety in an amount not 25 to exceed-one-bondred-dollars exceeding (\$100-00) with

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

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

10 (1) (a) The the name and address of the automobile elub 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 <u>(2)(b)</u> The the unqualified obligation of the surety 17 company to pay the fine or forfeiture in an amount not to 18 exceed one hundred-dellars 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 (G) (3) The term "guaranteed arrest bond certificater"
24 means any printed card or other certificate which:

25 <u>(a) is issued by an automobile cluby or association or</u>

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1 insurance company, to any of its members or insureds, and 2 (b) which-said-card-or-cortificate is signed by such 3 the seaber or insured and contains a printed statement that - 64 such the automobile club, automobile association, or insurance company and a surety company, or an insurance 5 company authorized to transact both automobile liability 6 insurance and surety business in the state of Hontana-: 7 8 (i) quarantee 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

<u>the</u> person to appear in court at the time of trial, pay any
fine or forfeiture imposed on such the person in an amount
not to oxceed one hundred dellars exceeding (\$100-00)."

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

16 "95-1122. Fieldtieng--of-seter Motor vehicle lavs violations -- posting-of-guarantood-arrest-boad-cortificate 17 18 certificates accepted in lieu of cash. Any A quaranteed arrest bond certificate with respect to which a surety 19 company has become surety or a guaranteed arrest bond 20 21 certificate issued by an insurance company authorized to transact both automobile liability insurance and surety 22 23 business within this state, as provided in section $95-1121_{T}$ hereof, shall, when posted by the person whose signature 24 appears thereon, be accepted in lieu of cash hail in an 25

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1 amount not to orgeted one hundred dellars exceeding (\$100-00) as a bail bond to guarantee the appearance of euch the 2 persony in any court, including municipal courts, in this 3 stater at such time as may be required by the court, when 4 such the person is was arrested for violation of any a motor 5 vehicle law of this state or ordinance of any a municipality б in this state (except for the offense of driving while 7 intoxicated or for any felony) committed prior to the date 8 of expiration shown on such the guaranteed arrest bond 9 certificate. so A quaranteed arrest_bond_certificate posted 10 as a bail bond in any a court in this state shall be is 11 subject to the same forfeiture and enforcement provisions 12 with-respect-to as bail bonds posted in criminal cases as 13 provided by law, and that any ough a guaranteed arrest bond 14 certificate posted as a bail bond in any a sunicipal court 15 in this state shall-be is subject to the forfeiture and 16 17 enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted." 18 Section 15. Section 95-1406, R.C.M. 1947, is amended 19 20 to read as follows: 21 "95-1406. #hon---and--from-whom-they-may-ack-advice-and 22 who-may--be--present--during--their--ressions lavice__and 23 assistance to grand jury -- who may be present ---

24 stenographer, transcript of testimony. (a) (1) The grand

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25 jury may, at all times, ask the advice of the court, or the

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

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

22 (6) (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 acguired 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 jury as interpreter. While his services are necessary, such h. the interpreter may be present at the examination of 5 б witnesses before the grand jury. The compensation for the 7 services of such the interpreter constitutes a charge against the county- and shall be fixed by the grand fury- 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 auditor upon an order of the judge of the district court. 11

12 (c) (5) Transsript-of-Testinent-(1) (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 recording device, but the record so made shall include the 15 testimony of all witnesses on that particular investigation. 16 17 The shorthand notes of the recordings and transcript of the same, if any, shall be delivered to and retained by the 18 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 <u>(c)</u> The stenographic reporter shall certify and file 25 with the clerk of the district court an original

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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 tea-(10) days after the indictment has been found as 5 the -- acousation -- prosented 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 with him to the county attorney immediately upon his receipt A 9 thereof, shall retain one (4) copy for use only by judges in proceedings relating to the indictment or-accusation, and 10 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.H. 1947, is amended
14 to read as follows:

15 *95-1407. Subpoena of witnesses --iseuance. & subpoena requiring the attendance of a witness before the grand jury 16 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 courty, for The subpoena may be directed to witnesses in the 19 20 state, in support of the prosecution, for those witnesses whose testimony, in his the opinion of the issuer, is 21 22 material in an investigation before the grand jury, and for 23 such other witnesses as the grand jury upon---investigation pending-before-thes say direct." 29

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

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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 vitnesses 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 gestion 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_{T_1} 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 (9) (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.H. 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-etherwise
24 provided by chapter 55, Title 94, R. C. N. -1947.

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

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1 complaint."

Section 19. Section 95-1504, R.C.H. 1947, is amended
to read as follows:

ш "95-1504, Joinder and discharge of offenses and 5 defendants. (a) (1) An indictment, information, or complaint or--accusation may charge two (2) or more different offenses 6 7 connected together in their commission, or different 8 statements of the same offense, or two 42+ or more different 9 offenses of the same class of grimes 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 counts set forth in the indictment, information, or 16 17 complaint or accuration, but and the defendant may be 18 convicted of any number of the offenses charged r_{2} 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 into two (2) or more groups and each of said the groups
 tried separately. An acquittal of one (4) or more counts
 shall not be deemed considered an acquittal of any other
 count.

5 (b) (3) Two (2) or more defendants may be charged in 6 the same indictment or information if they are alleged to have participated in the same series of acts or transactions 7 8 constituting an offense or offenses. Such defendants may be 9 charged in one (1) or more counts together or separately. and all of the defendants need not be charged in each count. 10 (a) If it appears that a defendant or the state is 11 12 prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate 13 charges or defendants for trial, the court may order 14 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 (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

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<u>court</u> must order him to be discharged before the evidence is
 closed, that he may be a witness for his codefendant."
 Section 20. Section 95-1506, B.C.H. 1947, is amended
 to read as follows:

"95-1506. Prior--conviction Procedural requirements --5 6 persistent felony offenders. (1) #hea If the state seeks 7 ingreased--punishment treatment of the accused as a prior 8 convisted felon persistent felony offender under sestion 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 quilty.

14 <u>(2) Such The</u> 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.

(b) The notice and the charges of prior convictions
contained therein shall not be made public nor or in any
manner be made known to the jury before the jury's verdict
is returned upon the felony charge, provided that However,
if the defendant shall testify testifies in his own behalf,
he shall-revertheless-be is subject to impeachment as
provided in section 93-1901-11, Rec. 1947, as another.

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

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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 а 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-94-4713 95-1507 and 95-2206.5." 9 Section 21. Section 95-1507. R.C.H. 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 different occasion than the first. An offender is considered 16 17 to have been previously convicted of a felony if: 18 (2) -- A -- porsistont -- felony-offender-shall-be-imprisoned 19 is-the-state-prison-for-a-tors-of-net--less--than--five---{5} 20 years sor sore than-one-hundred-(100)-years-providings 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

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

 6
 (c)--tho--offender--was-more-than-twenty-mee-(21)-years

 7
 old-at-the-time-of-the-commission-of-the-mow-offense.

6 (3) (c) h-previous-folony-conviction-shall-not-be
9 considered for the purpose of contending-under this section
10 if the offender has not been pardoned on the grownds ground
11 of innocence, or if and the conviction had has not been set
12 aside in any post-conviction a postconviction bearing.

13 (2) A persistent folony 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."

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

19 "95-1704. Time of making motion. The motion provided
20 for ip 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.H. 1947, is amended
24 to read as follows:

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

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

11 (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 sust be refunded to him. However. if the court grants a motion to dismiss based on a defect in ß q 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 defendant be held in custody or that his bail be continued 13 14 for a specified time pending the filing of a new complaint. 15 indictment, or information." 16 Section 24. Section 95-1707, B.C.H. 1947, is amended 17 to read as follows: 18 "95-1707. Transfer of trial. If the court determines 19 that the a motion to dismissy based upon the grounds of lack of jurisdiction or improper place of trial, is well founded. 20 21 it may, instead of <u>ordering</u> 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.H.-1947,--is--amended to-read-as-follower 25

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contempt-of-court.

1	#95-1709Sebstitution-of-judge(a)<u>j1}</u> The-defendant
2	ortheprosecutionmaymovethecourt-in-vriting-for-a
3	substitution of <u>the</u> judge-on-the-ground-that-he <u>thepogapt</u>
4	cannot—have—afair—and-impartial-hearing-or-trial-tefor e
5	caid <u>the</u> judgeThe-motion-chall-be-madeatleastfifteen
6	{15}dayspriortothe-trial-of-the-sase,-or-any-retrial
7	thereef-after-appeal,-effect-for-good-sause-showe.
8	<u>121Upon-the-filing-of-such-a the</u> sotion, thejudge
9	againstwhos-the-setics-is-filed-shall-be-vithout-authority
10	to-astfurtherinthespiningnetionynetion_ or
11	proceeding, but the provisions of this section do not apply
12	<u>creept_ip_regard</u> to-the-arrangementofthecalendar,the
13	rogulationoftho
14	transferring-the-grininal-astion-or-proseeding-to-some-other
15	oowst,-nor-to <u>and</u> the-power-of-calling-in-anotherjudgeto
16	sitandastinsuch <u>the</u> sciminal action-or-proceedingy
17	providing-that-ao <u>Ho</u> judgo-shall <u>mar</u> so-arrange-the-salondar
18	as-to-defeat-the-purposes-of-this-section.
19	<u>{}}Hot <u>Ho</u> morethanone{}-judgocan <u>mar</u> be</u>
20	disgualifiedintheoriminal-astion-or-proseeding,-at-the
21	instance-of-the-procecution-and-not he decethanone{1}
22	jsdge-at-the-instance-of-the-defendant-or-defendanter
23	<u>ffftf</u> party_in_any_matter_above_mentioned

24 shall-file-the <u>who_files_a</u> motion_as-_berein--frowided-_such
25 party <u>under___subsection__fl</u> asy-_cet-_complain--ef-_any

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reasonable delay-as the result thereof. <u>{5}---The-provision-of-this **Thi**s</u> sostion--shall--be <u>is</u> inapplicable--to--any-percon-in-any-sease-involving a-direct

5 (b) (6) -- In-addition--to--the--provision provisions of 6 subsection (a) subsections (1) through (5), any a defendant 7 say-move-at-any-time-for a substitution--of the judge--for 8 9 action, the-court-chall-conduct-a-hearing-and-detersize--the serits of the seties." 10 Section 25. Section 95-1711, R.C.H. 1947, is amended 11 12 to read as follows: 13 "95-1711. Bffect of former-prosecution--and--multiple multiple charges and former prosecutions. (1) Definitions of 14 terms. (a) The term "same transaction" includes conduct 15 16 consisting of:

(i) a series of acts or omissions <u>which are</u> motivated
by a purpose to accomplish a criminal objective, and <u>which</u>
<u>are</u> necessary or incidental to the accomplishment of that
objective; or
(ii) a series of acts or omissions <u>which are</u> motivated
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:

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

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) Hothed of presecution when conduct constitutes pore than one offense. When the same transaction may establish the commission of more than one offense, a person the charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

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

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

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

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

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

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course of conduct and the defendant's course of conduct was
 interrupted, and unless the law provides that the specific
 periods of such conduct constitute separate offenses.
 (3) When proceeding barred by ferrer presedution.

Provided If the offenses, if more than oney were known to 5 б 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 charger 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 former prosecution under the following circumstances: 12

13 (a) The former prosecution resulted in an acquittal. There is an acquittal if whenever the prosecution resulted 14 results in a finding of not quilty by the trier of fact or 15 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.

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

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

(c) The former prosecution resulted in a conviction.
5 There is <u>has been</u> a conviction if <u>whenever</u> 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

(iii) a plea of guilty accepted by the court, so long
as failure to enter judgment was for a reason other than a
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 <u>The</u> defendant consents to the termination or 24 waives his right to object to the termination ϕ_{\pm} of

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

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discretion, finds that the termination is necessary because: 1 (A) it is physically impossible to proceed with the 2 3 trial in conformity with law; or (E) there is a legal defect in the proceedings which 4 would make any judgment entered upon a verdict reversible as 5 6 a matter of law: or (C) prejudicial conducty in or outside the courtroomy 7 makes it impossible to proceed with the trial without 8 manifest injustice to either the defendant or the state; or 9 (D) the jury is unable to agree upon a verdict; or 10 (E) false statements of a juror on voir dire prevent a 11 fair trial. 12 13 bar. When conduct constitutes an offense within the 14 concurrent jurisdiction of this state and of the United 15 States or another state or of two courts of separate, and/or 16 overlapping, or concurrent jurisdiction in this state, a 17 prosecution in any such other jurisdiction is a bar to a 18 subsequent prosecution in this state under the following 19 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 cut of
24 the same transaction.

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

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complaint has had been filed on a misdemeanor charger or 1 after the information was had been filed or the indictment 2 found on a felony charge, by an acquittal or by a final 3 order or judgment for the defendant which has not been set ш 5 aside, reversed, or vacated; and which the acquittal, final order, or judgment necessarily required a determination 6 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) Porson-presention-before-court-lasking
11 jurisdiction-or when fraudulently presented 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:

(a) the <u>The</u> former prosecution was before a court
which lacked jurisdiction over the defendant or the
offenset, er

(b) the <u>The</u> former prosecution was procured by the
defendant without the knowledge of the proper prosecuting
officer or with the purpose of avoiding the sentence which
wight otherwise be imposed;<u>.</u> OF

(c) the The former prosecution resulted in a judgment
 of conviction which was held invalid in any-post-conviction
 a_postconviction bearing."

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

1 to read as follows:

18

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

(1) For the purpose of notice only and to prevent 6 7 surprise, the prosecution shall furnish to the defendant and A file with the clerk of the court at the time of arraignment, 9 a list of the witnesses intended to be called by the prosecution intends to call. The prosecution may, any time 10 after arraignment, add to the list the names of any 11 12 additional witnesses- upon a showing of good cause. The list shall include the names and addresses of the witnesses. 13 14 (2) -- The -- requirement -- of - subsection -- (a) (1) -- of -this section, shall This subsection does not apply to rebuttal 15 16 witnesses. 17

19 (e) (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, parers, or things which each party it intends to 23 introduce in evidence. Thereupen-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

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1 things. The order shall specify the time, place, and manner of making the inspection and of taking the copies or 2 3 photographs and may prescribe such terms and conditions as 4 are just. If the evidence relates to scientific tests or experiments, the opposing party shall, if practicable, be 5 permitted to be present during the tests and to inspect the 6 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 shall promptly notify the other party or his attorney or the 14 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 ruley 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 sectimuation 20 continuance during which it may inspect or copy the evidence 21 in the manner provided for above in this subsection (2).

22 $(\frac{4}{(3)}, \frac{4}{(3)})$ 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 $\frac{1}{(10)}$ days thereafter or

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

а (b) If the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file 5 with the clerk of the courty the names and addresses of all 6 7 witnesses to be called by the defense in support thereof. The Prior to trial the defendant may, prior to trial, upon 8 9 notion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the 10 trial connences, no witnesses may be called by the defendant 11 12 in support of these defenses, unless the name <u>of the witness</u> is included on such the list, except upon good cause shown. 13 (4) All matters which are privileged upon the 14 trialy are privileged against disclosure through any 15 ' 16 discovery procedure."

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

19 "95-1810. Witness from another state summoned to 20 testify in this state. (1) ## 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—of 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

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

(2) If said the certificate recommends that the 8 9 witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this 10 state, such it is prima facie proof of the desirability of 11 such custody and delivery and the judge may direct that such 12 the witness be forthwith brought before him immediately. 13 14 and If the judge being is satisfied of as to the desirability of such custody and delivery, for which such 15 detorgination-said-cortificate-shall-be-prist--fecie--proofy 16 he may order that said the witness be forthwith insediately 17 18 taken into custody and delivered to an officer of this stater. which The order shall be is sufficient authority to 19 such for the officer to take such the witness into custody 20 and hold his unless and until he say be is released by bail, 21 recognizance, or order of the judge issuing the certificate. 22 (3) If the Whenever a witness is summoned to attend 23 and testify in this state, he shall be tendered the sum of 24 25 ten---gents -{10#} cents a mile for each mile and five dollars

1 4\$5-001 for each day that he is required to travel and attend as a witness, provided further that in those cases 2 4 in-which If the state wherein the witness is found has by statutory enactment required that the summoned witness be ш paid an amount or---amounts in excess of the amount 5 б hereinhofore---in---this---paragraph---provided specified in the 7 preceding sentence, then said the witness may be tendered 8 said the ascust or ascesses required by said that state to 9 be-tendered-though-the-said-ascunt-or-aseasts-so-required-to 10 be--tonderod--aro--in--th--eroors--of--the--seid-acornto-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."

Section 28. Section 95-1909, R.C.H. 1947, is amended
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

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jurors with their addresses when the names have been drawn.
the drawn.
<ptt>the drawn.
<ptt>the drawn.

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 (9)(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 (d) (4) (1) (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,

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

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1 and tenant, or debtor and creditor with, or being a member of the family or in the employment of, the defendant, or of 2 3 the person who is alleged to be injured by the offense h charged, or on whose complaint the prosecution was S, instituted,-or-in-his-employment; б (iii) Boing being a party adverse to the defendant in a 7 civil action, or having complained against or been accused A by his in a crisinal 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 tried another person for the offense charged +: 14 15 (vi) Baving 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 verdicty after 18 the case was submitted to it-:

(vii) Having having served as a juror in a civil action
brought against the defendant for the act charged as an
offensev;

22 (viii) ff 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 guiltyt, in which case he must neither be permitted nor

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t 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-:

(x) Per-the existence of having a state of mind en-the
part-of-the-juror in reference to the case, or to either of
the parties, which will would prevent him from acting with
entire impartiality and without prejudice to the substantial
rights of either party.

9 (c) (5) All challenges must be interposed before the 10 inry 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 is which case the court, 13 in its discretion, may allow the challenge to be interposed. 14 (f) 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 twolve (12) 17 person 12-person jury-and-three-(3)-in-all-cases--triad--in 18 tustige--of-the-poage-or-police-courts, Hewaver-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 the same number of perceptory challenges as all of the 24 25 defendants. In a civil or criminal case tried in the

1 district court before a siz-(6)-person siz-person jury, the 2 state and all the defendants shall be allowed three 43+ 3 peremptory challenges each. When the partners PARTIES in a ŧ. critinal case in the district court agree upon a jury 5 consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory 7 challenges to be allowed. 8 (g) (?) After the jury is impaneled and sworn, the 9 court may direct the solection of that one or more alternate 10 jurorsy be selected in the same manner as principal jurorsy. 11 who The alternate jurges shall take the same cath as the 12 principal jurors. Each party shall have one additional 13 percuptory challenge for each alternate jurcr. 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 wediet 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. -(h) (8) The jury shall return a general verdict to each 24

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25

offense charged.

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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 Rowever, the court may allow the case to be reopened for 7 good cause shown."

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

10 "95-1915. Verdict. (a) (1) Between The verdict shall
11 <u>must</u> 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 the iff 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 (9) (3) Conviction—of—a Lessor 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.

#Lenever-a-erise--is--distinguished-into-degrees,-the 1 2 iury, if-they-convict-the-defendant, -suct-find-the-degree-of 3 the grize of which he is suilty. (4) Poll-of-Jury. When a verdict is returned, the 11 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." Section 30. Section 95-2004, B.C.M. 1947, is amended 9 10 to read as follows: "95-2004. Trial in justice justices! and police city 11 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 that six. (2) (b) A trial by jury may be waived by the consent of 16 17 both parties expressed in open court and entered in the 18 docket. 19 (2) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury 20 21 trial is waiwed, 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 (4) (a) The the defendant enters a plea of guilty in

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1 open courty; 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** <u>defendant</u>. The <u>Henryse</u> 6 <u>THE</u> <u>the offence</u> <u>shared earrise a penaltr of a fibe celtr</u> 7 <u>the</u> 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."

Section 31. Section 95-2005, R.C.H. 1947, is amended
to read as follows:

"95-2005. Formation of trial jury. (a)--Humber-of 16 17 Jurors, A-jury in -justice-or-police-court-shall--consist--ef 18 six--(6)-persons,-but-the-parties-may-agree-te-a-mamber-less than-six-(6)-(b)(1) Formatism-of-Trial-Jury-- The ht the 19 20 time of preparing the district court jury list, the county 21 22 tury-list, shall prepare a jury list for each justice 23 justice's and police city court within the county. Fach 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. Additional lists may be prepared if required. The lists 5 shall be filed in the office of the clerk of the district б 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
the potifying each one orally that he is summoned and of the
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 <u>(4)</u> 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 cection 95-1909(4) (2) (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.*

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Section 32. Section 95-2006, R.C.M. 1947, is amended
 to read as follows:

3 "95-2006. Verdict. (a) (1) Return. The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, it or cause it to be entered in the minutes. The verdict of the 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 (0) (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) (d) 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.H. 1947, is amended
24 to read as follows:

25 "95-2007. Sentence and judgment. (a) [1] If a judgment

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of acquittal is rendered, the defendant sust be issediately
 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 readered.
7 The sentence must be entered in the minutes of the court as
8 soon as it is imposed.

-feb (3) If the defendant pleads guilty, or is convicted 9 either by the court or by a jury, the court must impose a 10 sentence of -- fine--or imprisonment-or-bothy-as-the-came-mat 11 be--The-gourt-say-suspend-the-excoution-of-the--seatence---up 12 13 to---the-marinus-contonco-allowed-for-the-particular-offense-14 FORTFISTIONS-ON--the---BORtence--whish-it-decas-accessry 35 15 provided in 95-2206, 95-2206.1 through 95-2206.4, and 16 95-2207. If alcohol or other drugs are involved, the court 17 may impose such rehabilitative measures as it deeme 18 19 considers advisable under the circumstances. (d) (4) The determination and imposition of sentence 20 21 shall be are the exclusive duty of the court." Section 34. Section 95-2009, R.C.M. 1947, is amended 22 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

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district court and may be tried before a jury of six (6)
 which may be drawn from either the regular panel or jury box
 Word 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 ton days (10) days after judgment.

7 (e) (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-95-2010y--R.C.M.-1947y-is-ascaded 13 to-read-as-follows:

#95-2010, --- Dicqualification of -- justice, - magistrate, -- er 14 15 may-move-the-court-in-writing-for-the-disqualification-of--a 16 448tice-----17 that-he the-sevent cannot-have-a-fair-and-impactial--hearing 18 or--trial---boforo-the-jacticey-magistratey-or-jastice-of-the 19 peace. ... The action shall be ade at least fifteen (15) ... days 20 21 prior-to-the-trial-of-the-casey-or-any-retrial-thereaf-after 22 appeal, -except for good cases - shown. 121-- Upon the filing of such a the setion, the justice, 23

 24
 magistrate,-or-justice-of-the peace-against-whem-the-metica

 25
 is-filed-shall-be-without-authority-te-act--further--in--the

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2	of-this-sectiondonotapply <u>creeptintesard</u> tothe
3	arrangenentof-the-oalendar,-the-regulation-of-the-erder-of
4	business-the-power-of-transferring-the-original-action-or
5	proscodingtosonoothersourtynor-to <u>and</u> the-power-of
6	Calling-in-another-justics, magintrate, crjusticesfthe
٦	peacetositandactinsuch <u>the</u> criminal-action-or
8	Proceeding,, providing that no justice, <u>He</u> assistate, or
9	juctico-of the-peace-shall <u>gay</u> so-arrange-the-calendar-ac-to
10	defeat-the-puppeds-of-this-sostien-
11	<u>12)</u> Not <u>No</u> sere-than-ene-(1)-justicey-magistratey-er
12	justice of the peace can <u>may</u> be disgualified in the eminibal
13	astion-or-proceeding,-at-the-instance-of-the-proceettion-and
14	aot <u>mo</u> more-than-one-(1)-justice,-magistrate,-er-justiceef
15	the pease at the instance of the defendant or defendants,
16	<u>19}IEcither</u> <u>#</u> party-in-any-matter-above-mentioned
17	shall-file-the <u>who_files-a</u> sotion-as-horeigprovidedsuch
18	party yuder
19	reasonable-delay-as-the-result-thereof.
20	<u>151Phe-provision-of-thic This</u> costionskallbe <u>i</u> e
21	inapplicabletoany-porcon-in-any-cauce-involving-a-direct
22	contempt-of-courty
23	{2}<u>{6}</u>In-additiontotheprovision <u>provision</u> of
24	subcostion{1}-aug <u>subcostions-{1}_through-{5}</u>
25	#ay-move-at-any-time-for-the-disqualification-of-ajustice,

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1 magistrate, or justice of the peace for cause, supported by 2 affidavit. Upon the filing of cuch the section, the court 3 shall-conduct - a hearing-and detersing the section of the section.

5 Section 35. Section 95-2101, R.C.H. 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-estamination reexamination of the issue in 9 the same courty before another juryy 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) Setion for a Row 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 <u>shall specify the grounds therefor. It</u> 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 -- Botion -- for -- a -- Bou -- trial -- shall - specify the 23 grounds therefor.

24 (c) <u>Alternative-Authority-of-the-Court-on-Hearing</u>
 25 <u>Hotion-for-New Trial.</u> On hearing the motion for a new trial,

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1 if justified by law and the weight of the evidence, the2 court may:

- 3 4-(i) Deny deny the motion;
- 4 2. (ii) Grant grant a new trial; or

5 3-(iii) Rodify modify or change the verdict or finding by finding-the-defendant-quilty-of-a-lesser-degree-of-the 6 7 grise shareed, finding the defendant quilty of a lesser included crime or finding the defendant not guilty." 8 9 10 to-read-as-follerst 11 #95-2202. Sentence-and Rondering judgment and 12 13 10-0000-court-(b) (2) -- If--- the--- fordist--or--finding--is--- not--- quilty_ 14 15 -ugesent-shall-bo-condered...issediately--and--the--defeadant shall-be-discharged-from-gustody or from-the obligation of 16 17 his bail bond, except as provided in 95-1916. 18 shall---be----prosessed---asd---judgsest--rendered--withis---a 19 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 found guilty of a crise or an offense upon a verdict or a 24 plea of quilty, the court may: 25

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1 (4) (a) Defer defer imposition of sentence for a period not to-orgeed-one exceeding (1) year for any misdemeanor; or 2 for a period not to-orgoed-three exceeding (3) years for any 3 a felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period 5 6 of the deferred imposition. Such reasonable restrictions or 7 conditions may include: 8 (a) (i) jail base release; (b) (ii) jail time not to-encode-minety exceeding (90) 9 10 days; (iii) conditions for probation; 11 12 {d} (iv) restitution; (e) (v) any other reasonable conditions 13 deesed considered necessary for rehabilitation or for the 14 15 protection of society; or (#) (vi) any combination of the above-: 16 (2) (b) Suspend suspend execution of sentence up to the 17 maximum sentence allowed for the particular offense. The 18 sentencing judge may impose on the defendant any reasonable 19 restrictions during the period of suspended sentence. Such 20 21 reasonable restrictions may include: 22 (i) jail base release; 23 (b) (ii) jail time not to-exceed exceeding (90) days; (c) (iii) conditions for probation: 24 25 (iv) restitution;

1 (e)(y) any other reasonable conditions deemed 2 considered necessary for rehabilitation or for the 3 protection of society; 8 (f) (vi) any combination of the above-; 5 If--aby---Rostristions---or----gonditions-aro-violatedy-asy elapsed-timey-escept--4ail--timey--shall--net--be--a--seedit 6 7 against -- the -- contexcey---thigse--the--court--chell--thervise ordor. 8 9 (3) (c) Impose a fine as provided by law for the 10 offense; 11 (4) (d) Genuit commit the defendant to a correctional institution with or without a fine as provided by law for 12 13 the offenser; 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
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1 office: 2 (b) (ii) prohibit the defendant the right to own or 3 carry a dangerous weapon; Ľ1 (c) (iii) prohibit freedom of association; 5 (d) (iv) prohibit freedom of movement; б (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 municipal court shall does not have the authority to 10 11 restrict an individual's rights as enumerated in subsection 12 (4) (3) (a). 13 (4) any & judge, magistrate, or justice of the peace 14 who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this 15 section, or his successor, is authorized thereaftery in his 16 17 discretion, during the period of such the suspended sentence or deferred imposition of sentence, in his discretion, to 18 19 revoke such the suspension or impose sentence and order such the person committedy, or <u>He</u> may also, in his discretion, 20 21 order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such 22 23 jurisdiction with this bis court. Prior to the revocation of 24 an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing." 25

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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 h is--convicted of an has been found guilty of an cffense upon 5 a verdict or plea of quilty, the court may, if the offense is punishable by death or imprisonment, the --- court-may 6 7 sentence the offender to death or imprisonment." Section 38. Section 95-2206.5, B.C.M. 1947, is amended 8 to read as follows: 9 10 "95-2206.5. Judicial---designation Designation of 11 persistent felony offenders offender for purposes of parole 12 eligibility. (1) #hen-an-offender-hes-been-previewsly 13 convicted -- of -- a -- folony -- and -- the -- present - offense -- is -- second 14 felony-genitted-on-a-different-oggagion-than-the-first,-the The sentencing court shall designate the an offender a 15 16 persistent felony offender for purposes of eligibility for parole under section 95-3214, provided if the offender: 17 18 (a) the previous felony conviction was for an offence 19 gossitted---in-this-otate-or-any-other-warisdistion-for-which 20 a-sentence-to-a-ters-of-isprisonment-in-excess--of--ose--(1) 21 year would 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 cossission-of-the-present-offense-and-either: 25 (i)--the-previous-felony-sentistica,-or

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1	{ii}-the-offender1s-release-on-parole-or-stherwise-fron
2	pricen-er-ethercozmitzentizposedasa-resultsfth e
3	previous-felony-convictiont-and
4	(\$)[b] theoffender was nore-than-eighteen-(18) years
5	of age <u>or older</u> at the time of the commission of the present
6	offense.
7	(2)hproviousfolonyconvictionchallnotbo
8	considered for the purposes of this cection if the offender
9	has-been-pardoned-on-the-grounds-of-integenceyorifthe
10	convictionhadbooncotanideinanypost-conviction
11	hearing.
12	(3) [2] A judicial determination of that an offender is
13	a persistent felony offender under this section may be made
14	only when the conviction for the present offense occurs
15	after July 1, 1975."
16	Seetion 44. Section 95-2209, B.C.M1947, 18amended
17	to-road-as-followet
18	#95-2209Bateyof-~judgeestend-judgeent-collHeen
19	judgment-upon-a-conviction-ic-condered, the-clork-must-enter
20	the same it in the minuter stating briefly the offense - for
21	#hich-the-confiction-was-hadyandthefastof p fi of
22	convictionsy (if-any) or and Be masty-within-five(5)daysy
23	annoxtogetherandfilethe-following-papersy-which-will
24	constitute-the-judgment-rolls
25	{1}The <u>the</u> indictment-or-information-andacopyof

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(4)--h a copy-of-the-judgmont." Section 39. Section 95-2224, R.C.E. 1947, is amended to read as follows: "95-2224. Prisone--not-agenty or Penalty-for-treating PRISONER OF AGENT OF involuntary servant. He prisoner---in---the-gosquaity-under-the-proviciens-of-this-agt shall-be-deemed-to-be-an-agent, or -- involuntary -- corrant-- of the--department---or-of-the-supervising-agener-while-released #16008duct-pursuant-to-94-7-401,-8.6.8.-1947. ##-0fficer--08 esploree of the department or of the supervising agener-uhe troate-a-prisoner-participating-in-the_furlough-program-an an__intoluntary_servant_is_guilty_of_official_missonduct-and is purishable as provided in 94-7-404, NO PRISONER IN THE COBMUNITY UNDER THE PROVISIONS OF THIS ACT MAY BE CONSIDERED TO BE AN AGENT OF INVOLUNTARY SERVANT OF THE DEPARTMENT OF OF THE SUPERVISING AGENCY, WHILE BELBASED 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."

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the-minutes-of-the-orraignmenty-pleasy and-metionset

(2)--A a copy-of-the-minutes-of-the-trial-t

(3)--The the instructions--given--er--refused-and-the

Section 40. Section 95-2229, R.C.M. 1947, is amended
 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 webicles resulting from as the result of traffic 8 summonses issued by the peace officers of the cities, or 9 counties, or by highway patrolaen, together with that portion of the fines which is specified in section 75-7903, 10 shall be retained by the county treasurer of the county in 11 12 which the offense occurred and at the end of each month 13 distributed as follows:

14 (a) (1) fines <u>Pines</u> collected as the result of
15 summonses issued by city police <u>peace</u> officers shall be
16 distributed to the city in which the <u>police peace</u> officer is
17 employedy and credited to the city general fundy.

18 (b)(2) fines Pines 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 read
21 fund+1

22 (c)(3) fines Fines collected as the result of 23 summonses issued by state highway patrolmen shall be raid to 24 the state treasurer of Montana, and by him oredited who 25 <u>shall credit them</u> to the general fund of the statet.

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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 Bontana, and by bis-eredited who shall
4	<u>credit it</u> to the automobile driver education account in the
5	earmarked revenue fund."
6	Section 41. Section 95-2403, B.C.M. 1947, is amended
7	to read as follows:
8	95-2403. Scope of appeal <u>by state</u> . (a)[1] Except as
9	OTHERWISE SPECIFICALLY authorized by-thiscode 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)<u>(a)</u> dismissing a case;
14	<pre>(3) [b] modifying or changing the verdict as provided</pre>
15	in section 95-2101 (s) (3) (2) (C) (III);
16	<pre>{3}(c) granting a new trial;</pre>
17	<pre>(4)(d) quashing an arrest or search warrant;</pre>
18	<pre>(45) [9] suppressing evidence;</pre>
19	$\frac{(6)}{(f)}$ suppressing a confession or admission; cr
20	<pre>(7) (g) granting or denying change of venue."</pre>
21	Section 42. Section 95-2426, R.C.M. 1947, is amended
22	to read as follows:
23	"95-2426. Detormination-of-appeal <u>Action</u> reviewing
24	court may take. On appeal the reviewing court may:
25	(1) Reverse reverse, affirm, or modify the judgment or

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order from which the appeal is taken; 1 (2) Set set aside, affirm, or modify any or all of the 2 proceedings subsequent to or dependent upon the judgment or F order from which the appeal is taken; ш (3) Reduce-the-degree-of reduce the offense of which 5 the appellant was convicted to a lesser included offense; 6 7 (4) Reduce reduce the punishment imposed by the trial 8 court: or (5) Order order a new trial if justice so requires." 9 10 Section 43. Section 95-2601, R.C.H. 1947, is amended 11 to read as follows: 12 "95-2601. Potition in the trial court Circunstances in 13 which validity of sentence may be challenged. Any A person adjudged quilty of an offense in a court of record who has 14 15 no adequate remedy of appeal and who claims that sentence 16 was imposed in violation of the constitution or the laws of this state or the Constitution constitution of the United 17 18 States. or that the court was without jurisdiction to impose 19 such the sentence, or that the sentence was in excess of the maximum authorized by law_{τ} or is otherwise subject to 20 21 collateral attack, upon any ground of alleged error 22 available under a writ of habeas corpus, writ of coram nobis, or other common-law common law or statutory remedy 23 24 may move petition the court which imposed the sentence, of the supreme court, or any justice of the supreme court to 25

4 "95-2604. When action petition may be made filed. A 5 motion petition for such relief may be made <u>filed</u> at any 6 time after conviction." 7 Section 45. Section 95-2605. R.C.E. 1947. is amended 8 to read as follows: 9 *95-2605. Proceedings on the petition. (1) Unless the 10 sotion petition and the files and records of the case 11 conclusively show that the prisener petitioner is entitled 12 to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the 13 14 conviction took place, grant a prompt hearing thereon, determine the issue, and make findings of fact and 15 16 conclusions with respect thereto. (2) The court may receive proof by affidavits, 17 18 depositions, oral testimony, cr other evidence. In its discretion the court may order the petitioner brought before 19 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

vacate, set aside, or correct the sentence."

to read as follows:

Section 44. Section 95-2604. R.C.M. 1947. is amended

25 bail, or discharge as may be necessary and proper. If the

supplementary orders as to reassignment, retrial, custody,

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court finds for the state, the petitioner shall be returned
 to the custody of the person to whom the writ was directed."
 Section 46. Section 95-2606, R.C.M. 1947, is amended
 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.H. 1947, is amended
10 to read as follows:

11 **95-2608. Review. Bither the petitioner or the state 12 may appeal to the supreme court of Montana from an order 13 entered on the metion petition. The appeal shall must be 14 taken within sim (6) months from the entry of the order.*

15 Section 48. Section 95-2902, R.C.E. 1947, is amended
16 to read as follows:

"95-2902. Reasonable doubt as to degree which offense 17 convicts only of levest least offense. When it appears 18 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 gan may only be convicted of the levest-of-such 24 degrees-only greatest included offense about which there is 25 no reasonable doubt."

Section 49. Section 95-3004, R.C.M. 1947, is amended
 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 deathy 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 or of mitigation, excuse, or
12 justification appear."

Section 50. Section 95-3011, R.C.H. 1947, is amended
to read as follows:

15 "95-3011. Competency of hesband-and-wife-as-witzesses 16 spouses. Except with the consent of bothy or in cases of 17 criminal viclence upon one upon the other, or in case 18 of abandonment, or neglect of children by either party, or of abandonment or neglect of the wife one by the husband 19 20 other, neither husband---wife spouse is a competent 21 witness for or against the other in a criminal acticn or proceeding to which one or both are parties." 22

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.

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1 conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 2 section 94-2-106, unless he the testimony is corroborated by a other evidence, which in itself, and without the aid of the ħ. testimony of the one responsible or legally accountable for 5 the same offenser tends to connect the defendant with the 6 commission of the offenses, and the The corroboration is not 7 sufficient, if it merely shows the commission of the 8 9 offense, or the circumstances thereof."

10 Section 52. Section 95-3110, R.C.H. 1947, is amended
11 to read as follows:

12 *95-3110. Rights of accused persons --- application for writ-of habeas corpus. (1) Wo person arrested upon such 13 14 warrant shall may be delivered over to the agent whose the 15 executive authority demanding him shall have has appointed to receive him unless he shall-be is first taken forthwith 16 without delay before a judge of a court of record in this 17 state, who shall inform him of the demand made for his 18 19 surrender and of the crime with which he is chargedy and 20 what that he has the right to demand and procure legal 21 counsel+,

22 <u>(2)</u> and if <u>If</u> the prisoner or his counsel shall state 23 <u>states</u> 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

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a writ of babeas corpus. When such the writ is applied for, notice thereofy and of the time and place of bearing thereony shall be given to the prosecuting officer of the county in which the arrest is yas made and in which the accused is in custodyy and to the said agent of the demanding state."

7 Section 53. Section 95-3113, R.C.H. 1947, is amended
8 to read as follows:

9 #95-3113. Arrest of accused before making of requisition. (1) & judge or magistrate of this state shall 10 issue a warrant directed to any peace officer companding the 11 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

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

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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 (1) the commission of the crimer and, except in cases
8 arising under section 95-3106, has having fled from
9 justicer; 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-belioted-to-be-in-this-state-the-indes-or-secietrate 13 chall---issue--a--warrant--directed--to--any--pease--efficer 14 commanding--him--to--approhend--the--person--mamod--thereiny 15 *herever--he---aay--be--found-in-this-state,-and-to-bring-his 16 before-the-same-or-any-other-judgey-magistrate-or-sourt--who 17 18 place-where-the-arrest-may-be--madey--to--arswer--charge--or 19 complaint_and-affidawit_and-a

20 (2)_1 certified copy of the sworn charge or complaint
21 er and affidavit upon which the warrant is issued shall be
22 attached to the warrant."

23 Section 54. Section 95-3117, R.C.B. 1947, is amended
24 to read as follows:

25 "95-3117. Extension of time of commitment adjournment.

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If the accused is not arrested under the warrant of the 1 governor by the expiration of the time specified in the 2 warrant, bond, or undertaking, a judge or magistrate may २ h discharge him or may recommit him for a further period of sister (60) days or a supreme court justice or sounts 5 district court judge may again take bail for his appearance 6 and surrender, as provided in section 95-3116, but-with for 7 я a period not to exceed sisty (60) days after the date of such the new bond or undertaking." 9

10 Section 55. Section 95-3120, R.C.H. 1947, is amended
11 to read as follows:

12 "95-3120. Guilt or innocence of accused, when inquired into. The quilt or innocence of the accused as to the crime 13 14 of which he is charged may not be inquired into by the 15 governor, or in any proceeding after the depand for 16 extradition accompanied-by-a-charge-of-crise-in-legal-form as above provided for in 95-3103 shall have has been 17 18 presented to the governor, except as it may be involved in identifying the person held as the person charged with the 19 20 crime."

21 Section 56. Section 95-3123, B.C.M. 1947, is amended
22 to read as follows:

23 "95-3123. Application for issuance of requisition-by
 24 when eade-contents. Ir(1) When the return to this state of
 25 a person charged with a crime in this state is required, the

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prosecuting attorney shall present to the governor his 1 2 written application for a requisition for the return of the 3 person chargedy, in which The application shall state the name of the person so charged, the crime charged against n 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 worthiging 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.

 $II_{-}(2)$ When the return to this state is required of a 13 person who has been convicted of a crime in this state and 14 has escaped from confinement or broken the terms of his 15 bail, probation, or parole, the prosecuting attorney of the 16 17 county in which the offense was committed, the parole board, 18 or the warden of the institution or sheriff of the county from which the escape was made τ shall present to the 19 governor a written application for a requisition for the 20 return of such the persony, in-which The application shall 21 be stated state the name of the person, the crime of which 22 23 he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail. 24 probation, or parole, and the state in which he is telieved 25

time the application is made.
Iff.(3) The application shall be verified by
affidavit, shell be executed in duplicate, and shell be
accompanied by two certified copies of the:
(a) indictment returned; or

to be, including the location of the person therein at the

(b) information and affidavit filedy; or of the

8 (c) complaint made to the judge or magistrate, stating

9 the offense with which the accused is charged 7: or of the

10 (d) judgment of conviction; or

11 (e) of the sentence.

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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. information, and affidavits, or-of-the judgment of 19 conviction, or of the sentence shall be filed in the office 20 21 of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded 22 23 with the governor's requisition." 24 Section 57. Section 95-3125, R.C.M. 1947, is amended

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25 to read as follows:

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"95-3125. 1 No--fee--to--be--paid-to--public--officer 2 3 assisting return of fugitive. No compensation, fee, or reward of any kind can may be paid to or received by a 0 5 public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned 6 7 in section 95-3124, or for the surrender of the fugitive, or я for conveying his to this statey or detaining his therein, except as provided for in such-restion 95-3134-and 95-3134-4 9 10 95-3124 AND 95-3124.1."

Section 58. Section 95-3129, B.C.H. 1947, is amended
to read as follows:

13 "95-3129. Wonwaiver by this state. Nothing costained 14 in this act contained ... shall may be decond-to constitute 15 considered a waiver by this state of its right, power, or privilege to try such the demanded person from for a crime 16 17 committed within this state, or of its right, power, or privilege to regain custody of such the person by 18 extradition proceedings or otherwise for the purpose of 19 trial, a sentence, or punishment for any a crime committed 20 21 within this state_{v:} nor shall may any proceedings had under this act which result in, or fail to result in, extradition 22 23 be doemed considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction in-any-way 24

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25 whatseevet."

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1 Section 59. Section 95-3206, R.C.H. 1947, is amended 2 to read as follows:

3 "95-3206. Orders, records, report <u>reviewability.</u>
4 <u>confidentiality. [1]</u> 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.

(2) The department of institutions shall keep a record 7 of the board's acts and decisions available to the public. 8 However, all social records, including the pre-sentence 9 presentence report, the pre-parele preparole report, and the 10 supervision history obtained in the discharge of official 11 duty by the department, shall be confidential and shall not 12 be disclosed directly or indirectly to anyone other than the 13 members of the board or a judge. The board or a court may in 14 15 its discretion, when the best interest interests or welfare of a particular defendant or prisoner makes such action 16 desirable or helpful, permit the inspection of the report or 17 18 any parts thereof by the prisoner or his attorney."

19 Section 60. Section 95-3214, F.C.M. 1947, is amended20 to read as follows:

21 **95-3214. Parole authority and procedure. (1) The 22 <u>Subject to the following restrictions, the</u> board shall 23 release on parole, by appropriate order, any person confined 24 in the Bontana state prison, except persons under sentence 25 of death, when in its opinion there is reasonable

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probability that the prisoner can be released without 1 detriment to himself or to the community,-provided: 2 (a) That-no No convict serving a time sentence shall 3 may be paroled until he has served at least one-quarter ш 5 as allowance provided for in sustain 80-1905+, or 12 1/2 6 years upon his ters, whichever is less, escopt that no 10 7 convict designated a persistent felony offender under 8 section 95-2206.5 may be paroled until he has served at 9 least one-third (4/3) of his full term, less the good time 10 allowances -- offy -- as allowance provided for in section 11 80-1905, or 17 1/2 years upon his tern, whichever is less. # 12 first--offender-serving-a-tize-sentence-may-be-paroled-after 13 he-has--served,---apos---his--ters--of--sertense,--twalte---ast 14 one-half---(12--1/2)---years---A-persistent-feleny-offender-as 15 defined-in-section-95-2206,5-may-be--parelad--after--he--has 16 17 18 417-1/2) years. (b) No convict serving a life sentence shall may be 19

paroled until he has served thirty (30) years, less the good
time allowances off, as allowance provided for in section
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

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on parole only when the board believes that he is able and 1 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 б prisoner, including the circumstances of his offense, his 7 previous social history and criminal record, his conduct, A employment, and attitude in prison, and the reports of and q 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 perele-ghall-be-erdered-enly 12 £0x-4hc-bcst--intorent---of---seciety---net---as---as---as---as---as 13 elemency---et---a---reduction-of-sentence-or-parden,--i-pricence 14 shall-be-placed on parole-only-whon-the beard believes--thet 15 he--is--ablo--and---willing---to--fulfill-the-obligations-of-a 16 lav-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 parcle 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

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eligibility of prisoners for parole, and the conduct of

parole hearings, or and conditions to he imposed upon

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1 parolers. #hen-an-order-for-parole-is-issued it-shall-resite 2 the-conditions-thereof."

3 Section 61. Section 95-3215, B.C.H. 1947, is amended to read as follows: ù

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 persistent felony offender on parole who has served 8 9 one-third (1/3) of his term or terms, less the good time allowances allowance, is considered released on parole until 10 11 the expiration of the maximum term or terms for which he was 12 sentenced, less the good time allowance 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 parcle in preparing a parole plan. 22 Department personnel shall make a report of their efforts 2.3 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

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signed by the parolee and given to him and to his probation 1 2 and parole officer, who shall report on his progress under the rules of the board. Э

(4) The probation and parole officer shall regularly 4 advise and consult with the parolee, assist his in adjusting 5 to community life, and inform him of the restoration of his 6 rights on successful completion of seatence. 7

(5) The probation and parcle officer shall keep such 8 9 records as the board or department may require. All records shall be entered in the master file of the individual." 10

Section 63. Section 95-3308, R.C.M. 1947, is amended 11 12 to read as follows:

"95-3308. Return of parole violator. (1) (a) At any 13 14 time during release on parcle or conditional release, the department may issue a warrant for the arrest of the 15 released prisoner for violations violation of any of the 16 conditions of releaser or a notice to appear to answer to a 17 charge of violation. Such The notice shall be served 18 19 personally upon the prisoner. The varrant shall authorize 20 all officers maged therein to return such the prisoner to the actual custody of the penal institution from which he 21 22 was released, or to any other suitable detention facility designated by the department. 23

24 (b) Any probation and parole officer may arrest such 25 the prisoner without a warrant, or may deputize any other

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officer with power to arrest to do so by giving him a 1 2 written statement setting forth that the prisoner bas, in З the judgment of said the probation and parole officer. violated the conditions of his release. Such The written а. 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 \mathbf{y} 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.

<u>(c)</u> Pending hearing, as <u>kereinafter</u> provided <u>in</u>
<u>subsections</u> <u>(2)</u> and <u>(3)</u>, upon any charge of violation_y the
prisoner may, if circumstances warrant, be incarcerated in
<u>such the</u> institution.

(2) (a) After the arrest of said the prisoner, a 17 hearing shall be held within a reasonable time, unless such 18 19 the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe 20 that the arrested parolee has committed acts which would 21 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

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violation or arrest and as promptly as convenient after
arrest. The parolee must be given notice of this the
hearing and must be allowed to appear and speak in his own
behalf and introduce relevant information to the hearings
officer.

6 $\frac{(3)}{(b)}$ 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 or evidence given in support of parole revocation and of the 9 parologis-position. Based on the information given to him, 10 11 the hearings officer sweet shall determine whether there is 12 probable cause to hold the parolee for the final decision of the board of pardons as specified provided in section 13 14 95-3217 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 report 21 shall be accompanied by the findings of the bearings 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

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adopt. If the violation is established, the board may
 continue or revoke the parole or conditional releaser or
 enter such other order as it may see fit.

-(4) (c) 1-prisoner-for-whose-return-a-warrant-has--been 4 5 isound_-shall,-after-the-issuance-of-such-warrant,-if-it-is 6 fugitive_-or_-to--have-fled-from-justice. If it shall-appear 7 Ð appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing 9 10 of such the warrant to the date of his arresty or any part of ity--shall will be counted as time served under the 11 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-

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