CHAPTER NO. _1/6____.

HOUSE BILL NO. 184

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INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January	16,	1979		Introduced and referred to Committee on Judiciary.
January	25,	1979		Committee recommend bill do pass as amended and be placed on Consent Calendar. Report adopted.
January	26,	1979		Printed and placed on members' desks.
January	30,	1979		Third reading Consent Calendar passed. Transmitted to second house.
		I	IN THE SENA	ATE
January	31,	1979		Introduced and referred to Committee on Judiciary.
February	₇ 27,	, 1979		Committee recommend bill be concurred in. Report adopted.
March 1,	, 197	79		Second reading, concurred in.

March 5, 1979 Third reading, concurred in.

IN THE HOUSE

March 6, 1979 Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled. LC 0026/01

1	HOLDE BILL NO. 184
2	INTRODUCED BY
3	BY REQUEST OF THE CODE COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND
7	REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947.*
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MUNTANA:
10	Section 1. Section 46-4-203, MCA, is amended to read:
11	#46-4-203。 Subpoenaing of witnesses。 A coroner may
12	issue subpoenes for witnesses, returnable forthwith
13	immediately or at such time and place as he may appoint
14	designate: which may be served by any competent person. He
15	must <u>shall</u> summon and examine as withesed-every <u>a withese</u>
16	<u>each</u> person who, in his opinion or that of the jury, has any
17	knowledge of the facts and may summon a surgeon or physician
18	to inspect the body and give a professional opinion as to
19	the cause of the death."
20	Section 2. Section 46-5-201, HEA, is amended to read:
21	#46-5-201。 Search warrant defined。 A "search warrant"
22	is an order:
23	(1) in writing;
24	(2) in the name of the state;
25	(3) signed by a judge;

L	(4) particularly describing the thing <u>s</u> or place <u>s or</u>
2	parson to be searched and the instruments, articles, or
3	things <u>e or persons</u> to be seized;
4	(5) directed to a peace officer commanding him to
5	search for <u>persons or</u> personal property and bring <u>them or</u> it
6	before the judge."
7	Section 3. Section 46-5-202, MCA, is amended to read:
8	#46-5+202。 Grounds for search warrant。 Any judge may
9	issue a search warrant upon the written application of any
10	person, made under oath or affirmation before the judge,
11	which:
12	(1) states that an offense has been committed;
13	(2) states facts sufficient to show probable cause for
14	issuance of the warrant;
15	(3) particularly describes the places or thingssources e^{-1}
16	<u>persons</u> to be searched; and
17	(4) particularly describes the things or persons to be
18	seized."
19	Section 4. Section 46-5-305; MCA; is amended to read:
20	#46-5-305. Disposition of unclaimed property. If
21	property seized as evidence is not claimed within 6 months
22	of completion of the case for which it was seized and if
23	after proper inquiry the judge cannot ascertain or locate
24	any person entitled to its possession, he must order the
25	property to be sold by the sheriff. The proceeds from such
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the sale, after deduction of the costs of storages and
 preservation of the property, and the sales must be paid
 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is agended to read: 5 "46-6-203. Manner of arrest with a warrant. When 6 making an arrest by-virtue-of <u>pursuant to</u> a warrant, the g peace officer making-the-arrest shall inform the person to 7 8 be arrested of his the officerts authority, of the intention 9 to arrest him, of the cause of the arrest, and of the fact 10 that a warrant has been issued for his arrest, except when 11 he flees or forcibly resists before the peace officer making 12 13 the giving of such information will imperil the arrest. The peace officer meking-the-arrest need not have the warrant in 14 15 his possession at the time of the arrest, but after the 16 affesty-if-the-person-warrested--so--requestsy the warrant shall must be shown to new the person arrested as soon as 17 18 practicable if such person so requests."

Section 6. Section 46-9-203, MCA, is amended to read: #46-9-203. Report to county attorney concerning drug users. it-is-hereby-mode-the--duty--of <u>A</u> city judges--and megistrates judge, judges judge of <u>a</u> municipal courts court. ond--justices <u>or_justice</u> of the peace to <u>shall</u> report immediately to the county attorney of the county wherein their--courts--are--established--and--conducted <u>bis court_is</u>

1 located any and-all knowledge or information acquired or 2 obtained by said-dity-judger-magistrater-judges-of-municipal courtsy-and-justices-of-the-peace him in a trial of couses a 3 4 cause or nearing bearing before them him, which knowledge 5 or information shows or tends to show that any person is a drug user or drug addict. If said such person so-shown-to-be 6 7 e--drug--user-or-drug-addict is under arrest or liberated on bail at the time said the knowledge or information is 8 9 acquired or-obtained-by-soid-city-judge-or-wagistratey-judge 10 of--a--municipal--courty--or-justice-of-the-peace, said such 11 person shall may not be liberated. it under arrest, or said 12 the bail discharged by said the judger-magistrater or 13 justice of the peace until said the report is made to the county attorney--es-provided-herein." 14

15 Section 7. Section 46-9-311, MCA, is amended to read: 16 #46-9-311. Reduction: increase. revocation. or 17 substitution of bail. (1) Upon application by the state or 18 the defendant, the court before which the proceeding is 19 pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the 20 21 bail. or revoke bail.

(2) Reasonable notice of such application must be
 given to the opposing parties or their attorneys by the
 applicant after-verdict-of-guilty-and-before-judgment."

25 Section 8. Section 46-9-403, MCA, is amended to read:

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1 "46-9-403. Qualifying property as bail. (1) If the 2 bail is stock or bonds or both, the accused or sureties 3 shall file a sworn schedule which shall must contain a list 4 of the stocks and bonds deposited describing each in 5 sufficient detail that it may be identified, the market 6 value of each stock or bong, and the total market value of 7 the stocks or and bonds listed.

8 (2) (a) If the bail is real estate, the accused or 9 sureties shall file a sworn schedule which shall must 10 contain a legal description of the real estate, a 11 description of any and all encumbrances on the real estate 12 including the amount of each and the holder thereof, and the 13 market value of the unencumbered equity owned by the 14 affiant.

15 (b) A certified copy of the schedule of real estate 16 shell must be filed immediately by the court in the office 17 of the clerk and recorder of the county in which the 18 property is situated, and the state shell-have has a lien on 19 such real estate from the time the copies-ore <u>copy_is</u> filed. 20 The clerk and recorder shall enter, index, and record such 21 schedules the schedule without requiring any fee.

22 (3) If the bail is a written undertaking with 23 sureties, each surety must be a resident or freeholder 24 within the state. They <u>Each surety</u> must each be worth the 25 amount specified in the undertaking, exclusive of property 1 exempt from execution, but the court or magistrate on taking 2 bail may allow more than two sureties to justify severally 3 in amounts less than that expressed in the undertaking if 4 the whole justification be is equivalent to that of 5 sufficient bail.

6 [4] If the bail is a commercial surety bond, it may be
7 so--done <u>executed</u> by any domestic or foreign surety company
8 which is qualified to transact surety business in this
9 state.*

Section 9. Section 46-10-102, MCA; is amended to read: "46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the judge justice shall hold him to answer to the court having jurisdiction of the offense."

15 Section 10. Section 46-10-201; MCA, is amended to 16 read:

17 "46-10-201• when examination not public. The judge 18 justice may• in his discretion, and musty upon the request 19 of the defendanty exclude from the preliminary examination 20 every person not officially associated with the case before 21 the court."

22 Section 11. Section 46-10-202, MCA, is amended to 23 read:

24#46-10-202.Presentationofevidence.(1)The25defendantshallmaynotentera plea.Thejustice

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shall hear the evidence without unnecessary delay. All
 witnesses shall must be examined in the presence of the
 defendant. The defendant may cross-examine witnesses against
 him and may introduce evidence in his own behalf.

5 (2) During the examination of any witness or when the 6 defendant is making a statement or testifying, the judge 7 justice may, and on the request of the defendant or state 8 shall, exclude all other witnesses. He may also cause the 9 witnesses to be kept separate and to be prevented from 10 communicating with each other until all are examined."

11 Section 12. Section 46~10-203, MCA, is amended to 12 read:

13 "46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe 15 that an offense has been committed by the defendant, the 16 judge justice shall hold him to answer to the court having 17 jurisdiction of the offense; otherwise, the judge justice 18 shall discharge him."

19 Section 13. Section 46-10-204, MCA, is amended to 20 read:

1 stenographer upon demand by the county attorney, the
2 defendant, or the defendant's counsel.

3 (2) After concluding the proceeding, if the judge
 4 justice holds the defendant to answer, he shall transmit
 5 forthwith ignediately to the clerk of the court having
 6 jurisdiction of the offense all papers in the proceeding and
 7 any bail taken by him."

8 Section 14. Section 46-13-203. MCA, is amended to → read:

10 ***46-13-203.** Change of place of trial. (1) The 11 defendant or the prosecution may move for a change of place 12 of trial on the ground that there exists in the county in 13 which the charge is pending such prejudice that a fair trial 14 cannot be had in such county. The motion shall must be made 15 at least 15 days prior to trial unless except that, for if 16 good cause is shown, it may be made thereafter.

17 (2) The motion shell must be in writing and supported 18 by an affidavit which thell must state facts showing the 19 nature of the prejudice alleged. The defendant or the state 20 may file counteraffidavits. The court shall conduct a 21 hearing and determine the merits of the motion.

22 (3) If the court determines that there exists in the 23 county where in which the prosecution is pending such 24 prejudice that a fair trial cannot be had, it shall transfer 25 the cause to any other court of competent jurisdiction in

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any county where in_which a fair trial may be had.#
 Section 15. Section 46-14-302, MCA, is amended to
 read:

4 #46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of Warm Springs 5 6 state hospital believes that a person committed to his 7 custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make 8 9 application for the discharge or release of the person in a report to the court by which the person was committed and 10 shall send a copy of the application and report to the 11 12 county attorney of the county from which the defendant was committed. 13

(2) The court shall then appoint at least two 14 qualified psychiatrists to examine the person and to report 15 16 their opinion as to his mental condition within 60 days or a 17 longer period which the court determines to be necessary for 18 the purpose. To facilitate the examinations and the 19 proceedings thereon: the court may have the person confined 20 in any institution located near the place where the court 21 sits which may hereafter be designated by the superintendent 22 of Warm Springs state hospital as suitable for the temporary 23 detention of irresponsible persons.

24 (3) If the court is satisfied by the report filed25 under subsection (1) of this section and the testimony of

the reporting psychiatrists which the court considers
 necessary that the committed person may be discharged or
 released on condition without danger to himself or others,
 the court shall order his discharge or his release on
 conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly ٨ 1 order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil н 9 proceeding, and the burden is upon the committed person to 10 prove by a preponderance of the evidence that he may safely 11 be discharged or released. According to the determination 12 of the court upon the hearing, the committed person shall 13 then be discharged or released on conditions which the court 14 determines to be necessary or shall be recommitted to the custody of the superintendent of Warm Springs state 15 hospital, subject to discharge or release only in accordance 16 with the procedure procedures prescribed in this section and 17 18 46-14-303-*

19 Section 16. Section 46-14-304, MCA, is amended to 20 read:

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conditional release should be revoked, the court shall
 immediately order him to be recommitted to the
 superintendent of Warm Springs state huspital, subject to
 discharge or release only in accordance with the procedure
 procedures prescribed in 46-14-302 and 46:14:303.**

5 Section 17. Section 46-16-103, MCA, is amended to 7 read:

8 "46-16-103. Who decides questions of law and fact. (1)
 9 All prosecutions deciding issues of fact shell must be tried
 10 by the court and jury. except on a plea of quilty.

11 (2) Questions of law shelf <u>Busi</u> be decided by the 12 court and questions of fact by the jury except <u>that</u> on a 13 trial for fibel <u>criminal defamation</u> the jury shall determine 14 both questions of law and of fact. Questions of law and fact 15 shelf <u>Busi</u> be decided by the court when a trial by jury is 16 waived under 46-16-102(2)."

17 Section 18. Section 46-16-503, MCA, is amended to 18 read:

19 #46-16-503. Conduct of jury after retirement -- advice 20 from court. (1) when the jury retires to consider its 21 verdict: an officer of the court shall must be appointed to 22 keep them the jurors together and to prevent conversations 23 between the jurors and others.

24 (2) After the jury has retired for deliberation, if
25 there be is any disagreement among them the jurges as to the

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testimony or if they the jurars desire to be informed on any point of law arising in the cause, they must require the afficer to conduct them into court. Upon--seing <u>when_the</u> <u>juracs_are</u> prought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county afformey and the defendant and his counsel."

8 Section 19. Section 46-16-702, MCA; is amended to 9 read:

10 "46-16-702. Motion for a new trial. (1) Following a 11 verdict or finding of guilty. the court may grant the 12 defendant a new trial if required in the interest of 13 justice.

14 (2) The motion for a new trial shall <u>must</u> be in 15 writing and shall <u>must</u> specify the grounds therefor. It 16 shall <u>must</u> be filed by the defendant within 30 days 17 following a verdict or finding of guilty. Reasonable notice 18 of the motion shall <u>must</u> be served on the state.

19 (3) On hearing the motion for a new trial, if 20 justified by law and the weight of the evidence, the court 21 may:

- 22 (a) deny the motion;
- 23 (b) grant a new trial; or

24 (c) modify or change the verdict or finding by finding

25 the defendant guilty of a lesser included erime offense or

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1	finding the defendant not guilty."	1	period not exce
2	Section 20. Section 46-17-311, MCA, is amended to	2	judg e may im po
3	read:	3	restrictions or a
4	"46-17-311. Appeal. (1) All cases on appeal from	4	imposition. Such
5	justices? or city courts must be tried anew in the district	5	include:
6	court and may be tried before a jury of six selected as	6	(i) jaił bi
7	providedinTitle-25y-cnaptor-7y-part-2 <u>in_the_same_manner</u>	7	(ii) jail ti
8	as a trial jury in a civil action. except thet the total	8	(iii) condit
9	number_of_jurors_drawn_shall_be_at_least_six_plus_the_total	9	(iv) restitu
10	number_of_peremptory_challenges.	10	(v) any d
11	(2) The defendant may appeal to the district court by	11	necessary for n
12	giving written notice of his intention to appeal within 10	12	society: or
13	days after judgment.	13	(vi) any com
14	(3) Within 30 days, the entire record of the justice's	14	(b) suspend
15	or city court proceedings shall gust be transferred to the	15	sentence allowed
16	district court or the appeal shall must be dismissed. It is	16	judge may impos
17	the duty of the defendant to perfect the appeal."	17	restrictions dur
18	Section 21. Section 46-18-201, MCA, is amended to	18	reasonable restri
19	read:	19	subsections.(1)[a
20	#46-18-201. Sentences that may be imposed. (1)	20	t+>ja++-be
21	Whenever a person has been found guilty of an offense upon a	21	tiij-joii-ti
22	verdict or a plea of guilty, the court may:	22	ttij-condi t
23	(a) defer imposition of sentence, excepting sentences	23	tiv}-resti tu
24	for driving under the influence of alcohol or drugs, for a	24	tv)anya
25	period not exceeding 1 year for any misdemeanor or for a	25	necessaryforr
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1	period not exceeding 3 years for any felony. The sentencing
2	judge may impose upon the defendant any reasonable
3	restrictions or conditions during the period of the deferred
4	imposition. Such reasonable restrictions or conditions may
5	include:
6	(i) jail base release;

time not exceeding 90 days;

itions for probation;

tution;

other reasonable conditions considered rehabilitation or for the protection of .

ombination of the above.

nd execution of sentence up to the maximum ed for the particular offense. The sentencing ose on the defendant any reasonable uring the period of suspended sentence. Such ictions may include+ <u>any of thosed listed in</u>

- (a)(i)_through_()(a)(vi)_
- tecesfor-reteset
- time-not-exceeding-90-dayst
- ttions-for-probations
- tutiont
- -ather---reasonable---conditions---considered

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-rehabititation--or--for--the--protection--of

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1 society: 2 tvij-any-combination-of-the-above. 3 (c) impose a fine as provided by law for the offense: 4 (d) commit the defendant to a correctional institution 5 with or without a fine as provided by law for the offense: 6 (e) impose any combination of subsections (1)(b). 7 (1)(c). and (1)(d). (2) If any restrictions or conditions imposed under 6 9 subsection (1)(a) or (1)(b) are violated, any elassed time. 10 except jail time, shall is not be a credit against the 11 sentence unless the court orders otherwise. 12 (3) Except as provided in 46-18-222, the imposition or 13 execution of the first 2 years of a sentence of imprisonment 14 imposed under the following sections may not be deferred or 15 suspended: 45-5-102(2). 45-5-103(2). 45-5-202(2). 16 45-5-302(2)+ 45-5-303(2)+ 45-5-401(2)+ 45-5-503(2) and (3)+ 17 45-9-101(2), 45-9-102(3), and 45-9-103(2).* 18 Section 22. Section 46-18-202. MCA: is amended to 19 read: 20 "46-18-202. Additional restrictions on sentence. (1)

The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society: (a) prohibit probibition of the defendant-the-right-to

hold defendant's holding public office; 1 (b) prohibit---the---defendant---the---right---to--own 2 prohibition of his owning or carry carrying a dangerous 3 4 weapon; (c) prohibit restrictions on his freedom of 5 association: 6 1 (d) promibit restrictions on his freedom of movement; (e) any other limitation reasonably related to the R objectives of rehabilitation and the protection of society. 9 (2) Whenever the district court imposes a sentence of 10 11 imprisonment in the state prison for a term exceeding 1 12 year, the court may also impose the restriction that the 13 defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. If such a 14 restriction is to be imposed, the court shall state the 15 reasons for it in writing. If the court finds that the 16 restriction is necessary for the protection of society, it 17 snall impose the restriction as part of the sentence and the 18 judgment shall contain a statement of the reasons for the 19 20 restriction. 21

(3) The judge in a justice*s, city, or municipal court
does not nave the authority to restrict an individual*s
rights as enumerated in subsections (1) and (2).*

24 Section 23. Section 46-18-401, MCA, is amended to 25 read:

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#46-18-401. Merger of sentences. (1) Unless the judge
 otherwise orders:

3 (a) when whenever a person serving a term of 4 commitment imposed by a court in this state is committed for 5 another offense, the shorter term or shorter remaining term 6 shall be merged in the other term <u>except</u> as provided in 7 subsection (5); and

8 (b) when whenever a person under suspended sentence or
9 on probation for an offense committed in this state is
10 sentenced for another offense; the period still to be served
11 on suspended sentence or probation shall be merged in any
12 new sentence of commitment or probation.

13 (2) The court merging the sentences shall forthwith 14 immediately furnish each of the other courts and penal 15 institutions in which the defendant is confined under 16 sentence with authenticated copies of its sentence, which 17 shall must cite the sentences being merged.

18 (3) If an unexpired sentence is merged pursuant to
19 subsection (1), the court which imposed such sentence shall
20 modify it in accordance with the effect of the merger.

21 (4) Separate sentences of for two or more crimes
 22 offenses shall run concurrently unless the court otherwise
 23 orders.

24 (5) Except as provided in this subsection, when 25 whenever a prisoner is sentenced for an offense committed

1 while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, 2 the new sentence runs consecutively with the remainder of 3 the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he 5 ъ is released on parole under chapter 23, part 2, of this 7 title in regard to the original sentence, whichever is 8 sooner. In the latter case, the sentences run concurrently 9 from the time of his release on parole." 10 Section 24. Section 46-20-318, MCA, is amended to

12 #46-20-318. Dismissal for failure to cause timely 13 transmission <u>-- transmission at instance of respondent</u>. (1) 14 If the appellant shelt-fett fails to cause timely 15 transmission of the record, any respondent may file a motion 16 in the supreme court to dismiss the appeal. The motion shelt 17 must be supported by:

read:

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18 (a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order expendence of the expiration date of any order extending the time for transmitting the record; and (b) proof that 7 days' notice in writing has been

25 served on the appellant that application will be made for -18- HB 184

1 dismissal of the appeal. 2 (2) Instead of filing a motion to dismiss the appeal. 3 the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall 4 proceed as if the appellant had caused it to be docketed." 5 Section 25. Section 46-22-201. NCA. is amended to 6 read: 1 #46-22-201. Application for write (1) Application for 6 9 the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. 10 11 It must specify: (a) that the person in whose behalf the writ is 12 13 applied for is unlawfully imprisoned or restrained of his liberty: 14 (b) why the imprisonment or restraint is unlawful; 15 (c) the place where and the officer or person by whom 16 he is so confined or restrained and-the-place-wherey--naming 17 att. 18 [21_A1] the parties <u>must be named</u> if they are known or 19 20 describing-them described if they are not known. +2+(3) The petition must be verified by the oath or 21 affirmation of the party making the application." 22 23 Section 26. Section 46-22-202. MCA. is amended to read: 24

25 #46-22-202. By whom issued and before whom returnable.

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1 The writ of habeas corpus may be granted:

2 (1) by the supreme court or any justice thereof upon 3 petition by or on behalf of any person restrained of his 4 liberty in this state. When so issued it may be made 5 returnable before the court or any justice thereof or before 6 any district court or judge thereof.

7 (2) by the a district courts court or a judge thereof
8 upon petition by or on behalf of any person restrained of
9 his liberty in their the court's or judge's respective
10 counties district or districts county."

11 Section 27. Section 46-23-108, MCA, is amended to 12 read:

13 #46-23-108. Records and reports -- confidentiality. 14 The department shall keep a record of the board's acts and 15 decisions available to the public. However, all social 16 records, including the presentence report, the preparole 17 report, and the supervision history obtained in the discharge of official duty by the department, shell-be are 18 19 confidential and shall may not be disclosed directly or 20 indirectly to anyone other than the members of the board or 21 a judge. The board or a court may, in its discretion, when 22 the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the 23 24 inspection of the report social record or any parts thereof by the prisoner or his attorney." 25

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ı	Section 28. Section 46-23-217, MCA, is amended to	1	read:
2	read:	2	"46-23-402. Purpose of prisoner furlough program. (1)
3	™46-23-217。 Service of term for additional crime. Any	3	The purpose and intent of this part is are to:
4	A prisoner who commits a crime while at large upon go parole	4	(a) establish a program for the rehabilitation,
5	or conditional release and who is convicted and sentenced	5	education, and betterment of selected prisoners confined in
6	therefor shall serve such sentence concurrently-with-thu	6	the state prison, placing the establishment, regulation,
7	te rms- under-which-he-was -released-unlesso therwiseordered	7	guidance, and control of such program under the direction of
8	by-the-court-in-sentencing-for-the-new-offense <u>consecutively</u>	8	the department of institutions;
9	<u>with_the_remainder_of_the_original_sentence_as_provided_in</u>	9	(b) increase th eir <u>such prisoners</u>! responsibility to
10	<u> 46-18-401</u> ."	10	society;
11	Section 29. Section 46-23-306, MCA, is amended to	11	(c) provide for the minimum hourly wage required by
12	read:	12	law or the prevailing rate of pay for persons employed in
13	#46-23-306. Record of hearing. At the hearing the	13	similar occupations by the same employer to be paid to said
14	board must cause to be kept a record showing:	14	convicts such prisoners while so employed;
15	(1) the names of all persons appearing before the	15	(a) make it possible that they may <u>for them</u> to work
16	board on behalf of the person perdoned-by seeking_clemency	16	gainfully to support their dependents in whole or in part
17	from the governor;	17	while serving their sentences, continue their education or
18	(2) the names of all persons appearing before the	18	training, and at the same time fulfill the obligations of
19	board in opposition to the granting of the same;	19	the sentence of imprisonment imposed.
20	(3) the testimony of all persons giving evidence	20	(2) The prisoner <u>furlough</u> program shall operate by
21	before the board;	21	supplementing and not replacing established penal procedures
22	(4) that the affidavit and return from the printer of	22	now or hereafter established by law and shall serve to
23	the publication of the notice and order of hearing was on	23	extend the limits of confinement for treatment as well as
24	file prior to the hearing."	24	jurisdictional purposes.
25	Section 30. Section 46-23-402, MCA, is amended to	25	(3) This part is to be liberally construed to effect
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- 1 the overall objectives set forth in this section.*
- 2 Section 31. Repealer. Sections 95-1709 and 95-2010;
- 3 R.C.M. 1947, are repealed.

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~End-

46th Legislature

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HB 0184/02

Approved by Committee on Judiciary

1	HOUSE BILL NO. 184
2	INTRODUCED BY MARKS
3	BY REQUEST OF THE CODE COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND
7	REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 46-4-203, MCA, is amended to read:
11	#46-4-203. Subpoenaing of witnesses. A coroner may
12	issue subpoenas for witnesses, returnable forthwith
13	immediately or at such time and place as he may appoint
14	designate, which may be served by any competent person. He
15	m ust <u>shall</u> summon and examine as witnesses-every <u>a witness</u>
16	each person who; in his opinion or that of the jury; has any
17	knowledge of the facts and may summon a surgeon or physician
18	to inspect the body and give a professional opinion as to
19	the cause of the death."
20	Section 2. Section 46-5-201, MCA, is amended to read:
21	#46-5-201。 Search warrant defined。 A #search warrant#
2 2	is an order:
23	(1) in writing;
24	(2) in the name of the state;
25	(3) signed by a judge:

1	(4) particularly describing the thing <u>a</u> or place <u>a.or</u>
2	person to be searched and the instruments, articles, or OR
3	things y of persons to be seized;
4	(5) directed to a peace officer commanding him to
5	search for <u>mersons or</u> personal property and bring <u>them or</u> it
6	before the judge."
7	Section 3. Section 46-5-202, MCA, is amended to read:
8	#46-5~202。 Grounds for search warrant。 Any judge may
9	issue a search warrant upon the written application of any
10	person, made under oath or affirmation before the judge,
11	which:
12	(1) states that an offense has been committed;
13	(2) states facts sufficient to show probable cause for
14	issuance of the warrant;
15	(3) particularly describes the places or things, or
16	<u>persons</u> to be searched; and
17	(4) particularly describes the things <u>errorsons</u> to be
18	seized."
19	Section 4. Section 46-5-305, MCA, is amended to read:
20	#46-5-305. Disposition of unclaimed property. If
21	property seized as evidence is not claimed within '6 months
22	of completion of the case for which it was seized and if
23	after proper inquiry the judge cannot ascertain or locate
24	any person entitled to its possession, he must order the
25	property to be sold by the sheriff. The proceeds from such
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the sale, after deduction of the costs of storage<u>1</u> and
 preservation of the property, <u>and the sale</u>; must be paid
 into the county treasury."

Section 5. Section 46-6-203, MCA, is amended to read: 4 5 #46+6+203. Manner of arrest with a warrant. When 6 making an arrest by-virtue-of <u>pursuant to</u> a warrant, the <u>a</u> peace officer making-the-arrest shall inform the person to 7 8 be arrested of his the officer's authority, of the intention 9 to arrest him, of the cause of the arrest, and of the fact 10 that a warrant has been issued for his arrest, except when 11 he flees or forcibly resists before the neace officer making 12 the-screat has an opportunity so to so inform him or when 13 the giving of such information will imperil the arrest. The peace officer making-the-arrest need not have the warrant in 14 15 his possession at the time of the arrest, but after the 16 arresty-ffethe-person-sorrested-so-sequestsy the warrant 17 shall must be shown to him the person arrested as soon as 18 practicable if such person so requests."

Section 6. Section 46-9-203. MCA, is amended to read: 20 #46-9-203. Report to county attorney concerning drug 21 users. it-is-hereby-made-the-duty-of <u>A</u> city judges-and 22 mngistrates judge, judges judge of <u>a</u> municipal courts <u>court</u>. 23 <u>and-justices or justice</u> of the peace to <u>shall</u> report 24 immediately to the county attorney of the county wherein 25 their--courts--are--established--ond--conducted <u>his_court_is</u>

1 located any and-all knowledge or information acquired or 2 obtained by said-city-judger-magistrater-judges-of-municipal 3 courtsy-ond-justices-of-the-peace him in a trial of couses a - 4 cause or hearings hearing before them him, which knowledge 5 or information shows or tends to show that any person is a drug user or drug addict. If said such person so-shown-to-be 6 a--drug--user-or-drug-addict is under arrest or liberated on 7 bail at the time said the knowledge or information is 8 acquired or obtained by said city windse or inagistratey widge 9 of--a--municipal--courty--or-justice-of-the-peace, said such 10 11 person shall may not be liberated, if under arrest, or stid 12 the bail discharged by said the judgey--magistratey or 13 justice of the peace until said the report is made to the 14 county attorney-as-provided-herein."

Section 7. Section 46-9-311. MCA, is amended to read: #46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be
 given to the opposing parties or their attorneys by the
 applicant...ifter-verdict-of-guilty-ond-before-judgment."

25 Section 8. Section 46-9-403, MCA, is amended to read:

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1 "46-9-403. Qualifying property as bail. (1) If the 2 bail is stock or bonds or both, the accused or sureties 3 shall file a sworn schedule which shall <u>must</u> contain a list 4 of the stocks and bonds deposited describing each in 5 sufficient detail that it may be identified, the warket 6 value of each stock or bond, and the total warket value of 7 the stocks or and bonds listed.

8 (2) (a) If the bail is real estate, the accused or 9 sureties shall file a sworn schedule which shell <u>must</u> 10 contain a legal description of the real estate, a 11 description of any and all encumbrances on the real estate 12 including the amount of each and the holder thereof, and the 13 warket value of the unencumbered equity owned by the 14 affiant.

15 (b) A certified copy of the schedule of real estate 16 shall <u>must</u> be filed immediately by the court in the office 17 of the clerk and recorder of the county in which the 18 property is situated, and the state shall-have <u>bas</u> a lien on 19 such real estate from the time the copies-are <u>copy is</u> filed. 20 The clerk and recorder shall enter, index, and record such 21 schedules <u>the schedule</u> without requiring any fee.

22 (3) If the bail is a written undertaking with 23 sureties, each surety must be a resident or freeholder 24 within the state. They Each surety must each be worth the 25 amount specified in the undertaking, exclusive of property

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exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification be is equivalent to that of sufficient bail.

6 [4] If the bail is a commercial surety bond, it may be
7 so--done <u>executed</u> by any domestic or foreign surety company
8 which is qualified to transact surety business in this
9 state.^m

Section 9. Section 46-10-102, MCA, is amended to read:
 "46-10-102. Waiver of preliminary examination. If the
 defendant waives the preliminary examination, the judge
 justice shall hold him to answer to the court having
 jurisdiction of the offense."

15 Section 10. Section 46-10-201, MCA, is amended to 16 read:

17 "46-10-201. When examination not public. The judge justice may, in his discretion, and musty upon the request of the defendanty exclude from the preliminary examination every person not officially associated with the case before the court."

22 Section 11. Section 46-10-202, MCA. is amended to 23 read:

24 "46-10-202• Presentation of evidence• (1) The 25 defendant shell may not enter a plea• The judge justice

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shall hear the evidence without unnecessary delay. All
 witnesses shall must be examined in the presence of the
 defendant. The defendant may cross-examine witnesses against
 him and may introduce evidence in his own behalf.

5 (2) During the examination of any witness or when the 6 defendant is making a statement or testifying, the judge 7 justice may, and on the request of the defendant or state 8 shall, exclude all other witnesses. He may also cause the 9 witnesses to be kept separate and to be prevented from 10 communicating with each other until all are examined."

Section 12. Section 46-10-203, MCA, is amended to read:

13 "46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe 15 that an offense has been committed by the defendant. the judge justice shall hold him to answer to the court having 17 jurisdiction of the offense; otherwise. the judge justice 18 shall discharge him."

19 Section 13. Section 46-10-204, MCA, is amended to 20 read:

21 "46-10-204. Record of examination. (1) The testimony 22 of each witness. in case cases of homicide. must be reduced 23 to writing as a deposition by a court-appointed 24 stenographer. In cases other than homicide, the testimony 25 of each witness shall must be taken by a court-appointed stenographer upon demand by the county attorney, the
 defendant, or the defendant's counsel.

3 (2) After concluding the proceeding, if the judge 4 justice holds the defendant to answer, he shall transmit 5 forthwith immediately to the clerk of the court having 6 jurisdiction of the offense all papers in the proceeding and 7 any ball taken by hime*

8 Section 14. Section 46-13-203, MCA, is amended to 9 read:

10 "46-13-203. Change of place of trial. (1) The 11 defendant or the prosecution may move for a change of place 12 of trial on the ground that there exists in the county in 13 which the charge is pending such prejudice that a fair trial 14 cannot be had in such county. The motion shall must be made 15 at least 15 days prior to trial unless except that, for if 16 good cause is shown, it may be made thereafter.

17 (2) The motion shell must be in writing and supports.
18 by an affidavit which shell must state facts showing the
19 nature of the prejudice alleged. The defendant or the state
20 may file counteraffidavits. The court shall conduct a
21 hearing and determine the merits of the motion.

(3) If the court determines that there exists in the
county where in which the prosecution is pending such
prejudice that a fair trial cannot be had, it shall transfer
the cause to any other court of competent jurisdiction in

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1 any county where in which a fair trial may be had."

2 Section 15. Section 46-14-302, MCA, is amended to 3 read:

#46-14-302. Discharge or release upon motion of 4 superintendent. (1) If the superintendent of Warm Springs 5 state hospital believes that a person committed to his 6 custody under 46-14-301 may be discharged or released on 7 condition without danger to himself or others, he shall make 8 application for the discharge or release of the person in a 9 report to the court by which the person was committed and 10 shall send a copy of the application and report to the 11 county attorney of the county from which the defendant was 12 13 committed.

(2) The court shall then appoint at least two 14 qualified psychiatrists to examine the person and to report 15 their opinion as to his mental condition within 60 days or a 16 longer period which the court determines to be necessary for 17 the purpose. To facilitate the examinations and the 18 proceedings thereon, the court may have the person confined 19 in any institution located near the place where the court 20 sits which may hereafter be designated by the superintendent 21 of Warm Springs state hospital as suitable for the temporary 22 detention of irresponsible persons. 23

24 (3) If the court is satisfied by the report filed25 under subsection (1) of this section and the testimony of

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the reporting psychiatrists which the court considers
 necessary that the committed person may be discharged or
 released on condition without danger to himself or others,
 the court shall order his discharge or his release on
 conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly 6 7 order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil 8 9 proceeding, and the burden is upon the committed person to 10 prove by a preponderance of the evidence that he may safely 11 be discharged or released. According to the determination 12 of the court upon the hearing, the committed person shall 13 then be discharged or released on conditions which the court 14 determines to be necessary or shall be recommitted to the 15 custody of the superintendent of Warm Springs state 16 hospital, subject to discharge or release only in accordance 17 with the procedure procedures prescribed in this section and 18 46-14-303."

19 Section 16. Section 46-14-304, MCA, is amended to 20 read:

21 "46-14-304. Recommitment after conditional release. If 22 within 5 years after the conditional release of a committed 23 person the court determines after hearing evidence that the 24 conditions of release have not been fulfilled and that for 25 the safety of the person or for the safety of others his

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conditional release should be revoked, the court shall
 immediately order him to be recommitted to the
 superintendent of Warm Springs state hospital, subject to
 discharge or release only in accordance with the procedure
 procedures prescribed in 46-14-302 and 46-14-303."

6 Section 17. Section 46-16-103, MCA, is amended to 7 read:

8 #46-16-103• Who decides questions of law and fact• (1)
9 All prosecutions deciding issues of fact shell <u>must</u> be tried
10 by the court and jury. except on a plea of guilty.

11 (2) Questions of law shall <u>must</u> be decided by the 12 court and questions of fact by the jury except <u>that</u> on a 13 trial for libel <u>criminal defamation</u> the jury shall determine 14 both questions of law and of fact. Questions of law and fact 15 shall <u>must</u> be decided by the court when a trial by jury is 16 waived under 46-16-102(2)."

17 Section 18. Section 46-16-503, MCA, is amended to 18 read:

19 "46-16-503. Conduct of jury after retirement -- advice 20 from court. (1) When the jury retires to consider its 21 verdict, an officer of the court shall must be appointed to 22 keep them the jurors together and to prevent conversations 23 between the jurors and others.

24 (2) After the jury has retired for deliberation. if
 25 there be is any disagreement among them the jurors as to the

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testimony or if they the jurors desire to be informed on any 1 point of law arising in the cause, they must require the 2 officer to conduct them into court. Upon-being When_the 3 jurges are brought into court, the information requested may 4 be given in the discretion of the court. If such information 5 is given, it must be given in the presence of the county 6 attorney and the defendant and his counsel." 7 Section 19. Section 46-16-702, MCA, is amended to я 0 read: #46-16-702. Motion for a new trial. (1) Following a 10 verdict or finding of guilty, the court may grant the 11 defendant a new trial if required in the interest of 12 13 justice. (2) The motion for a new trial shell must be in 14 writing and shall must specify the grounds therefor. It 15 shall must be filed by the defendant within 30 days 16 following a verdict or finding of guilty. Reasonable noti-17 of the motion shall must be served on the state. 18 (3) On hearing the motion for a new trial, if 19 justified by law and the weight of the evidence, the court 20 21 #ay: 22 (a) deny the motion; (b) grant a new trial; or 23 (c) modify or change the verdict or finding by finding 24 the defendant guilty of a lesser included crime offense or 25

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1	finding the defendant not guilty."
2	Section 20. Section 46-17-311, MCA, is amended to
3	read:
4	"46-17-311• Appeal• (1) All cases on appeal from
5	justices* or city courts must be tried anew in the district
6	court and may be tried before a jury of six selected es
7	providedinfitle-25v-chapter-Tv-part-2 <u>in the same manner</u>
9	as a trial jury in a civil action, except that the total
9	<u>number_of_jurors_drawn_shall_be_at_least_six_plus_the_total</u>
10	number_of_peremptory_challenges.
11	(2) The defendant may appeal to the district court by
12	giving written notice of his intention to appeal within 10
13	days after judgment.
14	(3) Within 30 days, the entire record of the justice's
15	or city court proceedings shall must be transferred to the
16	district court or the appeal shall must be dismissed. It is
17	the duty of the defendant to perfect the appeal."
18	Section 21. Section 46-18-201, MCA, is amended to
19	read:
20	"46-18-201. Sentences that may be imposed. (1)
21	whenever a person has been found guilty of an offense upon a
22	verdict or a plea of guilty, the court may:
23	(a) defer imposition of sentence, excepting sentences
24	for driving under the influence of alcohol or drugs, for a
25	period not exceeding 1 year for any misdemeanor or for a
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1	period not exceeding 3 years for any felony. The sentencing
2	judge may impose upon the defendant any reasonable
3	restrictions or conditions during the period of the deferred
4	imposition. Such reasonable restrictions or conditions may
5	include:
6	(i) jail base release;
7	(ii) jail time not exceeding 90 days;
8	(iii) conditions for probation;
9	(iv) restitution;
10	(v) any other reasonable conditions considered
11	necessary for rehabilitation or for the protection of
12	society; or
13	<pre>{vi} any combination of the above.</pre>
14	(b) suspend execution of sentence up to the maximum
15	sentence allowed for the particular offense. The sentencing
16	judge may impose on the defendant any reasonable
17	restrictions during the period of suspended sentence. Such
18	reasonable restrictions may include+ <u>any of thosed_listed in</u>
19	<pre>subsections_(1)(a)(i)_through_(1)(a)(yi)s</pre>
20	tijjail-base-releaset
21	tiij-jail-time-not-exceeding-90-dayst
22	t++++-cond+++ons-for-probationt
23	tiv) -restitutions
24	{v}anyotherreasonab}econditionsconsidered
25	necessaryforrehabititationorfortheprotectionof

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1 society; 1 hold defendant's holding public office; 2 tvit-any-combination-of-the-aboves 2 3 (c) impose a fine as provided by law for the offense; 3 (d) commit the defendant to a correctional institution 4 4 weapon; 5 with or without a fine as provided by law for the offense; 5 6 (e) impose any combination of subsections (1)(b). 5 7 (1)(c), and (1)(d). 7 8 (2) If any restrictions or conditions imposed under 8 9 subsection (1)(a) or (1)(b) are violated, any elaosed time, 9 10 except jail time, shell is not be a credit against the 10 11 sentence unless the court orders otherwise. 11 12 (3) Except as provided in 46-18-222, the imposition or 12 13 execution of the first 2 years of a sentence of imprisonment 13 14 imposed under the following sections may not be deferred or 14 15 suspended: 45-5-102(2)+ 45-5-103(2)+ 45-5-202(2). 15 16 45-5-302(2)+ 45-5-303(2)+ 45-5-401(2)+ 45-5-503(2) and (3)+ 16 17 45-9-101(2), 45-9-102(3), and 45-9-103(2).* 17 18 Section 22. Section 46-18-202. MCA. is amended to 18 19 read: 19 2C #46-18-202. Additional restrictions on sentence. (1) 20 21 The district court may also impose any of the following 21 22 restrictions or conditions on the sentence provided for in 22 23 46-18-201 which it considers necessary to obtain the 23 objectives of rehabilitation and the protection of society: 24 24

25 (a) prohibit prohibition of the defendant-the-right-to

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(b) prohibit---the---defendant---the---right---to--own archibition of his owning or corry carrying a dangerous

restrictions on his freedom of (c) prohibit association:

(d) prohibit restrictions on his freedom of movement; (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society. (2) whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, shall impose the restriction as part of the sentence and the

judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).*

Section 23. Section 46-18-401, MCA, is amended to 25 read:

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*46-18-401. Nerger of sentences. (1) Unless the judge
 otherwise orders:

3 (a) when whenever a person serving a term of
4 commitment imposed by a court in this state is committed for
5 another offense, the shorter term or shorter remaining term
6 shall be merged in the other term <u>except as provided in</u>
7 <u>subsection (5);</u> and

8 (b) when whenever a person under suspended sentence or 9 on probation for an offense committed in this state is 10 sentenced for another offense, the period still to be served 11 on suspended sentence or probation shall be merged in any 12 new sentence of commitment or probation.

13 (2) The court merging the sentences shall forthwith 14 immediately furnish each of the other courts and penal 15 institutions in which the defendant is confined under 16 sentence with authenticated copies of its sentence, which 17 shall must cite the sentences being merged.

18 (3) If an unexpired sentence is merged pursuant to
19 subsection (1), the court which imposed such sentence shall
20 modify it in accordance with the effect of the merger.

21 {4} Separate sentences of <u>for</u> two or more crimes
 22 <u>offenses</u> shall run concurrently unless the court otherwise
 23 orders.

24 (5) Except as provided in this subsection, when
 25 whenever a prisoner is sentenced for an offense committed

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1 while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, 2 3 the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new 4 5 sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this 6 7 title in regard to the original sentence, whichever is sconer. In the latter case, the sentences run concurrently 8 9 from the time of his release on parole.*

10 Section 24. Section 46-20-318, MCA, is amended to 11 read:

12 "46-20-318. Dismissal for failure to cause timely 13 transmission <u>== transmission_at_instance_of_respondent</u>. (1) 14 If the appellant shall—fails to cause timely 15 transmission of the record, any respondent way file a motion 16 in the supreme court to dismiss the appeal. The motion shall 17 <u>must</u> be supported by:

(a) a certificate of the clerk of the district court
showing the date and substance of the judgment or order from
which the appeal was taken; the date on which the notice of
appeal was filed, the-expiration-date-on-which-the-notice-of
appeal--was--filed, and the expiration date of any order
extending the time for transmitting the record; and
(b) proof that 7 days! notice in writing has been

25 served on the appellant that application will be made for

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1	dismissal of the appeal.	1	The writ of habeas corpus may be granted:
Z	(2) Instead of filing a motion to dismiss the appeal.	2	(1) by the supreme court or any justice thereof upon
3	the respondent may cause the record to be transmitted and	3	petition by or on behalf of any person restrained of his
4	may docket the appeal, in which event the appeal shall	4	liberty in this state. When so issued it may be made
5	proceed as if the appellant had caused it to be docketed."	5	returnable before the court or any justice thereof or before
6	Section 25. Section 46-22-201, MCA, is amended to	6	any district court or judge thereof.
7	read:	7	(2) by the <u>a</u> district courts <u>court</u> or a judge thereof
8	<pre>#46-22-201. Application for writ. (1) Application for</pre>	8	upon petition by or on behalf of any person restrained of
9	the writ is made by petition signed either hy the party for	9	his liberty in their the court's or judge's respective
10	whose relief it is intended or by some person in his behalf.	10	counties <u>district</u> or districts <u>county</u> ."
11	It must specify:	11	Section 27. Section 46-23-108, MCA, is amended to
12	(a) that the person in whose behalf the writ is	12	read:
13	applied for is unlawfully imprisoned or restrained of his	13	"46-23-108. Records and reports confidentiality.
14	liberty;	14	The department shall keep a record of the board's acts and
15	(b) why the imprisonment or restraint is unlawful;	15	decisions available to the public. However, all social
16	(c) the place where and the officer or person by whom	16	records, including the presentence report, the preparolo
17	he is so confined or restrained and-the-place-wherevnaming	17	report, and the supervision history obtained in the
18	att _a	18	discharge of official outy by the department, shall-be are
19	[2] All the parties must be named if they are known or	19	confidential and shall may not be disclosed directly or
20	describing-them <u>described</u> if they are not known.	20	indirectly to anyone other than the members of the board or
21	<pre>t21(3) The petition must be verified by the oath or</pre>	21	a judge. The board or a court may, in its discretion, when
22	affirmation of the party making the application."	22	the best interests or welfare of a particular defendant or
23	Section 26. Section 46-22-202, MCA, is amended to	23	prisoner makes such action desirable or helpful, permit the
24	read:	24	inspection of the report social record or any parts thereof
25	"46-22-202. By whom issued and before whom returnable.	25	by the prisoner or his attorney."
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1 Section 28. Section 46-23-217, MCA, is amended to 2 read: #46-23-217. Service of term for additional crime. Any 3 A prisoner who commits a crime while at large upon on parole 4 5 or conditional release and who is convicted and sentenced therefor shall serve such sentence concurrently-with-the 6 7 terms-under-which-he-was-released-unless--atherwise--ardered by-the-court-in-sentencing-for-the-new-offense consecutively 8 with the remainder of the original sectence as provided in 9 46-18-401.* 10 Section 29. Section 46-23-306, MCA, is amended to 11 12 read: "46-23-306. Record of hearing. At the hearing the 13 board must cause to be kept a record showing: 14 (1) the names of all persons appearing before the 15 board on behalf of the person perdoned-by seeking cleasacy 16 17 from the governor; (2) the names of all persons appearing before the 18 19 board in opposition to the granting of the same; 20 (3) the testimony of all persons giving evidence before the board: 21 22 (4) that the affidavit and return from the printer of 23 the publication of the notice and order of hearing was on file prior to the hearing." 24 Section 30. Section 46-23-402, MCA, is amended to 25 -21-HB 184

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1 read:

2 #46-23-402. Purpose of prisoner furlough program. (1)
3 The purpose and intent of this part is are to:

4 (a) establish a program for the rehabilitation,
5 education, and betterment of selected prisoners confined in
6 the state prison, placing the establishment, regulation,
7 guidance, and control of such program under the direction of
8 the department of institutions;

9 (b) increase their such prisoners! responsibility to
 10 society;

11 (c) provide for the minimum hourly wage required by
12 law or the prevailing rate of pay for persons employed in
13 similar occupations by the same employer to be paid to smid
14 convicts <u>such prisoners</u> while so employed;
15 (d) make it possible that they may for them to work
16 gainfully to support their dependents in whole or in part

17 while serving their sentences, continue their education or 18 training, and at the same time fulfill the obligations of

19 the sentence of imprisonment imposed.

(2) The prisoner <u>furlough</u> program shall operate by
supplementing and not replacing established penal procedures
now or hereafter established by law and shall serve to
extend the limits of confinement for treatment as well as
jurisdictional purposes.

25 (3) This part is to be liberally construed to effect

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- 1 the overall objectives set forth in this section.
- 2 Section 31. Repealer. Sections 95-1709 and 95-2010.
- 3 R.C.M. 1947, are repealed.

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HB 0184/03

1	HDUSE BILL NO. 184
2	INTRODUCED BY MARKS
3	BY REQUEST OF THE CODE COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6	CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND
7	REPEALING SECTIONS 95-1709 AND 95-2010+ R.C.N. 1947."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 46-4-203, MCA, is amended to read:
11	#46-4-203. Subpoenaing of witnesses. A coroner may
12	issue subpoenas for witnesses+ returnable forthwith
13	immediately or at such time and place as he may sppoint
14	designate, which may be served by any competent person. He
15	<u>2290111_6_97979-coccentive</u> as without our nomula <u>line</u> s
16	each person who+ in his opinion or that of the jury+ has any
17	knowledge of the facts and may summon a surgeon or physician
18	to inspect the body and give a professional opinion as to
19	the cause of the death."
20	Section 2. Section 46-5-201, MCA, is amended to read:
21	"46-5-201. Search warrant defined. A "search warrant"
22	is an order:
23	{1} in writing;
24	(2) in the name of the state;
25	(3) signed by a judge;

1	(4) particularly describing the things or places
2	<u>person</u> to be searched and the instruments, articles, or <u>OR</u>
3	things <u>represens</u> to be seized;
4	(5) directed to a peace officer commanding him to
5	search for <u>persons or</u> personal property and bring <u>theser</u> it
6	before the judge."
7	Section 3. Section 46-5-202, MCA, is amended to read:
8	#46~5-202。 Grounds for search warrant. Any judge may
9	issue a search warrant upon the written application of any
10	person, made under oath or affirmation before the judge,
11	which:
12	states that an offense has been committed;
13	(2) states facts sufficient to show probable cause for
14	issuance of the warrant;
15	(3) particularly describes the place _x or things <u>* or</u>
16	<u>persons</u> to be searched; and
17	(4) particularly describes the things <u>or persons</u> to be
18	seized."
19	Section 4. Section 46-5-305, MCA, is amended to read:
20	#46-5-305. Disposition of unclaimed property. If
21	property seized as evidence is not claimed within 6 months
22	of completion of the case for which it was seized and if
23	after proper inquiry the judge cannot ascertain or locate
24	any person entitled to its possession, he must order the

- 25 property to be sold by the sheriff. The proceeds from such
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<u>the</u> sale. after deduction of the costs of storage_ and
 preservation of the property. <u>and the sale.</u> must be paid
 into the county treasury."

Section 5. Section 46-6-203. MCA, is amended to read: 4 5 #46-6-203. Nanner of arrest with a warrant. When making an arrest by-virtue-of pursuant to a warrant, the a 6 peace officer making-the-arrest shall inform the person to 7 8 be arrested of his the officer's authority, of the intention to arrest him, of the cause of the arrest, and of the fact 9 10 that a warrant has been issued for his arrest. except when 11 he flees or forcibly resists before the peace officer meking the--errest has an opportunity so to so inform him or when 12 13 the giving of such information will imperil the arrest. The peace officer making-the-arrest need not have the warrant in 14 15 his possession at the time of the arrest, but after the 16 arresty-if-the-person--arrested--so--requestsy the warrant 17 shall must be shown to him the person arrested as soon as 18 practicable if such person so requests."

19 Section 6. Section 46-9-203. NCA, is amended to read: 20 "46-9-203. Report to county attorney concerning drug 21 users. It-is-hereby-mode-the--duty--of <u>A</u> city judges--and 22 magistrates judge, judge of <u>a</u> municipal courts <u>court</u>. 23 and--justices <u>or justice</u> of the peace to <u>shall</u> report 24 immediately to the county attorney of the county wherein 25 their--courts--are--established--and--conducted <u>bis_court_is</u>

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1 located any and-all knowledge or information acquired or obtained by said-city-iudges-magistratey-judges-of-municipal 2 courtsy-ond-justices-of-the-peace him in a trial of couses a 3 cause or hearing hearing before them him, which knowledge 4 or information shows or tends to show that any person is a 5 drug user or drug addict. If said such person so-shown-to-be 6 a--drug--user-or-drug-addict is under arrest or liberated on 7 bail at the time said the knowledge or information is A acquired or-obtained-by-said-city-judge-or-magistratey-judge • of--a--municipal--courty--or-justice-of-the-peace, said such 10 11 person shall may not be liberated, if under arrest, or said 12 the bail discharged by said the judgev--magistratev or justice of the peace until said the report is made to the 13 14 county attorney+-as-provided-herein.*

Section 7. Section 46-9-311, MCA, is amended to read: 15 #46-9-311. Reduction. increase. revocation. or 16 substitution of bail. (1) Upon application by the state or 17 18 the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail. 19 substitute one bail for another, alter the conditions of the 20 21 bail, or revoke bail.

(2) Reasonable notice of such application must be
 given to the opposing parties or their attorneys by the
 applicant after-verdict-of-guilty-and-before-judgment."

25 Section 8. Section 46-9-403, MCA, is amended to read:

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1 "46-9-403, Qualifying property as bail. (1) If the 2 bail is stock or bonds or both, the accused or sureties 3 shall file a sworn schedule which shall <u>must</u> contain a list 4 of the stocks and bonds deposited describing each in 5 sufficient detail that it may be identified, the market 6 value of each stock or bond, and the total market value of 7 the stocks or and bonds listed.

8 (2) (a) If the bail is real estate, the accused or 9 sureties shall file a sworn schedule which shall gust 10 contain a legal description of the real estate, a 11 description of any and all encumbrances on the real estate 12 including the amount of each and the holder thereof, and the 13 market value of the unencumbered equity owned by the 14 affiant.

15 (b) A certified copy of the schedule of real estate 16 shell <u>must</u> be filed immediately by the court in the office 17 of the clerk and recorder of the county in which the 18 property is situated, and the state shell-have <u>bas</u> a lien on 19 such real estate from the time the copies-ore <u>copy_is</u> filed. 20 The clerk and recorder shall enter, index, and record such 21 schedules <u>the_schedule</u> without requiring any fee.

22 (3) If the bail is a written undertaking with 23 sureties, each surety must be a resident or freeholder 24 within the state. They Each surety must each be worth the 25 amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification be is equivalent to that of sufficient bail.

6 (4) If the bail is a commercial surety bond, it may be
7 so--done <u>executed</u> by any domestic or foreign surety company
8 which is qualified to transact surety business in this
9 state."

Section 9. Section 46-10-102, MCA, is amended to read: 46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the judge justice shall hold him to answer to the court having jurisdiction of the offense."

15 Section 10. Section 46-10-201, MCA, is amended to 16 read:

17 "46-10-201. When examination not public. The judge 18 justice may, in his discretion, and musty upon the request 19 of the defendanty exclude from the preliminary examination 20 every person not officially associated with the case before 21 the court."

22 Section 11. Section 46-10-202+ MCA+ is amended to 23 read:

24 "46-10-202. Presentation of evidence. (1) The
25 defendant shall may not enter a plea. The judge justice

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shall hear the evidence without unnecessary delay. All
 witnesses shall <u>must</u> be examined in the presence of the
 defendant. The defendant may cross-examine witnesses against
 him and may introduce evidence in his own behalf.

5 (2) During the examination of any witness or when the 6 defendant is making a statement or testifying, the judge 7 justice may, and on the request of the defendant or state 8 shall, exclude all other witnesses. He may also cause the 9 witnesses to be kept separate and to be prevented from 10 communicating with each other until all are examined."

Section 12. Section 46-10-203, MCA, is amended to read:

13 "46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe 15 that an offense has been committed by the defendant. the judge justice shall hold him to answer to the court having 17 jurisdiction of the offense; otherwise, the judge justice 18 shall discharge him."

19 Section 13. Section 46-10-204, MCA, is amended to 20 read:

21 "46-10-204. Record of examination. (1) The testimony 22 of each witness, in cose <u>cases</u> of homicide, must be reduced 23 to writing as a deposition by a court-appointed 24 stenographer. In cases other than homicide, the testimony 25 of each witness shell must be taken by a court-appointed

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stenographer upon demand by the county attorney, the
 defendant, or the defendant's counsel.

3 (2) After concluding the proceeding, if the judge 4 justice holds the defendant to answer, he shall transmit 5 forthwith immediately to the clerk of the court having 6 jurisdiction of the offense all papers in the proceeding and 7 any bail taken by him."

8 Section 14. Section 46-13-203, MCA, is amended to 9 read:

10 "46-13-203. Change of place of trial. (1) The 11 defendant or the prosecution may move for a change of place 12 of trial on the ground that there exists in the county in 13 which the charge is pending such prejudice that a fair trial 14 cannot be had in such county. The motion shall must be made 15 at least 15 days prior to trial unless except that, for if 16 good cause is shown, it may be made thereafter.

17 (2) The motion shall <u>must</u> be in writing and supported 18 by <u>an</u> affidavit which shall <u>must</u> state facts showing the 19 nature of the prejudice alleged. The defendant or the state 20 may file counteraffidavits. The court shall conduct a 21 hearing and determine the merits of the motion.

22 (3) If the court determines that there exists in the 23 county where in which the prosecution is pending such 24 prejudice that a fair trial cannot be had, it shall transfer 25 the cause to any other court of competent jurisdiction in

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any county where in_which a fair trial may be had."
 Section 15. Section 46-14-302, MCA, is amended to
 read:

#46-14-302. Discharge or release upon motion of 4 5 superintendent. (1) If the superintendent of Warm Springs state hospital believes that a person committed to his 6 custody under 46-14-301 may be discharged or released on 7 condition without danger to himself or others, he shall make 8 application for the discharge or release of the person in a 9 10 report to the court by which the person was committed and shall send a copy of the application and report to the 11 county attorney of the county from which the defendant was 12 13 committed.

14 (2) The court shall then appoint at least two 15 qualified psychiatrists to examine the person and to report 16 their opinion as to his mental condition within 60 days or a 17 longer period which the court determines to be necessary for 18 the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined 19 20 in any institution located near the place where the court 21 sits which may hereafter be designated by the superintendent 22 of Warm Springs state hospital as suitable for the temporary 23 detention of irresponsible persons.

24 (3) If the court is satisfied by the report filed25 under subsection (1) of this section and the testimony of

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the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

6 (4) If the court is not satisfied, it shall promptly 7 order a hearing to determine whether the person may safely 8 be discharged or released. A hearing is considered a civil 9 proceeding, and the burden is upon the committed person to 10 prove by a preponderance of the evidence that he may safely 11 be discharged or released. According to the determination 12 of the court upon the hearing, the committed person shall 13 then be discharged or released on conditions which the court 14 determines to be necessary or shall be recommitted to the custody of the superintendent of Warm Springs state 15 hospital, subject to discharge or release only in accordance 16 17 with the procedure procedures prescribed in this section and 46-14-303." 18

19 Section 16. Section 46-14-304. MCA, is amended to 20 read:

21 **46-14-304. Recommitment after conditional release. If 22 within 5 years after the conditional release of a committed 23 person the court determines after hearing evidence that the 24 conditions of release have not been fulfilled and that for 25 the safety of the person or for the safety of others his

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conditional release should be revoked; the court shall
 immediately order him to be recommitted to the
 superintendent of Warm Springs state hospital; subject to
 discharge or release only in accordance with the procedure
 procedures prescribed in 46-14-302 and 46-14-303.**

6 Section 17. Section 46-16-103. MCA, is amended to 7 read:

8 *46-16-103• Who decides questions of law and fact• (1)
9 All prosecutions deciding issues of fact shall must be tried
10 by the court and jury• except on a plea of guilty•

11 (2) Questions of law shaft <u>must</u> be decided by the 12 court and questions of fact by the jury except <u>that</u> on a 13 trial for tibet <u>criminal defamation</u> the jury shall determine 14 both questions of law and of fact. Questions of law and fact 15 shelt <u>must</u> be decided by the court when a trial by jury is 16 waived under 46-16-102(2)."

17 Section 18. Section 46-16-503, MCA, is amended to 18 read:

19 "46-16-503. Conduct of jury after retirement -- advice 20 from court. (1) When the jury retires to consider its 21 verdict, an officer of the court shall must be appointed to 22 keep them the jurges together and to prevent conversations 23 between the jurges and others.

24 (2) After the jury has retired for deliberation. if
 25 there be is any disagreement among them the jurges as to the

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testimony or if they the jurars desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon--being <u>When_the</u> <u>jurars_are</u> brought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel."

8 Section 19. Section 46-16-702. MCA, is amended to 9 read:

10 "46-16-702. Motion for a new trial. (1) Following a 11 verdict or finding of guilty. the court may grant the 12 defendant a new trial if required in the interest of 13 justice.

14 (2) The motion for a new trial shell must be in 15 writing and shell must specify the grounds therefor. It 16 shell must be filed by the defendant within 30 days 17 following a verdict or finding of guilty. Reasonable notice

18 of the motion shell must be served on the state.

19 (3) On hearing the motion for a new trial, if 20 justified by law and the weight of the evidence, the court 21 may:

22 (a) deny the motion;

23 (b) grant a new trial; or

(c) modify or change the verdict or finding by finding
 the defendant guilty of a lesser included crime offense or

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	1	period not exceeding 3 years for any felony. The sentencing
is amended to	2	judge may impose upon the defendant any reasonable
	3	restrictions or conditions during the period of the deferred
on appeal from	4	imposition. Such reasonable restrictions or conditions may
in the district	5	include:
ix selected as	6	(i) jail base release:
the same manner	7	(il) jail time not exceeding 90 days;
thatthe_total	8	(iii) conditions for probation;
x_plus_the_total	9	(iv) restitution;
	10	(v) any other reasonable conditions considered
strict court by	11	necessary for rehabilitation or for the protection of
appeal within 10	12	society; or
	13	(vi) any combination of the above.
of the justice's	14	(b) suspend execution of sentence up to the maximum
sferred to the	15	sentence allowed for the particular offense. The sentencing
dismissed. It is	16	judge may impose on the defendant any reasonable
eal."	17	restrictions during the period of suspended sentence. Such
is amended to	18	reasonable restrictions may include* any of thosed listed in
	19	subsections_[]][a][i]_tbrough_[]][a][vi]=
e imposed. (1)	20	tijjaij-base-rejeaset
n offense upon a	21	tiit-jait-time-nat-exceeding-98-dayst
	22	tiiij-conditions-for-probations
pting sentences	23	tiv;-restitution;
or drugs, for a	24	{ v}anyotherreasonab}econditionsconsidered
an or or for a	25	necessaryforrehabititationorfortheprotectionof

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1 finding the defendant not guilty.*

2 Section 20. Section 46-17-311. MCA. is amended to 3 read:

4 "46-17-311. Appeal. (1) All cases on appeal from
5 justices' or city courts must be tried anew in the district
6 court and may be tried before a jury of six selected as
7 provided--in--fitle-25y-chapter-fy-port-2 in_the_same_manner
8 as a trial_jury_in_a civil_actions_except_that_the_total
9 number_of_jurors_drawn_shall_be_at_least_six_plus_the_total
10 number_of_peremptory_challenges.

(2) The defendant may appeal to the district court by
 giving written notice of his intention to appeal within 10
 days after judgment.

(3) Within 30 days, the entire record of the justice's
or city court proceedings shall must be transferred to the
district court or the appeal shall must be dismissed. It is
the duty of the defendant to perfect the appeal."

18 Section 21. Section 46-18-201, MCA, is amended to 19 read:

20 **46-18-201. Sentences that may be imposed. (1)
21 Whenever a person has been found guilty of an offense upon a
22 verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences
for driving under the influence of alcohol or drugs, for a
period not exceeding 1 year for any misdemeanor or for a

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2 fvit-any-combination-of-the-abover

3 (c) impose a fine as provided by law for the offense;
4 (d) commit the defendant to a correctional institution
5 with or without a fine as provided by law for the offense;
6 (e) impose any combination of subsections (1)(b);
7 (1)(c); and (1)(d).

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

12 (3) Except as provided in 46-18-222, the imposition or
13 execution of the first 2 years of a sentence of imprisonment
14 imposed under the following sections may not be deferred or
15 suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2),
16 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3),
17 45-9-101(2), 45-9-102(3), and 45-9-103(2)."

18 Section 22. Section 46-18-202, MCA, is amended to 19 read:

20#46-18-202. Additional restrictions on sentence. (1)21The district court may also impose any of the following22restrictions or conditions on the sentence provided for in2346-18-201 which it considers necessary to obtain the24objectives of rehabilitation and the protection of society:25(a) prohibit prohibition_of the defendant-the-right-to

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1 hold defendant's holding public office;

2 (b) prohibit---the---defendant---the---right---to--own 3 prohibition_of_bis_owning or earry carrying a dangerous 4 weapon;

5 (c) prohibit restrictions__on__his freedom of 6 association;

(d) prohibit restrictions on his freedom of movement; 7 (e) any other limitation reasonably related to the 8 objectives of rehabilitation and the protection of society. 9 (2) Whenever the district court imposes a sentence of 10 imprisonment in the state prison for a term exceeding 1 11 12 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the 13 prisoner furlough program while serving his term. If such a 14 restriction is to be imposed, the court shall state the 15 reasons for it in writing. If the court finds that the 16 restriction is necessary for the protection of society, it 17 shall impose the restriction as part of the sentence and the 18 19 judgment shall contain a statement of the reasons for the 20 restriction.

(3) The judge in a justice's, city, or municipal court
does not have the authority to restrict an individual's
rights as enumerated in subsections (1) and (2)."

24 Section 23. Section 46-18-401, MCA, is amended to 25 read:

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#46-18-401. Merger of sentences. (1) Unless the judge
 otherwise orders:

3 (a) when <u>whenever</u> a person serving a term of 4 commitment imposed by a court in this state is committed for 5 another offense, the shorter term or shorter remaining term 6 shall be merged in the other term <u>except_as_provided_in</u> 7 <u>subsection_(5)</u>; and

(b) when <u>when whenever</u> a person under suspended sentence or
 on probation for an offense committed in this state is
 sentenced for another offense, the period still to be served
 on suspended sentence or probation shall be merged in any
 new sentence of commitment or probation.

13 (2) The court merging the sentences shall forthwith 14 immediately furnish each of the other courts and penal 15 institutions in which the defendant is confined under 16 sentence with authenticated copies of its sentence, which 17 shall must cite the sentences being merged.

18 (3) If an unexpired sentence is merged pursuant to 19 subsection (1), the court which imposed such sentence shall 20 modify it in accordance with the effect of the merger.

(4) Separate sentences of for two or more crimes
 <u>offenses</u> shall run concurrently unless the court otherwise
 orders.

24 (5) Except as provided in this subsection, when
 25 whenever a prisoner is sentenced for an offense committed

1 while he was imprisoned in the state prison or while he was 2 released on parole or under the prisoner furlough program. the new sentence runs consecutively with the remainder of ٦. 4 the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he 5 is released on parole under chapter 23, part 2, of this 6 titly in regard to the original sentence, whichever is 1 sooner. In the latter case, the sentences run concurrently в from the time of his release on parole." 9

10 Section 24- Section 46-20-318, MCA, is amended to 11 read:

12 #46-20-318. Dismissal for failure to cause timely 13 transmission <u>== transmission at instance of respondent</u>. (1) 14 If the appellant shell—fails to cause timely 15 transmission of the record, any respondent may file a motion 16 in the supreme court to dismiss the appeal. The motion shell 17 must be supported by:

(a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date on which the notice of sppeal --was--filedy and the expiration date of any order extending the time for transmitting the record; and

(b) proof that 7 days* notice in writing has been
 served on the appellant that application will be made for

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1	dismissal of the appeal.	1	The writ of habeas corpus may be granted:
2	(2) Instead of filing a motion to dismiss the appeal.	2	(1) by the supreme court or any justice thereof upon
3	the respondent may cause the record to be transmitted and	3	petition by or on behalf of any person restrained of his
4	may docket the appeal, in which event the appeal shall	4	liberty in this state. When so issued it may be made
5	proceed as if the appellant had caused it to be docketed."	5	returnable before the court or any justice thereof or before
6	Section 25. Section 46-22-201, MCA, is amended to	6	any district court or judge thereof.
7	readt	7	(2) by the a district courts court or a judge thereof
8	#46-22-201. Application for writ. (1) Application for	8	upon petition by or on behalf of any person restrained of
9	the writ is made by petition signed either by the party for	9	his liberty in their the court's or judgets respective
10	whose relief it is intended or by some person in his behalf.	10	counties <u>district</u> or districts <u>county</u> ."
11	It must specify:	11	Section 27. Section 46-23-108, MCA, is amended to
12	(a) that the person in whose behalf the writ is	12	read:
13	applied for is unlawfully imprisoned or restrained of his	13	%46-23-108. Records and reports confidentiality.
14	liberty;	14	The department shall keep a record of the board's acts and
15	(b) why the imprisonment or restraint is unlawful;	15	decisions available to the public. However, all social
16	(c) the place where and the officer or person by whom	16	records, including the presentence report, the preparole
17	he is so confined or restrained and-the-place-wherevnaming	17	report, and the supervision history obtained in the
18	6++2_	18	discharge of official duty by the department, shall-be are
19	(2) All the parties must be named if they are known or	19	confidential and shall may not be disclosed directly or
20	describing-them described if they are not known.	20	indirectly to anyone other than the members of the board or
21	(2)(3) The petition must be verified by the oath or	21	a judge. The board or a court may, in its discretion, when
22	affirmation of the party making the application."	22	the best interests or welfare of a particular defendant or
23	Section 26. Section 46-22-202, MCA, is amended to	23	prisoner makes such action desirable or helpful, permit the
24	read:	24	inspection of the report social_record or any parts thereof
25	*46-22-202. By whom issued and before whom returnable.	25	by the prisoner or his attorney."

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1	Section 28. Section 46-23-217, MCA, is amended to
2	read:
3	"46-23-217. Service of term for additional crime. Any
4	A prisoner who commits a crime while at large upon on parole
5	or conditional release and who is convicted and sentenced
6	therefor shall serve such sentence concurrently-with-the
7	terms-under-which-he-was-released-unlessotherwiseordered
3	by-the-court-in-sentencing-for-the-new-offense <u>consecutively</u>
9	with_the_remainder_of_the_original_sectence_as_provided_io
10	<u>46-18-401.</u> "
11	Section 29. Section 46-23-306, MCA, is amended to
12	read:
13	"46-23-306. Record of hearing. At the hearing the
14	board must cause to be kept a record showing:
15	(1) the names of all persons appearing before the
16	board on behalf of the person perdoned-by seeking clemency
17	from the governor;
18	(2) the names of all persons appearing before the
19	board in opposition to the granting of the same;
20	(3) the testimony of all persons giving evidence
21	before the board;
22	(4) that the affidavit and return from the printer of
23	the publication of the notice and order of hearing was on
24	file prior to the hearing."

25 Section 30. Section 46-23-402, MCA, is amended to

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1 read:

2 P46-23-402. Purpose of prisoner furlough program. (1)
3 The purpose and intent of this part is are to:

4 (a) establish a program for the rehabilitation,
5 education, and betterment of selected prisoners confined in
6 the state prison, placing the establishment, regulation,
7 guidance, and control of such program under the direction of
8 the department of institutions;

9 (b) increase their such prisoners* responsibility to
 10 society;

11 {c} provide for the minimum hourly wage required by 12 law or the prevailing rate of pay for persons employed in 13 similar occupations by the same employer to be paid to said 14 convicts such orisoners while so employed;

15 (d) make it possible that-they-may for them to work 16 gainfully to support their dependents in whole or in part 17 while serving their sentences, continue their education or 18 training, and at the same time fulfill the obligations of 19 the sentence of imprisonment imposed.

(2) The prisoner <u>furlough</u> program shall operate by
supplementing and not replacing established penal procedures
now or hereafter established by law and shall serve to
extend the limits of confinement for treatment as well as
jurisdictional purposes.

25 (3) This part is to be liberally construed to effect

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- 1 the overall objectives set forth in this section."
- 2 Section 31. Repeater. Sections 95-1709 and 95-2010.
- 3 R.C.M. 1947. are repealed.

-End-

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