

# CHAPTER NO. 116.

HOUSE BILL NO. 184

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.

## IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
February 27, 1979	Committee recommend bill be concurred in. Report adopted.
March 1, 1979	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.
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1 ~~House~~ BILL NO. 184  
2 INTRODUCED BY P. J. Park  
3 BY REQUEST OF THE CODE COMMISSIONER

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."

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                   must shall summon and examine as witnesses--every a witness  
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;

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

1 the sale, after deduction of the costs of storage and  
 2 preservation of the property, and the sales must be paid  
 3 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is amended to read:  
 5 "46-6-203. Manner of arrest with a warrant. When  
 6 making an arrest by virtue of pursuant to a warrant, the a  
 7 peace officer making-the-arrest shall inform the person to  
 8 be arrested of his 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 peace officer making  
 12 the--arrest has an opportunity so to so inform him or when  
 13 the giving of such information will imperil the arrest. The  
 14 peace officer making-the-arrest need not have the warrant in  
 15 his possession at the time of the arrest, but after the  
 16 arrest--if-the-person--arrested--so--requests-- 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, MCA, is amended to read:  
 20 "46-9-203. Report to county attorney concerning drug  
 21 users. It is hereby made the duty of a city judges--and  
 22 magistrates judges judge of a municipal courts court  
 23 and--justices or justice of the peace to shall report  
 24 immediately to the county attorney of the county wherein  
 25 their--courts--are--established--and--conducted his court is

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

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,  
 20 substitute one bail for another, alter the conditions of the  
 21 bail, or revoke bail.

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

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

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 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~~ ~~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 ~~shall~~ ~~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 ~~shall~~ ~~have~~ ~~has~~ a lien on  
 19 such real estate from the time the ~~copies~~-~~are~~ ~~copy~~ is 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 ~~each~~ ~~surety~~ ~~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~~ ~~executed~~ by any domestic or foreign surety company  
 8 which is qualified to transact surety business in this  
 9 state."

10       Section 9. Section 46-10-102, MCA, is amended to read:  
 11       "46-10-102. Waiver of preliminary examination. If the  
 12 defendant waives the preliminary examination, the judge  
 13 justice shall hold him to answer to the court having  
 14 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 ~~must~~ upon the request  
 19 of the defendant, 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

1 shall hear the evidence without unnecessary delay. All  
 2 witnesses shall ~~must~~ be examined in the presence of the  
 3 defendant. The defendant may cross-examine witnesses against  
 4 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  
 14 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:

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

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 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 ~~must~~ be in writing and supported  
 18 by an affidavit which shall ~~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

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:

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

1 the reporting psychiatrists which the court considers  
2 necessary that the committed person may be discharged or  
3 released on condition without danger to himself or others,  
4 the court shall order his discharge or his release on  
5 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  
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

1 conditional release should be revoked, the court shall  
 2 immediately order him to be recommitted to the  
 3 superintendent of Warm Springs state hospital, subject to  
 4 discharge or release only in accordance with the procedure  
 5 procedures prescribed in 46-14-302 and 46-15-301."

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 shall must be decided by the  
 12 court and questions of fact by the jury except that on a  
 13 trial for ~~the~~ criminal defamation the jury shall determine  
 14 both questions of law and of fact. Questions of law and fact  
 15 shall must 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

1 testimony or if they the jurors desire to be informed on any  
 2 point of law arising in the cause, they must require the  
 3 officer to conduct them into court. Upon--being when the  
 4 jurors are brought into court, the information requested may  
 5 be given in the discretion of the court. If such information  
 6 is given, it must be given in the presence of the county  
 7 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 shall must be in  
 15 writing and shall must specify the grounds therefor. It  
 16 shall must be filed by the defendant within 30 days  
 17 following a verdict or finding of guilty. Reasonable notice  
 18 of the motion shall 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  
 24 (c) modify or change the verdict or finding by finding  
 25 the defendant guilty of a lesser included crime offense or

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--Title-25--Chapter-7--Part-2 in the same manner  
8 as a trial jury in a civil action, except that the total  
9 number of jurors drawn shall be at least six plus the total  
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

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 (vi) any combination of the above.

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 ~~any of those listed in~~  
19 subsections (i) through (vi)

20 ~~tit--jail-base-release~~  
21 ~~tit--jail-time-not-exceeding-90-days~~  
22 ~~tit--conditions-for-probation~~  
23 ~~tit--restitution~~  
24 ~~tit--any--other--reasonable--conditions--considered~~  
25 ~~necessary--for--rehabilitation--or--for--the--protection--of~~

1       society;

2       (f) 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).

8       (2) If any restrictions or conditions imposed under  
9       subsection (1)(e) or (1)(d) are violated, any elapsed time,  
10       except jail time, shall 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)  
21       The district court may also impose any of the following  
22       restrictions or conditions on the sentence provided for in  
23       46-18-201 which it considers necessary to obtain the  
24       objectives of rehabilitation and the protection of society:

25       (a) prohibit prohibition\_of the defendant ~~the~~ right to

1       hold defendant's holding public office;

2       (b) prohibit ~~the~~ defendant ~~the~~ right to own  
3       prohibition of his owning or carry carrying a dangerous  
4       weapon;

5       (c) prohibit restrictions on his freedom of  
6       association;

7       (d) prohibit restrictions on his freedom of movement;  
8       (e) any other limitation reasonably related to the  
9       objectives of rehabilitation and the protection of society.

10       (2) Whenever the district court imposes a sentence of  
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  
14       prisoner furlough program while serving his term. If such a  
15       restriction is to be imposed, the court shall state the  
16       reasons for it in writing. If the court finds that the  
17       restriction is necessary for the protection of society, it  
18       shall impose the restriction as part of the sentence and the  
19       judgment shall contain a statement of the reasons for the  
20       restriction.

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

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

1       "46-18-401. Merger of sentences. (1) Unless the judge  
 2 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 except 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  
 2 released on parole or under the prisoner furlough program,  
 3 the new sentence runs consecutively with the remainder of  
 4 the original sentence. The prisoner starts serving the new  
 5 sentence when the original sentence has expired or when he  
 6 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  
 11 read:

12       "46-20-318. Dismissal for failure to cause timely  
 13 transmission as transmission at instance of respondent. (1)  
 14 If the appellant ~~shall~~ fails to cause timely  
 15 transmission of the records, any respondent may file a motion  
 16 in the supreme court to dismiss the appeal. The motion ~~shall~~  
 17 must be supported by:

18       (a) a certificate of the clerk of the district court  
 19 showing the date and substance of the judgment or order from  
 20 which the appeal was taken, the date on which the notice of  
 21 appeal was filed, the expiration date on which the notice of  
 22 appeal was filed, and the expiration date of any order  
 23 extending the time for transmitting the records; and

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

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  
 4 may docket the appeal, in which event the appeal shall  
 5 proceed as if the appellant had caused it to be docketed."

6 Section 25. Section 46-22-201, MCA, is amended to  
 7 read:

8 "46-22-201. Application for Writ. (1) Application for  
 9 the writ is made by petition signed either by the party for  
 10 whose relief it is intended or by some person in his behalf.

11 It must specify:

12 (a) that the person in whose behalf the writ is  
 13 applied for is unlawfully imprisoned or restrained of his  
 14 liberty;

15 (b) why the imprisonment or restraint is unlawful;

16 (c) the place where and the officer or person by whom  
 17 he is so confined or restrained and the place where--naming  
 18 etc.

19 121 all the parties must be named if they are known or  
 20 describing them described if they are not known.

21 ~~121~~ The petition must be verified by the oath or  
 22 affirmation of the party making the application."

23 Section 26. Section 46-22-202, MCA, is amended to  
 24 read:

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

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 prearrange  
 17 report, and the supervision history obtained in the  
 18 discharge of official duty by the department, ~~shall be~~ are  
 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  
 23 prisoner makes such action desirable or helpful, permit the  
 24 inspection of the report social record or any parts thereof  
 25 by the prisoner or his attorney."

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       prisoner who commits a crime while at large upon 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 unless otherwise ordered  
 8       by the court in sentencing for the new offense consecutively  
 9       with the remainder of the original sentence as provided in  
 10      46-18-401."

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 pardoned 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

1       read:

2       "46-23-402. Purpose of prisoner furlough program. (1)

3       The purpose and intent of this part is 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 prisoners 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.

20      (2) The prisoner furlough program shall operate by  
 21      supplementing and not replacing established penal procedures  
 22      now or hereafter established by law and shall serve to  
 23      extend the limits of confinement for treatment as well as  
 24      jurisdictional purposes.

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

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.

-End-

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 must summon and examine as witnesses—every witness  
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 or  
2 person to be searched and the instruments, articles or other  
3 things or persons to be seized;  
4 (5) directed to a peace officer commanding him to  
5 search for persons or personal property and bring them or 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 persons 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

HB

1 the sale, after deduction of the costs of storage and  
 2 preservation of the property, and the sale must be paid  
 3 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is amended to read:  
 5 "46-6-203. Manner of arrest with a warrant. When  
 6 making an arrest by virtue of pursuant to a warrant, the a  
 7 peace officer making-the-arrest shall inform the person to  
 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 peace officer making  
 12 the--arrest has an opportunity so to so inform him or when  
 13 the giving of such information will imperil the arrest. The  
 14 peace officer making-the-arrest need not have the warrant in  
 15 his possession at the time of the arrest, but after the  
 16 arrest--if-the-person--arrested--so--requestas the warrant  
 17 shall be shown to him the person arrested as soon as  
 18 practicable if such person so requests."

19 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 a city judges--and  
 22 magistrates judge, judges judge of a municipal courts court,  
 23 and--justices or justice of the peace to shall report  
 24 immediately to the county attorney of the county wherein  
 25 their--courts--are--established--and--conducted his court is

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

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,  
 20 substitute one bail for another, alter the conditions of the  
 21 bail, or revoke bail.

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

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

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 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~~ ~~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 ~~shall~~ ~~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 ~~shall~~ ~~have~~ ~~has~~ a lien on  
 19 such real estate from the time the ~~copies~~-~~are~~ ~~copy~~ is 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~~ ~~Each~~ ~~surety~~ 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~~ ~~executed~~ by any domestic or foreign surety company  
 8 which is qualified to transact surety business in this  
 9 state."

10       Section 9. Section 46-10-102, MCA, is amended to read:  
 11       "46-10-102. Waiver of preliminary examination. If the  
 12 defendant waives ~~the~~ preliminary examination, the judge  
 13 ~~justice~~ shall hold him to answer to the court having  
 14 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 ~~must~~ upon the request  
 19 of the defendant, 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~~

1 shall hear the evidence without unnecessary delay. All  
 2 witnesses shall ~~must~~ be examined in the presence of the  
 3 defendant. The defendant may cross-examine witnesses against  
 4 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  
 14 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:

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

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~~ 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 ~~must~~ be in writing and supported  
 18 by an affidavit which shall ~~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

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:

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

1 the reporting psychiatrists which the court considers  
2 necessary that the committed person may be discharged or  
3 released on condition without danger to himself or others,  
4 the court shall order his discharge or his release on  
5 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  
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

1 conditional release should be revoked, the court shall  
 2 immediately order him to be recommitted to the  
 3 superintendent of Warm Springs state hospital, subject to  
 4 discharge or release only in accordance with the procedure  
 5 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 ~~shall~~ must be decided by the  
 12 court and questions of fact by the jury except that on a  
 13 trial for ~~the~~ criminal defamation the jury shall determine  
 14 both questions of law and of fact. Questions of law and fact  
 15 ~~shall~~ must 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~~ the jurors as to the

1 testimony or if they ~~the~~ the jurors desire to be informed on any  
 2 point of law arising in the cause, they must require the  
 3 officer to conduct them into court. Upon--being ~~when~~ the  
 4 ~~jurors~~ are brought into court, the information requested may  
 5 be given in the discretion of the court. If such information  
 6 is given, it must be given in the presence of the county  
 7 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 ~~shall~~ must be in  
 15 writing and ~~shall~~ must specify the grounds therefor. It  
 16 ~~shall~~ must be filed by the defendant within 30 days  
 17 following a verdict or finding of guilty. Reasonable noti-  
 18 of the motion ~~shall~~ 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  
 24 (c) modify or change the verdict or finding by finding  
 25 the defendant guilty of a lesser included crime offense or

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--Title-25r-chapter-7r-part-2 in the same manner  
8 as a trial jury in a civil action, except that the total  
9 number of jurors drawn shall be at least six plus the total  
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

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 (vi) any combination of the above.

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 any of those listed in  
19 subsections (1)(a)(i) through (1)(a)(vi)

20 ~~(i) jail base release~~  
21 ~~(ii) jail time not exceeding 90 days~~  
22 ~~(iii) conditions for probation~~  
23 ~~(iv) restitution~~  
24 ~~(v) any other reasonable conditions considered~~  
25 ~~necessary for rehabilitation or for the protection of~~

1 society;

2 (vii)-any-combination-of-the-aboves

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 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)

21 The district court may also impose any of the following

22 restrictions or conditions on the sentence provided for in

23 46-18-201 which it considers necessary to obtain the

24 objectives of rehabilitation and the protection of society:

25 (a) prohibit prohibition\_of the defendant-the-right-to

1 hold defendant's\_holding public office;

2 (b) prohibit---the---defendant---the---right---to---own

3 prohibition\_of\_his\_owning or carry carrying a dangerous

4 weapon;

5 (c) prohibit restrictions\_on\_his freedom of

6 association;

7 (d) prohibit restrictions\_on\_his freedom of movement;

8 (e) any other limitation reasonably related to the

9 objectives of rehabilitation and the protection of society.

10 (2) whenever the district court imposes a sentence of

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

14 prisoner furlough program while serving his term. If such a

15 restriction is to be imposed, the court shall state the

16 reasons for it in writing. If the court finds that the

17 restriction is necessary for the protection of society,

18 shall impose the restriction as part of the sentence and the

19 judgment shall contain a statement of the reasons for the

20 restriction.

21 (3) The judge in a justice's, city, or municipal court

22 does not have the authority to restrict an individual's

23 rights as enumerated in subsections (1) and (2)."

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

25 read:

1        "46-18-401. Merger of sentences. (1) Unless the judge  
 2 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 except 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  
 2 released on parole or under the prisoner furlough program,  
 3 the new sentence runs consecutively with the remainder of  
 4 the original sentence. The prisoner starts serving the new  
 5 sentence when the original sentence has expired or when he  
 6 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  
 11 read:

12       "46-20-318. Dismissal for failure to cause timely  
 13 transmission -- transmission at instance of respondent. (1)  
 14 If the appellant ~~shall--fail~~ 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 ~~shall~~  
 17 must be supported by:

18       (a) a certificate of the clerk of the district court  
 19 showing the date and substance of the judgment or order from  
 20 which the appeal was taken, the date on which the notice of  
 21 appeal was filed, ~~the-expiration-date-on-which-the-notice-of~~  
 22 ~~appeal--was--filed~~ and the expiration date of any order  
 23 extending the time for transmitting the record; and

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

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  
 4 may docket the appeal, in which event the appeal shall  
 5 proceed as if the appellant had caused it to be docketed."

6       Section 25. Section 46-22-201, MCA, is amended to  
 7 read:

8       "46-22-201. Application for writ. (1) Application for  
 9 the writ is made by petition signed either by the party for  
 10 whose relief it is intended or by some person in his behalf.

11 It must specify:

12       (a) that the person in whose behalf the writ is  
 13 applied for is unlawfully imprisoned or restrained of his  
 14 liberty;

15       (b) why the imprisonment or restraint is unlawful;

16       (c) the place where and the officer or person by whom  
 17 he is so confined or restrained ~~and-the-place-where--naming~~  
 18 ~~sets~~

19       (2) All the parties must be named if they are known or  
 20 describing them described if they are not known.

21       ~~131~~ The petition must be verified by the oath or  
 22 affirmation of the party making the application."

23       Section 26. Section 46-22-202, MCA, is amended to  
 24 read:

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

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 preprobation  
 17 report, and the supervision history obtained in the  
 18 discharge of official duty by the department, ~~shall be are~~  
 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  
 23 prisoner makes such action desirable or helpful, permit the  
 24 inspection of the report social record or any parts thereof  
 25 by the prisoner or his attorney."

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 ~~an~~ 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 unless otherwise ordered  
8       by the court in sentencing for the new offense consecutively  
9       with the remainder of the original sentence as provided in  
10       46-18-401."

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 ~~pardoned~~ 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

1       read:

2       "46-23-402. Purpose of prisoner furlough program. (1)  
3       The purpose and intent of this part is 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~~ prisoners 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.

20       (2) The prisoner furlough program shall operate by  
21       supplementing and not replacing established penal procedures  
22       now or hereafter established by law and shall serve to  
23       extend the limits of confinement for treatment as well as  
24       jurisdictional purposes.

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

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.

-End-

HOUSE BILL NO. 184  
INTRODUCED BY MARKS  
BY REQUEST OF THE CODE COMMISSIONER

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."

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       must shall summon and examine as witnesses every a witness

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;

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 persons to be searched; and  
16 (4) particularly describes the things ~~or persons~~ to be  
17 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

1 the sale, after deduction of the costs of storage and  
 2 preservation of the property, and the sales must be paid  
 3 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is amended to read:

5 "46-6-203. Manner of arrest with a warrant. When  
 6 making an arrest by virtue of pursuant to a warrant, the a  
 7 peace officer making-the-arrest shall inform the person to  
 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 peace officer making  
 12 the--arrest has an opportunity so to so inform him or when  
 13 the giving of such information will imperil the arrest. The  
 14 peace officer making-the-arrest need not have the warrant in  
 15 his possession at the time of the arrest, but after the  
 16 arrest--if-the-person--arrested--so--requestsv the warrant  
 17 shall be shown to him the person arrested as soon as  
 18 practicable if such person so requests."

19 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 a city judge--and  
 22 magistrates judge, judges judge of a municipal courts court,  
 23 and--justices or justice of the peace to shall report  
 24 immediately to the county attorney of the county wherein  
 25 their--courts--are--established--and--conducted his court is

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

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,  
 20 substitute one bail for another, alter the conditions of the  
 21 bail, or revoke bail.

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

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

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 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~~ ~~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 ~~shall~~ ~~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 ~~shall~~ ~~have~~ has a lien on  
 19 such real estate from the time the ~~copies~~ ~~one~~ ~~copy~~ is 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~~ ~~Each~~ ~~surety~~ 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~~ ~~executed by any domestic or foreign surety company~~  
 8 ~~which is qualified to transact surety business in this~~  
 9 ~~state."~~

10        Section 9. Section 46-10-102, MCA, is amended to read:  
 11        "46-10-102. Waiver of preliminary examination. If the  
 12 defendant waives ~~the~~ preliminary examination, the judge  
 13 ~~justice~~ shall hold him to answer to the court having  
 14 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 ~~must~~ upon the request  
 19 of the defendant, 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~~

1 shall hear the evidence without unnecessary delay. All  
 2 witnesses shall ~~must~~ be examined in the presence of the  
 3 defendant. The defendant may cross-examine witnesses against  
 4 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  
 14 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:

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

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 ~~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 ~~must~~ be in writing and supported  
 18 by an affidavit which shall ~~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

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:

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

1 the reporting psychiatrists which the court considers  
2 necessary that the committed person may be discharged or  
3 released on condition without danger to himself or others,  
4 the court shall order his discharge or his release on  
5 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  
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

1 conditional release should be revoked, the court shall  
 2 immediately order him to be recommitted to the  
 3 superintendent of Warm Springs state hospital, subject to  
 4 discharge or release only in accordance with the procedure  
 5 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 shall must be decided by the  
 12 court and questions of fact by the jury except that on a  
 13 trial for ~~felon~~ criminal defamation the jury shall determine  
 14 both questions of law and of fact. Questions of law and fact  
 15 shall must 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

1 testimony or if they the jurors desire to be informed on any  
 2 point of law arising in the cause, they must require the  
 3 officer to conduct them into court. Upon--being When the  
 4 jurors are brought into court, the information requested may  
 5 be given in the discretion of the court. If such information  
 6 is given, it must be given in the presence of the county  
 7 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 shall must be in  
 15 writing and shall must specify the grounds therefor. It  
 16 shall must be filed by the defendant within 30 days  
 17 following a verdict or finding of guilty. Reasonable notice  
 18 of the motion shall 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  
 24 (c) modify or change the verdict or finding by finding  
 25 the defendant guilty of a lesser included crime offense or

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--fifte-25--chapter-7--part-2 in the same manner  
8        as a trial jury in a civil action, except that the total  
9        number of jurors drawn shall be at least six plus the total  
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

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 (1) 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 (vi) any combination of the above.

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\* any of those listed in  
19 subsections (1)(a)(i) through (1)(a)(vii).

20 ~~tit--jet-base-release~~

## 22 ~~titit-conditions-for-probation~~

### 23 ~~tit-trestutont~~

24           tvf--any---other---reasonable---conditions---considered  
25 necessary--for--rehabilitation--or--for--the--protection--of

1 society;

2 ~~with 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).

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 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)  
 21 The district court may also impose any of the following  
 22 restrictions or conditions on the sentence provided for in  
 23 46-18-201 which it considers necessary to obtain the  
 24 objectives of rehabilitation and the protection of society:

25 (a) prohibit ~~the defendant~~ the right to

1 hold defendant's holding public office;

2 (b) prohibit ~~the~~ defendant ~~the~~ right to own  
 3 ~~prohibition of his owning~~ or carry carrying a dangerous  
 4 weapon;

5 (c) prohibit ~~restrictions on his~~ freedom of  
 6 association;

7 (d) prohibit ~~restrictions on his~~ freedom of movement;  
 8 (e) any other limitation reasonably related to the  
 9 objectives of rehabilitation and the protection of society.

10 (2) Whenever the district court imposes a sentence of  
 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  
 14 prisoner furlough program while serving his term. If such a  
 15 restriction is to be imposed, the court shall state the  
 16 reasons for it in writing. If the court finds that the  
 17 restriction is necessary for the protection of society, it  
 18 shall impose the restriction as part of the sentence and the  
 19 judgment shall contain a statement of the reasons for the  
 20 restriction.

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

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

1        \*46-18-401. Merger of sentences\* (1) Unless the judge  
 2 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 except as provided in  
 7 subsection 151; 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  
 2 released on parole or under the prisoner furlough programs  
 3 the new sentence runs consecutively with the remainder of  
 4 the original sentence. The prisoner starts serving the new  
 5 sentence when the original sentence has expired or when he  
 6 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  
 11 read:

12        \*46-20-318. Dismissal for failure to cause timely  
 13 transmission transmission at instance of respondent. (1)  
 14 If the appellant shall--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 shall  
 17 must be supported by:

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

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

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  
 4 may docket the appeal, in which event the appeal shall  
 5 proceed as if the appellant had caused it to be docketed."

6 Section 25. Section 46-22-201, MCA, is amended to  
 7 read:

8 "46-22-201. Application for writ. (1) Application for  
 9 the writ is made by petition signed either by the party for  
 10 whose relief it is intended or by some person in his behalf.

11 It must specify:

12 (a) that the person in whose behalf the writ is  
 13 applied for is unlawfully imprisoned or restrained of his  
 14 liberty;

15 (b) why the imprisonment or restraint is unlawful;  
 16 (c) the place where and the officer or person by whom  
 17 he is so confined or restrained and the place where naming  
 18 etc.

19 (2) All the parties must be named if they are known or  
 20 describing them described if they are not known.

21 (2) The petition must be verified by the oath or  
 22 affirmation of the party making the application."

23 Section 26. Section 46-22-202, MCA, is amended to  
 24 read:

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

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 prearole  
 17 report, and the supervision history obtained in the  
 18 discharge of official duty by the department, shall be are  
 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  
 23 prisoner makes such action desirable or helpful, permit the  
 24 inspection of the report social record or any parts thereof  
 25 by the prisoner or his attorney."

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       prisoner who commits a crime while at large upon ~~or~~ 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 unless otherwise ordered  
 8       by the court in sentencing for the new offense consecutively  
 9       with the remainder of the original sentence as provided in  
 10      46-18-401."

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 pardoned 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

1       read:

2       "46-23-402. Purpose of prisoner furlough program. (1)

3       The purpose and intent of this part is 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 prisoners~~ 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.

20       (2) The prisoner furlough program shall operate by  
 21      supplementing and not replacing established penal procedures  
 22      now or hereafter established by law and shall serve to  
 23      extend the limits of confinement for treatment as well as  
 24      jurisdictional purposes.

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

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.

-End-