# SENATE BILL 347

Introduced by Van Valkenburg, et al.

2/04	Introduced
2/04	Referred to Judiciary
2/07	Hearing
2/13	Committee ReportBill Passed
2/15	2nd Reading Passed
2/17	3rd Reading Passed

Transmitted to House

2/21	Referred	to	Judiciary
3/07	Hearing		

3/0/	Hearing	
3/20	Tabled in	Committee

1 INTRODUCED BY 2 3 "AN ACT TO GENERALLY REVISE THE / ENTITLED: A BILL FOR AN ACT 4 LAW RELATING TO CRIMINAL PROCEDURE; IMPLEMENTING THE 5 RECOMMENDATIONS OF THE COMMISSION ON RULES OF CRIMINAL 6 PROCEDURE; AMENDING SECTIONS 1-1-202, 1-1-207, 7-4-2902, 7 7-32-4303, 7-32-201, 7-32-233, 7-16-2322, 7-4-2912, 8 45-5-206, 45-8-209, 44-11-303, 37-60-406, 16-11-147, 9 46-8-114, 46-16-103, 46-18-201, 46-18-247, 46-18-502, AND 10 46-20-103, MCA; AND REPEALING SECTIONS 46-1-101, 46-1-102, 11 THROUGH 46-3-106, 46-3-201 THROUGH 46-1-201, 46-3-101 12 THROUGH 46-4-201 THROUGH 46-4-207, 46-4-301 46-3-206, 13 THROUGH 46-5-104, 46-5-201 THROUGH 46-5-101 14 46-4-306, 46-5-209, 46-5-301 THROUGH 46-5-305, 46-5-401, 46-5-402, 15 46-5-505, 46-6-101, 46-6-104 THROUGH 46-5-501 THROUGH 16 46-6-301 THROUGH 46-6-201 THROUGH 46-6-204, 46-6-106. 17 46-6-401 THROUGH 46-6-404, 46-6-411, 46-6-412, 46-6-304, 18 46-6-422, 46-6-501 THROUGH 46-6-503, 46-7-101 19 46-6-421, 46-8-101 THROUGH 46-8-104. 46-8-111 THROUGH 46-7-103, 20 THROUGH 46-8-115, 46-8-201, 46-8-202, 46-9-101 THROUGH 21 46-9-111, 46-9-201 THROUGH 46-9-205, 46-9-301 22 46-9-104, THROUGH 46-9-303, 46-9-311, 46-9-401 THROUGH 46-9-404, 23 46-9-414, 46-9-501 THROUGH 46-9-505, THROUGH 24 46-9-411 46-10-204, 46-10-201 THROUGH 46-10-102, 46-10-101, 25

46-11-101, 46-11-102, 46-11-201 THROUGH 46-11-204, 46-11-301 1 2 THROUGH 46-11-303, 46-11-311 THROUGH 46-11-319, 46-11-331 THROUGH 46-11-333, 46-11-401 THROUGH 46-11-405, 46-11-501 3 THROUGH 46-11-505, 46-11-601, 46-12-101 THROUGH 46-12-105, 4 5 46-12-201 THROUGH 46-12-206, 46-13-101 THROUGH 46-13-106, 6 46-13-201 THROUGH 46-13-204, 46-13-301, 46-13-302, 46-14-101 THROUGH 46-14-103, 46-14-201 THROUGH 46-14-203, 46-14-212, 7 8 46-14-213, 46-14-221, 46-14-222, 46-14-301 THROUGH 46-14-304, 46-14-311 THROUGH 46-14-313, 46-14-401, 46-15-101 9 10 THROUGH 46-15-105, 46-15-111 THROUGH 46-15-114, 46-15-201 THROUGH 46-15-204, 46-15-321 THROUGH 46-15-329, 46-15-331, 11 12 46-15-332, 46-15-401 THROUGH 46-15-403, 46-16-102, 46-16-108. 46-16-201. 46-16-202, 46-16-211 THROUGH 13 46-16-213, 46-16-301 THROUGH 46-16-307, 46-16-401 THROUGH 14 15 46-16-403, 46-16-501 THROUGH 46-16-505, 46-16-601 THROUGH 16 46-16-605, 46-16-701, 46-16-702, 46-17-101 THROUGH 46-17-103, 46-17-201 THROUGH 46-17-205, 46-17-211, 46-17-301 17 THROUGH 46-17-303, 46-17-311, 46-17-401 THROUGH 46-17-404, 18 19 46-18-102, 46-18-111 THROUGH 46-18-113, 46-18-203, 20 46-18-501, 46-18-503, 46-21-101 THROUGH 46-21-105, AND 46-21-201 THROUGH 46-21-203, MCA." 21

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

24 <u>NEW SECTION.</u> Section 1. scope -- purpose --25 construction. (1) [This act] governs the practice and

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procedure in all criminal proceedings in the courts of
 Montana except where provision for a different procedure is
 specifically provided by law.

4 (2) [This act] is intended to provide for the just 5 determination of every criminal proceeding. [This act] shall 6 be construed to secure simplicity in procedure, fairness in 7 administration, and elimination of unjustifiable expense and 8 delay.

<u>NEW SECTION.</u> Section 2. Definitions. As used in [this
act], unless the context requires otherwise, the following
definitions apply:

12 (1) "Arraignment" means the formal act of calling the13 defendant into open court to enter a plea answering a14 charge.

15 (2) "Arrest" means the taking of a person into custody16 in the manner authorized by law.

17 (3) "Arrest warrant" means the written order from a
18 court directed to a peace officer or to some other person
19 specifically named commanding that person to arrest another.
20 This term includes the original warrant of arrest and a copy
21 certified by the issuing court.

(4) "Bail" means the security given for the primary
purpose of insuring the presence of the defendant in a
pending criminal proceeding.

25 (5) "Charge" means a written statement presented to a

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court accusing a person of the commission of the offense and
 is contained in a complaint, information, and indictment.

3 (6) "Concealment." means any act or deception done 4 purposely or knowingly upon or outside the premises of a 5 wholesale or retail store or other mercantile establishment 6 with the intent to deprive the merchant of all or part of 7 the value of the merchandise.

8 (7) "Conviction", unless otherwise provided by law, 9 means a judgment or sentence entered upon a guilty plea or 10 upon a verdict or finding of guilty of an offense rendered 11 by a legally constituted jury or by a court of competent 12 jurisdiction authorized to try the case without a jury.

13 (8) "Court" means a place were justice is judicially14 administered and includes the judge thereof.

(9) "Judge" means a person who is invested by law withthe power to perform judicial functions.

17 (10) "Judgment" means an adjudication by a court that
18 the defendant is guilty and includes the sentence pronounced
19 by the court.

(11) "Make available for examination and reproduction"
means to make material and information subject to disclosure
available upon request at a designated place during
specified reasonable times and provide suitable facilities
or arrangements for reproducing it. The term does not mean
that the disclosing party is required to make copies at its

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expense, to deliver the materials or information to the
 other party, or to supply the facilities or materials
 required to carry out tests on disclosed items. The parties
 may by mutual consent make any other or additional
 arrangements.

6 (12) "New trial" means a re-examination of the issue in 7 the same court before another jury after a verdict or 8 finding has been rendered.

9 (13) "Offense" means a violation of any penal statute of10 this state or any ordinance of its political subdivisions.

11 (14) "Included offense" means an offense that:

12 (a) is established by proof of the same or less than
13 all the facts required to establish the commission of the
14 offense charged;

(b) consists of an attempt to commit the offense
charged or to commit an offense otherwise included therein;
or

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

(15) "Parole" means the release to the community of a
prisoner by a decision of the board of pardons prior to the
expiration of a prisoner's term, subject to conditions
imposed by the board of pardons and the supervision of the

l department of institutions.

2 (16) "Peace officer" means any person who by virtue of 3 his office or public employment is vested by law with a duty 4 to maintain public order and make arrests for offenses while 5 acting within the scope of his authority.

6 (17) "Persistent felony offender" means an offender who 7 has previously been convicted of a felony and who is 8 presently being sentenced for a second felony committed on a 9 different occasion than the first. An offender is considered 10 to have been previously convicted of a felony if:

11 (a) the previous felony conviction was for an offense 12 committed in this state or any other jurisdiction for which 13 a sentence of imprisonment in excess of 1 year could have 14 been imposed;

15 (b) less than 5 years have elapsed between the16 commission of the present offense and either:

17 (i) the previous felony conviction; or

18 (ii) the offender's release on parole or otherwise from 19 prison or other commitment imposed as a result of a previous 20 felony conviction; and

(c) the offender has not been pardoned on the ground of
innocence and the conviction has not been set aside at the
postconviction hearing.

(18) "Place of trial" means the geographical locationand political subdivision within which is situated the court

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that will hear the cause. 1 2 (19) "Preliminary examination" means a hearing before a 3 justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by 4 5 the defendant. (20) "Probation" means release by the court without 6 imprisonment, except as otherwise provided by law, of a 7 defendant found guilty of a crime. The release is subject to 8 9 the supervision of the department of institutions upon directions of the court. 10 11 (21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry 12 out criminal proceedings on behalf of the state or a 13 political subdivision. 14 (22) "Same transaction" means conduct consisting of a 15 series of acts or omissions which are motivated by: 16

17 (a) a purpose to accomplish a criminal objective and 18 which are necessary or incidental to the accomplishment of 19 that objective; or

(b) a common purpose or plan which result in the
repeated commission of the same offense or effect upon the
same person or persons or the property thereof.

(23) "Search warrant" means a written order made in the
name of the state and signed by a judge that particularly
describes the thing, place, or person to be searched and the

instruments, articles, or things to be seized; and that is 1 directed to a peace officer commanding him to search for 2 personal property and bring it before the judge. 3 (24) "Sentence" means the judicial disposition of a 4 criminal proceeding upon a plea or finding of guilty. 5 (25) "Statement" means: 6 (a) a writing signed or otherwise adopted or approved 7 8 by a person; (b) a video, audio, or other recording of a person's 9 communications or a transcript of the communications; and 10 (c) a writing containing a summary of a person's scal 11 communications or admissions. 12 (26) "Summons" means a written order issued by the court 13 that commands a person to appear before a court at a stated 14 time and place to answer the offense set forth therein. 15 (27) "Superseded notes" means handwritten notes, 16 including field notes, that have been substantially 17 incorporated into a statement. The notes may not be 18 considered a statement and are not subject to disclosure 19 except as provided in [section 139]. 20 (28) "Temporary road block" means any structure, device, 21 or means used by a peace officer for the purpose of 22 controlling all traffic through a point on the highway where 23 all vehicles may be slowed or stopped. 24

25 (29) "Witness" means any person whose testimony is

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desired in any proceeding or investigation by a grand jury
 or in a criminal action, prosecution, or proceeding.

3 (30) "Work product" means legal research, records, 4 correspondence, reports, and memoranda, written and oral, to 5 the extent that they contain the opinions, theories, and 6 conclusions of the prosecutor, defense counsel, or their 7 staff or investigators.

8 <u>NEW SECTION.</u> Section 3. Filing the charge. In all 9 criminal prosecutions, the charge shall be filed in the 10 county where the offense was committed unless otherwise 11 provided by law.

12 <u>NEW SECTION.</u> Section 4. Place of trial. (1) The place 13 of trial shall be the county where the charge is filed 14 unless otherwise provided by law.

(2) All objections that a charge is filed in the
improper county are waived by the defendant unless made
before trial as provided for in [sections 175 through 177].
If an objection is made, a hearing shall be held and the
proper county in which to file the charge shall be
established before further proceedings.

21 <u>NEW SECTION.</u> Section 5. Requisite act in multiple 22 counties. (1) When two or more acts are requisite to the 23 commission of any offense, or two or more acts are committed 24 in furtherance of a common scheme, the charge may be filed 25 in any county in which any of the acts or offenses occur. LC 1439/01

1 (2) When an act requisite to the commission of an 2 offense occurs or continues in more than one county, the 3 charge may be filed in any county in which the act occurred 4 or continued.

5 <u>NEW SECTION.</u> Section 6. Assisting or committing an 6 offense. When a person in one county commits or aids, abets, 7 or procures the commission of an offense in another county, 8 the charge may be filed in either county.

9 <u>NEW SECTION.</u> Section 7. County of offense unknown. (1) 10 If it cannot be readily determined in which county the 11 offense was committed, the offender may be charged in any 12 county in which it readily appears that an element of the 13 offense occurred.

14 (2) When an offense is committed in or against a public
15 or private conveyance, and it is doubtful in which county
16 the offense occurred, the charge may be filed in any county
17 in or through which the conveyance has traveled.

18 <u>NEW SECTION.</u> Section 8. Offense consummated within 19 state. If an offense is commenced outside the state but is 20 consummated within the state, the offense shall be charged 21 in the county where an act requisite to the commission of 22 the offense is committed or continued.

23 <u>NEW SECTION.</u> Section 9. Inquest -- when held -- how
 24 conducted. (1) The coroner shall hold an inquest only if
 25 requested to do so by the county attorney of the county in

which the acts or events causing death occurred. However,
 when the death of any person occurs in a jail or a penal
 institution or from the use of a firearm by a peace officer,
 except where criminal charges have been or will be filed,
 the county attorney shall direct the coroner to hold an
 inquest.

7 (2) If an inquest is held, the proceedings shall be
8 public. The coroner shall conduct the inquest with the aid
9 and assistance of the county attorney. The inquest must be
10 held in accordance with this section.

<u>NEW SECTION.</u> Section 10. Disqualifying a coroner. (1)
 A coroner who also serves as a peace officer may not conduct
 an inquest into the death of a person who:

14 (a) died in a jail or penal institution;

15 (b) died while in custody of a peace officer; or

16 (c) was killed by a peace officer.

17 (2) If a coroner is disgualified under subsection (1), 18 the county attorney shall request a qualified coroner of 19 another county to conduct the inquest. The expenses of a 20 coroner fulfilling the request must be paid by the 21 requesting county.

22 <u>NEW SECTION.</u> Section 11. Summoning and swearing in of 23 jurors -- instructions. (1) For holding an inquest, the 24 coroner must summon a jury of not more than nine persons 25 qualified by law to serve as jurors. LC 1439/01

1 (2) The jurors chosen to serve must be sworn by the 2 coroner to inquire who the person was and when, where, and 3 by what means he came to his death, and into the 4 circumstances attending his death and to render a true 5 verdict thereon, according to the evidence offered.

6 (3) The jurors may be required to inspect the body of
7 the decedent, whether or not an autopsy has been performed,
8 at the discretion of the county attorney.

9 (4) The coroner must instruct the jurors as to their10 duties.

11 <u>NEW SECTION.</u> Section 12. Coroner's subpoena. Upon the 12 request of the county attorney, a coroner must issue 13 subpoenas for witnesses returnable immediately or at a time 14 and place as he may designate, which may be served by any 15 competent person.

16 <u>NEW SECTION.</u> Section 13. Witness compelled to attend 17 -- examination. (1) A witness served with a subpoena may be 18 compelled to attend and testify or be punished as upon a 19 subpoena issued by a justice of the peace.

20 (2) The county attorney shall examine each witness,
21 after which the witness may be examined by the coroner and
22 the jurors.

23 <u>NEW SECTION.</u> Section 14. Form of verdict. After
24 inspecting the body, if required, and hearing the testimony,
25 the jury must render its verdict, which shall be by majority

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vote, and certify the same in writing signed by them and
 setting forth who the deceased person was and the location,
 time, circumstances, and means of the death.

NEW SECTION. Section 15. Recording and filing the 4 testimony and proceedings. The testimony of the witness 5 examined before the coroner's jury must be recorded and 6 transcribed, the transcript of which shall be filed with the 7 clerk of the district court of the county. The recording and 8 transcribing expenses shall be paid by the county upon 9 10 claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid. 11

NEW SECTION. Section 16. Issuing subpoenas. 12 (1)Whenever the attorney general or county attorney has a duty 13 to investigate alleged unlawful activity, any justice of the 14 supreme court or district court judge of this state may 15 cause subpoenas to be issued commanding the persons to whom 16 17 they are directed to appear before the attorney general or the county attorney and give testimony. 18

19 (2) Subpoenas duces tecum may also issue commanding
20 persons to whom they are directed to produce such books,
21 records, papers, documents, and other objects as may be
22 necessary and proper to the investigation.

(3) A subpoena may issue only when it appears upon the
affidavit of the attorney general or the county attorney
that the administration of justice requires it to be issued.

<u>NEW SECTION.</u> Section 17. Failure to appear or obey.
 (1) A person who, without just cause, fails to obey an
 investigative subpoena issued pursuant to this section may
 be cited for contempt of court.

5 (2) A person who, after being granted immunity under 6 [section 20], refuses to give testimony or to produce 7 evidence must be brought before the judge issuing the 8 subpoena or, in that judge's absence or inability to act, 9 before the nearest and most accessible judge who shall 10 inform the person:

11 (a) of the contents and requirements of the subpoena;
12 (b) that because immunity has been granted, the person
13 cannot be excused from testifying or producing evidence on
14 the grounds that the testimony or evidence may be personally
15 incriminating; and

16 (c) that the refusal to testify or to produce evidence
17 as commanded in the subpoena is punishable as a contempt of
18 court under Title 3, chapter 1, part 5.

19 (3) In the presence of the judge, the person must be
20 examined by the county attorney or produce evidence as
21 commanded in the subpoena.

22 <u>NEW SECTION.</u> Section 18. Relief from improper 23 subpoena. A person aggrieved by a subpoena issued pursuant 24 to this section may, within a reasonable time, file a motion 25 to dismiss the subpoena. If a subpoena duces tecum has

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issued, a person aggrieved may petition to limit its scope. 1 2 NEW SECTION. Section 19. Conduct of investigative 3 inquiry. (1) The person requesting a subpoena may examine 4 under oath all witnesses subpoenaed pursuant to [sections 16 5 through 21]. Testimony shall be recorded. The witness has the right to have counsel present at all times. If the 6 7 witness does not have resources to obtain counsel, the 8 issuing judge shall appoint counsel, when requested.

9 (2) The secrecy and disclosure provisions relating to 10 grand jury proceedings shall apply to proceedings conducted 11 under (sections 16 through 21). A person who divulges the 12 contents of the application or the proceedings without legal 13 privilege to do so may be punished for contempt of court.

14 (3) All penalties for perjury or preparing, submitting,
15 or offering false evidence apply to proceedings conducted
16 under [sections 16 through 21].

17 <u>NEW SECTION.</u> Section 20. self-incrimination --18 immunity. (1) No person subpoenaed to give testimony
19 pursuant to [sections 16 through 21] may be required to make
20 any statement or to produce any evidence which may be
21 personally incriminating.

(2) The attorney general or the county attorney may,
with the approval of the judge who authorized the issuance
of the subpoena on behalf of the state, grant any person
subpoenaed immunity from the use of any compelled testimony

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or evidence or any information directly or indirectly
 derived from such testimony or evidence against that person
 in any criminal prosecution.

4 (3) Nothing in [sections 16 through 20] prohibits a 5 prosecutor from granting immunity from prosecution for or on 6 account of any transaction, matter, or thing concerning 7 which a witness is compelled to testify if the prosecutor 8 determines, in his sole discretion, that the ends of justice 9 would be served thereby.

10 (4) After being granted immunity, no person may be 11 excused from testifying on the grounds that such testimony 12 may be personally incriminating. Immunity may not extend to 13 prosecution or punishment for false statements given 14 pursuant to the subpoena.

15 (5) Nothing in [sections 16 through 21] requires a 16 witness to divulge the contents of a privileged 17 communication unless the privilege is waived as provided by 18 law.

<u>NEW SECTION.</u> Section 21. Fees -- costs. (1) The fees
and mileage of witnesses subpoenaed pursuant to [sections 16
through 20] shall be the same as required in criminal
actions.

(2) When the application for the subpoend is made by
the attorney general, the state shall bear all costs,
including the cost of service. The appropriate county shall

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bear all costs, including the cost of service, when the
 application for the subpoena is made by the county attorney.
 (3) All provisions relating to subpoenas in criminal
 actions apply, including [sections 182 through 190], to
 subpoenas issued pursuant to [sections 16 through 20].

6 <u>NEW SECTION.</u> Section 22. Method of arrest. (1) An 7 arrest is made by an actual restraint of the person to be 8 arrested or by his submission to custody of the person 9 making the arrest.

10 (2) All necessary and reasonable force may be used in 11 making an arrest, but the person arrested may not be subject 12 to any greater restraint than is necessary to hold or detain 13 him.

14 (3) All necessary and reasonable force may be used to
15 effect an entry into any building or property or part
16 thereof to make an authorized arrest.

NEW SECTION. Section 23. Time of making arrest. An 17 18 arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home 19 or private dwelling place at night for a misdemeanor 20 21 committed some other time and place unless upon the direction of a judge endorsed upon a warrant for arrest. 22 However, a person may be arrested in his home or private 23 dwelling in cases involving domestic abuse. 24

25 NEW SECTION. Section 24. Written report when no arrest

made in domestic violence situation. When a peace officer is
called to the scene of a reported incident of domestic
violence but does not make an arrest, he shall file a
written report with the officer commanding the law
enforcement agency employing him, setting forth the reason
or reasons for his decision.

NEW SECTION. Section 25. Notice of rights to victim 7 8 upon arrest in domestic violence situation. Whenever a peace 9 officer arrests a person for domestic abuse, as defined in 10 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other 11 12 services in the community and give the victim immediate notice of any legal rights and remedies available. The 13 notice must include furnishing the victim with a copy of the 14 15 following statement:

16 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county 17 attorney's office can file criminal charges against your 18 abuser. You have the right to go to court and file a 19 petition requesting any of the following orders for relief: 20 (1) an order restraining your abuser from abusing you; 21 (2) an order directing your abuser to leave your 22 household;

23 (3) an order preventing your abuser from transferring
24 any property except in the usual course of business;

25 (4) an order awarding you or the other parent custody

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1 of or visitation with a minor child or children;

2 (5) an order restraining your abuser from molesting or
3 interfering with minor children in your custody; or

4 (6) an order directing the party not granted custody to 5 pay support of minor children or to pay support of the other 6 party if there is a legal obligation to do so".

7 <u>NEW SECTION.</u> Section 26. Basis for arrest without 8 warrant. (1) A peace officer may arrest a person when no 9 warrant has issued if the officer has probable cause to 10 believe that the person is committing an offense or that the 11 person has committed an offense and existing circumstances 12 require immediate arrest.

13 (2) A summons of a peace officer to a place of 14 residence by a family or household member constitutes an 15 exigent circumstance for making an arrest. Arrest is the 16 preferred response in domestic abuse cases involving injury 17 to the victim, use or threatened use of a weapon, violation 18 of a restraining order, or other imminent danger to the 19 victim.

20 <u>NEW SECTION.</u> Section 27. Manner of arrest without 21 warrant. A peace officer making an arrest when no warrant 22 has issued must inform the person to be arrested of the 23 officer's authority, of the intention to arrest that person, 24 and of the cause of the arrest, except when the person to be 25 arrested is actually engaged in the commission of or in an LC 1439/01

1	attempt to commit an offense, or is pursued immediately
2	after its commission or after an escape, or when the giving
3	of the information will imperil the arrest.
4	NEW SECTION. Section 28. Notice to appear. (1)
5	Whenever a peace officer is authorized to arrest a person
6	when no warrant has issued, the officer may instead issue
7	the person a notice to appear.
8	(2) The notice to appear shall:
9	(a) be in writing;
10	(b) state the person's name and address, if known;
11	(c) set forth the nature of the offense;
12	(d) be signed by the issuing officer; and
13	(e) direct the person to appear before a court at a
14	certain time and place.
15	(3) Upon failure of the person to appear, a summons or
16	warrant of arrest may issue.
17	NEW SECTION. Section 29. Release. When no warrant has
18	issued, a peace officer having custody of a person arrested
19	may release the arrested person without requiring that
20	person to appear before a court when the officer is
21	satisfied that there are insufficient grounds to commence
22	prosecution.
23	NEW SECTION. Section 30. Arrest warrant and summons.
24	A peace officer may arrest a person when the officer has a

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warrant commanding that the person be arrested or when the

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1	officer believes on reasonable grounds:	1	or in the name of the municipality if the violation of a
2	(1) that a felony warrant for the person's arrest has	2	municipal ordinance is charged;
3	been issued in another jurisdiction; or	3	(b) state the name of the person summoned and that
4	(2) that a warrant for the person's arrest has been	4	person's address, if known;
5	issued in this state.	5	(c) set forth the nature of the offense;
6	NEW SECTION. Section 31. Issuing warrant or summons.	6	(d) state the date when issued and the municipality or
7	(1) Upon the filing of a charge, the court may issue a	7	county where issued;
8	summons or a warrant of arrest as provided in [sections 91	8	(e) be signed by a judge of the court with the title of
9	and 93). A summons may issue to a corporation upon the	9	office also noted; and
10	filing of a charge against it. More than one warrant or	10	(f) command the person to appear before a court at a
11	summons may issue on the same charge.	11	certain time and place.
12	(2) A summons may be served personally or by	12	(2) The summons shall plainly state that, upon failure
13	first-class mail.	13	to appear following service of summons, an arrest warrant
14	NEW SECTION. Section 32. Failure to appear following	14	shall issue forthwith; or, if the service is made to a
15	summons. (1) If, after the issuance of a summons or notice	15	corporation, that a plea of not guilty will be entered.
16	to appear, the judge becomes satisfied that the person has	16	NEW SECTION. Section 34. Form and content of an arrest
17	not appeared or will not appear as commanded, the judge may	17	warrant. (1) The form of an arrest warrant shall:
18	at once issue a warrant of arrest.	18	(a) be in writing in the name of the state of Montana
19	(2) If, after being summoned, the corporation does not	19	or in the name of a municipality if a violation of a
20	appear, a plea shall be entered in accordance with [section	20	municipal ordinance is charged;
21	130] and the matter shall proceed to trial and judgment	21	(b) set forth the nature of the charge;
22	without further process.	22	(c) command that the person against whom the complaint
23	NEW SECTION. Section 33. Form and content of a	23	was made be arrested and brought before the nearest or most
23 24	summons. (1) The form of a summons shall:	24	accessible court for an initial appearance;

25 (a) be in writing in the name of the state of Montana

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(d) specify the name of the person to be arrested or,

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if that person's name is unknown, designate the person by
 any name or description by which the person to be arrested
 can be identified with certainty;

4 (e) state the date when issued and the municipality or5 county where issued; and

6 (f) be signed by the judge of the court with the title 7 of office noted.

8 (2) The warrant of arrest may specify the amount of9 bail.

10 (3) No warrant of arrest shall be dismissed nor shall
11 any person in custody for an offense be discharged from
12 custody because of technical irregularities not affecting
13 the substantial rights of the accused.

NEW SECTION. Section 35. Execution of a warrant. (1) A warrant of arrest may be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state.

18 (2) Warrants issued for the violation of city
19 ordinances cannot be executed outside the city limits,
20 except as otherwise provided by law.

21 <u>NEW SECTION.</u> Section 36. Manner of arrest with 22 warrant. (1) When making an arrest pursuant to a warrant, a 23 peace officer shall inform the person to be arrested of the 24 officer's authority, the intention to arrest that person, 25 the cause of the arrest, and the fact that a warrant has

,

1 been issued for that person's arrest, except:

2 (a) when the person forcibly resists or flees before
3 the peace officer has an opportunity to inform the person;
4 or

5 (b) when the giving of the information will imperil6 arrest.

7 (2) The peace officer need not have possession of the 8 warrant at the time of arrest, but after the arrest the 9 warrant must be shown to the person arrested as soon as 10 practicable if the person requests.

<u>NEW SECTION.</u> Section 37. Assisting a peace officer.
 (1) A peace officer making a lawful arrest may command the

13 aid of persons 18 years of age or older.

14 (2) A person commanded to aid a peace officer in making15 an arrest:

16 (a) has the same authority to arrest as that officer; 17 and

18 (b) is not civilly liable for any reasonable conduct in19 aid of the officer.

20 <u>NEW SECTION.</u> Section 38. Assisting officer of another 21 state. (1) Any peace officer of another state, of the United 22 States, or of the District of Columbia who enters this state 23 in close pursuit of a person in order to arrest him has the 24 same authority to arrest and hold the person in custody as 25 peace officers of this state have to arrest and hold in 1 custody a person on the ground that he had committed a crime
2 in this state.

3 (2) If an arrest is made in this state by an officer of 4 another state or of the District of Columbia, the officer 5 shall without unnecessary delay take the arrested person 6 before the judge of a court of record, who shall conduct a 7 hearing for the sole purpose of determining if the arrest 8 was in accordance with subsection (1) and not of determining 9 guilt or innocence of the arrestee.

10 (3) If the judge determines that the arrest was in 11 accordance with subsection (1), the judge shall commit the 12 arrestee to the custody of the officer making the arrest, 13 who shall, without unnecessary delay, take the arrestee to 14 the state from which he fled. If the judge determines that 15 the arrest was unlawful, the judge shall discharge the 16 person arrested.

17 (4) This section may not be construed to make unlawful18 an arrest in this state which would otherwise be lawful.

19 <u>NEW SECTION.</u> Section 39. When authorized -- custody.
20 (1) A private person may arrest another when there is
21 probable cause to believe that the person is committing or
22 has committed an offense and the existing circumstances
23 require the person's immediate arrest.

24 (2) A private person making an arrest shall immediately25 notify the nearest available law enforcement agency or peace

officer and give custody of the person arrested to the
 officer or agency.

3 <u>NEW SECTION.</u> Section 40. Peace officer's custody. A 4 peace officer who, pursuant to law, takes custody of a 5 person arrested by a private citizen shall proceed in 6 accordance with [sections 27 and 36], and as otherwise 7 provided by law.

8 <u>NEW SECTION.</u> Section 41. Investigative stop. A peace 9 officer may stop any person or vehicle which is observed in 10 circumstances that create a particularized suspicion that 11 the person or occupant of the vehicle has committed, is 12 committing, or is about to commit an offense, to obtain or 13 verify an account of the person's presence or conduct, or to 14 determine whether to arrest the person.

15 <u>NEW SECTION.</u> Section 42. Stop and frisk. A peace 16 officer who has made a lawful stop under [sections 41 17 through 43]:

(1) may frisk the person and take other reasonably
necessary steps for protection if the officer has reasonable
cause to suspect that the person is armed and presently
dangerous to him or another person present;

(2) may take possession of any object that is
discovered during the course of the frisk if the officer has
probable cause to believe the object is a weapon;

25 (3) may demand of the person or persons stopped his or

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her name and present address; and		authorized. A search of a person, object, or place may be
(4) shall inform the person or persons stopped as	2	made and instruments, articles, or things may be seized in
promptly as possible under the circumstances and in any case	3	accordance with [this act] when a search is made:
before questioning the person, that he is a peace officer,	4	(1) by the authority of a search warrant; or
that the stop is not an arrest but rather a temporary	5	(2) in accordance with recognized exceptions to the
detention for an investigation, and that upon the completion	6	warrant requirement.
of the investigation the person will be released if not	7	NEW SECTION. Section 47. Authority to issue search
arrested.	8	warrant. A search warrant authorized by this section may be
NEW SECTION. Section 43. Duration of stop. A stop	9	issued:
authorized by [section 41 or 42] may not last longer than is	10	(1) upon the request of a peace officer, the city or
necessary to effectuate the purpose to the stop.	11	county attorney or the attorney general; and
NEW SECTION. Section 44. Authority to establish	12	(2) by any city or municipal court judge or justice of
roadblock. Any law enforcement agency of this state is	13	the peace within his respective jurisdiction wherein the
authorized to establish, within its jurisdiction, temporary	14	property or person sought is located; or
roadblocks on the highways of this state for the purpose of	15	(3) by any district court judge within this state.
identifying drivers, checking for driver's licenses, vehicle	16	NEW SECTION. Section 48. What may be seized with
registration, and insurance.	17	search warrant. A warrant may issue under this section to
NEW SECTION. Section 45. Establishing a roadblock. A	18	search for and seize any:
written plan for establishing a roadblock shall be designed	19	(1) property that constitutes evidence of the
by supervisory officers within the law enforcement agency to	20	commission of an offense;
ensure motorist safety, minimize motorist inconvenience, and	21	(2) contraband, fruits of the crime, or things
prevent the arbitrary selection of vehicles to be stopped by		otherwise criminally possessed;
providing a schedule for the selection of vehicles to be		(3) property designed or intended for use or which is
stopped.	24	or has been used as a means of committing a criminal
NEW SECTION. Section 46. Search and seizure when	25	offense; or

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(4) person for whose arrest there is probable cause, or
 for whom there has been a warrant of arrest issued, or who
 is unlawfully restrained.

NEW SECTION. Section 49. Search 4 warrant upon affidavit. (1) A search warrant, other than a search warrant 5 6 upon oral testimony under [section 50], shall issue only 7 upon an affidavit or affidavits sworn to before the judge which establishes grounds for issuing a warrant. The judge 8 shall issue a search warrant if the judge is satisfied that 9 there is probable cause to believe an offense has been or 10 11 will be committed and that there is probable cause for 12 issuance of the warrant.

13 (2) The warrant shall particularly describe the thing,
14 place, or person to be searched and instruments, articles,
15 or person to be seized.

16 (3) The warrant shall be directed to a specific peace
17 officer commanding the officer to search for and seize the
18 designated person or items.

19 <u>NEW SECTION.</u> Section 50. Search warrant upon oral 20 testimony. (1) If the circumstances make it reasonable to 21 dispense with a written affidavit, a judge may issue a 22 warrant based on sworn oral testimony communicated by 23 telephone or other appropriate means.

(2) The person who is requesting the warrant shallprepare a document to be known as a duplicate original

warrant and shall read the duplicate original warrant,
 verbatim, to the judge. The judge shall then enter,
 verbatim, what is read to him on a document to be known as
 the original warrant.

(3) If the judge is satisfied that the circumstances 5 are such as to make it reasonable to dispense with a written 6 7 affidavit and that grounds for the application exist, or я that there is probable cause to believe that they exist, the judge shall order the issuance of a warrant by directing the 9 10 person requesting the warrant to sign the judge's name on 11 the duplicate original warrant and enter on the face of the 12 original warrant the exact time when the warrant was issued. 13 The finding of probable cause for a warrant upon oral 14 testimony may be based on the same kind of evidence as is 15 sufficient for a warrant upon affidavit.

16 (4) When a caller informs the judge that the purpose of the case is to request a warrant, the judge shall 17 immediately place under oath each person whose testimony 18 19 forms a basis of the application and each person applying 20 for that warrant. An applicant's telephonic oath or 21 affirmation is considered to have been made before the judge. If a voice recording device is available, the judge 22 23 shall record all of the call after the caller informs the 24 judge that the purpose of the call is to request a warrant. Otherwise, a stenographic or longhand verbatim record shall 25

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be made. If a voice recording is used or a stenographic record is made, the judge shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the judge shall file a signed copy with the court.

7 (5) A search warrant issued upon any telephonic request
8 is invalid unless it is subsequently signed by the issuing
9 judge or his successor.

10 (6) The contents of a warrant upon oral testimony shall11 be the same as the contents of a warrant upon affidavit.

12 (7) Evidence obtained pursuant to a warrant issued 13 under this section is not subject to a motion to suppress on 14 the ground that the circumstances were not such as to make 15 it reasonable to dispense with a written affidavit.

16 <u>NEW SECTION.</u> Section 51. Service of a search warrant.
17 A search warrant must in all cases be served by the peace
18 officer specifically named and by no other person except in
19 aid of the officer, the officer being present and acting in
20 its execution.

<u>NEW SECTION.</u> Section 52. Procedures assisting
 execution of search warrant. (1) All necessary and
 reasonable force may be used to execute a search warrant or
 to effect an entry into any building or property or part
 thereof to execute a search warrant.

1 (2) The person executing the warrant may reasonably 2 detain and search any person in the place being searched at 3 the time:

(a) to protect himself from attack; or

5 (b) to prevent disposal or concealment of any
6 instruments, articles, or things particularly described in
7 the warrant.

8 NEW SECTION. Section 53. Execution and return. (1) 9 Service of a search warrant is made by exhibiting the 10 original warrant, or a duplicate original warrant, at the 11 place or to the person to be searched. The officer taking 12 property under the warrant shall give to the person from 13 whom or from whose premises the property is taken a copy of 14 the search warrant and receipt for property taken or shall 15 leave the copy and receipt at the place from which the items 16 were taken. Failure to leave a copy and receipt may not 17 render the property seized inadmissible at trial.

(2) The return shall be made promptly and shall be
accompanied by a written inventory of any property taken,
verified by the person executing the warrant. The return
shall be made before the judge who issued the warrant or, if
he is absent or unavailable, before the nearest available
judge.

(3) The judge shall, upon request, deliver a copy ofthe inventory and the order of custody or disposition to the

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person from whom or from whose premises the property was
 taken and to the applicant for the warrant.

3 (4) The warrant may be executed at any time of the day 4 or night. The warrant shall be executed within 10 days from 5 the time of issuance. Any warrant not executed within 10 6 days is void and shall be returned to the court or judge 7 issuing the same as "not executed".

8 (5) The judge shall enter an order providing for the
9 custody or appropriate disposition of the instruments,
10 articles, or things seized pending further proceedings.

NEW SECTION. Section 54. Filing of return. (1) The application on which the warrant is issued shall be retained by the judge but may not be filed with the clerk of court, or with the court if there is no clerk, until the warrant has been executed or has been returned "not executed".

16 (2) The judge before whom the warrant is returned shall 17 attach to the warrant a copy of the return, inventory, and 18 all other papers in connection with the warrant and shall 19 file them with the issuing court.

20 <u>NEW SECTION.</u> Section 55. Custody and disposition --21 seizure without search warrant. (1) Instruments, articles, 22 or things lawfully seized without a warrant may be retained 23 in the custody of the officer making the seizure for a time 24 sufficient to complete an investigation.

25 (2) Notice of the seizure and a receipt for the

property seized shall be given to the person from whose possession the property is taken and to the owner of the property if the owner is reasonably ascertainable. The failure to give a receipt may not render the evidence seized inadmissible upon trial.

6 NEW SECTION. Section 56. Return of property seized ---7 right to possess. (1) Any person claiming the right to 8 possession of property seized as evidence may apply to the 9 judge for its return. The judge shall give written notice as 10 the judge considers adequate to the prosecuting attorney and all persons who have or may have an interest in the property 11 12 and shall hold a hearing to determine the right to 13 possession.

14 (2) If the right to possession is established, the
15 judge shall order the property other than contraband
16 returned if:

17 (a) the property is not needed as evidence; or

18 (b) all proceedings in which it might be required have19 been completed.

20 <u>NEW SECTION.</u> Section 57. Disposition of unclaimed 21 property. If property seized as evidence is not claimed 22 within 6 months of the completion of the case for which it 23 was seized, the officer having custody of it shall apply to 24 the court for its disposition. If the judge, after proper 25 inquiry, cannot ascertain or locate any person entitled to

its possession, the judge must order the property to be sold
 or, if contraband, destroyed, by the sheriff. The proceeds
 from the sale, after deduction of the costs of storage,
 preservation of property, and the sale, must be paid into
 the county general fund.

6 <u>NEW SECTION.</u> Section 58. Right to counsel. (1) During 7 the initial appearance before the court, every defendant 8 must be informed of the right to have counsel, and must be 9 asked if the aid of counsel is desired.

10 (2) If the defendant desires counsel, is financially
11 unable to employ counsel, and is entitled to have counsel
12 assigned, the court must assign counsel to the defendant
13 without unnecessary delay.

14 (3) The defendant, if unable to employ counsel, is15 entitled to have counsel assigned if:

16 (a) the offense charged is a felony;

17 (b) the offense charged is a misdemeanor and the court18 desires to retain imprisonment as a sentencing option; or

19 (c) the interests of justice would be served by 20 assignment.

21 <u>NEW SECTION.</u> Section 59. Waiver of counsel. A
22 defendant may waive the right to counsel when the court
23 ascertains that the waiver is made knowingly, voluntarily,
24 and intelligently.

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25 NEW SECTION. Section 60. Duration of appointment. (1)

Where counsel has been assigned, the assignment shall be
 effective until final judgment, including any proceeding
 upon direct appeal to the Montana supreme court, unless
 relieved by order of the court.

5 (2) If counsel finds the defendant's case on appeal to 6 be wholly frivolous, counsel must advise the court of that 7 fact and request permission to withdraw. The request to 8 withdraw must be accompanied by a memorandum referring to 9 anything in the record that might arguably support the 10 appeal. The defendant is entitled to receive a copy of 11 counsel's memorandum, and to file a reply with the court.

12 <u>NEW SECTION.</u> Section 61. Determination of indigence.
13 (1) The court shall make a determination of indigence.

14 (2) In applying for a court-appointed counsel, a 15 defendant shall submit a sworn financial statement 16 demonstrating a financial inability to obtain legal 17 representation without substantial hardship in providing for 18 personal or family necessities. The statement is not 19 admissible in any civil or criminal action except where 20 offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing. 2i 22 NEW SECTION. Section 62. Payment for court-appointed 23 counsel by defendant. (1) The court may require a convicted 24 defendant to pay the costs of court-appointed counsel as a

part of or a condition under the sentence imposed as

25

provided in [this act].

2 (2) Costs must be limited to reasonable compensation
3 and costs incurred by the court-appointed counsel in the
4 criminal proceeding.

5 (3) The court may not sentence a defendant to pay the 6 costs of court-appointed counsel unless the defendant is or 7 will be able to pay them. In determining the amount and 8 method of payment of costs, the court shall take account of 9 the financial resources of the defendant and the nature of 10 the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and 11 12 who is not in contumacious default in the payment may at any time petition the court that sentenced him for remission of 13 14 the payment of costs or of any unpaid portion of the costs. 15 If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the 16 defendant or his immediate family, the court may remit all 17 18 or part of the amount due in costs or modify the method of 19 payment.

20 <u>NEW SECTION.</u> Section 63. Time and method of payment. 21 When a defendant is sentenced to pay the costs of 22 court-appointed counsel, the court may order payment to be 23 made within a specified period of time or in specified 24 installments. Payments shall be made to the clerk of the 25 district court. The clerk of the district court shall

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distribute the payments to the government agency responsible
 for the expense of court-appointed counsel as provided in
 [section 65].

NEW SECTION. Section 64. Effect of nonpayment. (1) 4 When a defendant who is sentenced to pay the costs of 5 court-appointed counsel defaults in payment of the costs or 6 7 of any installment, the court on motion of the county 8 attorney or on its own motion may require the defendant to 9 show cause why the default should not be treated as a 10 contempt of court and may issue a show cause citation or a warrant of arrest for the defendant's appearance. 11

12 (2) Unless the defendant shows that the default was not 13 attributable to an intentional refusal to obey the order of 14 the court or to a failure on the defendant's part to make a 15 good faith effort to make the payment, the court may find 16 that the default constitutes civil contempt.

17 (3) The term of imprisonment for contempt for 18 nonpayment of the costs of court-appointed counsel shall be 19 set forth in the judgment and may not exceed 1 day for each 20 \$25 of the payment, 30 days if the order for payment was imposed upon conviction of a misdemeanor, or 1 year in any 21 22 other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit. 23 toward payment for each day of imprisonment at the rate 24 specified in the judgment. 25

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1 (4) If it appears to the satisfaction of the court that 2 the default in the payment of costs is not contempt, the 3 court may enter an order allowing the defendant additional 4 time for payment, reducing the amount of the payment or of 5 each installment, or revoking the order for payment of the 6 unpaid portion of the costs in whole or in part.

7 (5) A default in the payment of costs or any 8 installment may be collected by any means authorized by law 9 for the enforcement of a judgment. The writ of execution for 10 the collection of costs may not discharge a defendant 11 committed to imprisonment for contempt until the amount of 12 the payment for costs has actually been collected.

NEW SECTION. Section 65. Remuneration of appointed 13 14 counsel. (1) Whenever in a criminal proceeding an attorney 15 represents or defends any person by order of the court on the ground that the person is financially unable to employ 16 counsel, the attorney shall be paid for his services a sum 17 18 as a district court or justice of the state supreme court certifies to be reasonable compensation and shall be 19 20 reimbursed for reasonable costs incurred in the criminal 21 proceeding.

(2) The expense of implementing this rule is chargeable
as provided in 3-5-901 to the county in which the proceeding
arose, the department of commerce, or both, except that:
(a) in proceedings solely involving the violation of a

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city ordinance or state statute prosecuted in a city or
municipal court, the expense is chargeable to the city or
town in which the proceeding arose; or

4 (b) when there has been an arrest by agents of the 5 department of fish, wildlife, and parks or agents of the 6 department of justice and the charge is prosecuted by 7 personnel of the state agency that made the charge, the 8 expense must be borne by the prosecuting state agency.

<u>NEW SECTION.</u> Section 66. General authority for release
and detention. (1) An arrested person shall be released or
detained pending judicial proceedings pursuant to [sections
66 through 81].

13 (2) If a person is released, he shall appear to answer,14 as ordered, in the court having jurisdiction.

NEW SECTION. Section 67. Release or detention of a
 defendant pending trial. Before a verdict has been rendered,
 the court shall:

18 (1) authorize the release of the defendant upon
19 reasonable conditions that assure the appearance of the
20 defendant and protect the safety of the community or of any
21 other person; or

(2) detain the defendant where there is probable cause
to believe that the defendant committed an offense for which
death is a possible punishment and adequate safeguards are
not available to ensure the defendant's appearance and

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1 safety of the community.

2 NEW SECTION. Section 68. Release or detention pending 3 appeal -- revocation -- sentencing hearing. The court shall 4 order that a defendant found quilty of an offense who is 5 awaiting imposition or execution of sentence, revocation hearing, or who has filed an appeal, be detained, unless the 6 7 court finds that the defendant is not likely to flee or pose R a danger to the safety of any other person or the community 9 if released.

10 <u>NEW SECTION.</u> Section 69. Conditions upon the 11 defendant's release. (1) The court may impose any condition 12 which will reasonably assure the appearance of the defendant 13 as required, or assure the safety of any person and the 14 community; including but not limited to, the following:

15 (a) the defendant not commit an offense during the 16 period of release;

17 (b) the defendant remain in the custody of a designated 18 person who agrees to supervise the defendant and report any 19 violation of a release condition to the court, if the 20 designated person is reasonably able to assure the court 21 that the defendant will appear as required and will not pose 22 a danger to the safety of any person or the community;

23 (c) the defendant maintain employment, or if
24 unemployed, actively seek employment;

25 (d) the defendant abide by specified restrictions on

1 the defendant's personal associations, place of abode, and 2 travel;

3 (e) the defendant avoid all contact with the alleged
4 victim of the offense and any potential witness who may
5 testify concerning the offense;

6 (f) the defendant report on a regular basis to a
7 designated agency or individual, pretrial services agency,
8 or other appropriate individual;

9 (g) the defendant comply with a specified curfew;

10 (h) the defendant may not possess a firearm, 11 destructive device, or other dangerous weapon;

12 (i) the defendant may not use or possess alcohol, or
13 any dangerous drug or other controlled substance without a
14 legal prescription;

15 (j) furnish bail in accordance with [section 75]; or

16 (k) the defendant return to custody for specified hours
17 following release for employment, schooling, or other
18 limited purposes.

19 (2) The court may not impose an unreasonable condition 20 that results in the pretrial detention of the defendant and 21 shall subject the defendant to the least restrictive 22 condition, or combination of conditions, that will assure 23 the defendant's appearance and provide for the protection of 24 the community. The court may, upon a reasonable basis, amend 25 the order to impose additional or different conditions of 26 the order to impose additional or different conditions of 27 the order to impose additional or different conditions

release, at any time, upon its own motion or upon the motion
 of either party.

3 <u>NEW SECTION.</u> Section 70. Release or detention hearing. 4 (1) The release or detention of the defendant shall be 5 determined immediately upon the defendant's first 6 appearance.

7 (2) In determining whether the defendant shall be
8 released or detained, the court shall take into account the
9 available information concerning:

10 (a) the nature and circumstances of the offense
11 charged, including whether the offense involved the use of
12 force or violence;

13 (b) the weight of the evidence against the defendant;
14 (c) the history and characteristics of the defendant,
15 including:

(i) the defendant's character, physical and mental
condition, family ties, employment, financial resources,
length of residence in the community, community ties, past
conduct, history relating to alcohol or drug abuse, criminal
history, and record concerning the appearance at court
proceedings; and

(ii) whether at the time of the current arrest or
offense, the defendant was on probation, on parole, or on
other release pending trial, sentencing, appeal, or
completion of sentencing for an offense;

1 (d) the nature and seriousness of the danger to any 2 person or the community that would be posed by the 3 defendant's release; and

4 (e) the property available as collateral for the 5 defendant's release to determine if it will reasonably 6 assure the appearance of the defendant as required.

7 (3) Upon the motion of any party or the court, a 8 hearing shall be held to determine whether bail is 9 established in the appropriate amount, or whether any other 10 condition or restriction upon the defendant's release will 11 reasonably assure the appearance of the defendant and the 12 safety of any other person or the community.

13 <u>NEW SECTION.</u> Section 71. Release order. A release 14 order issued by the court shall include a written statement 15 setting forth any restrictions or conditions upon the 16 defendant's release.

17 <u>NEW SECTION.</u> Section 72. Release ordered by court 18 where charge not pending. If release is ordered or bail is 19 accepted by a court other than the court in which the charge 20 is pending, any bonds, instrument of ownership, money 21 posted, and a written statement of other conditions of 22 release shall be delivered without delay to the court in 23 which the charge is pending.

24 <u>NEW SECTION.</u> Section 73. Bail schedule. A judge may
25 establish and post a schedule of bail for offenses over

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which the judge has original jurisdiction. A person may not
 be released on bail without first appearing before the judge
 when the offense is domestic abuse or any assault against a
 family member or a household member.

5 <u>NEW SECTION.</u> Section 74. Peace officer accepting bail.
6 (1) A peace officer may accept bail on behalf of a judge:

7 (a) in accordance with the bail schedule established 8 under [section 73]; or

9 (b) on behalf of a judge whenever the warrant of arrest10 specifies the amount of bail.

11 (2) Whenever a peace officer accepts bail, the officer 12 shall give a signed receipt to the offender setting forth 13 the bail received. The peace officer shall then deliver the 14 bail to the judge before whom the offender is to appear, and 15 the judge shall give a receipt to the peace officer for the 16 bail received.

NEW SECTION. Section 75. Forms of bail. (1) Bail may
 be furnished in the following ways:

19 (a) by a deposit with the court of an amount equal to 20 the required bail of cash, stocks, bonds, certificates of 21 deposit, or other personal property approved by the court; 22 (b) by real estate situated within the state with an 23 unencumbered equity, not exempt, owned by the defendant or 24 sureties at a value double the amount of the required bail; 25 (c) by written undertaking executed by the defendant 1 and by two sufficient sureties; or

2 (d) by a commercial surety bond executed by the
3 defendant and a qualified agent for and on behalf of the
4 surety company.

5 (2) The bond shall insure the appearance of the 6 defendant at all times required through all stages of the 7 proceeding including trial de novo, if any, and unless the 8 bond is denied by the court pursuant to [section 68], shall 9 remain in effect until final sentence is pronounced in open 10 court.

(3) Nothing in [sections 66 through 81] prohibits a
surety who considers himself insecure to surrender the
defendant pursuant to [section 79].

NEW SECTION. Section 76. Qualifying property as bail. (1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule which must contain a list of the personal property including a description of each item, its location and market value, and the total market value of all items listed.

21 (2) If the property is real estate:

(a) the defendant or sureties shall file a sworn
schedule which must contain a legal description of the
property, a description of any and all encumbrances on the
property, including the amount of each and the holder of the

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encumbrance, and the market value of the unencumbered equity
 owned by the affiant; and

3 (b) a certified copy of the schedule of the property 4 must be filed immediately by the court in the office of the 5 clerk and recorder of the county in which the property is 6 situated. The state has a lien on the property from the time 7 the copy is filed. The clerk and recorder shall enter, 8 index, and record the schedule without requiring any fee.

(3) If the property posted as a condition of release is 9 10 a written undertaking with sureties, each surety must be a 11 resident or freeholder within the state. Each surety must be 12 worth the amount specified in the undertaking, exclusive of 13 property exempt from execution, but the court or judge on 14 taking the property may allow more than two sureties to justify severally and in amounts less than that expressed in 15 the undertaking if the whole justification is equivalent to 16 17 that amount required.

18 (4) If the property posted as a condition of release is
19 a commercial bond, it may be executed by any domestic or
20 foreign surety company which is qualified to transact surety
21 business in this state. The undertaking shall be in a form
22 to be prescribed by the commissioner of insurance and shall
23 state the following:

24 (a) the name and address of the commercial surety25 company which issued the bond;

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(b) the amount of the bond and the ungualified
 obligation of the surety company to pay the court should the
 defendant fail to appear as guaranteed; and

4 (c) a provision that the surety company may not revoke5 the undertaking without good cause.

6 (5) The court may examine the sufficiency of any
7 undertaking and take any action it considers proper to
8 insure that a sufficient undertaking is posted.

NEW SECTION. Section 77. Guaranteed bond arrest q certificates. (1) A domestic or foreign surety company which 10 has qualified to transact surety business in this state may, 11 in any year, become surety in an amount not exceeding \$500 12 with respect to any guaranteed arrest bond certificates 13 issued in the year by an automobile club or association or 14 by an insurance company authorized to write automobile 15 liability insurance within this state by filing with the 16 commissioner of insurance an undertaking to become surety. 17 (2) The form of the undertaking shall be prescribed by 18 the commissioner of insurance but must include those matters 19 as required by [section 75]. 20

(3) A guaranteed arrest bond certificate shall, when
posted by the person whose signature appears on the
certificate, be accepted in lieu of any cash bail in an
amount not exceeding \$500 as a bail bond to guarantee the
appearance of the person in any court, including municipal

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1 courts, in this state at the time as may be required by the 2 court when the person was arrested for violation of a motor 3 vehicle law of this state or ordinance of a municipality of 4 this state (except for the offense of driving while 5 intoxicated or for any felony) committed prior to the date 6 of expiration shown on the guaranteed arrest bond 7 certificate.

8 (4) A guaranteed arrest bond certificate is subject to 9 the same enforcement and forfeiture provisions established 10 by [sections 66 through 81] unless otherwise provided by 11 law.

NEW SECTION. Section 78. Violation of a release 12 condition -- forfeiture. (1) If a defendant violates a 13 condition of release, including failure to appear, the 14 prosecuting attorney may move the court in writing for 15 revocation of the order of release. A judge may issue a 16 warrant for the arrest of a defendant charged with violating 17 a condition of release. Upon arrest the defendant shall be 18 brought before a judge for proceeding in accordance with 19 [section B2]. 20

21 (2) If a defendant fails to appear before a court as 22 required, and bail has been posted, the judge may declare 23 the bail forfeited. Notice of the order of forfeiture shall 24 be mailed to the defendant and the defendant's sureties at 25 their last known address. 1 (3) If at any time within 30 days after the forfeiture 2 the defendant or the defendant's sureties appear and 3 satisfactorily excuse the defendant's failure to appear, the 4 judge may direct the forfeiture to be discharged upon terms 5 as may be just.

NEW SECTION. Section 79. Surrender of defendant. (1)
At any time before the forfeiture of bail:

8 (a) the defendant may surrender to the court or any9 peace officer of this state; or

10 (b) the surety may arrest the defendant and surrender
11 the defendant to the court or any peace officer of this
12 state.

13 (2) The peace officer must detain the defendant in the 14 officer's custody as upon commitment and shall file a 15 certificate, acknowledging the surrender, in the court 16 having jurisdiction of the defendant. The court may then 17 order the bail exonerated.

18 <u>NEW SECTION.</u> Section 80. Porfeiture procedure. When 19 the order of forfeiture is not discharged, the court having 20 jurisdiction shall proceed with the forfeiture of the bail 21 posted as follows:

(1) if any money has been posted as bail, the court
must pay over the money to the treasury of the city or
county where the money was posted; or

25 (2) if other property is posted as a condition of

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release, the property shall be sold in the same manner as execution of sales in civil actions. The proceeds of the sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county where the case is pending.

7 (3) If a surety bond has been posted as bail, execution
8 may be issued against the sureties or the surety company in
9 the same manner as executions in civil actions.

10 NEW SECTION. Section 81. Use of forfeited bail as restitution. (1) If the court enters a judgment declaring 11 12 bail to be forfeited or if the order of forfeiture is not 13 discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the 14 15 offense for which the court has received bail. Whenever the court believes restitution may be proper, the court shall 16 17 order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined by law. 18

19 (2) If the court finds that restitution is appropriate,
20 the court shall order restitution in an amount not exceeding
21 the amount of the victim's complaint or the amount of the
22 victim's pecuniary loss.

(3) An order to require restitution is a judgment
against the defendant and the defendant's sureties, and the
court may order the restitution to be made by payment of

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1 money deposited as bail. Any balance of the bail money must
2 be disposed of in the manner prescribed in [section 80].

3 (4) A determination or decision under this section is
4 not admissible as evidence in any other civil action and is
5 not res judicata in any civil action.

6 <u>NEW SECTION.</u> Section 82. Appearance of the arrested 7 person. Any person arrested, whether with or without a 8 warrant, shall be taken without unnecessary delay before the 9 nearest and most accessible judge for an initial appearance.

10 <u>NEW SECTION.</u> Section 83. Duty of the court. (1) The 11 judge shall inform the defendant:

12 (a) of the charge or charges against the defendant;

13 (b) of the defendant's right to counsel;

14 {c} of the defendant's right to have counsel assigned 15 by a court of record in accordance with [section 58];

16 (d) of the general circumstances under which the 17 defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a
statement and that any statement made by the defendant may
be offered in evidence at the defendant's trial; and

21 (f) of the defendant's right to a judicial
22 determination of whether probable cause exists if the charge
23 is by complaint alleging the commission of a felony.

24 (2) The judge shall admit the defendant to bail as25 provided by law.

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<u>NEW SECTION.</u> Section 84. Preliminary examination - when held. (1) After the initial appearance, in all cases
 where the charge is triable in district court, the justice
 court shall, within a reasonable time, hold a preliminary
 examination unless:

6 (a) the defendant waives a preliminary examination;

7 (b) the district court has granted leave to file an8 information;

9 (c) an indictment has been returned; or

10 (d) the case is triable in a justice court.

11 <u>NEW SECTION.</u> Section 85. Waiver. If the defendant 12 waives the preliminary examination, the justice shall hold 13 the defendant to answer to the court having jurisdiction of 14 the offense.

15 <u>NEW SECTION.</u> Section 86. Presentation of evidence. (1) 16 The defendant may not enter a plea. The judge shall hear the 17 evidence without unnecessary delay. All witnesses must be 18 examined in the presence of the defendant. The defendant may 19 cross-examine witnesses against him and may introduce 20 evidence in his own behalf.

(2) During the examination of any witness or when the
defendant is making a statement or testifying, the judge
may, and on the request of the defendant or state shall,
exclude all other witnesses. The judge may also cause the
witnesses to be kept separate and to be prevented from

1 communicating with each other until all are examined.

2 (3) Objections to evidence on the ground that it was 3 acquired by unlawful means are not properly made at the 4 preliminary examination. Motions to suppress must be made 5 to the trial court as provided in (section 173).

6 <u>NEW SECTION.</u> Section 87. Disposition of the defendant. 7 (1) If from the evidence it appears that there is probable 8 cause to believe that an offense has been committed and that 9 the defendant committed it, the judge shall hold the 10 defendant to answer to the court having jurisdiction of the 11 offense.

12 (2) If from the evidence it appears that there is 13 insufficient probable cause to believe that an offense has 14 been committed and that the defendant committed it, the 15 judge shall dismiss the complaint and discharge the 16 defendant. The discharge of the defendant may not preclude 17 the state from instituting a subsequent prosecution for the 18 same offense.

<u>NEW SECTION.</u> Section 88. Record of preliminary
examination. (1) The testimony of each witness must be taken
by a court-appointed stenographer upon demand by the county
attorney, the defendant, or the defendant's counsel.

23 (2) After concluding the proceeding, if the justice
24 holds the defendant to answer, the justice shall transmit
25 immediately to the clerk of the court having jurisdiction of

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the offense all papers in the proceeding and any bail taken
 by the justice.

NEW SECTION. Section 89. Methods of commencing
 prosecution. A prosecution may be commenced by:

a complaint;

5

10

6 (2) an information following a preliminary examination7 or waiver of a preliminary examination;

8 (3) an information after leave of court has been9 granted; or

(4) an indictment.

11 <u>NEW SECTION.</u> Section 90. Required methods. (1) All 12 prosecutions of offenses charged in the district courts 13 shall be by indictment or information.

14 (2) All other prosecutions of offenses shall be by15 complaint.

16 <u>NEW SECTION.</u> Section 91. Filing a complaint. (1) When 17 a complaint is presented to a court charging a person with 18 the commission of an offense, the court may examine the 19 complainant and any affidavits, if filed, to determine 20 whether a charge may be filed.

21 (2) If it appears from any affidavit filed with the 22 charge, or from testimony of the complainant that there is 23 probable cause to believe that an offense has been committed 24 and that the person against whom the charge is made has 25 committed it, the court may issue a warrant of arrest.

NEW SECTION. Section 92. Amending a complaint. A 1 complaint may be amended, with leave of court, under the 2 same circumstances and in the same manner as an information. 3 NEW SECTION. Section 93. Leave to file. (1) The county 4 attorney may apply directly to the district court for 5 permission to file an information against a named defendant. 6 If the defendant named is a district court judge, the county 7 attorney shall apply directly to the supreme court for leave 8 to file the information. 9

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10 (2) An application must be by affidavit supported by 11 such evidence as the judge or chief justice may require. If 12 it appears that there is probable cause to believe that an 13 offense has been committed by the defendant, the judge or 14 chief justice shall grant leave to file the information; 15 otherwise the application shall be denied.

16 (3) When leave to file an information has been granted,
17 a warrant or summons may issue for the defendant's arrest or
18 appearance.

19 (4) When leave is granted to file an information 20 against a district court judge, the chief justice shall 21 designate and direct a judge of the district court of 22 another district to preside at the trial of the information 23 and hear and determine all pleas and motions affecting the 24 defendant under the information before and after judgment. 25 All necessary records shall be transferred to the clerk of

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1 the district court of the district in which the action 2 arose.

NEW SECTION. Section 94. Amending an information as to 3 substance. (1) The court shall grant leave to amend an 4 information as to matters of substance at any time, but not 5 less than 5 days before trial, provided that a motion is 6 timely filed, states the nature of the proposed amendment, 7 and is accompanied by an affidavit stating facts which show 8 the existence of probable cause to support the charge as 9 amended. A copy of the proposed amended information shall be 10 included with the motion to amend an information. 11

12 (2) If the court grants leave to amend the information, 13 the defendant shall be arraigned on the amended information 14 without unreasonable delay and shall be given a reasonable 15 period of time to prepare for trial on the amended 16 information.

17 <u>NEW SECTION.</u> Section 95. Amending an information as to 18 form. The court may permit an information to be amended as 19 to form at any time before verdict or finding if no 20 additional or different offense is charged and if 21 substantial rights of the defendant are not prejudiced.

22 <u>NEW SECTION.</u> Section 96. Time for filing information. 23 (1) After a finding of probable cause following a 24 preliminary examination or waiver of a preliminary 25 examination, or after leave of court has been granted, the county attorney shall file within 30 days in the proper
 district court an information charging the defendant with
 the offense or any other offense supported by probable
 cause.

5 (2) The court, unless good cause to the contrary is 6 shown, shall dismiss the prosecution if an information is 7 not filed within 30 days as required in subsection (1).

8 <u>NEW SECTION.</u> Section 97. Summoning grand jury. (1) A 9 grand jury may only be drawn or summoned when the district 10 judge, in his discretion, considers a grand jury to be in 11 the public interest and orders the grand jury to be drawn or 12 summoned. The composition and drawing of a grand jury shall 13 be in accordance with Title 3, chapter 15, part 6.

14 (2) The district judge may direct the selection of one
15 or more alternate jurors who shall sit as regular jurors
16 before an indictment is found or a grand jury investigation
17 is concluded. If a member of the jury becomes unable to
18 perform his duty, the juror may be replaced by an alternate.

19 <u>NEW SECTION.</u> Section 98. Challenges to grand jury or 20 grand jurors. (1) The attorney general or county attorney 21 may challenge the panel of a grand jury on the ground that 22 the grand jury was not selected, drawn, or summoned 23 according to law and may challenge an individual juror on 24 the ground that the juror is not legally qualified. 25 Challenges shall be made before the administration of the

1 oath of the jurors, may be oral or in writing, and shall be 2 tried and decided by the court.

(2) A motion to dismiss the indictment may be based on 3 the grounds that a grand jury was not selected, drawn, or 4 summoned according to law or that the individual juror was 5 not legally gualified. An indictment may not be dismissed 6 on grounds that one or more members are not legally 7 qualified if it appears from the record kept pursuant to 8 (sections 97 through 112) that eight or more jurors, after 9 deducting those not legally qualified, concurred in finding 10 the indictment. 11

12 <u>NEW SECTION.</u> Section 99. Excuse or discharge of grand 13 jurors. Any time for cause shown, the court may excuse or 14 discharge a juror or jurors either temporarily or 15 permanently and, in the latter event, the court may impanel 16 another person or persons in place of the juror or jurors 17 discharged.

NEW SECTION. Section 100. Foreman. The court 18 shall appoint one of the jurors to be a foreman. The foreman shall 19 20 have the power to administer oaths or affirmations and shall sign all indictments. The foreman or another juror 21 designated by the foreman shall keep a record of the number 22 of jurors concurring in the finding of every indictment and 23 shall file the record with the clerk of court, but the 24 25 record may not be made public except on order of the court.

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1NEW SECTION.Section 101. Appointingspecial2prosecutor. When the county attorney or attorney general is3the subject of the grand jury investigation, the court shall4appoint a special prosecutor. If a special prosecutor is5appointed, the county attorney's or attorney general's6office may not participate in an official capacity, but only7as witnesses.

8 NEW SECTION. Section 102. Charge to the grand jury. When a grand jury is impaneled and sworn, it shall be 9 10 charged by the judge who summoned it. In making the charge, 11 the court shall instruct the jury as to its duties and the 12 matters which jurors may consider. The prosecutor may bring 13 additional matters before the grand jury which are consistent with the original charge or are developed during 14 the proceedings. 15

NEW SECTION. Section 103. Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed. This rule may not affect a defendant's discovery rights after the filing of the indictment.

22 <u>NEW SECTION.</u> Section 104. Power and duties of grand 23 jurors. The grand jury shall inquire into those matters as 24 directed by the court summoning the jury and other matters 25 as presented by the prosecutor.

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<u>NEW SECTION.</u> Section 105. Subpoena of witnesses. (1) A
 subpoena requiring the attendance of a witness before the
 grand jury may be signed and issued by the county attorney,
 by the foreman of the grand jury, or by the judge of the
 district court.

6 (2) The fees and mileage of witnesses subpoenaed 7 pursuant to this section shall be the same as required in 8 criminal actions.

9 (3) All provisions relating to subpoenas in criminal
10 actions apply to subpoenas issued pursuant to this section,
11 including provisions of [sections 182 through 190].

12 <u>NEW SECTION.</u> Section 106. Reception of evidence. In 13 the investigation of a charge, the grand jury shall receive 14 no other evidence than that given by witnesses produced and 15 sworn before it, furnished by legal evidence, or the 16 deposition of a witness.

17 <u>NEW SECTION.</u> Section 107. Advice and assistance to 18 grand jury. (1) The grand jury may at all times ask the 19 advice of the judge. Unless his advice is asked, the judge 20 may not be present during sessions of the grand jury.

(2) The prosecutor may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. (3) Subject to the approval of the court, the county
 attorney may employ a special prosecutor, investigators,
 interpreters, and experts at an agreed compensation to be
 first approved by the court.

5 <u>NEW SECTION.</u> Section 108. Who may be present. The 6 prosecutor, witnesses under examination, interpreters when 7 needed and, for the purpose of taking the evidence, a 8 stenographer or operator of a recording device may be 9 present while the grand jury is in session. No person other 10 than the jurors may be present while the grand jury is 11 deliberating or voting.

12 <u>NEW SECTION.</u> Section 109. Recorded proceedings. (1) 13 The grand jury shall appoint a stenographer to take in 14 shorthand the testimony of witnesses, or the testimony may 15 be taken by a recording device, but the record shall include 16 the testimony of all witnesses on that particular 17 investigation.

(2) The stenographic reporter or operator of a
recording device shall, within 30 days after an indictment
has been found, certify and file with the clerk of the
district court the shorthand notes or the recordings made
and an original transcript of the notes or recordings.

23 (3) An unintentional failure of any recording to
24 reproduce all or any portion of a proceeding may not affect
25 the validity of the prosecution.

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NEW SECTION. Section 110. Secrecy of proceedings. (1) 1 A grand juror, an interpreter, a stenographer, an operator 2 3 of a recording device, any typist who transcribes recorded testimony, or the prosecutor may not disclose matters 4 occurring before the grand jury except as otherwise provided 5 6 for in [this act]. No obligation of secrecy may be imposed on any person except in accordance with this section. A 7 knowing violation of this section may be punishable as 8 9 contempt of court.

10 (2) Disclosure of matters occurring before the grand 11 jury, other than its deliberations and the vote of any 12 juror, may be made to any prosecutor or investigator of this 13 state, and prosecutors or investigators from any other 14 state, or the federal government for use in the performance 15 of their duty.

16 (3) Disclosure otherwise prohibited by this section of17 matters occurring before the grand jury may also be made:

18 (a) if directed by the court preliminary to or in19 connection with a judicial proceeding;

20 (b) when permitted by the court at the request of the 21 defendant, upon a showing that grounds may exist for a 22 motion to dismiss the indictment because of matters 23 occurring before the grand jury; or

(c) when permitted by the court, to a defendantpursuant to a proper discovery motion.

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<u>NEW SECTION.</u> Section 111. Discharge of jury. When the
 grand jury certifies completion of business before it and
 the court concurs, it shall be discharged by the court.

4 NEW SECTION, Section 112. Expenses of grand jury, (1) 5 Except as provided in subsection (2), all expenses of the grand jury, including special prosecutors, experts, 6 7 investigators, and interpreters, if any, must be paid by the 8 treasurer of the county out of the general fund of the 9 county, upon warrants drawn by the county auditor or the 10 clerk of the district court upon a written order of the 11 judge of the district court of the county.

12 (2) If the county has a district court fund, all13 expenses of a grand jury must be paid out of that fund.

14 (3) Subject to the procedures established by law, the
15 state shall reimburse the court for juror and witness fees
16 and witness expenses. The county shall deposit the amount
17 reimbursed in the general fund unless the county has a
18 district court fund. If the county has a district court
19 fund, the amount reimbursed must be deposited in that fund.

20 <u>NEW SECTION.</u> Section 113. Finding an indictment. (1) 21 The grand jury shall find an indictment when all the 22 evidence before it taken together would in its judgment 23 warrant a conviction by a trial jury. An indictment may be 24 found only upon the concurrence of at least eight grand 25 jurors.

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1 (2) If a complaint or information is pending against 2 the defendant and eight jurors do not concur in finding an 3 indictment, the foreman shall report the decision to the 4 district judge.

5 <u>NEW SECTION.</u> Section 114. Presenting an indictment. 6 (1) An indictment, when found by the grand jury, must be 7 signed by the foreman and presented by the foreman in the 8 presence of the grand jury to the court and must be filed 9 with the clerk. The court shall then issue a warrant or 10 summons for the defendant.

11 (2) The court may direct that an indictment shall be 12 kept secret until the defendant is in custody or has 13 appeared to answer the charge and a person may not disclose 14 the execution of a warrant or summons.

15 NEW SECTION, Section 115. Form of charge, (1) The 16 charge shall be in writing in the name of the state or 17 appropriate municipality and specify the court in which the 18 charge is filed. The charge shall be a plain, concise, and 19 definite statement of the essential facts constituting the offense charged, including the name of the offense, whether 20 21 the offense is a misdemeanor or felony, the name of the 22 person charged, and the time and place of its occurrence as 23 definitely as can be determined. The charge shall state for 24 each count the official or customary citation of the 25 statute, rule, regulation, or other provision of law which 1 the defendant is alleged to have violated.

2 (2) If the charge is by information or indictment, it
3 shall include endorsed on the information or indictment the
4 names of the witnesses for the state, if known.

5 (3) If the charge is by complaint, it shall be signed 6 on oath by a person having knowledge of the facts or by the 7 prosecuting attorney.

8 (4) If the charge is by information, it shall be signed
9 by the prosecuting attorney. If the charge is by indictment,
10 it shall be signed by a foreman of the grand jury.

(5) The court, on motion of the defendant, may strike
 surplusage from the indictment or information.

13 (6) A charge may not be dismissed because of a formal
14 defect which does not tend to prejudice a substantial right
15 of the defendant.

NEW SECTION. Section 116. Joinder of offenses. (1) Two 16 or more offenses, or different statements of the same 17 offense, may be charged in the same charging document in a 18 19 separate court, or alternatively, if the offenses charged, 20 whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transaction or on 21 two or more acts or transactions connected together or 22 constituting parts of a common scheme or plan. Allegations 23 made in one count may be incorporated by reference in 24 25 another count.

1 (2) If two or more charging documents are filed in the 2 case, the court may order them to be consolidated.

3 (3) The prosecution is not required to elect between 4 the different offenses set forth in the charging document 5 and the defendant may be convicted of any number of offenses 6 charged except as provided in [section 118]. Each offense of 7 which the defendant is convicted must be stated in the 8 verdict or the finding of the court.

NEW SECTION. Section 117. Joinder of defendants. Two 9 or more defendants may be charged in the same indictment, 10 11 information, or complaint if they are alleged to have participated in the same act or transaction or in the same 12 series of acts or transactions constituting an offense or 13 offenses. The defendants may be charged in one or more 14 counts together or separately and all of the defendants need 15 not be charged in each count. 16

NEW SECTION. Section 118. Multiple charges. (1) When
the same transaction may establish the commission of more
than one offense, a person charged with the conduct may be
prosecuted for each offense.

(2) A defendant may not, however, be convicted of morethan one offense if:

23 (a) one offense is included in the other;

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

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

3 (d) offenses differ only in that one is defined to4 prohibit a specific instance of the conduct; or

5 (e) the offense is defined to prohibit a continuing 6 course of conduct and the defendant's course of conduct was 7 interrupted, unless the law provides that the specific 8 periods of the conduct constitute separate offenses.

NEW SECTION. Section 119. Prosecution based on same 9 transaction barred by former prosecution. (1) When two or 10 11 more offenses are known to the prosecuting attorney, are supported by probable cause, are consummated before the 12 original charge, and jurisdiction and venue of the offenses 13 lie in a single court, a prosecution based upon the same 14 transaction as a former prosecution is barred under the 15 16 following circumstances:

17 (a) the former prosecution resulted in an acquittal.
18 There is an acquittal whenever the prosecution results in a
19 finding of not guilty by the trier of fact or in a
20 determination that there is insufficient evidence to warrant
21 a conviction. A finding of guilty of a lesser included
22 offense that is subsequently set aside is an acquittal of
23 the greater offense that was charged.

(b) the former prosecution resulted in a convictionthat has not been set aside, reversed, or vacated;

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(c) after a charge had been filed the prosecution was
 terminated by a final order or judgment for the defendant
 which has not been set aside, reversed, or vacated;

4 (d) the former prosecution was terminated for reasons
 5 not amounting to an acquittal and takes place:

6 (i) in a jury trial, after the jury was sworn but7 before verdict; or

8 (ii) in a nonjury trial, after the first witness is9 sworn but before the verdict.

10 (2) A prosecution based upon the same transaction as a 11 former prosecution is not barred under subsection (1)(d) 12 when:

13 (a) the defendant consents to the termination or waives14 his right to object to the termination; or

15 (b) the trial court finds the termination is necessary 16 because:

17 (i) it is physically impossible to proceed with the18 trial in conformity with law;

(ii) there is a legal defect in the proceedings which
would make any judgment entered upon a verdict reversible as
a matter of law;

(iii) prejudicial conduct makes it impossible to proceed
with the trial without manifest injustice to either the
defendant or the state;

25 (iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror during voir dire
 prevent a fair trial.

NEW SECTION. Section 120. Former prosecution in 3 another jurisdiction. When conduct constitutes an offense A within the concurrent jurisdiction of this state and of the 5 United States, or another state, or of two courts of 6 separate, overlapping, or concurrent jurisdictions in this 7 state, a prosecution in any other jurisdiction is a bar to a 8 subsequent prosecution in this state under the same 9 circumstances barring further prosecution in this state if: 10 (1) the first prosecution resulted in an acquittal or 11 in a conviction and the subsequent prosecution is based on 12 an offense arising out of the same transaction; or 13 14 (2) the former prosecution was terminated, after the charge had been filed, by an acquittal or by a final order 15

16 or judgment for the defendant which has not been set aside, 17 reversed, or vacated; and the acquittal, final order, or 18 judgment necessarily required a determination inconsistent 19 with a fact which must be established for conviction of the 20 offense for which the defendant is subsequently prosecuted.

21 NEW SECTION. Section 121. Former prosecution not a

22 bar. A prosecution is not a bar if:

(1) the former prosecution was before a court which
lacked jurisdiction over the defendant or the offense; or

25 (2) the former prosecution resulted in a judgment of

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1 conviction which was held invalid in a postconviction
2 hearing.

NEW SECTION. Section 122. Pretrial 3 proceedings -exclusion of public and sealing of records. (1) Except as 4 5 provided in this section, pretrial proceedings and their 6 record shall be open to the public. If, at the pretrial 7 proceedings, testimony or evidence is advanced that is likely to threaten the fairness of a trial, the presiding 8 9 officer shall advise those present of the danger and shall 10 seek the voluntary cooperation of the news media in delaying 11 dissemination of potentially prejudicial information by means of public communication until the impaneling of the 12 13 jury or until an earlier time consistent with the fair 14 administration of justice.

15 (2) The defendant may move that all or part of the 16 proceeding be closed to the public or, with the consent of 17 the defendant, the judge may take action on his own motion. 18 (3) The judge may close a preliminary hearing, bail 19 hearing, or any other pretrial proceedings, including a 20 motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial
proceeding and its record would create a clear and present
danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trialfairness cannot be avoided by any reasonable alternative

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#### 1 means.

2 (4) Whenever under this section all or part of any
3 pretrial proceeding is held in chambers or otherwise closed
4 to the public, a complete record shall be kept and made
5 available to the public following the completion of trial or
6 earlier if consistent with trial fairness.

7 (5) When the judge determines that a document filed in 8 support of a charge or warrant would present a clear and 9 present danger to the defendant's right to a fair trial, all 10 or part of the document shall be sealed until the trial is 11 completed or earlier if consistent with trial fairness.

NEW SECTION. Section 123. Misdemeanor offenses. In all cases in which the defendant is charged with a misdemeanor offense, he may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

17 <u>NEW SECTION.</u> Section 124. Felony offenses. (1) Except 18 as otherwise provided in [this act], the defendant in all 19 cases in which a felony is charged must be present at the 20 initial appearance, arraignment, entry of plea, preliminary 21 examination, trial, at the time of imposition of sentence, 22 and when otherwise required by the court.

23 (2) The defendant may be present at all other24 proceedings.

25 (3) Presence of the defendant is not required before

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1 the supreme court.

2 <u>NEW SECTION.</u> Section 125. Absence of defendant from 3 trial. (1) In a misdemeanor case, if the defendant fails to 4 appear in person, either at the time set for trial or at any 5 time during the course of the trial, and:

6 (a) if the defendant's counsel is authorized to act on 7 the defendant's behalf, the court shall proceed with the 8 trial unless good cause for continuance exists; or

9 (b) if the defendant's counsel is not authorized to act 10 on the defendant's behalf or if the defendant is not 11 represented by counsel, the court, in its discretion, may do 12 one or more of the following:

13 (i) order a continuance;

14 (ii) order bail forfeited;

15 (iii) issue a bench warrant; or

16 (iv) proceed with the trial after finding that the 17 defendant had knowledge of the trial date and is voluntarily 18 absent.

19 (2) The absence of the defendant during the trial of a 20 felony offense, after the trial has commenced in the 21 defendant's presence, may not prevent the trial from 22 continuing, up to and including the return of a verdict, if: 23 (a) the defendant has been removed from the courtroom 24 for disruptive behavior after receiving a warning that 25 removal will result if the defendant persists in conduct 1 that is so disruptive that the trial cannot be carried on
2 with the defendant in the courtroom; or

3 (b) the defendant is voluntarily absent and the offense4 is not one which is punishable by death.

5 (3) Nothing in this section limits the right of the 6 court to order the defendant to be personally present at the 7 trial for purposes of identification unless counsel 8 stipulates to the issue of identity.

<u>NEW SECTION.</u> Section 126. Absence of defendant on
 receiving verdict or at sentencing. (1) In all misdemeanor
 cases, the verdict may be returned and the sentence imposed
 without the defendant being present.

13 (2) In all felony cases, the defendant must appear in 14 person when the verdict is returned or sentence is imposed 15 unless, after the exercise of due diligence to procure the 16 defendant's presence, the court finds that it is in the 17 interest of justice that the verdict be received and 18 sentence be pronounced in the defendant's absence.

19 <u>NEW SECTION.</u> Section 127. Pretrial diversion. (1) The 20 prosecutor and defendant, who has counsel or who has 21 voluntarily waived counsel, may agree that a prosecution 22 will be deferred for a specified period of time based on any 23 or all of the following conditions:

24 (a) that the defendant not commit any offense;

25 (b) that the defendant not engage in specified

activities, conduct, and associations bearing a relationship
 to the conduct upon which the charge against him is based;
 (c) that the defendant participate in a supervised
 rehabilitation program that may include treatment,
 counseling, training, or eduction;

6 (d) that the defendant make restitution in a specified
7 manner for harm or loss caused by the offense; or

8 (e) any other reasonable conditions.

9 (2) The agreement may include stipulations concerning 10 the admissibility of evidence, specified testimony, or 11 dispositions if the deferral of the prosecution is 12 terminated and there is a trial on the charge. The 13 agreement shall be in writing signed by the parties and 14 state that the defendant waives his right to speedy trial 15 for the period of deferral.

16 (3) The prosecution shall be deferred for the period
17 specified in the agreement unless there has been a violation
18 of its terms.

(4) The agreement shall be terminated and the
prosecution automatically dismissed with prejudice upon
expiration and compliance with the terms of the agreement.
<u>NEW SECTION.</u> Section 128. Place of arraignment. The
defendant shall be arraigned in the court that has trial
jurisdiction of the charge.

25 NEW SECTION. Section 129. Manner of conducting

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arraignment. (1) Arraignment shall be conducted in open
 court and shall consist of reading the charge to the
 defendant or stating to the defendant the substance of the
 charge and calling on the defendant to plead to the charge.
 The defendant shall be given a copy of the charging document
 before being called upon to plead.

7 (2) The court shall inquire of the defendant, or the 8 defendant's counsel, the defendant's true name, and if the 9 defendant's true name is given as any other than that used 10 in the charge, the court must order the defendant's name to 11 be substituted for the name under which the defendant is 12 charged.

13 (3) The court shall determine whether the defendant is 14 under any disability which would prevent the court in its 15 discretion from proceeding with the arraignment. The 16 arraignment may be continued until the court determines the 17 defendant is able to proceed.

18 <u>NEW SECTION.</u> Section 130. Plea alternatives. (1) A
19 defendant may plead not guilty or guilty. If a defendant
20 refuses to plead, or if a defendant corporation fails to
21 appear, the court shall enter a plea of not guilty.

(2) With the approval of the court and the consent of
the prosecuting attorney, a defendant may enter a plea of
guilty reserving the right, on appeal from the judgment, to
review the adverse determination of any specified pretrial

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motion. If the defendant prevails on appeal, the defendant
 shall be allowed to withdraw the plea.

<u>NEW SECTION.</u> Section 131. Advice to defendant. Before
accepting a plea of guilty, the court shall determine that
the defendant understands the following:

6 (1) the nature of the charge for which the plea is 7 offered, the mandatory minimum penalty provided by law, if 8 any, the maximum penalty provided by law, including the 9 effect of any penalty enhancement provision or special 10 parole restriction and, when applicable, that the court may 11 also order the defendant to make restitution of the costs 12 and assessments provided by law; and

13 (2) if the defendant is not represented by an attorney,
14 that he has the right to be represented by an attorney at
15 every stage of the proceeding against him and, if necessary,
16 one will be appointed to represent the defendant; and

17 (3) that the defendant has a right to plead not guilty 18 or to persist in that plea if it has already been made, and 19 he has the right to be tried by a jury and at the trial has 20 a right to the assistance of counsel, the right to confront 21 and cross-examine witnesses against the defendant, and the 22 right not to be compelled to reveal personally incriminating 23 information; and

24 (4) that if the defendant pleads guilty in fulfillment25 of a plea agreement, the court is not required to accept the

terms of an agreement, and that the defendant may not be
 entitled to withdraw the plea if the agreement is not
 accepted pursuant to [section 133]; and

4 (5) that if the defendant's plea of guilty is accepted
5 by the courts there will not be a further trial of any kind,
6 so that by pleading guilty the defendant waives the right to
7 a trial.

NEW SECTION. Section 132. Insuring plea is voluntary. 8 The court may not accept a plea of guilty without first 9 10 determining that the plea is voluntary and not the result of 11 force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the 12 defendant's willingness to plead guilty results from prior 13 14 discussions between the prosecuting attorney and the 15 defendant or the defendant's attorney.

16 <u>NEW SECTION.</u> Section 133. Plea agreement procedure. 17 (1) The prosecuting attorney and the attorney for the 18 defendant, or the defendant when acting pro se, may engage 19 in discussions with a view toward reaching an agreement 20 that, upon the entering of a plea of guilty to a charged 21 offense or to a lesser or related offense, the prosecuting 22 attorney will do any of the following:

23 (a) move for dismissal of other charges;

24 (b) agree that a specific sentence is the appropriate25 disposition of the case; or

1 (c) make a recommendation, or agree not to oppose the 2 defendant's request, for a particular sentence, with the 3 understanding that the recommendation or request may not be 4 binding upon the court.

(2) If a plea agreement has been reached by the 5 parties, the court shall, on the record, require a 6 7 disclosure of the agreement in open court or, on a showing 8 of good cause in camera, at the time the plea is offered. If 9 the agreement is of the type specified in subsections (1)(a) and (1)(c), the court may accept or reject the agreement, or 10 may defer its decision as to the acceptance or rejection 11 12 until there has been an opportunity to consider the presentence report. If the agreement is of the type 13 14 specified in section (1)(c), the court shall advise the 15 defendant that, if the court does not accept the 16 recommendation or request, the defendant nevertheless has no 17 right to withdraw the plea.

18 (3) If the court accepts a plea agreement, the court
19 shall inform the defendant that it will embody in the
20 judgment and sentence the disposition provided for in the
21 plea agreement.

(4) If the court rejects the plea agreement, the court
shall, on the record, inform the parties of this fact and
advise the defendant that the court is not bound by the plea
agreement, afford the defendant an opportunity to withdraw

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the plea, and advise the defendant that if he persists in
 the guilty plea the disposition of the case may be less
 favorable to the defendant than that contemplated by the
 plea agreement.

5 <u>NEW SECTION.</u> Section 134. Determining the accuracy of 6 plea. (1) The court may not accept a guilty plea without 7 determining that there is a factual basis for the plea in 8 felonies or misdemeanors resulting in incarceration.

9 (2) A defendant who is unwilling to admit to any 10 element of the offense which would provide a factual basis 11 for a plea of guilty may, with the consent of the court, 12 enter a plea of guilty to the offense if the defendant 13 considers the plea to be in his best interest and a factual 14 basis exists for the plea.

15 <u>NEW SECTION.</u> Section 135. Harmless error. Any variance 16 from the procedure required by this section which does not 17 affect substantial rights of the defendant shall be 18 disregarded.

19NEW SECTION.Section 136.Disclosurebythe20prosecution. (1)Upon request, the prosecutor shall make21available to the defendant for examination and reproduction22or testing the following material and information within the23prosecutor's possession or control:

24 (a) the names, addresses, and statements of all persons25 whom the prosecutor may call as witnesses in the

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1 case-in-chief;

2 (b) all written or oral statements of the defendant and
3 of any other person who will be tried with the defendant;

4 (c) all written reports or statements of experts who have personally examined the accused or any evidence in the 5 particular case, together with the results of physical 6 7 examinations, scientific tests, experiments, or comparisons; 8 (d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were 9 10 obtained from or purportedly belong to the defendant; and 11 (e) all material or information that tends to mitigate 12 or negate the defendant's guilt as to the offense charged or

13 that would tend to reduce the defendant's potential 14 sentence. 15 (2) The prosecutor may impose reasonable conditions,

16 including an appropriate stipulation concerning chain of 17 custody, to protect physical evidence produced under section 18 (1)(d).

19 (3) At the same time, the prosecutor shall inform the 20 defendant of, and make available to the defendant for 21 examination and reproduction, any written or recorded 22 material or information within the prosecutor's control 23 regarding:

(a) whether there has been any electronic surveillance
of any conversations to which the defendant was a party;

(b) whether an investigative subpoend has been executed
 in connection with the case; and

3 (c) whether the case has involved an informant, and, if 4 so, the informant's identity if the defendant is entitled to 5 know either or both of these facts under Rule 502 of the 6 Montana Rules of Evidence.

7 (3) The prosecutor's obligation of disclosure extends 8 to material and information in the possession or control of 9 members of the prosecutor's staff and of any other persons 10 who have participated in the investigation or evaluation of 11 the case.

(4) Upon motion showing that the defendant has 12 substantial need in the preparation of the case for 13 additional material or information not otherwise provided 14 for and that the defendant is unable, without undue 15 hardship, to obtain the substantial equivalent by other 16 means, the court in its discretion may order any person to 17 make it available to the defendant. The court may, upon the 18 request of any person affected by the order, vacate or 19 modify the order if compliance would be unreasonable or 20 oppressive. The prosecutor may not be required to disclose 21 or prepare summaries of witnesses' testimony. 22

(5) The prosecutor shall furnish to the defendant no
later than 5 days before trial or at a later time as the
court may for good cause permit, together with their

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statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to the defenses of alibi, compulsion, entrapment, justifiable use of force, mistaken identity, or good character or the defense that the defendant did not have a particular state of mind that is an element of the offense charged.

7 <u>NEW SECTION.</u> Section 137. Disclosure by the defendant. 8 (1) At any time after the filing in district court of an 9 indictment or information, the defendant, in connection with 10 the particular crime charged, shall upon written request of 11 the prosecutor and approval of the court:

12 (a) appear in a line-up;

13 (b) speak for identification by witnesses;

14 (c) be fingerprinted, palmprinted, footprinted, or 15 voiceprinted;

16 (d) pose for photographs not involving reenactment of 17 an event;

(e) try on clothing;

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(f) permit the taking of samples of hair, blood,
saliva, urine, or other specified materials that involve no
unreasonable bodily intrusions;

22 (g) provide handwriting samples; or

(h) submit to reasonable physical or medical
inspection. However, such inspection does not include
psychiatric or psychological examination.

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(2) Within 10 days after the omnibus hearing in
 district court or at a later time as the court may for good
 cause permit, the defendant shall make available to the
 prosecutor for testing, examination, or reproduction:

5 (a) the names, addresses, and statements of all 6 persons, other than the accused, whom the defendant may call 7 as witnesses in the defense case-in-chief, together with 8 their statements;

9 (b) the names and addresses of experts whom the 10 defendant may call at trial, together with the results of 11 their physical examinations, scientific tests, experiments, 12 or comparisons, including all written reports and statements 13 made by these experts in connection with the particular 14 case; and

15 (c) all papers, documents, photographs, or other 16 tangible objects that the defendant may use at trial.

17 (3) The defendant's obligation under this section 18 extends to material and information within the possession or 19 control of the defendant, defendant's counsel and defense 20 counsel's staff or investigators.

(4) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable without undue hardship to obtain the substantial equivalent by other

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means, and that disclosure will not violate the defendant's 1 constitutional rights, the court in its discretion may order 2 3 any person to make material or information available to the prosecutor. The court may, upon request of any person 4 affected by the order, vacate or modify the order if 5 compliance would be unreasonable or oppressive. Defense 6 counsel may not be required to prepare or disclose summaries 7 of witness testimony. 8

NEW SECTION. Section 138. Notice of defenses and 9 disclosure of witnesses and their statements. (1) Within 10 10 days after the omnibus hearing in district court or at a 11 later time as the court may for good cause permit, the 12 defendant shall provide the prosecutor with a written notice 13 of the defendant's intention to introduce evidence at trial 14 of good character or the defenses of alibi, compulsion, 15 entrapment, justifiable use of force, or mistaken identity. 16 (2) Within 10 days after receiving a report of 17 examination pursuant to [section 151] or at a later time as 18 the court may for good cause permit, the defendant shall 19 provide the prosecutor with a written notice of the 20 intention to introduce evidence at trial of the defense that 21 22 due to a mental disease or defect the defendant did not have 23 a particular state of mind that is an essential element of the offense charged. 24

25 (3) The notice must specify for each defense the names

and addresses of the persons, other than the defendant, whom

defense counsel may call as witnesses at trial in support of the defense together with all written reports or statements made by them concerning the results of physical examination, scientific tests, experiments, or comparisons.

6 (4) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the 7 names of any additional witnesses and disclose their 8 9 statements or report as required by this section. After 10 trial commences, no witnesses may be called by the defendant 11 in support of these defenses unless the name of the witness 12 is included on the list and the witness's statement or 13 report has been disclosed as required by this section except for good cause shown. 14

15 <u>NEW SECTION.</u> Section 139. Materials not subject to 16 disclosure. (1) Except as provided in this section, 17 disclosure is not required for the superseded notes or work 18 product of the prosecuting or defense attorney.

19 (2) If exculpatory information is contained in the
20 superseded notes or work product of the prosecution, that
21 information must be disclosed.

22 <u>NEW SECTION.</u> Section 140. Failure to call a witness or 23 raise a defense. The fact that a witness whose name is on a 24 list furnished pursuant to [sections 136 through 146] does 25 not testify or that a matter contained in a pretrial notice

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1 is not raised may not be commented upon at trial unless the 2 court, on motion of a party, allows comment after finding 3 that the inclusion of the witness's name or the pretrial 4 notice constituted an abuse of the applicable disclosure 5 requirement or that other good cause is shown.

6 <u>NEW SECTION.</u> Section 141. Continuing duty to disclose. 7 If at any time after a disclosure has been made any party 8 discovers additional information or material that would be 9 subject to disclosure had it been known at the time of 10 disclosure, the party shall promptly notify all other 11 parties of the existence of the additional information or 12 material and make an appropriate disclosure.

13 <u>NEW SECTION.</u> Section 142. Investigation not to be 14 impeded. Except as to matters to which discovery is 15 restricted and except as to the defendant's counsel advising 16 the defendant, a party or agent of a party may not 17 discourage or obstruct communication between any person and 18 any party or otherwise obstruct a party's investigation of 19 the case.

NEW SECTION. Section 143. Excision and protective
orders. (1) Upon a motion of any party showing good cause,
the court may at any time order that any disclosure be
deferred or regulated when it finds:

(a) that the disclosure would result in a risk or harmoutweighing any usefulness of the unrestricted disclosure to

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1 any party; and

2 (b) that the risk cannot be eliminated by a less3 substantial restriction of discovery rights.

4 (2) Whenever the court finds, upon motion of any party, 5 that only a portion of a document or other material is 6 discoverable, it may authorize the party disclosing it to 7 excise that portion of the material which is nondiscoverable 8 and disclose the remainder.

9 (3) On motion of the party seeking a protective or 10 excision order or in submitting for the court's 11 determination the discoverability of any material or 12 information, the court may permit that party to present the 13 material or information for the inspection of the judge 14 alone. Counsel for all other parties may, in the discretion 15 of the court, be present when the presentation is made.

16 (4) If the court enters an order that any material or 17 any portion thereof is not discoverable, the entire text of 18 the material must be sealed and preserved in the record in 19 the event of an appeal.

20 <u>NEW SECTION.</u> Section 144. Sanctions. If at any time 21 during the course of the proceeding it is brought to the 22 attention of the court that a party has failed to comply 23 with any of the provisions of (sections 136 through 146) or 24 any order issued pursuant to [sections 136 through 146], the 25 court may impose any sanction that it finds just under the

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circumstances, including but not limited to: 1 2 (1) ordering disclosure of the information not З previously disclosed; 4 (2) granting a continuance; 5 (3) holding a witness, party, or counsel in contempt 6 for an intentional violation; (4) precluding a party from calling a witness, offering 7 8 evidence, or raising a defense not disclosed; or 9 (5) declaring a mistrial when necessary to prevent a 10 miscarriage of justice. NEW SECTION. Section 145. Compelling testimony or 11 production of evidence -- immunity. (1) Before or during 12 13 trial in any judicial proceeding, a judge of the district 14 court, upon request by the prosecutor or defense counsel, 15 may require a person to answer any question or produce any 16 evidence, even though personally incriminating, following a 17 grant of use immunity. (2) If a person is required to give testimony or 18 19 produce evidence in accordance with this section in any 20 investigation or proceeding, compelled testimony or evidence 21 or any information directly or indirectly derived from 22 compelled testimony or evidence may not be used against the 23 witness in any criminal prosecution. 24 (3) Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any 25

transaction, matter, or thing concerning which a witness is 1 compelled to testify if in the prosecutor's sole discretion 2 3 it is determined that the ends of justice would be served. (4) Immunity may not extend to prosecution or 4 punishment for false statements given in any testimony 5 required under this section. 6 7 NEW SECTION. Section 146. Privileged matters. A11

8 matters which are privileged upon the trial are privileged 9 against disclosure through any discovery procedure.

10 <u>NEW SECTION.</u> Section 147. When depositions may be 11 taken. (1) In felony cases if it appears that a prospective 12 witness:

13 (a) is likely to be either unable or otherwise14 prevented from attending a trial or hearing;

15 (b) is likely to be absent from the state at the time 16 of the trial or hearing; or

(c) is unwilling to provide relevant information to a 17 requesting party, and the witness's testimony is material 18 and necessary in order to prevent a failure of justice, the 19 district court shall, upon motion of any party and proper 20 21 notice, order that the testimony of the witness be taken by deposition and that any designated book, paper, document, 22 record, recording, or other material not privileged, be 23 introduced at the time the deposition is taken. 24

25 (2) The witness whose deposition is to be taken may be

required by subpoena to attend at any place designated by
 the district court, taking into account the convenience of
 the parties and of the witness.

4 (3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good 5 cause exists to believe that a witness will not respond to a 6 subpoena and the administration of justice requires, any 7 district judge may issue an arrest warrant commanding the 8 9 arrest of a material witness. The arrest warrant shall 10 further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of 11 12 securing his testimony in any criminal proceeding longer 13 than may be necessary to take his deposition.

14 NEW SECTION. Section 148. Procedure for taking depositions. (1) The party at whose instance a deposition is 15 16 to be taken shall give to every other party reasonable written notice of the time and place for taking a 17 deposition. The notice shall state the name and address of 18 19 each person to be examined. On motion of the party upon whom 20 the notice is served, the district court for cause shown may 21 extend or shorten the time or change the place for taking 22 the deposition.

23 (2) A deposition shall be taken in the manner provided
24 in civil actions. The district court, upon request, may
25 direct that any deposition be taken on written

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interrogatories in the manner provided in civil actions.
 However, a deposition may not be taken of a party defendant
 without his consent, and the scope and manner of examination
 and cross-examination shall be restricted as would be
 allowed in the trial itself.

6 (3) The deposition shall be filed with the district 7 court making the order and held until the trial. Either 8 party shall make available to the other party, or the other 9 party's counsel, for examination and use at the taking of 10 the deposition any relevant nonprivileged statement of the 11 witness being deposed which is in the possession of either 12 party.

13 (4) Objections to deposition testimony or evidence or
14 parts of the testimony or evidence may be reserved for
15 subsequent determination by the district court.

16 (5) Unless a defendant in custody has waived, in 17 writing, the right to be present at the taking of a 18 deposition, the officer having custody of the defendant 19 shall be notified of the time and place set for the 20 deposition. The officer having custody shall produce the 21 defendant and keep the defendant in the presence of a 22 witness during the deposition.

(6) A defendant not in custody who fails to appear,
without good cause, at the taking of a deposition after
being notified of the time and place set for the deposition

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will be considered to have waived the right to be present as
 provided in [section 125]. The waiver includes a waiver of
 any objection to the taking and use of the deposition based
 upon that right.

(7) Whenever a deposition is taken at the instance of 5 the prosecution, or whenever a deposition is taken at the 6 instance of a defendant who is unable to bear the expense of 7 taking a deposition, the district court shall direct that 8 the expense of travel and subsistence of the defendant and 9 10 the defendant's attorney for attendance at the examination and the cost of the transcript of the deposition shall be 11 12 paid by the state.

NEW SECTION. Section 149. Use of depositions at trial.
Any deposition may be used by any party for any purpose
allowed by the Montana Rules of Evidence.

16 <u>NEW SECTION.</u> Section 150. Mental disease or defect --17 fitness to proceed -- state of mind. (1) As used in 18 [sections 150 through 166], the term "mental disease or 19 defect" does not include an abnormality manifested only by 20 repeated criminal or anti-social behavior.

(2) A person who, as a result of mental disease or
defect, is unable to understand the proceedings against him
or to assist in his own defense may not be tried, convicted,
or sentenced for the commission of an offense so long as the
incapacity endures.

1 (3) Evidence that the defendant suffered from a mental 2 disease or defect is admissible to prove that the defendant 3 did or did not have a state of mind which is an element of 4 the offense.

5 NEW SECTION. Section 151. Examination of defendant. (1) If the defendant or the defendant's counsel files a 6 written motion requesting an examination, or the issue of 7 8 the defendant's fitness to proceed is raised by the court, q. prosecution, or defense counsel, the court shall appoint at 10 least one qualified psychiatrist or licensed clinical 11 psychologist or shall request the superintendent of the Montana state hospital to designate at least one gualified 12 psychiatrist or licensed clinical psychologist, which 13 14 designation may be or include himself, to examine and report 15 upon the defendant's mental condition.

16 (2) The court may order the defendant to be committed 17 to a hospital or other suitable facility for the purpose of 18 the examination for a period not exceeding 60 days or a 19 longer period as the court determines to be necessary for 20 the purpose and may direct that a qualified psychiatrist or 21 licensed clinical psychologist retained by the defendant be 22 permitted to witness and participate in the examination.

(3) In the examination any method may be employed which
is accepted by the medical or psychological profession for
the examination of those alleged to be suffering from mental

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1 disease or defect.

2 (4) If the defendant is indigent or the examination 3 occurs at the request of the state, the cost of the 4 examination must be paid by the county or the state, or 5 both, according to procedures established under 3-5-902(1).

NEW SECTION. Section 152. Prosecution's 6 riaht to 7 examination. (1) When the defense discloses the report of examination to the prosecution or files a notice of the 8 intention to rely on a defense of mental disease or defect, 9 10 the prosecution shall be entitled to have the defendant 11 examined by a qualified psychiatrist or licensed clinical 12 psychologist.

13 (2) The report of examination shall be disclosed to the14 defense within 10 days of its receipt by the prosecution.

15 NEW SECTION. Section 153. Access to defendant for 16 examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified 17 psychiatrist or licensed clinical psychologist selected by 18 19 the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant had, 20 21 at the time the offense was committed, a particular state of 22 mind which is an essential element of the offense, the 23 examiner shall be permitted to have reasonable access to the 24 defendant for the purpose of the examination.

25 NEW SECTION. Section 154. Report of examination. (1) A

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1 report of the examination shall include the following:

(a) a description of the nature of the examination;

3 (b) a diagnosis of the mental condition of the 4 defendant, including an opinion as to whether the defendant 5 is seriously mentally ill as defined in 53-21-102(14);

6 (c) if the defendant suffers from a mental disease or 7 defect, an opinion as to the defendant's capacity to 8 understand the proceedings against him and to assist in his 9 own defense;

(d) when directed by the court, an opinion as to the
capacity of the defendant to have a particular state of mind
which is an element of the offense charged; and

(e) when directed by the court, an opinion as to the
capacity of the defendant, because of a mental disease or
defect, to appreciate the criminality of his conduct or to
conform his conduct to the requirement of law.

17 (2) If the examination cannot be conducted by reason of
18 the unwillingness of the defendant to participate in the
19 examination, the report shall state that fact and include,
20 if possible, an opinion as to whether the unwillingness of
21 the defendant was the result of mental disease or defect.

<u>NEW SECTION.</u> Section 155. Psychiatric or psychological
 testimony upon trial. (1) Upon trial, any psychiatrist or
 licensed clinical psychologist who reported under {section
 151 or 154} may be called as a witness by the prosecutor or

by the defense. Both the prosecution and the defense may 1 2 summon any other gualified psychiatrist or licensed clinical psychologist to testify, but no one who has not examined the 3 4 defendant is competent to testify to an expert opinion with 5 respect to the mental condition of the defendant as distinguished from the validity of the procedure followed or 6 the general scientific propositions stated by another 7 8 witness.

9 (2) When a psychiatrist or licensed clinical 10 psychologist who has examined the defendant testifies concerning the defendant's mental condition, he may make a 11 statement as to the nature of his examination and his 12 13 medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation 14 reasonably serving to clarify his examination and diagnosis, 15 16 and the expert may be cross-examined as to any matter bearing on his competency or credibility or the validity of 17 his examination or medical or psychological diagnosis, A 18 psychiatrist or licensed clinical psychologist may not offer 19 20 an opinion to the jury on the ultimate issue of whether the 21 defendant did or did not have a particular state of mind or 22 the capacity to have a particular state of mind which is an 23 element of the offense charged.

24 <u>NEW SECTION.</u> Section 156. Form of verdict and
25 judgment. When the defendant is found not guilty of the

charged offense or offenses or any lesser included offense
 for the reason that, due to a mental disease or defect, the
 defendant did not have a particular state of mind that is an
 essential element of the offense charged, the verdict and
 the judgment shall so state.

NEW SECTION. Section 157. Admissibility of statements 6 made during examination or treatment. A statement made for 7 the purposes of psychiatric or psychological examination or 8 treatment provided for in this section by a person subjected 9 to examination or treatment is not admissible in evidence 10 against him at trial on any issue other than that of his 11 mental condition. It is admissible on the issue of his 12 mental condition at trial whether or not it would otherwise 13 be considered a privileged communication, only when and 14 after the defendant presents evidence that due to a mental 15 disease or defect he did not have a particular state of mind 16 which is an element of the offense charged. 17

NEW SECTION. Section 158. Determination of fitness to 18 proceed -- effect of finding of unfitness -- expenses. (1) 19 The issue of the defendant's fitness to proceed may be 20 raised by the court, the defendant or his counsel, or by the 21 22 prosecution. When the issue is raised, it shall be determined by the court. If neither the prosecution nor 23 counsel for the defendant contests the finding of the report 24 filed under [section 154], the court may make the 25

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1 determination on the basis of the report. If the finding is
2 contested, the court shall hold a hearing on the issue. If
3 the report is received in evidence at the hearing, the
4 parties have the right to subpoena and cross-examine the
5 psychiatrists or licensed clinical psychologists who joined
6 in the report and to offer evidence upon the issue.

7 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be 8 9 suspended, except as provided in subsection (4), and the 10 court shall commit him to the custody of the director of the 11 department of institutions to be placed in an appropriate institution of the department of institutions for so long as 12 13 the unfitness endures. The committing court shall within 90 days of commitment, review the defendant's fitness to 14 15 proceed. If the court finds that he is still unfit to 16 proceed and that it does not appear that he will become fit 17 to proceed within the reasonably foreseeable future, the 18 proceeding against him shall be dismissed, except as 19 provided in subsection (4), and the county attorney shall 20 petition the court in the manner provided in chapter 20 or 21 21 of Title 53, whichever is appropriate, to determine the 22 disposition of the defendant pursuant to those provisions. 23 (3) If the court determines that the defendant lacks 24 fitness to proceed because he is developmentally disabled as 25 provided in 53-20-102(4), the proceeding against him shall LC 1439/01

be dismissed and the county attorney shall petition the
 court in the manner provided in chapter 20 of Title 53.

3 (4) The fact that the defendant is unfit to proceed 4 does not preclude any legal objection to the prosecution 5 which is susceptible to fair determination prior to trial 6 and without the personal participation of the defendant.

7 (5) The expenses of sending the defendant to the 8 custody of the director of the department of institutions to 9 be placed in an appropriate institution of the department of 10 institutions, of keeping him there, and of bringing him back 11 are chargeable to the state and payable according to 12 procedures established under 3-5-902(1).

NEW SECTION. Section 159. Proceedings if fitness 13 14 regained. When the court, on its own motion or upon the application of the director of the department of 15 institutions, the prosecution, or the defendant or his legal 16 representative, determines, after a hearing if a hearing is 17 requested, that the defendant has regained fitness to 18 proceed, the proceeding shall be resumed. If, however, the 19 court is of the view that so much time has elapsed since the 20 commitment of the defendant that it would be unjust to 21 resume the criminal proceedings, the court may dismiss the 22 charge and may order the defendant to be discharged, or 23 subject to the law governing the civil commitment of persons 24 suffering from serious mental illness, order the defendant 25

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committed to an appropriate institution of the department of
 institutions.

NEW SECTION. Section 160. Commitment upon finding of 3 not guilty by reason of lack of mental state -- hearing to 4 determine release or discharge. (1) When a defendant is 5 б found not quilty for the reason that due to a mental disease 7 or defect he could not have a particular state of mind that 8 is an essential element of the offense charged, the court 9 shall order a predisposition investigation in accordance 10 with [section 224], which must include an investigation of 11 the present mental condition of the defendant. If the trial 12 was by jury, the court shall hold a hearing to determine the 13 appropriate disposition of the defendant. If the trial was 14 by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the 15 appropriate disposition of the defendant. If the trial was 16 17 by the court, the court may hold a hearing to obtain any 18 additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, 19 the testimony and evidence presented at trial shall be 20 considered by the court in making its determination. 21

(2) The court, upon finding that the defendant may not
be discharged or released without danger to others, shall
order the defendant committed to the custody of the
superintendent of the Montana state hospital to be placed in

an appropriate institution for custody, care, and treatment. 1 (3) A person committed to the custody of the 2 3 superintendent shall have a hearing within 180 days of his confinement to determine his present mental condition and 4 whether he may be discharged or released without danger to 5 others. The hearing shall be conducted by the court that 6 ordered the commitment unless that court transfers 7 jurisdiction to the third judicial district. The court shall 8 cause notice I the hearing to be served upon the person, 9 his counsel, and the prosecuting attorney. The hearing is a 10 civil proceeding, and the burden shall be upon the defendant 11 to prove by a preponderance of the evidence that by may be 12 safely released. 13

(4) According to the determination of the court upon
the hearing, the defendant shall be discharged or released
on conditions the court determines to be necessary or shall
be committed to the custody of the superintendent of the
Montana state hospital to be placed in an appropriate
institution for custody, care, and treatment.

20 <u>NEW SECTION.</u> Section 161. Discharge or release upon 21 motion of superintendent. (1) If the superintendent of the 22 Montana state hospital believes that a person committed to 23 his custody under [section 160] may be discharged or 24 released on condition without danger to himself or others, 25 he shall make application for the discharge or release of

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1 the person in a report to the court by which the person was 2 committed and shall send a copy of the application and 3 report to the prosecutor of the county from which the 4 defendant was committed.

(2) The court shall then appoint at least two qualified 5 examiners who shall be either psychiatrists or licensed 6 clinical psychologists to examine the person and to report 7 their opinion as to his mental condition within 60 days or a 8 longer period which the court determines to be necessary for 9 the purpose. To facilitate the examinations and the 10 proceedings thereon, the court may have the person confined 11 in any institution located near the place where the court 12 sits which may be designated by the superintendent of the 13 Montana state hospital as suitable for the temporary 14 detention of irresponsible persons. 15

16 (3) If the court is satisfied by the report filed under 17 subsection (1) and the testimony of the reporting 18 psychiatrist or licensed clinical psychologist that the 19 committed person may be discharged or released on condition 20 without danger to himself or others, the court shall order 21 his discharge or his release on conditions which the court 22 determines to be necessary.

23 (4) If the court is not satisfied, it shall promptly
24 order a hearing to determine whether the person may safely
25 be discharged or released. A hearing is considered a civil

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1 proceeding, and the burden is upon the committed person to 2 prove by a preponderance of the evidence that he may safely З be discharged or released. According to the determination of the court upon the hearing, the committed person shall be 4 5 discharged or released on conditions which the court determines to be necessary or shall be recommitted to the 6 custody of the superintendent of the Montana state hospital, 7 8 subject to discharge or release only in accordance with the 9 procedures prescribed in this section and [section 162].

10 NEW SECTION. Section 162. Application for discharge or 11 release by committed person. A committed person may make 12 application for his discharge or release to the court by 13 which he was committed, and the procedure to be followed 14 upon the application is the same as that prescribed in 15 [section 161] in the case of an application by the 16 superintendent of the Montana state hospital. However, an 17 application by a committed person need not be considered 18 until he has been confined for a period of not less than 6 19 months from the date of the order of commitment, and if the 20 determination of the court is adverse to the application, 21 the person may not be permitted to file a further 22 application until 1 year has elapsed from the date of any 23 preceding hearing on an application for his release or 24 discharge.

25 <u>NEW SECTION.</u> Section 163. Recommitment

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after

1 conditional release. If within 5 years after the conditional release of a committed person the court determines after 2 hearing evidence that the conditions of release have not 3 4 been fulfilled and that for the safety of the person or for 5 the safety of others his conditional release should be 6 revoked, the court shall immediately order him to be recommitted to the superintendent of the Montana state 7 hospital, subject to discharge or release only in accordance в with the procedures prescribed in [section 161 or 162]. 9

NEW SECTION. Section 164. Consideration of 10 mental disease or defect in sentencing. Whenever a defendant is 11 12 convicted on a verdict or a plea of guilty and he claims 13 that at the time of the commission of the offense of which 14 he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the 15 criminality of his conduct or to conform his conduct to the 16 requirements of law, the sentencing court shall consider any 17 18 relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the 19 20 determination of the issue, including examination of the 21 defendant and a report of the examination as provided in 22 [sections 151 and 154].

23 <u>NEW SECTION.</u> Section 165. Sentence to be imposed. (1)
24 If the court finds that the defendant at the time of the
25 commission of the offense of which he was convicted did not

suffer from a mental disease or defect as described in
 [section 164], it shall sentence him as provided in Title
 46, chapter 18.

4 (2) If the court finds that the defendant at the time 5 of the commission of the offense suffered from a mental 6 disease or defect as described in [section 164], any 7 mandatory minimum sentence prescribed by law for the offense 8 need not apply and the court shall sentence him to be 9 committed to the custody of the director of the department 10 of institutions to be placed in an appropriate institution 11 for custody, care, and treatment for a definite period of 12 time not to exceed the maximum term of imprisonment that 13 could be imposed under subsection (1). The authority of the 14 court with regard to sentencing is the same as authorized in 15 Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for. 16

17 (3) A defendant whose sentence has been imposed under 18 subsection (2) may petition the sentencing court for review 19 of the sentence if the professional person certifies that the defendant has been cured of the mental disease or 20 defect. The sentencing court may make any order not 21 inconsistent with its original sentencing authority except 22 that the length of confinement or supervision must be equal 23 24 to that of the original sentence. The professional person 25 shall review the defendant's status each year.

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NEW SECTION. Section 166. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 165(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

8 <u>NEW SECTION.</u> Section 167. Pretrial motions and 9 notices. (1) Except for good cause shown, any defense, 10 objection, or request which is capable of determination 11 without trial of the general issue must be raised at or 12 before the omnibus hearing unless otherwise provided by 13 [this act].

14 (2) Failure of a party to raise defenses or objections,
15 or to make requests which must be made prior to trial, at
16 the time set by the court, shall constitute a waiver of the
17 defense, objection, or request.

18 (3) The court, for cause shown, may grant relief from
19 any waiver provided by this section. Lack of jurisdiction or
20 the failure of a charging document to state an offense is a
21 nonwaivable defect and shall be noticed by the court at any
22 time during the pendency of a proceeding.

23 <u>NEW SECTION.</u> Section 168. Form of pretrial motions.
24 Unless the court provides otherwise, all pretrial motions
25 shall be in writing and supported by a statement of the

1 relevant facts upon which the motion is being made. The 2 motion shall state with particularity the grounds for the 3 motion and the order or relief sought.

4 <u>NEW SECTION.</u> Section 169. Ruling on motions. (1) A 5 motion made before trial shall be determined before trial 6 unless the court, for good cause, orders it be deferred for 7 determination at the trial of the general issue or until 8 after the verdict, but a determination may not be deferred 9 if a party's right to appeal is adversely affected.

10 (2) Except where mandated by [this act], the court has
11 discretion to conduct a hearing into the merits of a motion.
12 (3) The court's final determination of any pretrial
13 motion shall state, either in writing or on the record, the
14 court's findings of fact and conclusions of law.

15 <u>NEW SECTION.</u> Section 170. Omnibus hearing. (1) Within 16 a reasonable time following the entry of a not guilty plea 17 but not less than 30 days before trial the court shall hold 18 an omnibus hearing.

19 (2) The purpose of the hearing shall be to expedite the20 procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The
prosecutor and the defendant's counsel shall attend the
hearing and shall be prepared to discuss any pretrial matter
appropriate to the case, including but not limited to:

25 (a) joinder and severance of offenses or defendants,

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1	[sections 116, 117, 178, and 179];
2	<pre>(b) double jeopardy, [sections 118 through 120];</pre>
3	(c) need for exclusion of public and for sealing
4	records of any pretrial proceedings, [section 122];
5	(d) notification of the existence of a plea agreement,
6	[section 133];
7	(e) disclosure and discovery motions, [sections 136
8	through 146];
9	(f) notice of reliance on certain defenses, [section
10	138];
11	(g) notice of seeking enhanced punishment, [section
12	171];
13	(h) notice of other crimes, wrongs, or acts, [section
14	172];
15	<li>(i) motion to suppress, [sections 173 and 174];</li>
16	(j) motion to dismiss, [sections 180 and 181];
17	(k) motion for change of place of trial, [sections 175
18	through 177];
19	<ol> <li>reasonableness of bail, [sections 66 through 81];</li> </ol>
20	and .
21	<pre>(m) stipulations.</pre>
22	(4) At the conclusion of the hearing, a court-approved
23	memorandum of the matters settled shall be signed by the
24	court and counsel and filed with the court.
25	(5) Any motions made pursuant to subsections (1)

through (3) may be ruled on by the court at the time of the
 hearing, where appropriate, or may be scheduled for briefing
 and further hearing as the court considers necessary.

4 <u>NEW SECTION.</u> Section 171. Notice by prosecutor seeking 5 persistent felony offender status. (1) Except for good cause 6 shown, if the prosecutor seeks treatment of the accused as a 7 persistent felony offender, notice of that fact must be 8 given at or before the omnibus hearing pursuant to [section 9 167].

10 (2) The notice must specify the alleged prior
11 convictions and may not be made known to the jury before
12 verdict except as allowed by the Montana Rules of Evidence.
13 (3) If the defendant objects to the allegations
14 contained in the notice, the judge shall conduct a hearing
15 to determine if the allegations in the notice are true.

16 (4) The hearing shall be held before the court alone.
17 If the judge finds any allegations of the prior convictions
18 are true, the accused shall be sentenced as provided by law.
19 (5) The notice shall be filed and sealed until the time
20 of trial or until a plea of guilty is given by the

21 defendant.

22 <u>NEW SECTION.</u> Section 172. Notice by prosecutor of 23 other crimes, acts, or wrongs evidence. (1) Except for good 24 cause shown, if the prosecutor intends to use evidence of 25 other crimes, wrongs, or acts pursuant to Rule 404(b) of the

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Montana Rules of Evidence, notice shall be given at or
 before the omnibus hearing pursuant to [section 167].

3 (2) The notice shall specify the other crimes, wrongs,
4 or acts and include a statement as to the purpose for which
5 the evidence is to be offered.

6 (3) The notice shall be filed and sealed until the time
7 of trial or until a plea of guilty is given by the
8 defendant.

9 <u>NEW SECTION.</u> Section 173. Suppression of evidence. (1)
 10 A defendant aggrieved by an unlawful search and seizure may
 11 move the court to suppress as evidence anything obtained by
 12 the unlawful search and seizure.

13 (2) If the motion states facts which, if true, would
14 show that the evidence should be suppressed, the court shall
15 hear the merits of the motion at the omnibus hearing or at a
16 later date if the court orders.

17 (3) If the motion is granted, the evidence shall not be18 admissible at trial.

<u>NEW SECTION.</u> Section 174. Suppression of confessions
 or admissions. (1) A defendant may move to suppress as
 evidence any confession or admission given by him on the
 ground that it was involuntary. The motion shall be in
 writing and state facts showing why the confession or
 admission was involuntary.

25

(2) If the allegations of the motion state facts which,

if true, show that the confession or admission was not
 voluntarily made, the court shall conduct a hearing into the
 merits of the motion. The prosecution must prove by a
 preponderance of the evidence that the confession or
 admission was voluntary.

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6 (3) The issue of the admissibility of the confession or 7 admission may not be submitted to the jury. If the 8 confession or admission is determined to be admissible, the 9 circumstances surrounding the making of the confession or 10 admission may be submitted to the jury as bearing upon the 11 credibility or the weight to be given to the confession or 12 admission.

13 (4) If the motion is granted, the confession or
14 admission is admissible in evidence only for purposes of
15 impeachment against the movant at the trial of the case.

16 <u>NEW SECTION.</u> Section 175. Change for prejudice. (1)
17 The defendant or the prosecution may move for a change of
18 place of trial on the ground that there exists in the county
19 in which the charge is pending such prejudice that a fair
20 trial cannot be had in the county.

(2) If the court determines that there exists in the
county in which the prosecution is pending such prejudice
that a fair trial cannot be had, the court shall:

24 (a) transfer the cause to any other county in which a25 fair trial may be had;

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1 (b) direct that a jury be selected in any county where 2 a fair trial may be had and then returned to the county 3 where the prosecution is pending to try the case; or

4 (c) take any other action to ensure that a fair trial 5 may be had.

6 <u>NEW SECTION.</u> Section 176. Change for other reasons. If 7 the court determines that a motion to dismiss based upon the 8 grounds of lack of jurisdiction or improper place of trial 9 is well-founded, it may, instead of ordering dismissal, 10 order the cause transferred to a court of competent 11 jurisdiction or to a proper place of trial.

12 <u>NEW SECTION.</u> Section 177. Return to original place of 13 trial. When a trial occurs after a change of place of trial 14 and a retrial is required, the cause shall be returned to 15 the county in which the charge was originally properly filed 16 for further proceedings.

NEW SECTION. Section 178. Trial 17 together of 18 indictments, informations, complaints, or defendants. The court may order two or more indictments, informations, 19 complaints, or defendants to be tried together if the 20 interests of justice require and the charges or defendants 21 22 could have been joined in a single indictment, information or complaint as provided for in [sections 114 through 117]. 23 NEW SECTION. Section 179. Relief from 24 prejudicial 25 joinder. (1) If it appears that a defendant or the prosecution is prejudiced by a joinder of charges or defendants in an indictment, information, or complaint or by joinder for trial together, the court may order separate trials, grant a severance of defendants, or provide whatever other relief justice requires.

6 (2) In ruling on a motion by a defendant for severance 7 the court may order the prosecutor to deliver to the court 8 for inspection, in camera, any statements or confessions 9 made by the defendants that the prosecution intends to 10 introduce at trial.

11 NEW SECTION. Section 180. Dismissal at instance of 12 court or prosecution. (1) The court may, either on its own motion or upon the application of the prosecuting attorney, 13 and in furtherance of justice, order a complaint, 14 information, or indictment to be dismissed. However, the 15 court may not order a dismissal of a complaint, information, 16 or indictment, or a count contained in a complaint, 17 information, or indictment, charging a felony, unless good 18 cause for dismissal is shown and the reasons for dismissal 19 are set forth in an order entered upon the minutes. 20

(2) After the entry of a plea upon a misdemeanor
charge, the court, unless good cause to the contrary is
shown, must order the prosecution to be dismissed, with
prejudice, if a defendant whose trial has not been postponed
upon the defendant's motion is not brought to trial within 6

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1 months.

2 NEW SECTION. Section 181. Effect of order to dismiss. If the court directs the action to be dismissed, the 3 4 defendant must, if in custody, be discharged and, if admitted to bail, have the defendant's bail exonerated or 5 money deposited instead of bail refunded to the defendant. 6 7 NEW SECTION. Section 182. Issuing subpoenas. (1) After the filing of charges and upon the request of 8 the 9 prosecuting attorney, the defendant, or the defendant's 10 attorney, the clerk of court shall issue subpoenas with the name of the person to whom each subpoena is directed 11 12 commanding the person to appear and to give testimony. The 13 clerk of the court shall maintain a list of the names of 14 persons to whom subpoenas are issued.

15 (2) A subpoend shall state the name of the court and 16 the title, if any, of the proceeding, and shall command each 17 person to whom it is directed to attend and give testimony 18 at the time and place specified in the subpoend.

19 (3) The court, upon motion made promptly, may quash or
20 modify a subpoena if compliance would be unreasonable or
21 oppressive.

NEW SECTION. Section 183. Subpoenas for the production
of evidence. (1) A subpoena may command the person to whom
it is directed to produce the books, papers, documents, or
other objects designated in the subpoena.

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1 (2) The court may direct that the books, papers, 2 documents, or other objects designated in the subpoena be 3 produced before the court at the time prior to the trial or 4 prior to the time when they are to be offered into evidence 5 and may upon their production permit the books, papers, 6 documents, or objects, or portions thereof, to be inspected 7 by the parties and their attorneys.

8 (3) The court, upon motion made promptly, may quash or
9 modify a subpoena if compliance would be unreasonable or
10 oppressive.

11 <u>NEW SECTION.</u> Section 184. Service of subpoenas. (1) A 12 subpoena may be served by a peace officer or by any other 13 person who is not a party and who is not less than 18 years 14 of age. A peace officer must serve any subpoena delivered to 15 him for service in his county either on the part of the 16 state or of the defendant.

17 (2) Service of a subpoena shall be made by delivering a 18 copy of the subpoena to the person named and, if ordered by 19 the court, by tendering to those residing outside the county 20 of trial the fee for 1 day's attendance and the mileage 21 allowed by law. The person making service shall without 22 delay make a written return of the service subscribed by him 23 stating the time and place of service.

24 (3) A subpoend requiring attendance of a witness at a25 hearing or trial may be served anywhere within the state of

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1 Montana.

NEW SECTION. Section 185. Subpoena for witnesses in 2 this state to testify in another state. (1) If a judge of a 3 4 court of record in any state, which by its laws has made 5 provision for commanding persons within that state to attend 6 and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the 7 8 court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is 9 10 a material witness in the prosecution or grand jury 11 investigation, and that his presence will be required for a 12 specified number of days, upon presentation of the 13 certificate to any judge of a court of record in the county 14 in which the person is located, the judge shall fix a time 15 and place for a hearing and shall make an order directing 16 the witness to appear at a time and place certain for hearing. 17

(2) If at a hearing the judge determines that the 18 19 witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and 20 testify in a prosecution or a grand jury investigation in 21 22 the other state, and that the laws of the state in which the prosecution is pending or grand jury is commenced or about 23 24 to commence will give him protection from arrest and the service of civil and criminal process, he shall issue a 25

summons with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In the hearing the certificate shall be prima facie evidence of all the facts stated in the certificate.

(3) If the certificate recommends that the witness be 8 9 taken into custody and delivered to an officer of the requesting state to assure his attendance in the requesting 10 11 state, the judge may, in lieu of notification of the hearing, direct that the witness be brought before him for 12 13 the hearing. At the hearing the judge may, in lieu of issuing a subpoena or summons, order that the witness be 14 15 taken into custody and delivered to an officer of the 16 requesting state.

NEW SECTION. Section 186. Subpoena of a witness in 17 another state to testify in this state. (1) Whenever a 18 19 person in any state that by its laws has made provision for 20 commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in 21 this state is a material witness in a prosecution pending in 22 23 a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a 24 25 judge of the court may issue a certificate under the seal of

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1 the court stating these facts and specifying the number of 2 days the witness will be required. The certificate shall be 3 presented to a judge of a court of record in the county in 4 which the witness is found.

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

(3) A witness who has appeared in accordance with the
provisions of the summons may not be required to remain
within this state for a longer period of time than the
period mentioned in the certificate unless otherwise ordered
by the court.

23 (4) The witness fees, costs, and expenses shall be24 tendered as provided in [section 188].

25 NEW SECTION. Section 187. Subpoena of witnesses for

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defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witnesses and that the presence of the witness is necessary to an adequate defense.

8 (2) If a defendant is indigent a court order must be9 obtained if more than six witnesses are to be subpoenaed.

NEW SECTION. Section 188. Fees, costs, and expenses. 10 11 (1) When a person appears before a judge, grand jury, or 12 court as a witness in a criminal case or investigation upon a subpoena, the witness shall receive the witness fee as 13 14 prescribed by Title 26, part 5. The court, on motion by 15 either party, may allow additional fees for expert 16 witnesses.

17 (2) The court may determine the reasonable and 18 necessary expenses of subpoenaed witnesses and order the 19 clerk of the court to pay the expenses from the county 20 treasury.

(3) When a person is subpoended in this state to
testify in another state, or from another state to testify
in this state, the person must be paid for lodging, mileage
or travel, and per diem, the sum equal to that allowed by
Title 2, chapter 18, part 5, for each day that the person is

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required to travel and attend as a witness. If the state
 where the witness is found has by statutory enactment
 required that the summoned witness be paid an amount in
 excess of the amount specified in this section, the witness
 may be paid the amount required by that state.

6 (4) According to procedures established by the department of commerce under 3-5-902, the clerk of the 7 district court shall submit to the department a detailed 8 statement containing a list of witnesses and the amount of 9 10 expenses paid to each witness by the county. Upon receipt 11 and verification of the statement, the department shall promptly reimburse the designated county for all or a 12 portion of the witness expenses. The county shall deposit 13 the amount reimbursed in its general fund. 14

15 <u>NEW SECTION.</u> Section 189. Failure of witness to 16 appear. If the witness fails without good cause to attend 17 and testify as directed, he shall be punished in the manner 18 provided for punishment of any witness who disobeys an order 19 issued from a court of record in this state in accordance 20 with Title 3, chapter 1, part 5, or in accordance with 21 45-7-309.

22 <u>NEW SECTION.</u> Section 190. Exemption from arrest and 23 service of process. (1) If a person comes into this state in 24 obedience to a summons directing the person to attend and 25 testify in this state, that person may not, while in this state pursuant to such subpoena or order, be subject to
 arrest or the service of process, civil or criminal, in
 connection with matters which arose before his entrance into
 this state under the subpoena.

5 (2) If a person passes through this state while going 6 to or returning from another state in obedience to a 7 subpoena or order to attend and testify in that state, the 8 person may not, while passing through this state, be subject 9 to arrest or the service of process, civil or criminal, in 10 connection with matters which arose before the person's 11 entrance into this state under the subpoena.

12 <u>NEW SECTION.</u> Section 191. Right to jury trial and
13 waiver. (1) Defendants in all felony cases shall have a
14 right to trial by jury of 12 persons.

15 (2) The parties may agree in writing at any time before 16 the verdict, with the approval of the court, that the jury 17 shall consist of any number less than that to which they are 18 entitled.

19 (3) Upon written consent of the defendant, a trial by20 jury may be waived.

<u>NEW SECTION.</u> Section 192. Formation of trial jury. (1)
 Trial juries in criminal cases are formed in the same manner
 as trial juries in civil actions.

24 (2) The qualifications of jurors and excuses from jury25 duty are prescribed in Title 3, chapter 15, part 3.

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<u>NEW SECTION.</u> Section 193. Motion to discharge jury
 panel. (1) Any objection to the manner in which a jury panel
 has been selected or drawn shall be raised by a motion to
 discharge the jury panel. Except for good cause shown, the
 motion shall be made at least 5 days prior to the term for
 which the jury is drawn.

7 (2) The motion shall be in writing supported by
8 affidavit and shall state facts that show that the jury
9 panel was improperly selected or drawn.

10 (3) If the motion states facts that show that the jury
11 panel has been improperly selected or drawn, it shall be the
12 duty of the court to conduct a hearing. The burden of proof
13 shall be on the movant.

14 (4) If the court finds that the jury panel was
15 improperly selected or drawn, the court shall order the jury
16 panel discharged and the selection or drawing of a new panel
17 in the manner provided by law.

18 <u>NEW SECTION.</u> Section 194. Examination of prospective jurors. (1) The clerk of court shall make available to the 20 parties a list of prospective jurors with their 21 questionnaires when the names have been drawn.

(2) The prosecutor and the defendant or the defendant's
attorney shall conduct the examination of prospective
jurors. The judge may conduct an additional examination. The
judge may limit the examination by the defendant, the

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defendant's attorney, or the prosecutor if the examination
 is improper.

<u>NEW SECTION.</u> Section 195. Challenges for cause. (1)
Each party may challenge jurors for cause, and each
challenge must be tried by the court.

6 (2) A challenge for cause may be taken for all or any
7 of the following reasons or for any other reason which the
8 court determines:

9 (a) consanguinity or relationship to the defendant or 10 to the person who is alleged to be injured by the offense 11 charged or on whose complaint the prosecution was 12 instituted;

13 (b) standing in the relation of guardian and ward, 14 attorney and client, master and servant, landlord and 15 tenant, or debtor and creditor with or being a member of the 16 family or in the employment of the defendant or the person 17 who is alleged to be injured by the offense charged or on 18 whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil
action or having complained against or being accused by the
defendant in a criminal prosecution;

(d) having served on the grand jury which found the
indictment or on a coroner's jury which inquired into the
death of a person whose death is the subject of the
indictment or information;

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(e) having served on a trial jury which tried another
 person for the offense charged or a related offense;

3 (f) having been a member of a jury formerly sworn to 4 try the same charge, the verdict of which was set aside or 5 which was discharged without verdict after the case was 6 submitted to it;

7 (g) having served as a juror in a civil action brought
8 against the defendant for the act charged as an offense;

9 (h) if the offense charged is punishable with death, 10 having conscientious opinions concerning the punishment as 11 would preclude his finding the defendant guilty, in which 12 case he may not be permitted or compelled to serve as a 13 juror;

14 (i) having a belief that the punishment fixed by law is15 too severe for the offense charged; or

(j) having a state of mind in reference to the case or
to either of the parties which would prevent the juror from
acting with entire impartiality and without prejudice to the
substantial rights of either party.

20 (3) An excuse from service on a jury is not a cause of21 challenge but the privilege of the person excused.

22 <u>NEW SECTION.</u> Section 196. Peremptory challenges. (1) 23 Each defendant shall be allowed eight peremptory challenges 24 in capital cases and six in all other cases tried in the 25 district court before a 12-person jury. There may not be

additional challenges for separate counts charged in the
 indictment or information.

3 (2) If the indictment or information charges a capital
4 offense as well as lesser offenses in separate counts, the
5 maximum number of challenges is eight.

6 (3) The state shall be allowed the same number of7 peremptory challenges as all of the defendants.

8 (4) In a criminal case tried before a six-person jury,
9 the state and all the defendants shall be allowed three
10 peremptory challenges each.

11 (5) When the parties in a criminal case in the district 12 cst agree upon a jury consisting of a number of persons 13 other than 6 or 12, they shall also agree in writing upon 14 the number of peremptory challenges to be allowed.

NEW SECTION. Section 197. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

21 <u>NEW SECTION.</u> Section 198. Alternate juror. (1) The 22 court may direct that one or more alternate jurors be 23 selected in the same manner as principal jurors. The 24 alternate jurors shall take the same oath as the principal 25 jurors.

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(2) Each party shall have one additional peremptory
 challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are 3 called, shall replace jurors who, prior to the time the jury 4 arrives at its verdict, become unable or disqualified to 5 6 perform their duties. An alternate juror may not join the 7 jury in its deliberation unless called upon by the court to replace a member of the jury. An alternate juror's conduct 8 during the period in which the jury is considering its 9 verdict shall be regulated by instructions of the trial 10 court. An alternate juror who does not replace a principal 11 juror shall be discharged after the jury arrives at its 12 verdict. 13

14 <u>NEW SECTION.</u> Section 199. Applicability of rules of 15 evidence and civil rules. The Montana Rules of Evidence and 16 the statutory rules of evidence in civil actions are 17 applicable to all criminal actions except as otherwise 18 provided.

19 <u>NEW SECTION.</u> Section 200. Defendant presumed innocent 20 -- reasonable doubt. A defendant in a criminal action is 21 presumed to be innocent until the contrary is proved, and in 22 case of a reasonable doubt whether the defendant's guilt is 23 satisfactorily shown, the defendant shall be found not 24 guilty.

25 NEW SECTION. Section 201. Competency of spouses. (1)

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1	Neither spouse may testify to the communications or
2	conversations between spouses which occur during their
3	marriage unless:
4	<ul><li>(a) consent of the defendant-spouse is obtained;</li></ul>
5	(b) the defendant-spouse has been charged with an act
6	of criminal violence against the other; or
7	(c) the defendant-spouse has been charged with abuse,
8	abandonment, or neglect of the other spouse or either
9	spouse's children.
10	(2) Except as provided in subsection (1), a spouse is a
11	competent witness for or against the other spouse.
12	NEW SECTION. Section 202. Testimony of person legally
13	accountable. A person may not be found guilty of an offense
14	on the testimony of one responsible or legally accountable
15	for the same offense, as defined in 45-2-301, unless the
16	testimony is corroborated by other evidence which in itself
17	and without the aid of the testimony of the one responsible
18	or legally accountable for the same offense tends to connect
19	the defendant with the commission of the offense.
20	NEW SECTION. Section 203. Use of confession. Before an
21	extrajudicial confession of the defendant to the crime
22	charged may be admitted into evidence, the prosecution must
23	introduce independent evidence tending to establish the
24	commission of the crime charged.

25 NEW SECTION. Section 204. Videotaped testimony. (1)

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For any prosecution commenced under 45-5-502(3), 45-5-503, 1 45-5-505, or 45-5-507, the testimony of the victim, at the 2 request of the victim and with the concurrence of the 3 prosecuting attorney, may be recorded by means of videotape 4 for presentation at trial. The recorded testimony may be 5 presented at trial and shall be received into evidence. The 6 victim need not be physically present in the courtroom when 7 the videotape is admitted into evidence. 8

(2) The procedural and evidentiary rules of the state 9 that are applicable to criminal trials within the state 10 shall apply to the videotape proceedings authorized by this 11 12 section.

(3) The district court judge, the prosecutor, the 13 victim, the defendant, the defendant's attorney, and other 14 persons as are considered necessary by the court to make the 15 recordings authorized under this section shall be allowed to 16 attend the videotape proceedings. 17

(4) Videotapes that are part of the court record are 18 subject to a protective order of the court for the purpose 19 of protecting the privacy of the victim. 20

NEW SECTION. Section 205. Order of trial. (1) After 21 the jury is sworn, but before the introduction of any 22 evidence, the court may give the jury general instructions 23 concerning the conduct of the trial. The court shall give 24 the jury such cautionary instructions as may be required 25

during the course of the trial. 1

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(2) The prosecutor may make an opening statement and 2 shall offer evidence in support of the prosecution. The 3 defendant may make his opening statement prior to the Δ prosecutor's offer of evidence or at the close of the 5 prosecution's case but prior to the defendant's offer of б evidence. 7

(3) The prosecutor and the defendant may, respectively, 8 offer rebutting testimony only. However, the court, for good 9 cause, may permit either party to offer evidence upon their 10 original case at any time before the close of evidence.

(4) Prior to final arguments, the court shall inform 12 the parties as to the instructions that will be given and 13 read them to the jury. 14

(5) A written copy of the instructions, both general 15 and special, shall be delivered to the jury for their 16 consideration during deliberations following the final 17 arguments. 18

NEW SECTION. Section 206. When order may be departed 19 from. For good cause shown and in the discretion of the 20 court, the order prescribed in [section 205] may be departed 21 from. 22

NEW SECTION. Section 207. Evidence insufficient to go 23 to jury. When, at the close of the state's evidence or at 24 the close of all the evidence, the evidence is insufficient 25

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to support a finding or verdict of guilty, the court may, on
 its own motion or on the motion of the defendant, dismiss
 the action and discharge the defendant. However, prior to
 dismissal, the court may allow the case to be reopened for
 good cause shown.

6 <u>NEW SECTION.</u> Section 208. Settlement of jury 7 instructions. (1) Any party may request special jury 8 instructions as provided in [section 205(4)]. All requests 9 for instructions shall conform to the Uniform District Court 10 Rules and all instructions shall be settled by the court out 11 of the presence of the jury.

12 (2) A record shall be made at the settlement of 13 instructions.

(3) A party may not assign as error any portion of the
instructions or omission from the instructions unless an
objection was made specifically stating the matter objected
to, and the grounds for the objection, at the settlement of
instructions.

19 (4) The presence of the defendant is not required20 during the settlement of instructions.

21 <u>NEW SECTION.</u> Section 209. Conduct of jury during 22 trial. (1) The jurors sworn to try an action may at any 23 time, in the discretion of the court, be permitted to 24 separate or be ordered to remain sequestered in the charge 25 of a proper officer. If sequestered, the officer must be LC 1439/01

1 sworn to keep the jurors together, to allow no person to 2 communicate with the jury or to personally communicate with 3 the jury on any subject connected with the trial, and to 4 return the jury into court as directed.

5 (2) Whether sequestered or permitted to separate, at 6 each adjournment of the court, the jury shall be admonished 7 that it is their duty not to converse among themselves or 8 with anyone else on any subject connected with the trial or 9 to form or express any opinion thereon until the cause is 10 finally submitted to them.

11 (3) In all cases appealed to the supreme court, it 12 shall be conclusively considered that the court or judge 13 gave the proper admonition in accordance with the provision 14 of subsection (2) unless the record affirmatively shows the 15 contrary.

NEW SECTION. Section 210. View of relevant place or 16 17 property. When the court considers it proper that the jury 18 view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the 19 custody of the sheriff or bailiff to view the place or 20 21 personal property in the presence of the court, the 22 prosecutor, the defendant, and his counsel. The place or 23 personal property will be shown them by a person appointed by the court for that purpose, and they may personally 24 inspect the same. The sheriff or bailiff must be sworn to 25

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suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

6 <u>NEW SECTION.</u> Section 211. Conduct of jury after 7 retirement -- advice from court. (1) When the jury retires 8 to consider its verdict, an officer of the court must be 9 appointed to keep the jurors together and to prevent 10 conversations between the jurors and others.

(2) After the jury has retired for deliberation, if 11 12 there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any 13 point of law arising in the cause, they must notify the 14 15 officer appointed to keep them together who shall then 16 notify the court. The information requested may be given in the discretion of the court after consultation with the 17 18 parties.

19 <u>NEW SECTION.</u> Section 212. Items which may be taken 20 into jury room. Upon retiring for deliberation, the jury may 21 take with them the written jury instructions read by the 22 court, notes of the proceedings taken by themselves, and all 23 exhibits that have been received as evidence in the cause as 24 in the opinion of the court shall be necessary.

25 NEW SECTION. Section 213. Activity of court during

jury's absence. While the jury is absent, the court may
 adjourn or conduct other business, but it must be open for
 every purpose connected with the cause submitted to the jury
 until a verdict is returned or the jury discharged.

5 <u>NEW SECTION.</u> Section 214. Form of verdict. (1) The 6 jury shall return a verdict as instructed by the court. The 7 verdict must be unanimous in all criminal actions. The 8 verdict shall be signed by the foreman and returned by the 9 jury to the judge in open court.

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

NEW SECTION. Section 215. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

21 <u>NEW SECTION.</u> Section 216. Verdict of not guilty -22 when defendant discharged. If a verdict of not guilty is
23 returned and the defendant is not detained for any other
24 legal cause, he must be discharged as soon as the judgment
25 is given.

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<u>NEW SECTION.</u> Section 217. Conviction of lesser
 included offense. (1) The defendant may be found guilty of
 an offense necessarily included in the offense charged or of
 an attempt to commit either the offense charged or an
 offense necessarily included in the offense charged.

6 (2) A lesser included offense instruction shall be 7 given where there is a proper request by one of the parties 8 and the jury, based on the evidence, could be warranted in 9 finding the defendant guilty of a lesser offense.

(3) When a lesser included offense instruction is 10 given, the court shall instruct the jury that it must reach 11 a verdict on the crime charged before it may proceed to a 12 lesser included offense. Upon the request of the defendant 13 at the settling of instructions, the court shall instruct 14 the jury that it may consider the lesser included offense if 15 it is unable after reasonable effort to reach a verdict on 16 17 the greater offense.

18 <u>NEW SECTION.</u> Section 218. Effect of a new trial. The 19 granting of a new trial places the parties in the same 20 position as if there had been no trial.

21 <u>NEW SECTION.</u> Section 219. Motion for a new trial. (1) 22 Following a verdict or finding of guilty, the court may 23 grant the defendant a new trial if required in the interest 24 of justice.

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(2) The motion for a new trial must be in writing and

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1	must specify the grounds for a new trial. The motion must be
2	filed by the defendant within 30 days following a verdict or
3	finding of guilty and be served upon the state.
4	(3) On hearing the motion for a new trial, if justified
5	by law and the weight of the evidence, the court may:
6	(a) deny the motion;
7	(b) grant a new trial; or
8	(c) modify or change the verdict or finding by finding
9	the defendant guilty of a lesser included offense or finding
10	the defendant not guilty.
11	NEW SECTION. Section 220. Juries in misdemeanor cases.
12	(1) The defendant in a misdemeanor case is entitled to a
13	jury of six qualified persons, but the parties may agree to
14	a number less than six at any time before the verdict.
15	(2) Upon written consent of the defendant, a trial by
16	jury may be waived.
17	NEW SECTION. Section 221. Formation of trial jury for
18	justice, municipal, and city courts. (1) At the time of
19	preparing the district court jury list, the county
20	commissioners and clerk and recorder shall prepare a jury
21	list for each justice and city court within the county. Each
22	list must consist of residents of the appropriate county,
23	city, or town. The lists must be selected in any reasonable
24	manner that ensures fairness, and each list must include a

25 number of names sufficient to meet the annual jury

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requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

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

NEW SECTION. Section 222. Appeal from 10 justice. municipal, and city courts, (1) The defendant may appeal to 11 district court by filing written notice of intention to 12 appeal within 10 days after a judgment is rendered following 13 14 trial. In the case of an appeal by the prosecution the notice must be filed within 10 days of the date the order 15 complained of is given. The prosecution may appeal only in 16 the cases provided for in 46-20-103. 17

18 (2) Within 30 days of filing the notice of appeal, the
19 court shall transfer the entire record of the lower court to
20 the district court.

(3) Except for cases where legal issues are preserved
for appeal pursuant to [section 130], all misdemeanor cases
on appeal by the defendant from a justice, municipal, or
city court must be tried anew in the district court and may
be tried before a jury of six selected in the same manner as

1 for other criminal cases.

2 <u>NEW SECTION.</u> Section 223. Presentence investigation --3 when required. (1) Upon acceptance of a plea or upon a
4 verdict or finding of guilty to one or more felony offenses.
5 the court shall direct the probation officer to make a
6 presentence investigation and report. The court may, in its
7 discretion, order a presentence investigation for a
8 defendant convicted of a misdemeanor.

9 (2) If the court finds that the record contains 10 information sufficient to enable the meaningful exercise of 11 discretion during sentencing, the defendant may waive a 12 presentence investigation and report. Both the finding and 13 the defendant's waiver must be made in open court on the 14 record.

NEW SECTION. Section 224. Content of presentence
investigation report. (1) Whenever an investigation is
required, the probation officer shall promptly inquire into
and report upon:

19 (a) the defendant's characteristics, circumstances,
20 needs, and potentialities;

21 (b) the defendant's criminal record and social history;

22 (c) the circumstances of the offense;

23 (d) the time of the defendant's detention for the

24 offenses charged; and

25 (e) except in capital cases where the death penalty may

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be imposed, the harm caused, as a result of the offense, to
 the victim, the victim's immediate family, and the
 community.

4 (2) If applicable, the court may require the officer to 5 inquire into the victim's pecuniary loss and make a 6 restitution report to the court as provided by law.

7 (3) The court may, in its discretion, require that the 8 presentence investigation report include a physical and 9 mental examination of the defendant.

10 (4) All local and state mental and correctional 11 institutions, courts, and law enforcement agencies shall 12 furnish, upon request of the officer preparing a presentence 13 investigation, the defendant's criminal record and other 14 relevant information.

NEW SECTION. Section 225. Availability 15 of the presentence investigation report. (1) All presentence 16 17 investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the 18 presentence investigation report must be provided to the 19 prosecution, the defendant and the defendant's attorney, and 20 the agency or institution to which the defendant is 21 committed. 22

(2) The court having jurisdiction of the case may
permit other access to the presentence investigation report
as it considers necessary.

<u>NEW SECTION.</u> Section 226. Sentencing hearing. Before
 imposing sentence or making any other disposition upon
 acceptance of a plea or upon a verdict or finding of guilty,
 the court shall conduct a sentencing hearing without
 unreasonable delay, as follows:

6 (1) The court shall afford the parties an opportunity 7 to be heard on any matter relevant to the disposition, 8 including the applicability of sentencing enhancement 9 provisions, mandatory minimum sentences, persistent felony 10 offender status, or an exception thereto.

(2) If there is a possibility of imposing the death
 penalty, the court shall hold a hearing as provided by
 46-18-301.

14 (3) Except as provided in [sections 122 through 126], 15 the court shall address the defendant personally to 16 ascertain whether the defendant wishes to make a statement 17 and to present any information in mitigation of punishment 18 or reason why he should not be sentenced. If the defendant 19 wishes to make a statement, the court shall afford him a 20 reasonable opportunity to do so.

21 (4) The court shall impose sentence or make any other22 disposition authorized by law.

(5) In felony cases, the court shall specifically state
all reasons for the sentence, including restrictions,
conditions, or enhancements imposed, in open court on the

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1 record and in the written judgment.

2 <u>NEW SECTION.</u> Section 227. Judgment. The judgment must 3 set forth the plea, verdict or finding, and the 4 adjudication. If the defendant is convicted, it must set 5 forth the sentence or other disposition. The judgment must 6 be signed and entered of record.

7 <u>NEW SECTION.</u> Section 228. Correction of sentence. The 8 court may correct an illegal sentence or disposition at any 9 time and may correct a sentence imposed in an illegal manner 10 within 120 days after the sentence is imposed or after 11 remand from an appellate court.

NEW SECTION. Section 229. Revocation of a suspended or 12 13 deferred sentence. (1) Upon the filing of a petition for revocation, accompanied by an affidavit showing probable 14 cause that the defendant has violated any condition of a 15 16 sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on 17 revocation. The order must require the defendant to appear 18 at a specified time and place for the hearing and be served 19 20 by delivering a copy of the petition and order to the 21 defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer 22 23 to arrest the defendant and bring the defendant before the 24 court.

25 (2) The petition for a revocation must be filed with

1 the sentencing court during the period of suspension or 2 deferral. Expiration of the period of suspension or deferral 3 after the petition is filed does not deprive the court of 4 jurisdiction to rule on the petition.

5 (3) The provisions pertaining to bail as set forth in
6 (sections 66 through 81) are applicable to persons arrested
7 pursuant to this section.

8 (4) Without unnecessary delay the defendant shall be
9 brought before the court and the defendant shall be advised
10 of:

11 (a) the allegations of the petition;

12 (b) the opportunity to appear and to present evidence13 in the defendant's own behalf;

14 (c) the opportunity to question adverse witnesses; and
15 (d) the right to be represented by counsel at the
16 revocation hearing pursuant to [sections 58 through 65].

17 (5) A hearing is required before a suspended or
18 deferred sentence can be revoked or the terms or conditions
19 of the sentence can be modified, unless:

20 (a) the defendant admits the allegations and waives the21 right to a hearing; or

(b) the relief to be granted is favorable to the
defendant, and the prosecuting attorney, after having been
given notice of the proposed relief and a reasonable
opportunity to object, has not objected. An extension of
the term of probation is not favorable to the defendant for
 the purposes of this subsection.

(6) At the hearing the prosecution must prove that 3 there has been a violation of the terms and conditions of 4 the suspended or deferred sentence by a preponderance of the 5 evidence. Provided, however, that where the failure to pay 6 7 restitution is the basis for the petition the defendant may excuse such violation by showing sufficient evidence that 8 the failure to pay restitution was not attributable to a 9 10 failure on his part to make a good faith effort to obtain sufficient means to make the restitution payments as 11 ordered. 12

13 (7) If the court finds that the defendant has violated
14 the terms and conditions of the suspended or deferred
15 sentence, the court may:

16 (a) continue the suspended or deferred sentence without17 a change in conditions;

18 (b) continue the suspended sentence with modified or 19 additional terms and conditions;

20 (c) revoke the suspension of sentence and require the
21 defendant to serve either the sentence imposed or any lesser
22 sentence; or

23 (d) if the sentence was deferred, impose any sentence24 which might have been originally imposed.

25 (8) If the court finds that the prosecution has not

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proven, by a preponderance of the evidence, that there has
 been a violation of the terms and conditions of the
 suspended or deferred sentence, the petition shall be
 dismissed and the defendant, if in custody, immediately
 released.

NEW SECTION. Section 230. When validity of sentence 6 7 may be challenged. (1) A person adjudged guilty of an offense in a court of record who has no adequate remedy of R appeal and who claims that a sentence was imposed in 9 10 violation of the constitution or the laws of this state or the Constitution of the United States, that the court was 11 12 without jurisdiction to impose the sentence, that a 13 suspended or deferred sentence was improperly revoked, or 14 that the sentence was in excess of the maximum authorized by 15 law or is otherwise subject to collateral attack upon any 16 ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or 17 statutory remedy may petition the court that imposed the 18 19 sentence or the supreme court to vacate, set aside, or 20 correct the sentence or revocation order.

(2) If the sentence was imposed by a justice, city, or
municipal court, the petition must be filed with the
district court in the county where the lower court is
situated.

(3) If the person is in custody, the person may elect

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1 to file the petition directly with the supreme court.

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2 <u>NEW SECTION.</u> Section 231. When petition may be filed. 3 A petition for the relief referred to in [section 230] may 4 be filed at any time.

5 <u>NEW SECTION.</u> Section 232. Commencement of proceedings. 6 The proceeding for relief under [section 230] must be 7 commenced by filing a verified petition with the clerk of 8 the appropriate court. The clerk shall docket the petition 9 upon its receipt and bring the petition promptly to the 10 attention of the court.

11 <u>NEW SECTION.</u> Section 233. Contents of petition. (1)
12 The petition for postconviction relief must:

13 (a) identify the proceeding in which the petitioner was
14 convicted, give the date of the rendition of the final
15 judgment complained of, and clearly set forth the alleged
16 violation or violations;

17 (b) identify any previous proceedings that the 18 petitioner may have taken to secure relief from his 19 condition;

(c) have attached to the petition any affidavits,
records, or other evidence supporting its allegations or
state why the evidence is not attached.

23 (2) The petition must be accompanied by a supporting
24 memorandum including appropriate arguments and citations and
25 discussion of authorities.

NEW SECTION. Section 234. Waiver of grounds for relief. (1) All grounds for relief claimed by a petitioner under [section 230] must be raised in the original or amended petition. Those grounds for relief not raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition.

8 (2) When a petitioner has been afforded a direct appeal 9 of his conviction, grounds for relief that could reasonably 10 have been raised on direct appeal may not be raised in the 11 original or amended petition.

NEW SECTION. Section 235. Proceedings on the petition. 12 13 (1) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled 14 to relief, the court shall cause notice of the petition to 15 be served upon the county attorney in the county in which 16 the conviction took place and the attorney general and order 17 18 them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court 19 may dismiss the petition as a matter of law for failure to 20 21 state a claim for relief, or it may grant a prompt hearing 22 on the petition, determine the issue, and make findings of 23 fact and conclusions with respect to the petition.

24 (2) If a hearing is required or the interests of25 justice require, the court shall appoint counsel for a

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petitioner who gualifies for the appointment of counsel under [sections 58 through 65].

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3 (3) The court, for good cause, may grant leave to
4 either party to use the discovery procedures available in
5 criminal or civil proceedings. Discovery procedures may be
6 used only to the extent and in the manner the court has
7 ordered or to which the parties have agreed.

8 (4) The court may receive proof of affidavits,
9 depositions, oral testimony, or other evidence. In its
10 discretion, the court may order the petitioner brought
11 before the court for the hearing.

(5) If the court finds in favor of the petitioner, it 12 shall enter an appropriate order with respect to the 13 judgment or sentence in the former proceedings and such 14 supplementary orders as to reassignment, retrial, custody, 15 bail, or discharge as may be necessary and proper. If the 16 court finds for the state, the petition must be dismissed. 17 NEW SECTION. Section 236. Record of proceedings. A 18 court that hears a petition pursuant to this rule shall keep 19 a record of the proceedings and enter its findings and 20 conclusions. 21

22 <u>NEW SECTION.</u> Section 237. Review. Either the 23 petitioner or the state may appeal to the supreme court from 24 an order entered on a petition. The appeal must be taken 25 within 60 days of the entry of the order. NEW SECTION. Section 238. Applicability of the writ of habeas corpus. (1) Except as provided in [sections 238 through 247], every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.

8 (2) The writ of habeas corpus is not available to 9 attack the validity of the conviction or sentence of a 10 person who has been adjudged guilty of an offense in a court 11 of record and has exhausted his remedy of appeal. The relief 12 under (sections 238 through 247) is not available to attack 13 the legality of an order revoking a suspended or deferred 14 sentence.

(3) A person may not be released on a writ of habeas
corpus due to any technical defect in commitment not
affecting his substantial rights.

18 <u>NEW SECTION.</u> Section 239. Application for a writ of 19 habeas corpus. (1) Application for a writ of habeas corpus 20 is made by petition signed either by the party for whose 21 relief it is intended or by another person on the 22 petitioner's behalf.

23 (2) The application must specify:

(a) that the petitioner is unlawfully imprisoned orrestrained of his liberty;

(b) why the imprisonment or restraint is unlawful; and
 (c) where and by whom the petitioner is confined or
 restrained.

4 (3) All parties must be named if they are known or
5 otherwise described so that they may be identified.

6 (4) The petition must be verified by the oath or7 affirmation of the party making the application.

8 <u>NEW SECTION.</u> Section 240. Granting a writ of habeas 9 corpus. (1) The writ of habeas corpus may be granted by any 10 justice of the state supreme court or by any district court 11 judge upon petition by or on behalf of any person restrained 12 of his liberty within the judge's or justice's jurisdiction. 13 (2) When a writ of habeas corpus is issued, it may be

14 made returnable before the issuing court.

(3) Any judge or justice authorized to grant the writ
of habeas corpus shall grant the writ without delay if it
appears that the writ ought to issue.

18 <u>NEW SECTION.</u> Section 241. Form of the writ. (1) The 19 writ of habeas corpus must be directed to the person having 20 custody of or restraining the person on whose behalf the 21 application is made and must command that person to have the 22 petitioner before the judge before whom the writ is 23 returnable at a time and place specified.

24 (2) The issue or issues to be determined upon return of25 the writ may be stated either in the writ or in an order

attached to the writ. If the issues to be determined are not
 stated in the writ or in an attached order, then a copy of
 the petition must be attached to the writ.

4 <u>NEW SECTION.</u> Section 242. Service of the writ. (1) The 5 writ of habeas corpus or any associated process may be 6 issued and served on any day or at any time.

7 (2) The writ must be served upon the person to whom it
8 is directed. If the writ is directed to a state institution,
9 a copy of the writ shall be served upon the attorney
10 general. If the writ is directed to a county facility, a
11 copy of the writ must be served upon the county attorney.

12 (3) The writ must be served by the clerk of court, the
13 sheriff, or any other person directed to do so by the court.
14 (4) The writ must be served in the same manner as a
15 summons in civil actions, except when otherwise expressly
16 directed by the judge or court.

17 <u>NEW SECTION.</u> Section 243. Return of service. (1) The 18 person upon whom the writ is served shall make a return and 19 state in that return:

(a) whether the party is in that person's custody or
under his power or restraint; and

(b) if the party is in custody or otherwise restrained,
state the authority for and cause of the custody or
restraint; or

25 (c) if the party has been transferred to the custody of

or otherwise restrained by another, state to whom, the time
 and place of transfer, the reason for the transfer, and the
 authority under which such transfer took place.

4 (2) The return must be signed and verified by oath 5 unless the person making the return is a sworn public 6 officer making a return in his official capacity.

7 <u>NEW SECTION.</u> Section 244. Appearance of petitioner. 8 (1) The person commanded by the writ shall bring the 9 petitioner before the court as required by the writ unless 10 the petitioner cannot be brought before the court without 11 danger to his health. Sickness or infirmity must be 12 confirmed in an affidavit by the person having custody of 13 the petitioner.

14 (2) If the court is satisfied with the truth of the
15 affidavit, the court may proceed and dispose of the case as
16 if the petitioner were present, or the hearing may be
17 postponed until the petitioner is present.

18 (3) If the person commanded by the writ refuses to19 obey, that person shall be adjudged in contempt of court.

20 <u>NEW SECTION.</u> Section 245. Hearing. (1) The court or 21 judge before whom the writ is returned shall immediately 22 proceed to hear and examine the return. The hearing may be 23 summary in nature.

24 (2) Evidence may be produced and compelled in25 preparation of a hearing as provided in [sections 238

1 through 247].

2 <u>NEW SECTION.</u> Section 246. Disposition of petitioner. 3 (1) If the court finds in favor of the petitioner, an 4 appropriate order must be entered with respect to the 5 judgment or sentence in the former proceeding and any 6 supplementary orders as to reassignment, retrial, custody, 7 bail, or discharge as may be necessary and proper.

8 (2) If the court finds for the state, the petitioner
9 shall be returned to custody of the person to whom the writ
10 was directed.

11 <u>NEW SECTION.</u> Section 247. Appeal by state. An appeal 12 may be taken to the supreme court by the state from an order 13 of judgment discharging the petitioner. The court may admit 14 the petitioner to bail pending appeal as provided in 15 [section 68]. The appeal must be taken in the same manner 16 as in civil actions.

17 Section 248. Section 1-1-202, MCA, is amended to read: 18 "1-1-202. Terms relating to procedure and the 19 judiciary. Unless the context requires otherwise, the 20 following definitions apply in the Montana Code Annotated: 21 (1) A "deposition" is a written declaration under oath 22 or affirmation, made upon notice to the adverse party for 23 the purpose of enabling him to attend and cross-examine.

24 (2) "Judicial officers" means justices of the supreme25 court, judges of the district courts, justices of the peace,

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1 municipal judges, and city judges.

2 (3) A "judicial record" is the record of official entry
3 of the proceedings in a court of justice or of the official
4 act of a judicial officer in an action or special
5 proceeding.

6 (4) "Magistrate" means any officer described---in
7 46-1-201(6) having the power to issue a warrant for the
8 arrest of a person charged with an offense and includes;

9 (a) the justices of the supreme court;

10 (b) the judges of the district courts;

11 (c) justices of the peace; and

12 (d) city or municipal judges.

13 (5) An "oral examination" is an examination in the
14 presence of the jury or tribunal which is to decide the fact
15 or act upon it, the testimony being heard by the jury or
16 tribunal from the lips of the witness.

17 (6) "Process" means a writ or summons issued in the18 course of judicial proceedings.

19 (7) For purposes of legal notification, the term20 "registered mail" includes registered or certified mail.

21 (8) "Testify" includes every mode of oral statement22 under oath or affirmation.

23 (9) "Writ" means an order in writing issued in the name24 of the state or of a court or judicial officer."

25 Section 249. Section 1-1-207, MCA, is amended to read:

"1-1-207. Miscellaneous terms. Unless the context
 requires otherwise, the following definitions apply in the
 Montana Code Annotated:

4 (1) "Bribe" means anything of value or advantage, 5 present or prospective, or any promise or undertaking to 6 give anything of value or advantage, which is asked, given, 7 or accepted with a corrupt intent to unlawfully influence 8 the person to whom it is given in his action, vote, or 9 opinion in any public or official capacity.

10 (2) "Peace officer" means any person described in 11 46-1-201(0) [section 2(16)].

12 (3) "Vessel", when used in reference to shipping, 13 includes ships of all kinds, steamboats and steamships, 14 canal boats, and every structure adapted to be navigated 15 from place to place."

16 Section 250. Section 3-15-603, MCA, is amended to read: 17 "3-15-603. Manner of impaneling. After the jurors have 18 been selected, the grand jury shall be impaneled as 19 prescribed in 46-11-301-through--46-11-303 [sections 97 20 through 112]."

Section 251. Section 7-4-2902, MCA, is amended to read: "7-4-2902. Vacancy in office of county coroner or disqualification of coroner. (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy

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1 coroner of another county to be acting county coroner if the
2 coroner:

3 (a) is absent or unable to attend to his duties or if
4 the office of coroner is vacant and there are no qualified
5 deputies available;

(b) is related to the deceased;

6

7 (c) is a potential party in an action concerning the
8 death or his inquiry into the death may pose a conflict of
9 interest;

(d) has not successfully completed the basic coroner
 course required in 7-4-2905 and there are no qualified
 deputies available; or

13 (e) is disgualified under the provisions of 46-4-201
14 [section 10].

(2) The salary of and expenses incurred by an acting
coroner on behalf of a requesting county are an allowable
charge against the requesting county."

18 Section 252. Section 7-4-2912, MCA, is amended to read: 19 "7-4-2912. Coroner's register. The county coroner shall 20 keep an official register, to be labeled "coroner's 21 register"7-as-provided-in-46-4-207."

22 Section 253. Section 7-16-2322, MCA, is amended to 23 read:

24 "7-16-2322. Rules and ordinances to implement part.
25 (1) (a) A county park board, in addition to powers and

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1 duties now given under law, has the following powers and 2 duties:

3 (i) to make rules necessary or convenient to protect 4 and promote the improvement of land and facilities under the 5 care and control of said board and for the protection of 6 birds and animals inhabiting or frequenting land and 7 facilities in parks and public places;

8 (ii) to make rules for the use of land and facilities by9 the public; and

10 (iii) to provide penalties for the violation of such
11 rules.

12 (b) The rules authorized by subsection (1) have the13 force of resolutions of the county commissioners.

14 (2) The county governing body, by the adoption of an
15 ordinance in substantial compliance with the provisions of
16 7-5-103 through 7-5-107, may:

17 (a) provide that violations of specific rules adopted
18 pursuant to subsection (1) constitute criminal offenses and
19 are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county
park warden to enforce park rules and ordinances. A county
park warden is not a peace officer, as defined in 46-1-201
[section 2(16)]. The law enforcement powers of a park warden
are limited to issuing citations charging violations of park
ordinances and rules."

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Section 254. Section 7-32-201, MCA, is amended to read:
 "7-32-201. Definitions. As used in this part, the
 following definitions apply:

4 (1) "Auxiliary officer" means an unsworn, part-time, 5 volunteer member of a law enforcement agency who may perform 6 but is not limited to the performance of such functions as 7 civil defense, search and rescue, office duties, crowd and 8 traffic control, and crime prevention activities.

9 (2) "General law enforcement duties" means patrol 10 operations performed for detection, prevention, and 11 suppression of crime and the enforcement of criminal and 12 traffic codes of this state and its local governments.

13 (3) "Law enforcement agency" means a law enforcement
14 service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time,
employed member of a law enforcement agency who is a peace
officer as defined in 46-1-201(0) [section 2(16)] and has
arrest authority as described in 46-6-401 [sections 26
through 36].

(5) "Reserve officer" means a sworn, part-time,
volunteer member of a law enforcement agency who is a peace
officer as defined in 46-1-201(0) [section 2(16)] and has
arrest authority as described in 46-6-401 [sections 26
through 36] only when authorized to perform these functions
as a representative of the law enforcement agency."

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Section 255. Section 7-32-233, MCA, is amended to read:
 "7-32-233. Limitation on arrest authority of auxiliary
 officer. An auxiliary officer has only the arrest authority
 granted a private person in 46-6-502-and--46-6-503 [section
 <u>39</u>]."
 Section 256. Section 7-32-4303, MCA, is amended to
 read:

8 "7-32-4303. Control of shoplifting. (1) The city or
9 town council may define-shoplifting-as-provided-in-46-6-501
10 and punish persons found guilty thereof of shoplifting.

11 (2) "Shoplifting" means the theft of any goods offered

12 for sale by a wholesale or retail store or other mercantile

13 establishment."

14 Section 257. Section 16-11-147, MCA, is amended to 15 read:

\*16-11-147. Seizure and forfeiture of unlawful 16 cigarettes. (1) Any motor vehicle, airplane, conveyance, 17 18 vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with 19 the cigarettes and other equipment or personal property used 20 21 in connection with such transportation and found in such 22 means of transportation, shall be subject to seizure by the department, its duly authorized agent, any sheriff or 23 deputy, or other peace officer and shall be subject to 24 25 forfeiture in the manner hereinafter provided.

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(2) Upon the seizure of any cigarettes and within 2 ٦ days thereafter, the person or officer making such seizure 2 shall deliver an inventory of the property seized to the 3 person from whom such seizure was made, if known, and file a 4 5 copy thereof with the department. The person from whom the seizure was made or any other person claiming an interest in 6 7 the property seized may apply for its return as provided in 8 46-5-302-through-46-5-305 [section 56]."

9 Section 258. Section 37-60-406, MCA, is amended to
10 read:

\*37-60-406. Peace officer's casual employment. A peace 11 12 officer, as defined in 46-1-201 [section 2(16)], or a 13 reserve officer, as defined in 7-32-201, is not prohibited 14 or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he 15 does not advertise his services or solicit employment and 16 further provided that the chief of his department previously 17 18 approves the off-duty employment. A peace officer or reserve officer so engaged in casual employment is exempt from the 19 20 provisions of this chapter only if the casual employment is 21 authorized in writing by his sheriff or chief of police."

22 Section 259. Section 44-11-303, MCA, is amended to 23 read:

24 "44-11-303. Definitions. When used in this part, unless
 25 the context requires otherwise, the following definitions

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#### 1 apply:

2 (1) "Law enforcement agency" means a public agency 3 lawfully established by statute or executive order that is responsible for the prevention and detection of crime and 4 the enforcement of penal, traffic, regulatory, or game laws. 5 (2) "Law enforcement agency of this state" or "law б enforcement agency of another (or any other) state" 7 8 includes, respectively, a law enforcement agency of a 9 political subdivision of this state and a law enforcement 10 agency of a political subdivision of another state.

11 (3) "Mutual aid agreement" or "agreement" means an
12 agreement between two or more law enforcement agencies,
13 consistent with the purposes of this part.

14 (4) "Party law enforcement agency" means a law
15 enforcement agency that is a party to a mutual aid agreement
16 as set forth in this part.

17 (5) "Peace officer" has the meaning as the term is 18 defined in 46-1-201 [section 2(16)]."

Section 260. Section 45-5-206, MCA, is amended to read:
\*45-5-206. Domestic abuse. (1) A person commits the
offense of domestic abuse if he:

22 (a) purposely or knowingly causes bodily injury to a23 family member or household member; or

24 (b) purposely or knowingly causes reasonable25 apprehension of bodily injury in a family member or

household member. The purpose to cause reasonable
 apprehension or the knowledge that reasonable apprehension
 would be caused shall be presumed in any case in which a
 person knowingly points a firearm at or in the direction of
 a family member or household member, whether or not the
 offender believes the firearm to be loaded.

7 (2) For the purposes of this section and 46-6-401
8 [section 26], "family member or household member" means a
9 spouse, former spouse, adult person related by blood or
10 marriage, or adult person of the opposite sex residing with
11 the defendant or who formerly resided with the defendant.

12 (3) A person convicted of domestic abuse for the first 13 or second time shall be fined not to exceed \$500 or be 14 imprisoned in the county jail not to exceed 6 months, or 15 both. On a third or subsequent conviction for domestic 16 abuse, the person convicted shall be fined not to exceed 17 \$50,000 or be imprisoned in the state prison for a term not 18 to exceed 5 years, or both."

19 Section 261. Section 45-8-209, MCA, is amended to read: 20 "45-8-209. Harming a police dog -- penalty. (1) A 21 person commits the offense of harming a police dog if he 22 purposely or knowingly shoots or kills a police dog being 23 used by a law enforcement officer in discharging or 24 attempting to discharge any legal duty in a reasonable and 25 proper manner.

1 (2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed \$5,000 or be 2 imprisoned in the state prison for a term not to exceed 1 3 4 year, or both. (3) As used in this section, the following definitions 5 б apply: 7 (a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-201 [section 2(16)]. 8 9 (b) "Police dog" means a dog that is: (i) used by a law enforcement agency, as defined in 10 11 7-32-201, in the exercise of its authority; 12 (ii) specifically trained for law enforcement work; and 13 (iii) under the control of a law enforcement officer." Section 262. Section 46-8-114, MCA, is amended to read: 14 "46-8-114. Time and method of payment of costs. When a 15 16 defendant is sentenced to pay the costs of court-appointed 17 counsel, the court may order payment to be made within a specified period of time or in specified installments. Such 18 19 payments shall be made to the clerk of the district court. 20 The clerk of the district court shall disburse the payments 21 to the county, agency, state agency, or local government unit responsible for the expenses of court-appointed counsel 22 as provided for in 46-8-201 [section 65]." 23

24 Section 263. Section 46-16-103, MCA, is amended to 25 read:

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

4 (2) Questions of law must be decided by the court and 5 questions of fact by the jury except that on a trial for 6 criminal defamation the jury shall determine both questions 7 of law and of fact. Questions of law and fact must be 8 decided by the court when a trial by jury is waived under 9 46-16-102(2) [section 191]."

10 Section 264. Section 46-18-201, MCA, is amended to 11 read:

12 "46-18-201. Sentences that may be imposed. (1) Whenever 13 a person has been found guilty of an offense upon a verdict 14 or a plea of guilty, the court may:

15 (a) defer imposition of sentence, excepting sentences 16 for driving under the influence of alcohol or drugs, for a 17 period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years 18 19 for any felony. The sentencing judge may impose upon the 20 defendant any reasonable restrictions or conditions during 21 the period of the deferred imposition. Such reasonable 22 restrictions or conditions may include:

23 (i) jail base release;

24 (ii) jail time not exceeding 180 days;

25 (iii) conditions for probation;

00 14.

1 (iv) restitution: 2 (v) payment of the costs of confinement; 3 (vi) payment of a fine as provided in 46-18-231; 4 (vii) payment of costs as provided in 46-18-232 and 5 46-18-233: (viii) payment of costs of court-appointed counsel as 6 provided in 46-8-113 [section 62]; 7 (ix) community service; 8 9 (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of 10 society; or 11 12 (xi) any combination of the above. (b) suspend execution of sentence up to the maximum 13 sentence allowed for each particular offense. The sentencing 14 15 judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended 16 sentence. Such reasonable restrictions or conditions may 17 include any of those listed in subsections (1)(a)(i) through 18 (1)(a)(xi). 19 (c) impose a fine as provided by law for the offense; 20 21 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided 22 in 46-8-113 [section 62]; 23

(e) commit the defendant to a correctional institutionwith or without a fine as provided by law for the offense;

1 (f) impose any combination of subsections (1)(b)
2 through (1)(e).

3 (2) If any financial obligation is imposed as a 4 condition under subsection (1)(a), sentence may be deferred 5 for a period not exceeding 2 years for any misdemeanor or 6 for a period not exceeding 6 years for any felony, 7 regardless of whether any other conditions are imposed.

8 (3) If any restrictions or conditions imposed under 9 subsection (1)(a) or (1)(b) are violated, the court shall 10 consider any elapsed time and either expressly allow part or 11 all of it as a credit against the sentence or reject all or 12 part as a credit and state its reasons in the order. Credit, 13 however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or 14 execution of the first 2 years of a sentence of imprisonment 15 imposed under the following sections may not be deferred or 16 suspended: 45-5-103, 45-5-202(3) relating to aggravated 17 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) 18 and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2). 19 20 (5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of 21 imprisonment imposed under 45-5-102 may not be deferred or 22 suspended. 23

24 (6) Except as provided in 46-18-222, imposition of
25 sentence in a felony case may not be deferred in the case of

a defendant who has been convicted of a felony on a prior
 occasion whether or not the sentence was imposed, imposition
 of the sentence was deferred, or execution of the sentence
 was suspended.

5 (7) If the victim was less than 16 years old, the 6 imposition or execution of the first 30 days of a sentence 7 of imprisonment imposed under 45-5-502(3), 45-5-503, 8 45-5-504, 45-5-505, or 45-5-507 may not be deferred or 9 suspended. Section 46-18-222 does not apply to the first 30 10 days of such imprisonment."

Section 265. Section 46-18-247, MCA, is amended to read:

"46-18-247. Default. (1) If an offender sentenced to 13 14 make restitution is in default, the sentencing court, upon 15 the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 [section 229] 16 17 requiring the offender to show cause why he should not be 18 confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and 19 place for a hearing or, if he fails to appear as ordered, 20 21 issue a warrant for his arrest. The order or warrant must be 22 accompanied by written notice of the offender's right to a hearing as provided in 46-18-203 [section 229]. 23

24 (2) If the court finds that the offender's default was25 attributable to a failure on his part to make a good faith

effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203 [section 229]. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

7 (3) An order to pay restitution constitutes a judgment 8 rendered in favor of the state, and following a default in 9 the payment of restitution or any installment thereof, the 10 sentencing court may order the restitution to be collected 11 by any method authorized for the enforcement of other 12 judgments."

13 Section 266. Section 46-18-502, MCA, is amended to 14 read:

15 "46-18-502. Sentencing of persistent felony offender.
16 (1) Except as provided in subsection (2), a persistent
17 felony offender shall be imprisoned in the state prison for
18 a term of not less than 5 years or more than 100 years or
19 shall be fined an amount not to exceed \$50,000, or both, if
20 he was 21 years of age or older at the time of the
21 commission of the present offense.

(2) If the offender was a persistent felony offender,
as defined in 46-10-501 [section 2(17)], at the time of his
previous felony conviction, less than 5 years have elapsed
between the commission of the present offense and either the

1 previous felony conviction or the offender's release on 2 parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 3 4 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison 5 for a term of not less than 10 years or more than 100 years 6 or shall be fined an amount not to exceed \$50,000, or both. 7 8 (3) Except as provided in 46-18-222, the imposition or 9 execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed 10 11 under subsection (2) may not be deferred or suspended. 12 (4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed." 13

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14 Section 267. Section 46-20-103, MCA, is amended to 15 read:

16 "46-20-103. Scope of appeal by state. (1) Except as 17 otherwise specifically authorized, the state may not appeal 18 in a criminal case.

19 (2) The state may appeal from any court order or20 judgment the substantive effect of which results in:

21 (a) dismissing a case;

22 (b) modifying or changing the verdict as provided in

23 46-16-702(3)(c) [section 219];

24 (c) granting a new trial;

25 (d) quashing an arrest or search warrant;

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1 (e) suppressing evidence;

2 (f) suppressing a confession or admission; or

3 (g) granting or denying change of venue."

NEW SECTION. Section 268. Repealer. Sections 46-1-101, 4 46-1-102, 46-1-201, 46-3-101 through 46-3-106, 46-3-201 5 through 46-3-206, 46-4-201 through 46-4-207, 6 46-4-301 7 through 46-4-306, 46-5-101 through 46-5-104, 46-5-201 through 46-5-209, 46-5-301 through 46-5-305, 46-5-401, 8 46-5-402, 46-5-501 through 46-5-505, 46-6-101, 46-6-104 9 through 46-6-106, 46-6-201 through 46-6-204, 46-6-301 10 11 through 46-6-304, 46-6-401 through 46-6-404, 46-6-411, 12 46-6-412, 46-6-421, 46-6-422, 46-6-501 through 46-6-503, 13 46-7-101 through 46-7-103, 46-8-101 through 46-8-104, 14 46-8-111 through 46-8-115, 46-8-201, 46-8-202, 46-9-101 46-9-104, 46-9-111, 46-9-201 through 46-9-205, 15 through 46-9-301 through 46-9-303, 46-9-311, 46-9-401 through 16 17 46-9-404. 46-9-411 through 46-9-414, 46-9-501 through 46-9-505, 46-10-101, 46-10-102, 46-10-201 through 46-10-204, 18 46-11-101, 46-11-102, 46-11-201 through 46-11-204, 46-11-301 19 through 46-11-303, 46-11-311 through 46-11-319, 46-11-331 20 21 through 46-11-333, 46-11-401 through 46-11-405, 46-11-501 22 through 46-11-505, 46-11-601, 46-12-101 through 46-12-105, 23 46-12-201 through 46-12-206, 46-13-101 through 46-13-106, 24 46-13-201 through 46-13-204, 46-13-301, 46-13-302, 46-14-101 through 46-14-103, 46-14-201 through 46-14-203, 46-14-212, 25

1 46-14-213. 46-14-221, 46-14-222, 46-14-301 through 2 46-14-304, 46-14-311 through 46-14-313, 46-14-401, 46-15-101 through 46-15-105, 46-15-111 through 46-15-114, 46-15-201 3 through 46-15-204, 46-15-321 through 46-15-329, 46-15-331, 4 46-15-332, 46-15-401 through 5 46-15-403. 46-16-102. 46-16-108, 46-16-201. 46-16-202, 6 46-16-211 through 7 46-16-213, 46-16-301 through 46-16-307, 46-16-401 through 8 46-16-403, 46-16-501 through 46-16-505, 46-16-601 through 9 46-16-605, 46-16-701, 46-16-702, 46-17-101 through 10 46-17-103, 46-17-201 through 46-17-205, 46-17-211, 46-17-301 through 46-17-303, 46-17-311, 46-17-401 through 46-17-404, 11 12 46-18-102, 46-18-111 through 46-18-113, 46-18-203. 46-18-503, 46-21-101 through 46-21-105, and 13 46-18-501, 14 46-21-201 through 46-21-203, MCA, are repealed.

51st Legislature

Montana Legislative Council

APPROVED BY COMMITTEE

ON JUDICIARY

1 INTRODUCED BY 2 3 "AN ACT TO GENERALLY REVISE THE 4 A BILL FOR AN ACT ENTITLED: LAW RELATING TO CRIMINAL 5 PROCEDURE: IMPLEMENTING THE 6 RECOMMENDATIONS OF THE COMMISSION ON RULES OF CRIMINAL 7 PROCEDURE; AMENDING SECTIONS 1-1-202, 1-1-207, 7-4-2902, 8 7-4-2912, 7-16-2322. 7-32-201. 7-32-233. 7-32-4303, 16-11-147, 37-60-406, 9 44-11-303, 45-5-206, 45-8-209, 46-16-103, 46-18-201, 46-18-247, 46-18-502, AND 10 46-8-114. 11 46-20-103, MCA; AND REPEALING SECTIONS 46-1-101, 46-1-102, 12 46-1-201. THROUGH 46-3-106, 46-3-201 THROUGH 46-3-101 13 46-3-206, 46-4-201 THROUGH 46-4-207, 46-4-301 THROUGH 14 46-5-101 46-4-306, THROUGH 46-5-104, 46-5-201 THROUGH 15 46-5-209, 46-5-301 THROUGH 46-5-305, 46-5-401, 46-5-402, 16 46-5-501 THROUGH 46-5-505, 46-6-101, 46-6-104 THROUGH 17 46-6-106. 46-6-201 THROUGH 46-6-204, 46-6-301 THROUGH 18 46-6-304. 46-6-401 THROUGH 46-6-404, 46-6-411, 46-6-412, 19 46-6-421, 46-6-422, 46-6-501 THROUGH 46-6-503, 46-7-101 20 THROUGH 46-7-103, 46-8-101 THROUGH 46-8-104, 46-8-111 21 THROUGH 46-8-115, 46-8-201, 46-8-202, 46-9-101 THROUGH 22 46-9-111, 45-9-201 THROUGH 46-9-205, 46-9-104, 46-9-301 23 THROUGH 46-9-303, 46-9-311, 46-9-401 THROUGH 46-9-404, 24 46-9-411 THROUGH 46-9-414, 46-9-501 THROUGH 46-9-505, 25 46-10-101, 46-10-102, 46-10-201 THROUGH 46-10-204.

46-11-101, 46-11-102, 46-11-201 THROUGH 46-11-204, 46-11-301 1 2 THROUGH 46-11-303, 46-11-311 THROUGH 46-11-319, 46-11-331 3 THROUGH 46-11-333, 46-11-401 THROUGH 46-11-405, 46-11-501 THROUGH 46-11-505, 46-11-601, 46-12-101 THROUGH 46-12-105, 4 46-12-201 THROUGH 46-12-206, 46-13-101 THROUGH 46-13-106, 5 46-13-201 THROUGH 46-13-204, 46-13-301, 46-13-302, 46-14-101 6 7 THROUGH 46-14-103, 46-14-201 THROUGH 46-14-203, 46-14-212, 8 46-14-213. 46-14-221, 46-14-222, 46-14-301 THROUGH 46-14-304, 46-14-311 THROUGH 46-14-313, 46-14-401, 46-15-101 9 10 THROUGH 46-15-105, 46-15-111 THROUGH 46-15-114, 46-15-201 11 THROUGH 46-15-204, 46-15-321 THROUGH 46-15-329, 46-15-331, 12 46-15-332, 46-15-401 THROUGH 46-15-403, 46-16-102, 46-16-202, 46-16-211 THROUGH 13 46-16-108, 46-16-201, 46-16-301 THROUGH 46-16-307, 46-16-401 THROUGH 14 46-16-213 15 46-16-403, 46-16-501 THROUGH 46-16-505, 46-16-601 THROUGH 16 46-16-605 46-16-701. 46-16-702, 46-17-101 THROUGH 17 46-17-103, 46-17-201 THROUGH 46-17-205, 46-17-211, 46-17-301 18 THROUGH 46-17-303, 46-17-311, 46-17-401 THROUGH 46-17-404, 19 46-18-102, 46-18-111 THROUGH 46-18-113. 46-18-203. 20 46-18-501, 46-18-503, 46-21-101 THROUGH 46-21-105, AND 21 46-21-201 THROUGH 46-21-203, MCA." 22

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

24 <u>NEW SECTION.</u> Section 1. Scope -- purpose -25 construction. (1) [This act] governs the practice and

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procedure in all criminal proceedings in the courts of
 Montana except where provision for a different procedure is
 specifically provided by law.

4 (2) [This act] is intended to provide for the just 5 determination of every criminal proceeding. [This act] shall 6 be construed to secure simplicity in procedure, fairness in 7 administration, and elimination of unjustifiable expense and 8 delay.

9 <u>NEW SECTION.</u> Section 2. Definitions. As used in [this
10 act], unless the context requires otherwise, the following
11 definitions apply:

12 (1) "Arraignment" means the formal act of calling the
13 defendant into open court to enter a plea answering a
14 charge.

15 (2) "Arrest" means the taking of a person into custody16 in the manner authorized by law.

17 (3) "Arrest warrant" means the written order from a
18 court directed to a peace officer or to some other person
19 specifically named commanding that person to arrest another.
20 This term includes the original warrant of arrest and a copy
21 certified by the issuing court.

(4) "Bail" means the security given for the primary
purpose of insuring the presence of the defendant in a
pending criminal proceeding.

25 (5) "Charge" means a written statement presented to a

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court accusing a person of the commission of the offense and
 is contained in a complaint, information, and indictment.

3 (6) "Concealment" means any act or deception done 4 purposely or knowingly upon or outside the premises of a 5 wholesale or retail store or other mercantile establishment 6 with the intent to deprive the merchant of all or part of 7 the value of the merchandise.

8 (7) "Conviction", unless otherwise provided by law, 9 means a judgment or sentence entered upon a guilty plea or 10 upon a verdict or finding of guilty of an offense rendered 11 by a legally constituted jury or by a court of competent 12 jurisdiction authorized to try the case without a jury.

13 (8) "Court" means a place were justice is judicially
14 administered and includes the judge thereof.

(9) "Judge" means a person who is invested by law withthe power to perform judicial functions.

17 (10) "Judgment" means an adjudication by a court that
18 the defendant is guilty and includes the sentence pronounced
19 by the court.

(11) "Make available for examination and reproduction"
means to make material and information subject to disclosure
available upon request at a designated place during
specified reasonable times and provide suitable facilities
or arrangements for reproducing it. The term does not mean
that the disclosing party is required to make copies at its

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expense, to deliver the materials or information to the
 other party, or to supply the facilities or materials
 required to carry out tests on disclosed items. The parties
 may by mutual consent make any other or additional
 arrangements.

6 (12) "New trial" means a re-examination of the issue in
7 the same court before another jury after a verdict or
8 finding has been rendered.

9 (13) "Offense" means a violation of any penal statute of
10 this state or any ordinance of its political subdivisions.
11 (14) "Included offense" means an offense that:

12 (a) is established by proof of the same or less than
13 all the facts required to establish the commission of the
14 offense charged;

(b) consists of an attempt to commit the offense
charged or to commit an offense otherwise included therein;
or

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

(15) "Parole" means the release to the community of a
prisoner by a decision of the board of pardons prior to the
expiration of a prisoner's term, subject to conditions
imposed by the board of pardons and the supervision of the

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1 department of institutions.

2 (16) "Peace officer" means any person who by virtue of
3 his office or public employment is vested by law with a duty
4 to maintain public order and make arrests for offenses while
5 acting within the scope of his authority.

6 (17) "Persistent felony offender" means an offender who
7 has previously been convicted of a felony and who is
8 presently being sentenced for a second felony committed on a
9 different occasion than the first. An offender is considered
10 to have been previously convicted of a felony if:

11 (a) the previous felony conviction was for an offense 12 committed in this state or any other jurisdiction for which 13 a sentence of imprisonment in excess of 1 year could have 14 been imposed;

15 (b) less than 5 years have elapsed between the 16 commission of the present offense and either:

17 (i) the previous felony conviction; or

18 (ii) the offender's release on parole or otherwise from 19 prison or other commitment imposed as a result of a previous 20 felony conviction; and

(c) the offender has not been pardoned on the ground of
innocence and the conviction has not been set aside at the
postconviction hearing.

24 (18) "Place of trial" means the geographical location25 and political subdivision within which is situated the court

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1 that will hear the cause.

2 (19) "Preliminary examination" means a hearing before a
3 justice of the peace for the purpose of determining if there
4 is probable cause to believe a felony has been committed by
5 the defendant.

6 (20) "Probation" means release by the court without 7 imprisonment, except as otherwise provided by law, of a 8 defendant found guilty of a crime. The release is subject to 9 the supervision of the department of institutions upon 10 directions of the court.

11 (21) "Prosecutor" means an elected or appointed attorney 12 who is vested by law with the power to initiate and carry 13 out criminal proceedings on behalf of the state or a 14 political subdivision.

15 (22) "Same transaction" means conduct consisting of a16 series of acts or omissions which are motivated by:

17 (a) a purpose to accomplish a criminal objective and
18 which are necessary or incidental to the accomplishment of
19 that objective; or

(b) a common purpose or plan which result in the
repeated commission of the same offense or effect upon the
same person or persons or the property thereof.

(23) "Search warrant" means a written order made in the
name of the state and signed by a judge that particularly
describes the thing, place, or person to be searched and the

instruments, articles, or things to be seized; and that is
 directed to a peace officer commanding him to search for
 personal property and bring it before the judge.

4 (24) "Sentence" means the judicial disposition of a
 5 criminal proceeding upon a plea or finding of guilty.

6 (25) "Statement" means:

7 (a) a writing signed or otherwise adopted or approved
8 by a person;

9 (b) a video, audio, or other recording of a person's
10 communications or a transcript of the communications: and
11 (c) a writing containing a summary of a person's trail

12 communications or admissions.

(26) "Summons" means a written order issued by the court
that commands a person to appear before a court at a stated
time and place to answer the offense set forth therein.

16 (27) "Superseded notes" means handwritten notes, 17 including field notes, that have been substantially 18 incorporated into a statement. The notes may not be 19 considered a statement and are not subject to disclosure 20 except as provided in [section 139].

(28) "Temporary road block" means any structure, device,
or means used by a peace officer for the purpose of
controlling all traffic through a point on the highway where
all vehicles may be slowed or stopped.

25 (29) "Witness" means any person whose testimony is

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desired in any proceeding or investigation by a grand jury
 or in a criminal action, prosecution, or proceeding.

3 (30) "Work product" means legal research, records,
4 correspondence, reports, and memoranda, written and oral, to
5 the extent that they contain the opinions, theories, and
6 conclusions of the prosecutor, defense counsel, or their
7 staff or investigators.

8 <u>NEW SECTION.</u> Section 3. Filing the charge. In all 9 criminal prosecutions, the charge shall be filed in the 10 county where the offense was committed unless otherwise 11 provided by law.

12 <u>NEW SECTION.</u> Section 4. Place of trial. (1) The place 13 of trial shall be the county where the charge is filed 14 unless otherwise provided by law.

(2) All objections that a charge is filed in the
improper county are waived by the defendant unless made
before trial as provided for in [sections 175 through 177].
If an objection is made, a hearing shall be held and the
proper county in which to file the charge shall be
established before further proceedings.

21 <u>NEW SECTION.</u> Section 5. Requisite act in multiple 22 counties. (1) When two or more acts are requisite to the 23 commission of any offense, or two or more acts are committed 24 in furtherance of a common scheme, the charge may be filed 25 in any county in which any of the acts or offenses occur. 1 (2) When an act requisite to the commission of an 2 offense occurs or continues in more than one county, the 3 charge may be filed in any county in which the act occurred 4 or continued.

5 <u>NEW SECTION.</u> Section 6. Assisting or committing an 6 offense. When a person in one county commits or aids, abets, 7 or procures the commission of an offense in another county, 8 the charge may be filed in either county.

9 <u>NEW SECTION.</u> Section 7. County of offense unknown. (1) 10 If it cannot be readily determined in which county the 11 offense was committed, the offender may be charged in any 12 county in which it readily appears that an element of the 13 offense occurred.

14 (2) When an offense is committed in or against a public
15 or private conveyance, and it is doubtful in which county
16 the offense occurred, the charge may be filed in any county
17 in or through which the conveyance has traveled,

18 <u>NEW SECTION.</u> Section 8. Offense consummated within 19 state. If an offense is commenced outside the state but is 20 consummated within the state, the offense shall be charged 21 in the county where an act requisite to the commission of 22 the offense is committed or continued.

23 <u>NEW SECTION.</u> Section 9. Inquest -- when held -- how
 24 conducted. (1) The coroner shall hold an inquest only if
 25 requested to do so by the county attorney of the county in

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which the acts or events causing death occurred. However,
 when the death of any person occurs in a jail or a penal
 institution or from the use of a firearm by a peace officer,
 except where criminal charges have been or will be filed,
 the county attorney shall direct the coroner to hold an
 inquest.

7 (2) If an inquest is held, the proceedings shall be
8 public. The coroner shall conduct the inquest with the aid
9 and assistance of the county attorney. The inquest must be
10 held in accordance with this section.

NEW SECTION. Section 10. Disgualifying a coroner. (1)
 A coroner who also serves as a peace officer may not conduct
 an inquest into the death of a person who:

14 (a) died in a jail or penal institution;

15 (b) died while in custody of a peace officer; or

16 (c) was killed by a peace officer.

17 (2) If a coroner is disgualified under subsection (1), 18 the county attorney shall request a qualified coroner of 19 another county to conduct the inquest. The expenses of a 20 coroner fulfilling the request must be paid by the 21 requesting county.

22 <u>NEW SECTION.</u> Section 11. Summoning and swearing in of 23 jurors -- instructions. (1) For holding an inquest, the 24 coroner must summon a jury of not more than nine persons 25 qualified by law to serve as jurors. 1 (2) The jurors chosen to serve must be sworn by the 2 coroner to inquire who the person was and when, where, and 3 by what means he came to his death, and into the 4 circumstances attending his death and to render a true 5 verdict thereon, according to the evidence offered.

6 (3) The jurors may be required to inspect the body of
7 the decedent, whether or not an autopsy has been performed,
8 at the discretion of the county attorney.

9 (4) The coroner must instruct the jurors as to their10 duties.

NEW SECTION. Section 12. Coroner's subpoena. Upon the request of the county attorney, a coroner must issue subpoenas for witnesses returnable immediately or at a time and place as he may designate, which may be served by any competent person.

16 <u>NEW SECTION.</u> Section 13. Witness compelled to attend 17 -- examination. (1) A witness served with a subpoena may be 18 compelled to attend and testify or be punished as upon a 19 subpoena issued by a justice of the peace.

(2) The county attorney shall examine each witness,
after which the witness may be examined by the coroner and
the jurors.

23 <u>NEW SECTION.</u> Section 14. Porm of verdict. After
24 inspecting the body, if required, and hearing the testimony,
25 the jury must render its verdict, which shall be by majority

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vote, and certify the same in writing signed by them and
 setting forth who the deceased person was and the location,
 time, circumstances, and means of the death.

NEW SECTION. Section 15. Recording and filing the 4 testimony and proceedings. The testimony of the witness 5 examined before the coroner's jury must be recorded and 6 transcribed, the transcript of which shall be filed with the 7 8 clerk of the district court of the county. The recording and 9 transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the 10 same manner as other claims against the county are paid. 11

NEW SECTION. Section 16. Issuing 12 subpoenas. (1) 13 Whenever the attorney general or county attorney has a duty to investigate alleged unlawful activity, any justice of the 14 supreme court or district court judge of this state may 15 cause subpoenas to be issued commanding the persons to whom 16 17 they are directed to appear before the attorney general or the county attorney and give testimony. 18

(2) Subpoenas duces tecum may also issue commanding
persons to whom they are directed to produce such books,
records, papers, documents, and other objects as may be
necessary and proper to the investigation.

23 (3) A subpoena may issue only when it appears upon the
24 affidavit of the attorney general or the county attorney
25 that the administration of justice requires it to be issued.

 <u>NEW SECTION.</u> Section 17. Pailure to appear or obey.
 (1) A person who, without just cause, fails to obey an investigative subpoena issued pursuant to this section may be cited for contempt of court.

5 (2) A person who, after being granted immunity under 6 [section 20], refuses to give testimony or to produce 7 evidence must be brought before the judge issuing the 8 subpoena or, in that judge's absence or inability to act, 9 before the nearest and most accessible judge who shall 10 inform the person:

11 (a) of the contents and requirements of the subpoena;

(b) that because immunity has been granted, the person
cannot be excused from testifying or producing evidence on
the grounds that the testimony or evidence may be personally
incriminating; and

16 (c) that the refusal to testify or to produce evidence
17 as commanded in the subpoena is punishable as a contempt of
18 court under Title 3, chapter 1, part 5.

19 (3) In the presence of the judge, the person must be
20 examined by the county attorney or produce evidence as
21 commanded in the subpoena.

22 <u>NEW SECTION.</u> Section 18. Relief from improper 23 subpoena. A person aggrieved by a subpoenal issued pursuant 24 to this section may, within a reasonable time, file a motion 25 to dismiss the subpoena. If a subpoend tecum has

1 issued, a person aggrieved may petition to limit its scope. 2 NEW SECTION. Section 19. Conduct of investigative 3 inquiry. (1) The person requesting a subpoena may examine 1 under oath all witnesses subpoenaed pursuant to [sections 16 5 through 21]. Testimony shall be recorded. The witness has 6 the right to have counsel present at all times. If the 7 witness does not have resources to obtain counsel, the 8 issuing judge shall appoint counsel, when requested.

9 (2) The secrecy and disclosure provisions relating to 10 grand jury proceedings shall apply to proceedings conducted 11 under (sections 16 through 21). A person who divulges the 12 contents of the application or the proceedings without legal 13 privilege to do so may be punished for contempt of court.

14 (3) All penalties for perjury or preparing, submitting,
15 or offering false evidence apply to proceedings conducted
16 under [sections 16 through 21].

(2) The attorney general or the county attorney may,
with the approval of the judge who authorized the issuance
of the subpoena on behalf of the state, grant any person
subpoenaed immunity from the use of any compelled testimony

or evidence or any information directly or indirectly
 derived from such testimony or evidence against that person
 in any criminal prosecution.

4 (3) Nothing in [sections 16 through 20] prohibits a 5 prosecutor from granting immunity from prosecution for or on 6 account of any transaction, matter, or thing concerning 7 which a witness is compelled to testify if the prosecutor 8 determines, in his sole discretion, that the ends of justice 9 would be served thereby.

10 (4) After being granted immunity, no person may be 11 excused from testifying on the grounds that such testimony 12 may be personally incriminating. Immunity may not extend to 13 prosecution or punishment for false statements given 14 pursuant to the subpoena.

15 (5) Nothing in [sections 16 through 21] requires a 16 witness to divulge the contents of a privileged 17 communication unless the privilege is waived as provided by 18 law.

19 <u>NEW SECTION.</u> Section 21. Fees -- costs. (1) The fees 20 and mileage of witnesses subpoenaed pursuant to [sections 16 21 through 20] shall be the same as required in criminal 22 actions.

(2) When the application for the subpoena is made by
the attorney general, the state shall bear all costs,
including the cost of service. The appropriate county shall

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bear all costs, including the cost of service, when the
 application for the subpoena is made by the county attorney.
 (3) All provisions relating to subpoenas in criminal
 actions apply, including [sections 182 through 190], to
 subpoenas issued pursuant to [sections 16 through 20].

6 <u>NEW SECTION.</u> Section 22. Method of arrest. (1) An 7 arrest is made by an actual restraint of the person to be 8 arrested or by his submission to custody of the person 9 making the arrest.

10 (2) All necessary and reasonable force may be used in
11 making an arrest, but the person arrested may not be subject
12 to any greater restraint than is necessary to hold or detain
13 him.

14 (3) All necessary and reasonable force may be used to
15 effect an entry into any building or property or part
16 thereof to make an authorized arrest.

17 NEW SECTION. Section 23. Time of making arrest. An 18 arrest may be made on any day and at any time of the day or 19 night, except that a person cannot be arrested in his home 20 or private dwelling place at night for a misdemeanor committed some other time and place unless upon the 21 22 direction of a judge endorsed upon a warrant for arrest. 23 However, a person may be arrested in his home or private dwelling in cases involving domestic abuse. 24

25 NEW SECTION. Section 24. Written report when no arrest

made in domestic violence situation. When a peace officer is
called to the scene of a reported incident of domestic
violence but does not make an arrest, he shall file a
written report with the officer commanding the law
enforcement agency employing him, setting forth the reason
or reasons for his decision.

7 NEW SECTION. Section 25. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace 8 9 officer arrests a person for domestic abuse, as defined in 10 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other 11 12 services in the community and give the victim immediate notice of any legal rights and remedies available. The 13 14 notice must include furnishing the victim with a copy of the 15 following statement:

16 "IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county 17 attorney's office can file criminal charges against your 18 abuser. You have the right to go to court and file a 19 petition requesting any of the following orders for relief: 20 (1) an order restraining your abuser from abusing you; 21 (2) an order directing your abuser to leave your 22 household;

23 (3) an order preventing your abuser from transferring24 any property except in the usual course of business;

25 (4) an order awarding you or the other parent custody

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1 of or visitation with a minor child or children;

2 (5) an order restraining your abuser from molesting or3 interfering with minor children in your custody; or

4 (6) an order directing the party not granted custody to 5 pay support of minor children or to pay support of the other 6 party if there is a legal obligation to do so".

7 <u>NEW SECTION.</u> Section 26. Basis for arrest without 8 warrant. (1) A peace officer may arrest a person when no 9 warrant has issued if the officer has probable cause to 10 believe that the person is committing an offense or that the 11 person has committed an offense and existing circumstances 12 require immediate arrest.

13 (2) A summons of a peace officer to a place of 14 residence by a family or household member constitutes an 15 exigent circumstance for making an arrest. Arrest is the 16 preferred response in domestic abuse cases involving injury 17 to the victim, use or threatened use of a weapon, violation 18 of a restraining order, or other imminent danger to the 19 victim.

20 <u>NEW SECTION.</u> Section 27. Manner of arrest without 21 warrant. A peace officer making an arrest when no warrant 22 has issued must inform the person to be arrested of the 23 officer's authority, of the intention to arrest that person, 24 and of the cause of the arrest, except when the person to be 25 arrested is actually engaged in the commission of or in an

attempt to commit an offense, or is pursued immediately 1 after its commission or after an escape, or when the giving 2 of the information will imperil the arrest. 3 appear. (1) NEW SECTION. Section 28. Notice to 4 Whenever a peace officer is authorized to arrest a person 5 when no warrant has issued, the officer may instead issue 6 the person a notice to appear. 7 (2) The notice to appear shall: 8 be in writing; q (a) state the person's name and address, if known: 10 (b) set forth the nature of the offense: 11 (c)be signed by the issuing officer; and 12 (d) (e) direct the person to appear before a court at a 13 14 certain time and place. 15 (3) Upon failure of the person to appear, a summons or warrant of arrest may issue. 16 NEW SECTION. Section 29. Release. When no warrant has 17 issued, a peace officer having custody of a person arrested 18 19 may release the arrested person without requiring that person to appear before a court when the officer is 20 satisfied that there are insufficient grounds to commence 21 22 prosecution.

23 <u>NEW SECTION.</u> Section 30. Arrest warrant and summons. 24 A peace officer may arrest a person when the officer has a 25 warrant commanding that the person be unrested or when the

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1 officer believes on reasonable grounds:

2 (1) that a felony warrant for the person's arrest has3 been issued in another jurisdiction; or

4 (2) that a warrant for the person's arrest has been5 issued in this state.

6 <u>NEW SECTION.</u> Section 31. Issuing warrant or summons. 7 (1) Upon the filing of a charge, the court may issue a 8 summons or a warrant of arrest as provided in [sections 91 9 and 93]. A summons may issue to a corporation upon the 10 filing of a charge against it. More than one warrant or 11 summons may issue on the same charge.

12 (2) A summons may be served personally or by13 first-class mail.

14 <u>NEW SECTION.</u> Section 32. Failure to appear following 15 summons. (1) If, after the issuance of a summons or notice 16 to appear, the judge becomes satisfied that the person has 17 not appeared or will not appear as commanded, the judge may 18 at once issue a warrant of arrest.

19 (2) If, after being summoned, the corporation does not
20 appear, a plea shall be entered in accordance with [section
21 130] and the matter shall proceed to trial and judgment
22 without further process.

23 <u>NEW SECTION.</u> Section 33. Form and content of a
24 summons. (1) The form of a summons shall:

25 (a) be in writing in the name of the state of Montana

or in the name of the municipality if the violation of a
 municipal ordinance is charged;

3 (b) state the name of the person summoned and that
4 person's address, if known;

5 (c) set forth the nature of the offense;

6 (d) state the date when issued and the municipality or7 county where issued;

8 (e) be signed by a judge of the court with the title of9 office also noted; and

10 (f) command the person to appear before a court at a 11 certain time and place.

(2) The summons shall plainly state that, upon failure
to appear following service of summons, an arrest warrant
shall issue forthwith; or, if the service is made to a
corporation, that a plea of not guilty will be entered.

NEW SECTION. Section 34. Form and content of an arrest
 warrant. (1) The form of an arrest warrant shall:

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

21 (b) set forth the nature of the charge;

22 (c) command that the person against whom the complaint

23 was made be arrested and brought before the nearest or most

24 accessible court for an initial appearance;

25 (d) specify the name of the person to be arrested or,

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if that person's name is unknown, designate the person by
 any name or description by which the person to be arrested
 can be identified with certainty;

4 (e) state the date when issued and the municipality or5 county where issued; and

6 (f) be signed by the judge of the court with the title7 of office noted.

8 (2) The warrant of arrest may specify the amount of9 bail.

10 (3) No warrant of arrest shall be dismissed nor shall 11 any person in custody for an offense be discharged from 12 custody because of technical irregularities not affecting 13 the substantial rights of the accused.

NEW SECTION. Section 35. Execution of a warrant. (1) A warrant of arrest may be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state.

18 (2) Warrants issued for the violation of city
19 ordinances cannot be executed outside the city limits,
20 except as otherwise provided by law.

21 <u>NEW SECTION.</u> Section 36. Manner of arrest with 22 warrant. (1) When making an arrest pursuant to a warrant, a 23 peace officer shall inform the person to be arrested of the 24 officer's authority, the intention to arrest that person, 25 the cause of the arrest, and the fact that a warrant has 1 been issued for that person's arrest, except:

2 (a) when the person forcibly resists or flees before
3 the peace officer has an opportunity to inform the person;
4 or

5 (b) when the giving of the information will imperil6 arrest.

7 (2) The peace officer need not have possession of the 8 warrant at the time of arrest, but after the arrest the 9 warrant must be shown to the person arrested as soon as 10 practicable if the person requests.

11NEW SECTION.Section 37. Assisting a peace officer.12(1) A peace officer making a lawful arrest may command the13aid of persons 18 years of age or older.14(2) A person commanded to aid a peace officer in making15an arrest:16(a) has the same authority to arrest as that officer;17and

18 (b) is not civilly liable for any reasonable conduct in19 aid of the officer.

20 <u>NEW SECTION.</u> Section 38. Assisting officer of another 21 state. (1) Any peace officer of another state, of the United 22 States, or of the District of Columbia who enters this state 23 in close pursuit of a person in order to arrest him has the 24 same authority to arrest and hold the person in custody as 25 peace officers of this state have to arrest and hold in

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custody a person on the ground that he had committed a crime
 in this state.

3 (2) If an arrest is made in this state by an officer of 4 another state or of the District of Columbia, the officer 5 shall without unnecessary delay take the arrested person 6 before the judge of a court of record, who shall conduct a 7 hearing for the sole purpose of determining if the arrest 8 was in accordance with subsection (1) and not of determining 9 quilt or innocence of the arrestee.

10 (3) If the judge determines that the arrest was in 11 accordance with subsection (1), the judge shall commit the 12 arrestee to the custody of the officer making the arrest, 13 who shall, without unnecessary delay, take the arrestee to 14 the state from which he fled. If the judge determines that 15 the arrest was unlawful, the judge shall discharge the 16 person arrested.

17 (4) This section may not be construed to make unlawful18 an arrest in this state which would otherwise be lawful.

19 <u>NEW SECTION.</u> Section 39. When authorized -- custody.
20 (1) A private person may arrest another when there is
21 probable cause to believe that the person is committing or
22 has committed an offense and the existing circumstances
23 require the person's immediate arrest.

(2) A private person making an arrest shall immediately
 notify the nearest available law enforcement agency or peace

officer and give custody of the person arrested to the
 officer or agency.

3 <u>NEW SECTION.</u> Section 40. Peace officer's custody. A 4 peace officer who, pursuant to law, takes custody of a 5 person arrested by a private citizen shall proceed in 6 accordance with [sections 27 and 36], and as otherwise 7 provided by law.

8 <u>NEW SECTION.</u> Section 41. Investigative stop. A peace 9 officer may stop any person or vehicle which is observed in 10 circumstances that create a particularized suspicion that 11 the person or occupant of the vehicle has committed, is 12 committing, or is about to commit an offense, to obtain or 13 verify an account of the person's presence or conduct, or to 14 determine whether to arrest the person.

15 <u>NEW SECTION.</u> Section 42. Stop and frisk. A peace 16 officer who has made a lawful stop under (sections 4) 17 through 43]:

18 (1) may frisk the person and take other reasonably 19 necessary steps for protection if the officer has reasonable 20 cause to suspect that the person is armed and presently 21 dangerous to him or another person present;

(2) may take possession of any object that is
discovered during the course of the frisk if the officer has
probable cause to believe the object is a weapon;

25 (3) may demand of the person or persons stopped his or

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1 her name and present address; and

2 (4) shall inform the person or persons stopped as 3 promptly as possible under the circumstances and in any case 4 before questioning the person, that he is a peace officer, 5 that the stop is not an arrest but rather a temporary 6 detention for an investigation, and that upon the completion 7 of the investigation the person will be released if not 8 arrested.

<u>NEW SECTION.</u> Section 43. Duration of stop. A stop
authorized by [section 41 or 42] may not last longer than is
necessary to effectuate the purpose to the stop.

12 NEW SECTION. Section 44. Authority to establish 13 roadblock. Any law enforcement agency of this state is 14 authorized to establish, within its jurisdiction, temporary 15 roadblocks on the highways of this state for the purpose of 16 identifying drivers, checking for driver's licenses, vehicle 17 registration, and insurance.

18 <u>NEW SECTION.</u> Section 45. Establishing a roadblock. A 19 written plan for establishing a roadblock shall be designed 20 by supervisory officers within the law enforcement agency to 21 ensure motorist safety, minimize motorist inconvenience, and 22 prevent the arbitrary selection of vehicles to be stopped by 23 providing a schedule for the selection of vehicles to be 24 stopped.

25 NEW SECTION. Section 46, Search and seizure --- when

authorized. A search of a person, object, or place may be
 made and instruments, articles, or things may be seized in
 accordance with [this act] when a search is made:

4 (1) by the authority of a search warrant; or

5 (2) in accordance with recognized exceptions to the6 warrant requirement.

7 <u>NEW SECTION.</u> Section 47. Authority to issue search 8 warrant. A search warrant authorized by this section may be 9 issued:

10 (1) upon the request of a peace officer, the city or 11 county attorney or the attorney general; and

12 (2) by any city or municipal court judge or justice of
13 the peace within his respective jurisdiction wherein the
14 property or person sought is located; or

15 (3) by any district court judge within this state.

16 <u>NEW SECTION.</u> Section 48. What may be seized with
17 search warrant. A warrant may issue under this section to
18 search for and seize any:

19 (1) property that constitutes evidence of the20 commission of an offense;

(2) contraband, fruits of the crime, or thingsotherwise criminally possessed;

23 (3) property designed or intended for use or which is
24 or has been used as a means of committing a criminal
25 offense; or

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(4) person for whose arrest there is probable cause, or
 for whom there has been a warrant of arrest issued, or who
 is unlawfully restrained.

NEW SECTION. Section 49. Search 4 warrant upon affidavit. (1) A search warrant, other than a search warrant 5 upon oral testimony under [section 50], shall issue only 6 upon an affidavit or affidavits sworn to before the judge 7 8 which establishes grounds for issuing a warrant. The judge 9 shall issue a search warrant if the judge is satisfied that there is probable cause to believe an offense has been or 10 will be committed and that there is probable cause for 11 issuance of the warrant. 12

13 (2) The warrant shall particularly describe the thing,
14 place, or person to be searched and instruments, articles,
15 or person to be seized.

16 (3) The warrant shall be directed to a specific peace
17 officer commanding the officer to search for and seize the
18 designated person or items.

19 <u>NEW SECTION.</u> Section 50. Search warrant upon oral 20 testimony. (1) If the circumstances make it reasonable to 21 dispense with a written affidavit, a judge may issue a 22 warrant based on sworn oral testimony communicated by 23 telephone or other appropriate means.

24 (2) The person who is requesting the warrant shall25 prepare a document to be known as a duplicate original

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warrant and shall read the duplicate original warrant,
 verbatim, to the judge. The judge shall then enter,
 verbatim, what is read to him on a document to be known as
 the original warrant.

(3) If the judge is satisfied that the circumstances 5 6 are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist, or 7 8 that there is probable cause to believe that they exist, the judge shall order the issuance of a warrant by directing the 9 person requesting the warrant to sign the judge's name on 10 the duplicate original warrant and enter on the face of the 11 12 original warrant the exact time when the warrant was issued. The finding of probable cause for a warrant upon oral 13 14 testimony may be based on the same kind of evidence as is 15 sufficient for a warrant upon affidavit.

(4) When a caller informs the judge that the purpose of 16 17 the case is to request a warrant, the judge snall immediately place under oath each person whose testimony 18 forms a basis of the application and each person applying 19 20 for that warrant. An applicant's telephonic oath or affirmation is considered to have been made before the 21 22 judge. If a voice recording device is available, the judge shall record all of the call after the caller informs the 23 judge that the purpose of the call is to request a warrant. 24 Otherwise, a stenographic or longhand verbatim record shall 25

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be made. If a voice recording is used or a stenographic record is made, the judge shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the judge shall file a signed copy with the court.

7 (5) A search warrant issued upon any telephonic request
8 is invalid unless it is subsequently signed by the issuing
9 judge or his successor.

10 (6) The contents of a warrant upon oral testimony shall11 be the same as the contents of a warrant upon affidavit.

12 (7) Evidence obtained pursuant to a warrant issued 13 under this section is not subject to a motion to suppress on 14 the ground that the circumstances were not such as to make 15 it reasonable to dispense with a written affidavit.

NEW SECTION. Section 51. Service of a search warrant.
A search warrant must in all cases be served by the peace officer specifically named and by no other person except in and of the officer, the officer being present and acting in its execution.

<u>NEW SECTION.</u> Section 52. Procedures assisting execution of search warrant. (1) All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant. 1 (2) The person executing the warrant may reasonably 2 detain and search any person in the place being searched at 3 the time:

4 (a) to protect himself from attack; or

5 (b) to prevent disposal or concealment of any
6 instruments, articles, or things particularly described in
7 the warrant.

R NEW SECTION. Section 53. Execution and return. (1) 9 Service of a search warrant is made by exhibiting the 10 original warrant, or a duplicate original warrant, at the place or to the person to be searched. The officer taking 11 12 property under the warrant shall give to the person from 13 whom or from whose premises the property is taken a copy of 14 the search warrant and receipt for property taken or shall 15 leave the copy and receipt at the place from which the items 16 were taken. Failure to leave a copy and receipt may not 17 render the property seized inadmissible at trial.

18 (2) The return shall be made promptly and shall be 19 accompanied by a written inventory of any property taken, 20 verified by the person executing the warrant. The return 21 shall be made before the judge who issued the warrant or, if 22 he is absent or unavailable, before the nearest available 23 judge.

(3) The judge shall, upon request, deliver a copy ofthe inventory and the order of custody or disposition to the

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person from whom or from whose premises the property was
 taken and to the applicant for the warrant.

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3 (4) The warrant may be executed at any time of the day 4 or night. The warrant shall be executed within 10 days from 5 the time of issuance. Any warrant not executed within 10 6 days is void and shall be returned to the court or judge 7 issuing the same as "not executed".

8 (5) The judge shall enter an order providing for the 9 custody or appropriate disposition of the instruments, 10 articles, or things seized pending further proceedings.

NEW SECTION. Section 54. Piling of return. (1) The application on which the warrant is issued shall be retained by the judge but may not be filed with the clerk of court, or with the court if there is no clerk, until the warrant has been executed or has been returned "not executed".

16 (2) The judge before whom the warrant is returned shall 17 attach to the warrant a copy of the return, inventory, and 18 all other papers in connection with the warrant and shall 19 file them with the issuing court.

<u>NEW SECTION.</u> Section 55. Custody and disposition -seizure without search warrant. (1) Instruments, articles,
or things lawfully seized without a warrant may be retained
in the custody of the officer making the seizure for a time
sufficient to complete an investigation.

25 (2) Notice of the seizure and a receipt for the

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property seized shall be given to the person from whose possession the property is taken and to the owner of the property if the owner is reasonably ascertainable. The failure to give a receipt may not render the evidence seized inadmissible upon trial.

NEW SECTION. Section 56. Return of property seized --6 7 right to possess. (1) Any person claiming the right to possession of property seized as evidence may apply to the 8 9 judge for its return. The judge shall give written notice as 10 the judge considers adequate to the prosecuting attorney and all persons who have or may have an interest in the property 11 and shall hold a hearing to determine the right to 12 13 possession.

14 (2) If the right to possession is established, the
15 judge shall order the property other than contraband
16 returned if:

17 (a) the property is not needed as evidence; or

18 (b) all proceedings in which it might be required have 19 been completed.

20 <u>NEW SECTION.</u> Section 57. Disposition of unclaimed 21 property. If property seized as evidence is not claimed 22 within 6 months of the completion of the case for which it 23 was seized, the officer having custody of it shall apply to 24 the court for its disposition. If the judge, after proper 25 inquiry, cannot ascertain or locate any person entitled to

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its possession, the judge must order the property to be sold
 or, if contraband, destroyed, by the sheriff. The proceeds
 from the sale, after deduction of the costs of storage,
 preservation of property, and the sale, must be paid into
 the county general fund.

6 <u>NEW SECTION</u>. Section 58. Right to counsel. (1) During 7 the initial appearance before the court, every defendant 8 must be informed of the right to have counsel, and must be 9 asked if the aid of counsel is desired.

10 (2) If the defendant desires counsel, is financially 11 unable to employ counsel, and is entitled to have counsel 12 assigned, the court must assign counsel to the defendant 13 without unnecessary delay.

14 (3) The defendant, if unable to employ counsel, is15 entitled to have counsel assigned if:

16 (a) the offense charged is a felony;

17 (b) the offense charged is a misdemeanor and the court18 desires to retain imprisonment as a sentencing option; or

19 (c) the interests of justice would be served by 20 assignment.

21 <u>NEW SECTION.</u> Section 59. Waiver of counsel. A 22 defendant may waive the right to counsel when the court 23 ascertains that the waiver is made knowingly, voluntarily, 24 and intelligently.

25 NEW SECTION. Section 60. Duration of appointment. (1)

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Where counsel has been assigned, the assignment shall be
 effective until final judgment, including any proceeding
 upon direct appeal to the Montana supreme court, unless
 relieved by order of the court.

5 (2) If counsel finds the defendant's case on appeal to 6 be wholly frivolous, counsel must advise the court of that 7 fact and request permission to withdraw. The request to 8 withdraw must be accompanied by a memorandum referring to 9 anything in the record that might arguably support the 10 appeal. The defendant is entitled to receive a copy of 11 counsel's memorandum, and to file a reply with the court.

<u>NEW SECTION.</u> Section 61. Determination of indigence.
 (1) The court shall make a determination of indigence.

14 (2) In applying for a court-appointed counsel, a 15 defendant shall submit a sworn financial statement 16 demonstrating a financial inability to obtain legal 17 representation without substantial hardship in providing for 16 personal or family necessities. The statement is not 19 admissible in any civil or criminal action except where 20 offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing. 21 22 NEW SECTION. Section 62. Payment for court-appointed 23 counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a 24

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part of or a condition under the sentence imposed as

25

provided in {this act}.

2 (2) Costs must be limited to reasonable compensation
3 and costs incurred by the court-appointed counsel in the
4 criminal proceeding.

5 (3) The court may not sentence a defendant to pay the 6 costs of court-appointed counsel unless the defendant is or 7 will be able to pay them. In determining the amount and 8 method of payment of costs, the court shall take account of 9 the financial resources of the defendant and the nature of 10 the burden that payment of costs will impose.

11 (4) A defendant who has been sentenced to pay costs and 12 who is not in contumacious default in the payment may at any time petition the court that sentenced him for remission of 13 the payment of costs or of any unpaid portion of the costs. 14 15 If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the 16 defendant or his immediate family, the court may remit all 17 or part of the amount due in costs or modify the method of 18 19 payment.

20 <u>NEW SECTION.</u> Section 63. Time and method of payment. 21 When a defendant is sentenced to pay the costs of 22 court-appointed counsel, the court may order payment to be 23 made within a specified period of time or in specified 24 installments. Payments shall be made to the clerk of the 25 district court. The clerk of the district court shall distribute the payments to the government agency responsible
 for the expense of court-appointed counsel as provided in
 (section 65).

NEW SECTION. Section 64, Effect of nonpayment, (1) 4 5 When a defendant who is sentenced to pay the costs of 6 court-appointed counsel defaults in payment of the costs or 7 of any installment, the court on motion of the county 8 attorney or on its own motion may require the defendant to 9 show cause why the default should not be treated as a 10 contempt of court and may issue a show cause citation or a 11 warrant of arrest for the defendant's appearance.

12 (2) Unless the defendant shows that the default was not 13 attributable to an intentional refusal to obey the order of 14 the court or to a failure on the defendant's part to make a 15 good faith effort to make the payment, the court may find 16 that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for 17 18 nonpayment of the costs of court-appointed coursel shall be set forth in the judgment and may not exceed 1 day for each 19 20 \$25 of the payment, 30 days if the order for payment was imposed upon conviction of a misdemeanor, or 1 year in any 21 other case, whichever is the shorter period. A person 22 committed for nonpayment of costs must be given credit 23 toward payment for each day of imprisonment at the rate 24 specified in the judgment. 25

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1 (4) If it appears to the satisfaction of the court that 2 the default in the payment of costs is not contempt, the 3 court may enter an order allowing the defendant additional 4 time for payment, reducing the amount of the payment or of 5 each installment, or revoking the order for payment of the 6 unpaid portion of the costs in whole or in part.

7 (5) A default in the payment of costs or any 8 installment may be collected by any means authorized by law 9 for the enforcement of a judgment. The writ of execution for 10 the collection of costs may not discharge a defendant 11 committed to imprisonment for contempt until the amount of 12 the payment for costs has actually been collected.

NEW SECTION. Section 65. Remuneration of appointed 13 counsel. (1) Whenever in a criminal proceeding an attorney 14 represents or defends any person by order of the court on 15 the ground that the person is financially unable to employ 16 counsel. the attorney shall be paid for his services a sum 17 as a district court or justice of the state supreme court 18 certifies to be reasonable compensation and shall be 19 reimbursed for reasonable costs incurred in the criminal 20 21 proceeding.

22 (2) The expense of implementing this rule is chargeable
23 as provided in 3-5-901 to the county in which the proceeding
24 arose, the department of commerce, or both, except that:

25 (a) in proceedings solely involving the violation of a

city ordinance or state statute prosecuted in a city or
 municipal court, the expense is chargeable to the city or
 town in which the proceeding arose; or

(b) when there has been an arrest by agents of the
department of fish, wildlife, and parks or agents of the
department of justice and the charge is prosecuted by
personnel of the state agency that made the charge, the
expense must be borne by the prosecuting state agency.

9 <u>NEW SECTION.</u> Section 66. General authority for release 10 and detention. (1) An arrested person shall be released or 11 detained pending judicial proceedings pursuant to [sections 12 66 through 81].

13 (2) If a person is released, he shall appear to answer,14 as ordered, in the court having jurisdiction.

NEW SECTION. Section 67. Release or detention of a
 defendant pending trial. Before a verdict has been rendered,
 the court shall:

(1) authorize the release of the defendant upon
reasonable conditions that assure the appearance of the
defendant and protect the safety of the community or of any
other person; or

(2) detain the defendant where there is probable cause
to believe that the defendant committed an offense for which
death is a possible punishment and adequate sateguards are
not available to ensure the defendant's appearance and

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1 safety of the community.

2 NEW SECTION. Section 68. Release or detention pending appeal -- revocation -- sentencing hearing. The court shall 3 4 order that a defendant found quilty of an offense who is 5 awaiting imposition or execution of sentence, revocation 6 hearing, or who has filed an appeal, be detained, unless the 7 court finds that the defendant is not likely to flee or pose 8 a danger to the safety of any other person or the community 9 if released.

10 <u>NEW SECTION.</u> Section 69. Conditions upon the 11 defendant's release. (1) The court may impose any condition 12 which will reasonably assure the appearance of the defendant 13 as required, or assure the safety of any person and the 14 community, including but not limited to, the following:

15 (a) the defendant not commit an offense during the 16 period of release;

17 (b) the defendant remain in the custody of a designated 18 person who agrees to supervise the defendant and report any 19 violation of a release condition to the court, if the 20 designated person is reasonably able to assure the court 21 that the defendant will appear as required and will not pose 22 a danger to the safety of any person or the community;

23 (c) the defendant maintain employment, or if
24 unemployed, actively seek employment;

25 (d) the defendant abide by specified restrictions on

1 the defendant's personal associations, place of abode, and 2 travel;

3 (e) the defendant avoid all contact with the alleged
4 victim of the offense and any potential witness who may
5 testify concerning the offense;

6 (f) the defendant report on a regular basis to a
7 designated agency or individual, pretrial services agency,
8 or other appropriate individual;

(g) the defendant comply with a specified curfew;

(h) the defendant may not possess a fireard,
destructive device, or other dangerous weapon;

12 (i) the defendant may not use or possess alcohol, or
13 any dangerous drug or other controlled substance without a
14 legal prescription;

15 (j) furnish bail in accordance with [section 75]; or
16 (k) the defendant return to custody for specified hours
17 following release for employment, schooling, or other
18 limited purposes.

19 (2) The court may not impose an unreasonable condition 20 that results in the pretrial detention of the defendant and 21 shall subject the defendant to the least restrictive 22 condition, or combination of conditions, that will assure 23 the defendant's appearance and provide for the protection of 24 the community. The court may, upon a reasonable basis, amend 25 the order to impose additional or different conditions of

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release, at any time, upon its own motion or upon the motion
 of either party.

3 <u>NEW SECTION.</u> Section 70. Release or detention hearing. 4 (1) The release or detention of the defendant shall be 5 determined immediately upon the defendant's first 6 appearance.

7 (2) In determining whether the defendant shall be 8 released or detained, the court shall take into account the 9 available information concerning:

10 (a) the nature and circumstances of the offense 11 charged, including whether the offense involved the use of 12 force or violence;

(b) the weight of the evidence against the defendant;
(c) the history and characteristics of the defendant,
including:

16 (i) the defendant's character, physical and mental 17 condition, family ties, employment, financial resources, 18 length of residence in the community, community ties, past 19 conduct, history relating to alcohol or drug abuse, criminal 20 nistory, and record concerning the appearance at court 21 proceedings; and

(ii) whether at the time of the current arrest or
offense, the defendant was on probation, on parole, or on
other release pending trial, sentencing, appeal, or
completion of sentencing for an offense;

1 (d) the nature and seriousness of the danger to any 2 person or the community that would be posed by the 3 defendant's release; and

4 (e) the property available as collateral for the
b defendant's release to determine if it will reasonably
c assure the appearance of the defendant as required.

7 (3) Upon the motion of any party or the court, a 8 hearing shall be held to determine whether bail is 9 established in the appropriate amount, or whether any other 10 condition or restriction upon the defendant's release will 11 reasonably assure the appearance of the defendant and the 12 safety of any other person or the community.

13 <u>NEW SECTION.</u> Section 71. Release order. A release 14 order issued by the court shall include a written statement 15 setting forth any restrictions or conditions upon the 16 defendant's release.

17 <u>NEW SECTION.</u> Section 72. Release ordered by court 18 where charge not pending. If release is ordered or bail is 19 accepted by a court other than the court in which the charge 20 is pending, any bonds, instrument of ownership, money 21 posted, and a written statement of other conditions of 22 release shall be delivered without delay to the court in 23 which the charge is pending.

24 NEW SECTION. Section 73. Bail schedule. A judge may
25 establish and post a schedule of bail for offenses over

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which the judge has original jurisdiction. A person may not
be released on bail without first appearing before the judge
when the offense is domestic abuse or any assault against a
family member or a household member.

5 <u>NEW SECTION.</u> Section 74. Peace officer accepting bail.
6 (1) A peace officer may accept bail on behalf of a judge:

7 (a) in accordance with the bail schedule established8 under [section 73]; or

9 (b) on behalf of a judge whenever the warrant of arrest10 specifies the amount of bail.

11 (2) Whenever a peace officer accepts bail, the officer 12 shall give a signed receipt to the offender setting forth 13 the bail received. The peace officer shall then deliver the 14 bail to the judge before whom the offender is to appear, and 15 the judge shall give a receipt to the peace officer for the 16 bail received.

NEW SECTION. Section 75. Forms of bail. (1) Bail may
 be furnished in the following ways:

19 (a) by a deposit with the court of an amount equal to 20 the required bail of cash, stocks, bonds, certificates of 21 deposit, or other personal property approved by the court; 22 (b) by real catate situated within the state with an 23 unencumbered equity, not exempt, owned by the defendant or 24 sureties at a value double the amount of the required bail; 25 (c) by written undertaking executed by the defendant 1 and by two sufficient sureties; or

2 (d) by a commercial surety bond executed by the
3 defendant and a qualified agent for and on behalf of the
4 surety company.

5 (2) The bond shall insure the appearance of the 6 defendant at all times required through all stages of the 7 proceeding including trial de novo, if any, and unless the 8 bond is denied by the court pursuant to [section 68], shall 9 remain in effect until final sentence is pronounced in open 10 court.

(3) Nothing in (sections 66 through 81) prohibits a
 surety who considers himself insecure to surrender the
 defendant pursuant to (section 79).

14 <u>NEW SECTION.</u> Section 76. Qualifying property as bail. 15 (1) If property posted as a condition of release is personal 16 property, the defendant or sureties shall file a sworn 17 schedule which must contain a list of the personal property 18 including a description of each item, its location and 19 market value, and the total market value of all items 20 listed.

(2) If the property is real estate:

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(a) the defendant or sureties shall file a sworn
schedule which must contain a legal description of the
property, a description of any and all encumbrances on the
property, including the amount of each and the holder of the

encumbrance, and the market value of the unencumbered equity
 owned by the affiant; and

3 (b) a certified copy of the schedule of the property 4 must be filed immediately by the court in the office of the 5 clerk and recorder of the county in which the property is 6 situated. The state has a lien on the property from the time 7 the copy is filed. The clerk and recorder shall enter, 8 index, and record the schedule without requiring any fee.

9 (3) If the property posted as a condition of release is 10a written undertaking with suteties, each surety must be a 11 resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of 12 13 property exempt from execution, but the court or judge on 14 taking the property may allow more than two sureties to 15 justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to 16 17 that amount required.

(4) If the property posted as a condition of release is
a commercial bond, it may be executed by any domestic or
foreign surety company which is qualified to transact surety
business in this state. The undertaking shall be in a form
to be prescribed by the commissioner of insurance and shall
state the following:

(a) the name and address of the commercial suretycompany which issued the bond;

1 (b) the amount of the bond and the ungualified 2 obligation of the surety company to pay the court should the 3 defendant fail to appear as guaranteed; and

4 (c) a provision that the surety company may not revoke
 5 the undertaking without good cause.

(5) The court may examine the sufficiency of any
7 undertaking and take any action it considers proper to
8 insure that a sufficient undertaking is posted.

NEW SECTION. Section 77. Guaranteed arrest bond 9 certificates. (1) A domestic or foreign surety company which 10 has qualified to transact surety business in this state may, 11 in any year, become surety in an amount not exceeding \$500 12 with respect to any guaranteed arrest bond certificates 13 issued in the year by an automobile club or association or 14 by an insurance company authorized to write automobile 15 liability insurance within this state by filing with the 16 commissioner of insurance an undertaking to become surety. 17 (2) The form of the undertaking shall be prescribed by 18 the commissioner of insurance but must include those matters 19 20 as required by [section 75].

(3) A guaranteed arrest bond certificate shall, when posted by the person whose signature appears on the certificate, be accepted in lieu of any cash bail in an amount not exceeding \$500 as a bail bond to quarantee the appearance of the person in any court, including municipal

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courts, in this state at the time as may be required by the 1 court when the person was arrested for violation of a motor 2 vehicle law of this state or ordinance of a municipality of 3 state (except for the offense of driving while this 4 intoxicated or for any felony) committed prior to the date 5 expiration shown on the guaranteed arrest bond of 6 certificate. 7

8 (4) A guaranteed arrest bond certificate is subject to 9 the same enforcement and forfeiture provisions established 10 by [sections 66 through 81] unless otherwise provided by 11 law.

NEW SECTION. Section 78. Violation of a release 12 condition -- forfeiture. (1) If a defendant violates a 13 condition of release, including failure to appear, the 14 prosecuting attorney may move the court in writing for 15 revocation of the order of release. A judge may issue a 16 warrant for the arrest of a defendant charged with violating 17 a condition of release. Upon arrest the defendant shall be 18 brought before a judge for proceeding in accordance with 19 20 [section 82].

(2) If a defendant fails to appear before a court as
required, and bail has been posted, the judge may declare
the bail forfeited. Notice of the order of forfeiture shall
be mailed to the defendant and the defendant's sureties at
their last known address.

1 (3) If at any time within 30 days after the forfeiture 2 the defendant or the defendant's sureties appear and 3 satisfactorily excuse the defendant's failure to appear, the 4 judge may direct the forfeiture to be discharged upon terms 5 as may be just.

NEW SECTION. Section 79. Surrender of defendant. (1)
At any time before the forfeiture of bail:

8 (a) the defendant may surrender to the court or any9 peace officer of this state; or

10 (b) the surety may arrest the defendant and surrender 11 the defendant to the court or any peace officer of this 12 state.

13 (2) The peace officer must detain the defendant in the 14 officer's custody as upon commitment and shall file a 15 certificate, acknowledging the surrender, in the court 16 having jurisdiction of the defendant. The court may then 17 order the bail exonerated.

18 <u>NEW SECTION.</u> Section 80. Porfeiture procedure. When 19 the order of forfeiture is not discharged, the court having 20 jurisdiction shall proceed with the forfeiture of the bail 21 posted as follows:

(1) if any money has been posted as bail, the court
must pay over the money to the treasury of the city or
county where the money was posted; or

25 (2) if other property is posted as a condition of

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release, the property shall be sold in the same manner as
 execution of sales in civil actions. The proceeds of the
 sale shall be used to satisfy all court costs and prior
 encumbrances, if any, and from the balance, a sufficient sum
 to satisfy the judgment or forfeiture shall be paid into the
 treasury of the city or county where the case is pending.

7 (3) If a surety bond has been posted as bail, execution
8 may be issued against the sureties or the surety company in
9 the same manner as executions in civil actions.

10 NEW SECTION. Section 81. Use of forfeited bail as 11 restitution. (1) If the court enters a judgment declaring 12 bail to be forfeited or if the order of forfeiture is not 13 discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the 14 15 offense for which the court has received bail. Whenever the court believes restitution may be proper, the court shall 16 17 order a hearing for the purpose of considering the nature 18 and extent of the victim's pecuniary loss as defined by law. 19 (2) If the court finds that restitution is appropriate, 20 the court shall order restitution in an amount not exceeding 21 the amount of the victim's complaint or the amount of the 22 victim's pecuniary loss.

(3) An order to require restitution is a judgment
against the defendant and the defendant's sureties, and the
court may order the restitution to be made by payment of

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1	money deposited as bail. Any balance of the bail money must
2	be disposed of in the manner prescribed in [section 80].
3	(4) A determination or decision under this section is
4	not admissible as evidence in any other civil action and is
5	not res judicata in any civil action.
6	NEW SECTION. Section 82. Appearance of the arrested
7	person. Any person arrested, whether with or without a
8	warrant, shall be taken without unnecessary delay before the
9	nearest and most accessible judge for an initial appearance.
10	NEW SECTION. Section 83. Duty of the court. (1) The
11	judge shall inform the defendant:
12	<ul><li>(a) of the charge or charges against the defendant;</li></ul>
13	<ul><li>(b) of the defendant's right to counsel;</li></ul>
14	(c) of the defendant's right to have counsel assigned
15	by a court of record in accordance with (section 58);
16	(d) of the general circumstances under which the
17	defendant may obtain pretrial release:
18	(e) of the defendant's right to refuse to make a
19	statement and that any statement made by the defendant may
20	be offered in evidence at the defendant's trial: and
21	(f) of the defendant's right to a judicial
22	determination of whether probable cause exists if the charge
23	is by complaint alleging the commission of a felony.
24	(2) The judge shall admit the defendant to bail as
25	provided by law.

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<u>NEW SECTION.</u> Section 84. Preliminary examination -- when held. (1) After the initial appearance, in all cases
 where the charge is triable in district court, the justice
 court shall, within a reasonable time, hold a preliminary
 examination unless:

6 (a) the defendant waives a preliminary examination;

7 (b) the district court has granted leave to file an8 information;

9 (c) an indictment has been returned; or

10 (d) the case is triable in a justice court.

11 <u>NEW SECTION.</u> Section 85. Waiver. If the defendant 12 waives the preliminary examination, the justice shall hold 13 the defendant to answer to the court having jurisdiction of 14 the offense.

15 <u>NEW SECTION.</u> Section 86. Presentation of evidence. (1) 16 The defendant may not enter a plea. The judge shall hear the 17 evidence without unnecessary delay. All witnesses must be 18 examined in the presence of the defendant. The defendant may 19 cross-examine witnesses against him and may introduce 20 evidence in his own behalf.

(2) During the examination of any witness or when the
defendant is making a statement or testifying, the judge
may, and on the request of the defendant or state shall,
exclude all other witnesses. The judge may also cause the
witnesses to be kept separate and to be prevented from

(3) Objections to evidence on the ground that it was
acquired by unlawful means are not properly made at the
preliminary examination. Motions to suppress must be made
to the trial court as provided in (section 173).
<u>NEW SECTION.</u> Section 87. Disposition of the defendant.
(1) If from the evidence it appears that there is probable

communicating with each other until all are examined.

8 cause to believe that an offense has been committed and that 9 the defendant committed it, the judge shall hold the 10 defendant to answer to the court having jurisdiction of the 11 offense.

12 (2) If from the evidence it appears that there is 13 insufficient probable cause to believe that an offense has 14 been committed and that the defendant committed it, the 15 judge shall dismiss the complaint and discharge the 16 defendant. The discharge of the defendant may not preclude 17 the state from instituting a subsequent prosecution for the 18 same offense.

<u>NEW SECTION.</u> Section 88. Record of preliminary
examination. (1) The testimony of each witness must be taken
by a court-appointed stenographer upon demand by the county
attorney, the defendant, or the defendant's counsel.

23 (2) After concluding the proceeding, if the justice
24 holds the defendant to answer, the justice shall transmit
25 immediately to the clerk of the court having jurisdiction of

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the offense all papers in the proceeding and any bail taken
 by the justice.

NEW SECTION. Section 89. Methods of commencing
 prosecution. A prosecution may be commenced by:

5 (1) a complaint;

6 (2) an information following a preliminary examination7 or waiver of a preliminary examination;

8 (3) an information after leave of court has been9 granted; or

10 (4) an indictment.

11 <u>NEW SECTION.</u> Section 90. Required methods. (1) All 12 prosecutions of offenses charged in the district courts 13 shall be by indictment or information.

14 (2) All other prosecutions of offenses shall be by15 complaint.

16 <u>NEW SECTION.</u> Section 91. Filing a complaint. (1) When 17 a complaint is precented to a court charging a person with 18 the commission of an offense, the court may examine the 19 complainant and any affidavits, if filed, to determine 20 whether a charge may be filed.

(2) If it appears from any affidavit filed with the charge, or from testimony of the complainant that there is probable cause to believe that an offense has been committed and that the person against whom the charge is made has committed it, the court may issue a warrant of arrest. .

NEW SECTION. Section 92. Amending a complaint. A 1 complaint may be amended, with leave of court, under the 2 same circumstances and in the same manner as an information. 3 NEW SECTION. Section 93. Leave to file. (1) The county 4 attorney may apply directly to the district court for 5 permission to file an information against a named defendant. б If the defendant named is a district court judge, the county 7 attorney shall apply directly to the supreme court for leave 8 to file the information. 9

10 (2) An application must be by affidavit supported by 11 such evidence as the judge or chief justice may require. If 12 it appears that there is probable cause to believe that an 13 offense has been committed by the defendant, the judge or 14 chief justice shall grant leave to file the information; 15 otherwise the application shall be denied.

16 (3) When leave to file an information has been granted,
17 a warrant or summons may issue for the defendant's arrest or
18 appearance.

19 (4) When leave is granted to file an information 20 against a district court judge, the chief justice shall 21 designate and direct a judge of the district court of 22 another district to preside at the trial of the information 23 and hear and determine all pleas and motions affecting the 24 defendant under the information before and after judgment. 25 All necessary records shall be transferred to the clerk of

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the district court of the district in which the action
 arose.

NEW SECTION. Section 94. Amending an information as to 3 4 substance. (1) The court shall grant leave to amend an information as to matters of substance at any time, but not 5 less than 5 days before trial, provided that a motion is 6 timely filed, states the nature of the proposed amendment, 7 and is accompanied by an affidavit stating facts which show 8 the existence of probable cause to support the charge as 9 amended. A copy of the proposed amended information shall be 10 included with the motion to amend an information. 11

12 (2) If the court grants leave to amend the information,
13 the defendant shall be arraigned on the amended information
14 without unreasonable delay and shall be given a reasonable
15 period of time to prepare for trial on the amended
16 information.

17 <u>NEW SECTION.</u> Section 95. Amending an information as to 18 form. The court may permit an information to be amended as 19 to form at any time before verdict or finding if no 20 additional or different offense is charged and if 21 substantial rights of the defendant are not prejudiced.

22 <u>NEW SECTION.</u> Section 96. Time for filing information. 23 (1) After a finding of probable cause following a 24 preliminary examination or waiver of a preliminary 25 examination, or after leave of court has been granted, the county attorney shall file within 30 days in the proper
 district court an information charging the defendant with
 the offense or any other offense supported by probable
 cause.

5 (2) The court, unless good cause to the contrary is 6 shown, shall dismiss the prosecution if an information is 7 not filed within 30 days as required in subsection (1).

8 <u>NEW SECTION.</u> Section 97. Summoning grand jury. (1) A 9 grand jury may only be drawn or summoned when the district 10 judge, in his discretion, considers a grand jury to be in 11 the public interest and orders the grand jury to be drawn or 12 summoned. The composition and drawing of a grand jury shall 13 be in accordance with Title 3, chapter 15, part 6.

14 (2) The district judge may direct the selection of one
15 or more alternate jurors who shall sit as regular jurors
16 before an indictment is found or a grand jury investigation
17 is concluded. If a member of the jury becomes unable to
18 perform his duty, the juror may be replaced by an alternate.

19 <u>NEW SECTION.</u> Section 98. Challenges to grand jury or 20 grand jurors. (1) The attorney general or county attorney 21 may challenge the panel of a grand jury on the ground that 22 the grand jury was not selected, drawn, or summoned 23 according to law and may challenge an individual juror on 24 the ground that the juror is not legally qualified. 25 Challenges shall be made before the administration of the

oath of the jurors, may be oral or in writing, and shall be
 tried and decided by the court.

3 (2) A motion to dismiss the indictment may be based on the grounds that a grand jury was not selected, drawn, or 4 summoned according to law or that the individual juror was 5 not legally qualified. An indictment may not be dismissed 6 on grounds that one or more members are not legally 7 gualified if it appears from the record kept pursuant to 8 [sections 97 through 112] that eight or more jurors, after 9 deducting those not legally gualified, concurred in finding 10 11 the indictment.

12 <u>NEW SECTION.</u> Section 99. Excuse or discharge of grand 13 jurors. Any time for cause shown, the court may excuse or 14 discharge a juror or jurors either temporarily or 15 permanently and, in the latter event, the court may impanel 16 another person or persons in place of the juror or jurors 17 discharged.

NEW SECTION. Section 100. Foreman. The court shall 18 appoint one of the jurors to be a foreman. The foreman shall 19 have the power to administer oaths or affirmations and shall 20 sign all indictments. The foreman or another juror 21 designated by the foreman shall keep a record of the number 22 of jurors concurring in the finding of every indictment and 23 shall file the record with the clerk of court, but the 24 record may not be made public except on order of the court. 25

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1 <u>NEW SECTION.</u> Section 101. Appointing special 2 prosecutor. When the county attorney or attorney general is 3 the subject of the grand jury investigation, the court shall 4 appoint a special prosecutor. If a special prosecutor is 5 appointed, the county attorney's or attorney general's 6 office may not participate in an official capacity, but only 7 as witnesses.

NEW SECTION. Section 102. Charge to the grand jury. 8 When a grand jury is impaneled and sworn, it shall be 9 charged by the judge who summoned it. In making the charge, 10 the court shall instruct the jury as to its duties and the 11 matters which jurors may consider. The prosecutor may bring 12 additional matters before the grand jury which are 13 consistent with the original charge or are developed during 14 15 the proceedings.

16 <u>NEW SECTION</u>. Section 103. Closed hearing. Subject to 17 any right to an open hearing in contempt proceedings, the 18 court shall order a hearing on matters affecting a grand 19 jury proceeding to be closed. This rule may not affect a 20 defendant's discovery rights after the filing of the 21 indictment.

22 <u>NEW SECTION.</u> Section 104. Power and duties of grand 23 jurors. The grand jury shall inquire into those matters as 24 directed by the court summoning the jury and other matters 25 as presented by the prosecutor.

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<u>NEW SECTION.</u> Section 105. Subpoena of witnesses. (1) A
 subpoena requiring the attendance of a witness before the
 grand jury may be signed and issued by the county attorney,
 by the foreman of the grand jury, or by the judge of the
 district court.

6 (2) The fees and mileage of witnesses subpoenaed 7 pursuant to this section shall be the same as required in 8 criminal actions.

9 (3) All provisions relating to subpoenas in criminal 10 actions apply to subpoenas issued pursuant to this section, 11 including provisions of [sections 182 through 190].

12 <u>NEW SECTION.</u> Section 106. Reception of evidence. In 13 the investigation of a charge, the grand jury shall receive 14 no other evidence than that given by witnesses produced and 15 sworn before it, furnished by legal evidence, or the 16 deposition of a witness.

17 <u>NEW SECTION.</u> Section 107. Advice and assistance to 18 grand jury. (i) The grand jury may at all times ask the 19 advice of the judge. Unless his advice is asked, the judge 20 may not be present during sessions of the grand jury.

21 (2) The prosecutor may at all times appear before the 22 grand jury for the purpose of giving information or advice 23 relative to any matter cognizable by the grand jury and may 24 interrogate witnesses before the grand jury whenever he 25 thinks it necessary. (3) Subject to the approval of the court, the county
 attorney may employ a special prosecutor, investigators,
 interpreters, and experts at an agreed compensation to be
 first approved by the court.

5 <u>NEW SECTION.</u> Section 108. Who may be present. The 6 prosecutor, witnesses under examination, interpreters when 7 needed and, for the purpose of taking the evidence, a 8 stenographer or operator of a recording device may be 9 present while the grand jury is in session. No person other 10 than the jurors may be present while the grand jury is 11 deliberating or voting.

12 <u>NEW SECTION.</u> Section 109. Recorded proceedings. (1) 13 The grand jury shall appoint a stenographer to take in 14 shorthand the testimony of witnesses, or the testimony may 15 be taken by a recording device, but the record shall include 16 the testimony of all witnesses on that particular 17 investigation.

18 (2) The stenographic reporter or operator of a
19 recording device shall, within 30 days after an indictment
20 has been found, certify and file with the clerk of the
21 district court the shorthand notes or the recordings made
22 and an original transcript of the notes or recordings.

23 (3) An unintentional failure of any recording to
24 reproduce all or any portion of a proceeding may not affect
25 the validity of the prosecution.

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NEW SECTION. Section 110. Secrecy of proceedings. (1) 1 2 A grand juror, an interpreter, a stenographer, an operator of a recording device, any typist who transcribes recorded З 4 testimony, or the prosecutor may not disclose matters 5 occurring before the grand jury except as otherwise provided 6 for in [this act]. No obligation of secrecy may be imposed on any person except in accordance with this section. A 7 . 8 knowing violation of this section may be punishable as 9 contempt of court.

10 (2) Disclosure of matters occurring before the grand 11 jury, other than its deliberations and the vote of any 12 juror, may be made to any prosecutor or investigator of this 13 state, and prosecutors or investigators from any other 14 state, or the federal government for use in the performance 15 of their duty.

16 (3) Disclosure otherwise prohibited by this section of17 matters occurring before the grand jury may also be made:

18 (a) if directed by the court preliminary to or in19 connection with a judicial proceeding;

20 (b) when permitted by the court at the request of the 21 defendant, upon a showing that grounds may exist for a 22 motion to dismiss the indictment because of matters 23 occurring before the grand jury; or

(c) when permitted by the court, to a defendantpursuant to a proper discovery motion.

<u>NEW SECTION.</u> Section 111. Discharge of jury. When the
 grand jury certifies completion of business before it and
 the court concurs, it shall be discharged by the court.

NEW SECTION. Section 112. Expenses of grand jury. (1) Δ Except as provided in subsection (2), all expenses of the 5 grand jury, including special prosecutors, experts, 6 investigators, and interpreters, if any, must be paid by the 7 treasurer of the county out of the general fund of the 8 9 county, upon warrants drawn by the county auditor or the 10 clerk of the district court upon a written order of the 11 judge of the district court of the county.

12 (2) If the county has a district court fund, all
13 expenses of a grand jury must be paid out of that fund.

14 (3) Subject to the procedures established by law, the 15 state shall reimburse the court for juror and witness fees 16 and witness expenses. The county shall deposit the amount 17 reimbursed in the general fund unless the county has a 18 district court fund. If the county has a district court fund, the amount reimbursed must be deposited in that fund. 19 20 NEW SECTION. Section 113. Finding an indictment. (1) 21 The grand jury shall find an indictment when all the 22 evidence before it taken together would in its judgment

warrant a conviction by a trial jury. An indictment may be
found only upon the concurrence of at least eight grand
jurors.

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1 (2) If a complaint or information is pending against 2 the defendant and eight jurors do not concur in finding an 3 indictment, the foreman shall report the decision to the 4 district judge.

5 <u>NEW SECTION.</u> Section 114. Presenting an indictment. 6 (1) An indictment, when found by the grand jury, must be 7 signed by the foreman and presented by the foreman in the 8 presence of the grand jury to the court and must be filed 9 with the clerk. The court shall then issue a warrant or 10 summons for the defendant.

11 (2) The court may direct that an indictment shall be 12 kept secret until the defendant is in custody or has 13 appeared to answer the charge and a person may not disclose 14 the execution of a warrant or summons.

NEW SECTION. Section 115. Form of charge. (1) The 15 charge shall be in writing in the name of the state or 16 appropriate municipality and specify the court in which the 17 18 charge is filed. The charge shall be a plain, concise, and 19 definite statement of the essential facts constituting the offense charged, including the name of the offense, whether 20 21 the offense is a misdemeanor or felony, the name of the 22 person charged, and the time and place of its occurrence as 23 definitely as can be determined. The charge shall state for each count the official or customary citation of the 24 statute, rule, regulation, or other provision of law which 25

1 the defendant is alleged to have violated.

2 (2) If the charge is by information or indictment, it
3 shall include endorsed on the information or indictment the
4 names of the witnesses for the state, if known.

5 (3) If the charge is by complaint, it shall be signed 6 on oath by a person having knowledge of the facts or by the 7 prosecuting attorney.

8 (4) If the charge is by information, it shall be signed

9 by the prosecuting attorney. If the charge is by indictment,

10 it shall be signed by a foreman of the grand jury.

(5) The court, on motion of the defendant, may strike
 surplusage from the indictment or information.

13 (6) A charge may not be dismissed because of a formal
14 defect which does not tend to prejudice a substantial right
15 of the defendant.

16 NEW SECTION. Section 116. Joinder of offenses. (1) Two 17 or more offenses, or different statements of the same offense, may be charged in the same charging document in a 18 separate court, or alternatively, if the offenses charged, 19 20 whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transaction or on 21 22 two or more acts or transactions connected together or constituting parts of a common scheme or plan. Allegations 23 made in one count may be incorporated by reference in 24 another count. 25

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(2) If two or more charging documents are filed in the
 case, the court may order them to be consolidated.

3 (3) The prosecution is not required to elect between 4 the different offenses set forth in the charging document 5 and the defendant may be convicted of any number of offenses 6 charged except as provided in [section 118]. Each offense of 7 which the defendant is convicted must be stated in the 8 verdict or the finding of the court.

NEW SECTION. Section 117. Joinder of defendants. Two 9 10 or more defendants may be charged in the same indictment, 11 information, or complaint if they are alleged to have participated in the same act or transaction or in the same 12 series of acts or transactions constituting an offense or 13 offenses. The defendants may be charged in one or more 14 counts together or separately and all of the defendants need 15 not be charged in each count. 16

17 NEW SECTION. Section 118. Multiple charges. (1) When 18 the same transaction may establish the commission of more 19 than one offense, a person charged with the conduct may be 20 prosecuted for each offense.

21 (2) A defendant may not, however, be convicted of more22 than one offense if:

23 (a) one offense is included in the other;

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

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

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3 (d) offenses differ only in that one is defined to4 prohibit a specific instance of the conduct; or

5 (e) the offense is defined to prohibit a continuing 6 course of conduct and the defendant's course of conduct was 7 interrupted, unless the law provides that the specific 8 periods of the conduct constitute separate offenses.

NEW SECTION, Section 119. Prosecution based on same 9 transaction barred by former prosecution. (1) When two or 10 more offenses are known to the prosecuting attorney, are 11 supported by probable cause, are consummated before the 12 original charge, and jurisdiction and venue of the offenses 13 lie in a single court, a prosecution based upon the same 14 transaction as a former prosecution is barred under the 15 16 following circumstances:

17 (a) the former prosecution resulted in an acquittal.
18 There is an acquittal whenever the prosecution results in a
19 finding of not guilty by the trier of fact or in a
20 determination that there is insufficient evidence to warrant
21 a conviction. A finding of guilty of a lesser included
22 offense that is subsequently set aside is an acquittal of
23 the greater offense that was charged.

(b) the former prosecution resulted in a convictionthat has not been set aside, reversed, or vacated;

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1 (c) after a charge had been filed the prosecution was 2 terminated by a final order or judgment for the defendant 3 which has not been set aside, reversed, or vacated;

4 (d) the former prosecution was terminated for reasons
5 not amounting to an acquittal and takes place:

6 (i) in a jury trial, after the jury was sworn but7 before verdict; or

8 (ii) in a nonjury trial, after the first witness is
9 sworn but before the verdict.

10 (2) A prosecution based upon the same transaction as a
11 former prosecution is not barred under subsection (1)(d)
12 when:

13 (a) the defendant consents to the termination or waives14 his right to object to the termination; or

15 (b) the trial court finds the termination is necessary 16 because:

17 (i) it is physically impossible to proceed with the18 trial in conformity with law;

(ii) there is a legal defect in the proceedings which
would make any judgment entered upon a verdict reversible as
a matter of law;

(iii) prejudicial conduct makes it impossible to proceed
with the trial without manifest injustice to either the
defendant or the state;

25 (iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror during voir dire
 prevent a fair trial.

NEW SECTION. Section 120. Former 3 prosecution in another jurisdiction. When conduct constitutes an offense 4 5 within the concurrent jurisdiction of this state and of the United States, or another state, or of two courts of 6 7 separate, overlapping, or concurrent jurisdictions in this 8 state, a prosecution in any other jurisdiction is a bar to a 9 subsequent prosecution in this state under the same 10 circumstances barring further prosecution in this state if: 11 (1) the first prosecution resulted in an accustal or 12 in a conviction and the subsequent prosecution is based on 13 an offense arising out of the same transaction; or 14 (2) the former prosecution was terminated, after the 15 charge had been filed, by an acquittal or by a final order 16 or judgment for the defendant which has not been set aside, 17 reversed, or vacated; and the acquittal, final order, or 18 judgment necessarily required a determination. inconsistent 19 with a fact which must be established for conviction of the 20 offense for which the defendant is subsequently prosecuted. NEW SECTION. Section 121. Former prosecution not a 21 22 bar. A prosecution is not a bar if:

23 (1) the former prosecution was before a court which
24 lacked jurisdiction over the defendant or the offense; or
25 (2) the former prosecution resulted in a judgment of

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conviction which was held invalid in a postconviction
 hearing.

3 NEW SECTION. Section 122. Pretrial proceedings -exclusion of public and sealing of records. (1) Except as 4 5 provided in this section, pretrial proceedings and their 6 record shall be open to the public. If, at the pretrial 7 proceedings, testimony or evidence is advanced that is 8 likely to threaten the fairness of a trial, the presiding 9 officer shall advise those present of the danger and shall 10 seek the voluntary cooperation of the news media in delaying 11 dissemination of potentially prejudicial information by 12 means of public communication until the impaneling of the 13 jury or until an earlier time consistent with the fair 14 administration of justice.

15 (2) The defendant may move that all or part of the 16 proceeding be closed to the public or, with the consent of 17 the defendant, the judge may take action on his own motion. 18 (3) The judge may close a preliminary hearing, bail 19 hearing, or any other pretrial proceedings, including a 20 motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial
proceeding and its record would create a clear and present
danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trialfairness cannot be avoided by any reasonable alternative

1 means.

2 (4) Whenever under this section all or part of any 3 pretrial proceeding is held in chambers or otherwise closed 4 to the public, a complete record shall be kept and made 5 available to the public following the completion of trial or 6 earlier if consistent with trial fairness.

7 (5) When the judge determines that a document filed in 8 support of a charge or warrant would present a clear and 9 present danger to the defendant's right to a fair trial, all 10 or part of the document shall be sealed until the trial is 11 completed or earlier if consistent with trial fairness.

NEW SECTION. Section 123. Misdemeanor offenses. In all cases in which the defendant is charged with a misdemeanor offense, he may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

17 <u>NEW SECTION.</u> Section 124. Felony offenses. (1) Except 18 as otherwise provided in [this act], the defendant in all 19 cases in which a felony is charged must be present at the 20 initial appearance, arraignment, entry of plea, preliminary 21 examination, trial, at the time of imposition of sentence, 22 and when otherwise required by the court.

23 (2) The defendant may be present at all other24 proceedings.

25 (3) Presence of the defendant is not required before

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1 the supreme court.

2 <u>NEW SECTION.</u> Section 125. Absence of defendant from 3 trial. (1) In a misdemeanor case, if the defendant fails to 4 appear in person, either at the time set for trial or at any 5 time during the course of the trial, and:

6 (a) if the defendant's counsel is authorized to act on
7 the defendant's behalf, the court shall proceed with the
8 trial unless good cause for continuance exists; or

9 (b) if the defendant's counsel is not authorized to act 10 on the defendant's behalf or if the defendant is not 11 represented by counsel, the court, in its discretion, may do 12 one or more of the following:

13 (i) order a continuance;

14 (ii) order bail forfeited;

15 (iii) issue a bench warrant; or

16 (iv) proceed with the trial after finding that the 17 defendant had knowledge of the trial date and is voluntarily 18 absent.

19 (2) The absence of the defendant during the trial of a 20 felony offense, after the trial has commenced in the 21 defendant's presence, may not prevent the trial from 22 continuing, up to and including the return of a verdict, if: 23 (a) the defendant has been removed from the courtroom 24 for disruptive behavior after receiving a warning that 25 removal will result if the defendant persists in conduct 1 that is so disruptive that the trial cannot be carried on

2 with the defendant in the courtroom; or

3 (b) the defendant is voluntarily absent and the offense
4 is not one which is punishable by death.

5 (3) Nothing in this section limits the right of the 6 court to order the defendant to be personally present at the 7 trial for purposes of identification unless counsel 8 stipulates to the issue of identity.

9 <u>NEW SECTION.</u> Section 126. Absence of defendant on 10 receiving verdict or at sentencing. (1) In all misdemeanor 11 cases, the verdict may be returned and the sentence imposed 12 without the defendant being present.

13 (2) In all felony cases, the defendant must appear in 14 person when the verdict is returned or sentence is imposed 15 unless, after the exercise of due diligence to procure the 16 defendant's presence, the court finds that it is in the 17 interest of justice that the verdict be received and 18 sentence be pronounced in the defendant's absence.

19 <u>NEW SECTION.</u> Section 127. Pretrial diversion. (1) The 20 prosecutor and defendant, who has counsel or who has 21 voluntarily waived counsel, may agree that a prosecution 22 will be deferred for a specified period of time based on any 23 or all of the following conditions:

24 (a) that the defendant not commit any offense;

25 (b) that the defendant not engage in specified

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activities, conduct, and associations bearing a relationship
 to the conduct upon which the charge against him is based;
 (c) that the defendant participate in a supervised
 rehabilitation program that may include treatment,
 counseling, training, or eduction;

6 (d) that the defendant make restitution in a specified
7 manner for harm or loss caused by the offense; or

8 (e) any other reasonable conditions.

9 (2) The agreement may include stipulations concerning 10 the admissibility of evidence, specified testimony, or 11 dispositions if the deferral of the prosecution is 12 terminated and there is a trial on the charge. The 13 agreement shall be in writing signed by the parties and 14 state that the defendant waives his right to speedy trial 15 for the period of deferral.

16 (3) The prosecution shall be deferred for the period 1° specified in the agreement unless there has been a violation 18 of its terms.

19 (4) The agreement shall be terminated and the
20 prosecution automatically dismissed with prejudice upon
21 expiration and compliance with the terms of the agreement.
22 <u>NEW SECTION.</u> Section 128. Place of arraignment. The

23 defendant shall be arraigned in the court that has trial24 jurisdiction of the charge.

25 NEW SECTION. Section 129. Manner of conducting

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arraignment. (1) Arraignment shall be conducted in open
 court and shall consist of reading the charge to the
 defendant or stating to the defendant the substance of the
 charge and calling on the defendant to plead to the charge.
 The defendant shall be given a copy of the charging document
 before being called upon to plead.

7 (2) The court shall inquire of the defendant, or the 8 defendant's counsel, the defendant's true name, and if the 9 defendant's true name is given as any other than that used 10 in the charge, the court must order the defendant's name to 11 be substituted for the name under which the defendant is 12 charged.

(3) The court shall determine whether the defendant is
under any disability which would prevent the court in its
discretion from proceeding with the arraignment. The
arraignment may be continued until the court determines the
defendant is able to proceed.

18 <u>NEW SECTION.</u> Section 130. Plea alternatives. (1) A
19 defendant may plead not guilty or guilty. If a defendant
20 refuses to plead, or if a defendant corporation fails to
21 appear, the court shall enter a plea of not guilty.

(2) With the approval of the court and the consent of
the prosecuting attorney, a defendant may enter a plea of
guilty reserving the right, on appeal from the judgment, to
review the adverse determination of any specified pretrial

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motion. If the defendant prevails on appeal, the defendant
 shall be allowed to withdraw the plea.

3 <u>NEW SECTION.</u> Section 131. Advice to defendant. Before 4 accepting a plea of guilty, the court shall determine that 5 the defendant understands the following:

6 (1) the nature of the charge for which the plea is 7 offered, the mandatory minimum penalty provided by law, if 8 any, the maximum penalty provided by law, including the 9 effect of any penalty enhancement provision or special 10 parole restriction and, when applicable, that the court may 11 also order the defendant to make restitution of the costs 12 and assessments provided by law; and

(2) if the defendant is not represented by an attorney,
that he has the right to be represented by an attorney at
every stage of the proceeding against him and, if necessary,
one will be appointed to represent the defendant; and

17 (3) that the defendant has a right to plead not guilty 18 or to persist in that plea if it has already been made, and 19 he has the right to be tried by a jury and at the trial has 20 a right to the assistance of counsel, the right to confront 21 and cross-examine witnesses against the defendant, and the 22 right not to be compelled to reveal personally incriminating 23 information; and

(4) that if the defendant pleads guilty in fulfillmentof a plea agreement, the court is not required to accept the

terms of an agreement, and that the defendant may not be
 entitled to withdraw the plea if the agreement is not
 accepted pursuant to (section 133); and

4 (5) that if the defendant's plea of guilty is accepted
5 by the courts there will not be a further trial of any kind,
6 so that by pleading guilty the defendant waives the right to
7 a trial.

NEW SECTION. Section 132. Insuring plea is voluntary. 8 The court may not accept a plea of guilty without first 9 determining that the plea is voluntary and not the result of 10 11 force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the 12 13 defendant's willingness to plead quilty results from prior 14 discussions between the prosecuting attorney and the 15 defendant or the defendant's attorney.

16 <u>NEW SECTION.</u> Section 133. Plea agreement procedure. 17 (1) The prosecuting attorney and the attorney for the 18 defendant, or the defendant when acting pro se, may engage 19 in discussions with a view toward reaching an agreement 20 that, upon the entering of a plea of guilty to a charged 21 offense or to a lesser or related offense, the prosecuting 22 attorney will do any of the following:

23 (a) move for dismissal of other charges;

24 (b) agree that a specific sentence is the appropriate25 disposition of the case; or

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1 (c) make a recommendation, or agree not to oppose the 2 defendant's request, for a particular sentence, with the 3 understanding that the recommendation or request may not be 4 binding upon the court.

5 (2) If a plea agreement has been reached by the 6 parties, the court shall, on the record, require a 7 disclosure of the agreement in open court or, on a showing 8 of good cause in camera, at the time the plea is offered. If 9 the agreement is of the type specified in subsections (1)(a)10 and (1)(c), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection 11 12 until there has been an opportunity to consider the 13 presentence report. If the agreement is of the type 14 specified in section (1)(c), the court shall advise the 15 defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no 16 17 right to withdraw the plea.

18 (3) If the court accepts a plea agreement, the court
19 shall inform the defendant that it will embody in the
20 judgment and sentence the disposition provided for in the
21 plea agreement.

(4) If the court rejects the plea agreement, the court
shall, on the record, inform the parties of this fact and
advise the defendant that the court is not bound by the plea
agreement, afford the defendant an opportunity to withdraw

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the plea, and advise the defendant that if he persists in
 the guilty plea the disposition of the case may be less
 favorable to the defendant than that contemplated by the
 plea agreement.

5 <u>NEW SECTION.</u> Section 134. Determining the accuracy of 6 plea. (1) The court may not accept a guilty plea without 7 determining that there is a factual basis for the plea in 8 felonies or misdemeanors resulting in incarcetation.

9 (2) A defendant who is unwilling to admit to any 10 element of the offense which would provide a factual basis 11 for a plea of guilty may, with the consent of the court, 12 enter a plea of guilty to the offense if the defendant 13 considers the plea to be in his best interest and a factual 14 basis exists for the plea.

15 <u>NEW SECTION.</u> Section 135. Harmless error. Any variance 16 from the procedure required by this section which does not 17 affect substantial rights of the defendant shall be 18 disregarded.

19 NEW SECTION. Section 136. Disclosure by the 20 prosecution. (1) Upon request, the prosecutor shall make 21 available to the defendant for examination and reproduction 22 or testing the following material and information within the 23 prosecutor's possession or control:

24 (a) the names, addresses, and statements of all persons25 whom the prosecutor may call as withesses in the

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1 case-in-chief;

2 (b) all written or oral statements of the defendant and
3 of any other person who will be tried with the defendant;

4 (c) all written reports or statements of experts who 5 have personally examined the accused or any evidence in the 6 particular case, together with the results of physical 7 examinations, scientific tests, experiments, or comparisons; 8 (d) all papers, documents, photographs, or tangible 9 objects that the prosecutor may use at trial or that were 10 obtained from or purportedly belong to the defendant; and

11 (e) all material or information that tends to mitigate 12 or negate the defendant's guilt as to the offense charged or 13 that would tend to reduce the defendant's potential 14 sentence.

(2) The prosecutor may impose reasonable conditions,
including an appropriate stipulation concerning chain of
custody, to protect physical evidence produced under section
(1)(d).

19 (3) At the same time, the prosecutor shall inform the 20 defendant of, and make available to the defendant for 21 examination and reproduction, any written or recorded 22 material or information within the prosecutor's control 23 regarding:

(a) whether there has been any electronic surveillanceof any conversations to which the defendant was a party;

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(b) whether an investigative subpoend has been executed
 in connection with the case; and

3 (c) whether the case has involved an informant, and, if 4 so, the informant's identity if the defendant is entitled to 5 know either or both of these facts under Rule 502 of the 6 Montana Rules of Evidence.

7 (3) The prosecutor's obligation of disclosure extends
8 to material and information in the possession or control of
9 members of the prosecutor's staff and of any other persons
10 who have participated in the investigation or evaluation of
11 the case.

(4) Upon motion showing that the defendant has 12 substantial need in the preparation of the case for 13 additional material or information not otherwise provided 14 undue for and that the defendant is unable, without 15 hardship, to obtain the substantial equivalent by other 16 means, the court in its discretion may order any person to 17 make it available to the defendant. The court may, upon the 18 request of any person affected by the order, vacate or 19 modify the order if compliance would be unreasonable or 20 oppressive. The prosecutor may not be required to disclose 21 or prepare summaries of witnesses' testimony. 22

(5) The prosecutor shall furnish to the defendant no
later than 5 days before trial or at a later time as the
court may for good cause permit, together with their

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statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to the defenses of alibi, compulsion, entrapment, justifiable use of force, mistaken identity, or good character or the defense that the defendant did not have a particular state of mind that is an element of the offense charged.

7 <u>NEW SECTION.</u> Section 137. Disclosure by the defendant. 8 (1) At any time after the filing in district court of an 9 indictment or information, the defendant, in connection with 10 the particular crime charged, shall upon written request of 11 the prosecutor and approval of the court:

12 (a) appear in a line-up;

13 (b) speak for identification by witnesses;

14 (c) be fingerprinted, palmprinted, footprinted, or15 voiceprinted;

16 (d) pose for photographs not involving reenactment of 17 an event;

18 (e) try on clothing;

19 (f) permit the taking of samples of hair, blood,
20 saliva, urine, or other specified materials that involve no
21 unreasonable bodily intrusions;

22 (g) provide handwriting samples; or

(h) submit to reasonable physical or medical
inspection. However, such inspection does not include
psychiatric or psychological examination.

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1 (2) Within 10 days after the omnibus hearing in 2 district court or at a later time as the court may for good 3 cause permit, the defendant shall make available to the 4 prosecutor for testing, examination, or reproduction:

5 (a) the names, addresses, and statements of all 6 persons, other than the accused, whom the defendant may call 7 as witnesses in the defense case-in-chief, together with 8 their statements;

9 (b) the names and addresses of experts whom the 10 defendant may call at trial, together with the results of 11 their physical examinations, scientific tests, experiments, 12 or comparisons, including all written reports and statements 13 made by these experts in connection with the particular 14 case; and

15 (c) all papers, documents, photographs, or other16 tangible objects that the defendant may use at trial.

17 (3) The defendant's obligation under this section
18 extends to material and information within the possession or
19 control of the defendant, defendant's counsel and defense
20 counsel's staff or investigators.

(4) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable without undue hardship to obtain the substantial equivalent by other

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means, and that disclosure will not violate the defendant's 1 constitutional rights, the court in its discretion may order 2 3 any person to make material or information available to the prosecutor. The court may, upon request of any person 4 affected by the order, vacate or modify the order if 5 compliance would be unreasonable or oppressive. Defense 6 7 counsel may not be required to prepare or disclose summaries of witness testimony. 8

NEW SECTION. Section 138. Notice of defenses and 9 disclosure of witnesses and their statements. (1) Within 10 10 11 days after the omnibus hearing in district court or at a later time as the court may for good cause permit, the 12 defendant shall provide the prosecutor with a written notice 13 of the defendant's intention to introduce evidence at trial 14 of good character or the defenses of alibi, compulsion, 15 entrapment, justifiable use of force, or mistaken identity. 16 (2) Within 10 days after receiving a report of 17 examination pursuant to [section 151] or at a later time as 18 19 the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the 20 21 intention to introduce evidence at trial of the defense that 22 due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of 23 the offense charged. 24

25 (3) The notice must specify for each defense the names

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and addresses of the persons, other than the defendant, whom
 defense counsel may call as witnesses at trial in support of
 the defense together with all written reports or statements
 made by them concerning the results of physical examination,
 scientific tests, experiments, or comparisons.

(4) Prior to trial the defendant may, upon motion and 6 7 showing of good cause, add to the list of witnesses the of any additional witnesses and disclose their 8 names statements or report as required by this section. After 9 10 trial commences, no witnesses may be called by the defendant 11 in support of these defenses unless the name of the witness 12 is included on the list and the witness's statement or 13 report has been disclosed as required by this section except for good cause shown. 14

NEW SECTION. Section 139. Materials not subject to
 disclosure. (1) Except as provided in this section,
 disclosure is not required for the superseded notes or work
 product of the prosecuting or defense attorney.

19 (2) If exculpatory information is contained in the
20 superseded notes or work product of the prosecution, that
21 information must be disclosed.

22 <u>NEW SECTION.</u> Section 140. Failure to call a witness or 23 raise a defense. The fact that a witness whose name is on a 24 list furnished pursuant to [sections 136 through 146] does 25 not testify or that a matter contained in a pretrial notice

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is not raised may not be commented upon at trial unless the
 court, on motion of a party, allows comment after finding
 that the inclusion of the witness's name or the pretrial
 notice constituted an abuse of the applicable disclosure
 requirement or that other good cause is shown.

6 <u>NEW SECTION.</u> Section 141. Continuing duty to disclose. 7 If at any time after a disclosure has been made any party 8 discovers additional information or material that would be 9 subject to disclosure had it been known at the time of 10 disclosure, the party shall promptly notify all other 11 parties of the existence of the additional information or 12 material and make an appropriate disclosure.

NEW SECTION. Section 142. Investigation not to be impeded. Except as to matters to which discovery is restricted and except as to the defendant's counsel advising the defendant, a party or agent of a party may not discourage or obstruct communication between any person and any party or otherwise obstruct a party's investigation of the case.

NEW SECTION. Section 143. Excision and protective
orders. (1) Upon a motion of any party showing good cause,
the court may at any time order that any disclosure be
deferred or regulated when it finds:

(a) that the disclosure would result in a risk or harmoutweighing any usefulness of the unrestricted disclosure to

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1 any party; and

2 (b) that the risk cannot be eliminated by a less3 substantial restriction of discovery rights.

4 (2) Whenever the court finds, upon motion of any party, 5 that only a portion of a document or other material is 6 discoverable, it may authorize the party disclosing it to 7 excise that portion of the material which is nondiscoverable 8 and disclose the remainder.

9 (3) On motion of the party seeking a protective or 10 excision order or in submitting for the court's 11 determination the discoverability of any material or 12 information, the court may permit that party to present the 13 material or information for the inspection of the judge 14 alone. Counsel for all other parties may, in the discretion 15 of the court, be present when the presentation is made.

16 (4) If the court enters an order that any material or
17 any portion thereof is not discoverable, the entire text of
18 the material must be sealed and preserved in the record in
19 the event of an appeal.

20 <u>NEW SECTION.</u> Section 144. Sanctions. If at any time 21 during the course of the proceeding it is brought to the 22 attention of the court that a party has failed to comply 23 with any of the provisions of (sections 136 through 146) or 24 any order issued pursuant to [sections 136 through 146], the 25 court may impose any sanction that it finds just under the

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1 circumstances, including but not limited to:

2 (1) ordering disclosure of the information not3 previously disclosed;

4 (2) granting a continuance;

5 (3) holding a witness, party, or counsel in contempt6 for an intentional violation;

7 (4) precluding a party from Calling a witness, offering8 evidence, or raising a defense not disclosed; or

9 (5) declaring a mistrial when necessary to prevent a10 miscarriage of justice.

NEW SECTION. Section 145. Compelling testimony or production of evidence -- immunity. (1) Before or during trial in any judicial proceeding, a judge of the district court, upon request by the prosecutor or defense counsel, may require a person to answer any question or produce any evidence, even though personally incriminating, following a grant of use immunity.

(2) If a person is required to give testimony or
produce evidence in accordance with this section in any
investigation or proceeding, compelled testimony or evidence
or any information directly or indirectly derived from
compelled testimony or evidence may not be used against the
witness in any criminal prosecution.

24 (3) Nothing in this section prohibits a prosecutor from
 25 granting immunity from prosecution for or on account of any

transaction, matter, or thing concerning which a witness is compelled to testify if in the prosecutor's sole discretion it is determined that the ends of justice would be served. (4) Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section.

7 <u>NEW SECTION.</u> Section 146. Privileged matters. All 8 matters which are privileged upon the trial are privileged 9 against disclosure through any discovery procedure.

10 <u>NEW SECTION.</u> Section 147. When depositions may be 11 taken. (1) In felony cases if it appears that a prospective 12 witness:

13 (a) is likely to be either unable or otherwise
14 prevented from attending a trial or hearing;

15 (b) is likely to be absent from the state at the time 16 of the trial or hearing; or

(c) is unwilling to provide relevant information to a 17 requesting party, and the witness's testimony is material 18 and necessary in order to prevent a failure of justice, the 19 district court shall, upon motion of any party and proper 20 notice, order that the testimony of the witness be taken by 21 deposition and that any designated book, paper, document, 22 record, recording, or other material not privileged, be 21 introduced at the time the deposition is taken. 24

25 (2) The witness whose deposition is to be taken may be

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required by subpoena to attend at any place designated by
 the district court, taking into account the convenience of
 the parties and of the witness.

(3) If the defendant is charged with a felony and it 4 5 appears upon the affidavit of counsel for a party that good 6 cause exists to believe that a witness will not respond to a 7 subpoena and the administration of justice requires, any 8 district judge may issue an arrest warrant commanding the 9 arrest of a material witness. The arrest warrant shall 10 further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of 11 12 securing his testimony in any criminal proceeding longer than may be necessary to take his deposition. 13

NEW SECTION. Section 148. Procedure 14 for taking depositions. (1) The party at whose instance a deposition is 15 to be taken shall give to every other party reasonable 16 17 written notice of the time and place for taking a 18 deposition. The notice shall state the name and address of 19 each person to be examined. On motion of the party upon whom the notice is served, the district court for cause shown may 20 21 extend or shorten the time or change the place for taking 22 the deposition.

23 (2) A deposition shall be taken in the manner provided
24 in civil actions. The district court, upon request, may
25 direct that any deposition be taken on written

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1 interrogatories in the manner provided in civil actions. 2 However, a deposition may not be taken of a party defendant 3 without his consent, and the scope and manner of examination 4 and cross-examination shall be restricted as would be 5 allowed in the trial itself.

6 (3) The deposition shall be filed with the district 7 court making the order and held until the trial. Either 8 party shall make available to the other party, or the other 9 party's counsel, for examination and use at the taking of 10 the deposition any relevant nonprivileged statement of the 11 witness being deposed which is in the possession of either 12 party.

13 (4) Objections to deposition testimony or evidence or
 14 parts of the testimony or evidence may be reserved for
 15 subsequent determination by the district court.

16 (5) Unless a defendant in custody has waived, in 17 writing, the right to be present at the taking of a 18 deposition, the officer having custody of the defendant 19 shall be notified of the time and place set for the 20 deposition. The officer having custody shall produce the 21 defendant and keep the defendant in the presence of a 22 witness during the deposition.

(6) A defendant not in custody who fails to appear,
without good cause, at the taking of a deposition after
being notified of the time and place set for the deposition

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will be considered to have waived the right to be present as
 provided in [section 125]. The waiver includes a waiver of
 any objection to the taking and use of the deposition based
 upon that right.

(7) Whenever a deposition is taken at the instance of 5 the prosecution, or whenever a deposition is taken at the 6 instance of a defendant who is unable to bear the expense of 7 8 taking a deposition, the district court shall direct that 9 the expense of travel and subsistence of the defendant and 10 the defendant's attorney for attendance at the examination and the cost of the transcript of the deposition shall be 11 12 paid by the state.

NEW SECTION. Section 149. Use of depositions at trial.
Any deposition may be used by any party for any purpose
allowed by the Montana Rules of Evidence.

NEW SECTION. Section 150. Mental disease or defect -fitness to proceed -- state of mind. (1) As used in [sections 150 through 166], the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or anti-social behavior.

(2) A person who, as a result of mental disease or
defect, is unable to understand the proceedings against him
or to assist in his own defense may not be tried, convicted,
or sentenced for the commission of an offense so long as the
incapacity endures.

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1 (3) Evidence that the defendant suffered from a mental 2 disease or defect is admissible to prove that the defendant 3 did or did not have a state of mind which is an element of 4 the offense.

NEW SECTION. Section 151. Examination of defendant. 5 (1) If the defendant or the defendant's counsel files a 6 written motion requesting an examination, or the issue of 7 the defendant's fitness to proceed is raised by the court, 8 prosecution, or defense counsel, the court shall appoint at 9 10 least one gualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the 11 Montana state hospital to designate at least one qualified 12 psychiatrist or licensed clinical psychologist, which 13 designation may be or include himself, to examine and report 14 upon the defendant's mental condition. 15

16 (2) The court may order the defendant to be committed 17 to a hospital or other suitable facility for the purpose of 18 the examination for a period not exceeding 60 days or a 19 longer period as the court determines to be necessary for 20 the purpose and may direct that a qualified psychiatrist or 21 licensed clinical psychologist retained by the defendant be 22 permitted to witness and participate in the examination.

(3) In the examination any method may be employed which
is accepted by the medical or psychological profession for
the examination of those alleged to be suffering from mental

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1 disease or defect.

(4) If the defendant is indigent or the examination
 occurs at the request of the state, the cost of the
 examination must be paid by the county or the state, or
 both, according to procedures established under 3-5-902(1).
 <u>NEW SECTION.</u> Section 152. Prosecution's right to
 examination. (1) When the defense discloses the report of

8 examination to the prosecution or files a notice of the
9 intention to rely on a defense of mental disease or defect,
10 the prosecution shall be entitled to have the defendant
11 examined by a qualified psychiatrist or licensed clinical
12 psychologist.

13 (2) The report of examination shall be disclosed to the14 defense within 10 days of its receipt by the prosecution.

NEW SECTION. Section 153. Access to defendant for 15 examination. If either the defendant or the prosecution 16 wishes the defendant to be examined by a qualified 17 psychiatrist or licensed clinical psychologist selected by 18 19 the one proposing the examination in order to determine the 20 defendant's fitness to proceed or whether the defendant had, at the time the offense was committed, a particular state of 21 mind which is an essential element of the offense, the 22 23 examiner shall be permitted to have reasonable access to the 24 defendant for the purpose of the examination.

25

NEW SECTION. Section 154. Report of examination. (1) A

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1 report of the examination shall include the following: 2 (a) a description of the nature of the examination; 3 diagnosis of the mental condition of the (b) a 4 defendant, including an opinion as to whether the defendant 5 is seriously mentally ill as defined in 53-21-102(14); 6 (c) if the defendant suffers from a mental disease or 7 defect, an opinion as to the defendant's capacity to 8 understand the proceedings against him and to assist in his 9 own defense; 10 (d) when directed by the court, an opinion as to the 11 capacity of the defendant to have a particular state of mind 12 which is an element of the offense charged; and 13 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or 14 defect, to appreciate the criminality of his conduct or to 15 16 conform his conduct to the requirement of law. 17 (2) If the examination cannot be conducted by reason of 18 the unwillingness of the defendant to participate in the 19 examination, the report shall state that fact and include, 20 if possible, an opinion as to whether the unwillingness of 21 the defendant was the result of mental disease or defect. 22 NEW SECTION. Section 155. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist or 23 licensed clinical psychologist who reported under (section 24 151 or 154) may be called as a witness by the prosecutor or 25

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by the defense. Both the prosecution and the defense may 1 summon any other qualified psychiatrist or licensed clinical 2 psychologist to testify, but no one who has not examined the 3 defendant is competent to testify to an expert opinion with 4 respect to the mental condition of the defendant as 5 distinguished from the validity of the procedure followed or 6 7 the general scientific propositions stated by another witness. 8

9 (2) When a psychiatrist or licensed clinical osychologist who has examined the defendant testifies 10 concerning the defendant's mental condition, he may make a 11 statement as to the nature of his examination and his 12 medical or psychological diagnosis of the mental condition 13 of the defendant. The expert may make any explanation 14 15 reasonably serving to clarify his examination and diagnosis, and the expert may be cross-examined as to any matter 16 bearing on his competency or credibility or the validity of 17 his examination or medical or psychological diagnosis. A 18 psychiatrist or licensed clinical psychologist may not offer 19 an opinion to the jury on the ultimate issue of whether the 20 defendant did or did not have a particular state of mind or 21 22 the capacity to have a particular state of mind which is an 23 element of the offense charged.

24 <u>NEW SECTION.</u> Section 156. Form of verdict and
25 judgment. When the defendant is found not guilty of the

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charged offense or offenses or any lesser included offense
 for the reason that, due to a mental disease or defect, the
 defendant did not have a particular state of mind that is an
 essential element of the offense charged, the verdict and
 the judgment shall so state.

NEW SECTION. Section 157. Admissibility of statements б made during examination or treatment. A statement made for 7 the purposes of psychiatric or psychological examination or 8 treatment provided for in this section by a person subjected 9 to examination or treatment is not admissible in evidence 10 against him at trial on any issue other than that of his 11 mental condition. It is admissible on the issue of his 12 mental condition at trial whether or not it would otherwise 13 be considered a privileged communication, only when and 14 after the defendant presents evidence that due to a mental 15 disease or defect he did not have a particular state of mind 16 which is an element of the offense charged. 17

NEW SECTION. Section 158. Determination of fitness to 18 proceed -- effect of finding of unfitness -- expenses. (1) 19 The issue of the defendant's fitness to proceed may be 20 raised by the court, the defendant or his counsel, or by the 21 When the issue is raised, it shall be 22 prosecution. determined by the court. If neither the prosecution nor 23 counsel for the defendant contests the finding of the report 24 filed under (section 154), the court may make the 25

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determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence at the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

7 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be 8 suspended, except as provided in subsection (4), and the 9 10 court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate 11 12 institution of the department of institutions for so long as the unfitness endures. The committing court shall within 90 13 14 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to 15 16 proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the 17 18 proceeding against him shall be dismissed, except as 19 provided in subsection (4), and the county attorney shall 20 petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the 21 22 disposition of the defendant pursuant to those provisions. 23 (3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as 24 provided in 53-20-102(4), the proceeding against him shall 25

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be dismissed and the county attorney shall petition the
 court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed
does not preclude any legal objection to the prosecution
which is susceptible to fair determination prior to trial
and without the personal participation of the defendant.

7 (5) The expenses of sending the defendant to the 8 custody of the director of the department of institutions to 9 be placed in an appropriate institution of the department of 10 institutions, of keeping him there, and of bringing him back 11 are chargeable to the state and payable according to 12 procedures established under 3-5-902(1).

NEW SECTION. Section 159. Proceedings if fitness 13 regained. When the court, on its own motion or upon the 14 application of the director of the department of 15 institutions, the prosecution, or the defendant or his legal 16 representative, determines, after a hearing if a hearing is 17 requested, that the defendant has regained fitness to 18 proceed, the proceeding shall be resumed. If, however, the 19 court is of the view that so much time has elapsed since the 20 commitment of the defendant that it would be unjust to 21 resume the criminal proceedings, the court may dismiss the 22 charge and may order the defendant to be discharged, or 23 subject to the law governing the civil commitment of persons 24 suffering from serious mental illness, order the defendant 25

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committed to an appropriate institution of the department of
 institutions.

WW SECTION. Section 160. Commitment upon finding of 3 not guilty by reason of lack of mental state -- hearing to 4 determine release or discharge. (1) When a defendant is 5 found not guilty for the reason that due to a mental disease 6 7 or defect he could not have a particular state of mind that is an essential element of the offense charged, the court B 9 shall order a predisposition investigation in accordance 10 with [section 224], which must include an investigation of 11 the present mental condition of the defendant. If the trial 12 was by jury, the court shall hold a hearing to determine the 13 appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any 14 15 additional testimony it considers necessary to determine the appropriate disposition of the defendant. If the trial was 16 by the court, the court may hold a hearing to obtain any 17 18 additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, 19 the testimony and evidence presented at trial shall be 20 21 considered by the court in making its determination.

(2) The court, upon finding that the defendant may not
be discharged or released without danger to others, shall
order the defendant committed to the custody of the
superintendent of the Montana state hospital to be placed in

1 an appropriate institution for custody, care, and treatment. (3) A person committed to the custody of the 2 superintendent shall have a hearing within 180 days of his 3 confinement to determine his present mental condition and Δ whether he may be discharged or released without danger to 5 others. The hearing shall be conducted by the court that б ordered the commitment unless that court transfers 7 в jurisdiction to the third judicial district. The court shall cause notice f the hearing to be served upon the person, q his counsel, and the prosecuting attorney. The hearing is a 10 civil proceeding, and the burden shall be upon the defendant 11 to prove by a preponderance of the evidence that " mav be 12 safely released. 13

(4) According to the determination of the court upon
the hearing, the defendant shall be discharged or released
on conditions the court determines to be necessary or shall
be committed to the custody of the superintendent of the
Montana state hospital to be placed in an appropriate
institution for custody, care, and treatment.

20 <u>NEW SECTION.</u> Section 161. Discharge or release upon 21 motion of superintendent. (1) If the superintendent of the 22 Montana state hospital believes that a person committed to 23 his custody under [section 160] may be discharged or 24 released on condition without danger to himself or others, 25 he shall make application for the discharge or release of

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the person in a report to the court by which the person was
 committed and shall send a copy of the application and
 report to the prosecutor of the county from which the
 defendant was committed.

(2) The court shall then appoint at least two qualified 5 examiners who shall be either psychiatrists or licensed 6 clinical psychologists to examine the person and to report 7 their opinion as to his mental condition within 60 days or a 8 longer period which the court determines to be necessary for 9 purpose. To facilitate the examinations and the 10 the proceedings thereon, the court may have the person confined 11 12 in any institution located near the place where the court sits which may be designated by the superintendent of the 13 Montana state hospital as suitable for the temporary 14 detention of irresponsible persons. 15

16 (3) If the court is satisfied by the report filed under 17 subsection (1) and the testimony of the reporting 18 psychiatrist or licensed clinical psychologist that the 19 committed person may be discharged or released on condition 20 without danger to himself or others, the court shall order 21 his discharge or his release on conditions which the court 22 determines to be necessary.

23 (4) If the court is not satisfied, it shall promptly
24 order a hearing to determine whether the person may safely
25 be discharged or released. A hearing is considered a civil

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1 proceeding, and the burden is upon the committed person to 2 prove by a preponderance of the evidence that he may safely 3 be discharged or released. According to the determination of the court upon the hearing, the committed person shall be 4 5 discharged or released on conditions which the court determines to be necessary or shall be recommitted to the б 7 custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the 8 procedures prescribed in this section and [section 162]. 9

10 NEW SECTION. Section 162. Application for discharge or 11 release by committed person. A committed person may make 12 application for his discharge or release to the court by which he was committed, and the procedure to be followed 13 upon the application is the same as that prescribed in 14 15 [section 161] in the case of an application by the 16 superintendent of the Montana state hospital. However, an 17 application by a committed person need not be considered until he has been confined for a period of not less than 6 18 19 months from the date of the order of commitment, and if the determination of the court is adverse to the application, 20 the person may not be permitted to file a further 21 application until 1 year has elapsed from the date of any 22 preceding hearing on an application for his release or 23 24 discharge.

25 NEW SECTION. Section 163. Recommitment

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conditional release. If within 5 years after the conditional 1 release of a committed person the court determines after 2 hearing evidence that the conditions of release have not 3 4 been fulfilled and that for the safety of the person or for 5 the safety of others his conditional release should be revoked, the court shall immediately order him to be 6 recommitted to the superintendent of the Montana state 7 hospital, subject to discharge or release only in accordance 8 with the procedures prescribed in [section 161 or 162]. 9

10 NEW SECTION. Section 164. Consideration of mental 11 disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of quilty and he claims 12 13 that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or 14 15 defect which rendered him unable to appreciate the 16 criminality of his conduct or to conform his conduct to the 17 requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require 18 additional evidence as it considers necessary for the 19 20 determination of the issue, including examination of the 21 defendant and a report of the examination as provided in 22 [sections 151 and 154].

23 <u>NEW SECTION.</u> Section 165. Sentence to be imposed. (1)
24 If the court finds that the defendant at the time of the
25 commission of the offense of which he was convicted did not

suffer from a mental disease or defect as described in
 (section 164), it shall sentence him as provided in Title
 46, chapter 18.

4 (2) If the court finds that the defendant at the time 5 of the commission of the offense suffered from a mental 6 disease or defect as described in [section 164], any 7 mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be 8 9 committed to the custody of the director of the department of institutions to be placed in an appropriate institution 10 11 for custody, care, and treatment for a definite period of 12 time not to exceed the maximum term of imprisonment that 13 could be imposed under subsection (1). The authority of the 14 court with regard to sentencing is the same as authorized in 15 Title 46, chapter 18, if the treatment of the individual and 16 the protection of the public are provided for.

17 (3) A defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review 18 19 of the sentence if the professional person certifies that the defendant has been cured of the mental disease or 20 21 defect. The sentencing court may make any order not 22 inconsistent with its original sentencing authority except 23 that the length of confinement or supervision must be equal to that of the original sentence. The professional person 24 shall review the defendant's status each year. 25

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NEW SECTION. Section 166. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 165(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

8 <u>NEW SECTION.</u> Section 167. Pretrial motions and 9 notices. (1) Except for good cause shown, any defense, 10 objection, or request which is capable of determination 11 without trial of the general issue must be raised at or 12 before the omnibus hearing unless otherwise provided by 13 (this act).

14 (2) Failure of a party to raise defenses or objections,
15 or to make requests which must be made prior to trial, at
16 the time set by the court, shall constitute a waiver of the
17 defense, objection, or request.

18 (3) The court, for cause shown, may grant relief from
19 any waiver provided by this section. Lack of jurisdiction or
20 the failure of a charging document to state an offense is a
21 nonwaivable defect and shall be noticed by the court at any
22 time during the pendency of a proceeding.

23 <u>NEW SECTION.</u> Section 168. Form of pretrial motions.
24 Unless the court provides otherwise, all pretrial motions
25 shall be in writing and supported by a statement of the

relevant facts upon which the motion is being made. The
 motion shall state with particularity the grounds for the
 motion and the order or relief sought.

<u>NEW SECTION.</u> Section 169. Ruling on motions. (1) A motion made before trial shall be determined before trial unless the court, for good cause, orders it be deferred for determination at the trial of the general issue or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.

(2) Except where mandated by [this act], the court has
discretion to conduct a hearing into the merits of a motion.
(3) The court's final determination of any pretrial
motion shall state, either in writing or on the record, the
court's findings of fact and conclusions of law.

15 <u>NEW SECTION.</u> Section 170. Omnibus hearing. (1) Within 16 a reasonable time following the entry of a not guilty plea 17 but not less than 30 days before trial the court shall hold 18 an omnibus hearing.

19 (2) The purpose of the hearing shall be to expedite the
 20 procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The
prosecutor and the defendant's counsel shall attend the
hearing and shall be prepared to discuss any pretrial matter
appropriate to the case, including but not limited to:

25 (a) joinder and severance of offenses or defendants,

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1	[sections 116, 117, 178, and 179];
2	<pre>(b) double jeopardy, [sections 118 through 120];</pre>
3	(c) need for exclusion of public and for sealing
4	records of any pretrial proceedings, [section 122];
5	(d) notification of the existence of a plea agreement,
6	[section 133];
7	(e) disclosure and discovery motions, [sections 136
8	through 146];
9	(f) notice of reliance on certain defenses, [section
10	138];
11	(g) notice of seeking enhanced punishment, [section
12	171];
13	(h) notice of other crimes, wrongs, or acts, [section
14	172];
15	<ul><li>(i) motion to suppress, [sections 173 and 174];</li></ul>
16	(j) motion to dismiss, [sections 180 and 181];
17	(k) motion for change of place of trial, [sections 175
18	through 177];
19	<ol> <li>(1) reasonableness of bail, [sections 66 through 81];</li> </ol>
20	and
21	(m) stipulations.
22	(4) At the conclusion of the hearing, a court-approved
23	memorandum of the matters settled shall be signed by the
24	court and counsel and filed with the court.
25	(5) Any motions made pursuant to subsections (1)

through (3) may be ruled on by the court at the time of the
 hearing, where appropriate, or may be scheduled for briefing
 and further hearing as the court considers necessary.

4 <u>NEW SECTION.</u> Section 171. Notice by prosecutor seeking 5 persistent felony offender status. (1) Except for good cause 6 shown, if the prosecutor seeks treatment of the accused as a 7 persistent felony offender, notice of that fact must be 8 given at or before the omnibus hearing pursuant to [section 9 167].

(2) The notice must specify the alleged prior
convictions and may not be made known to the jury before
verdict except as allowed by the Montana Rules of Evidence.
(3) If the defendant objects to the allegations
contained in the notice, the judge shall conduct a hearing
to determine if the allegations in the notice are true.

16 (4) The hearing shall be held before the court alone.
17 If the judge finds any allegations of the prior convictions
18 are true, the accused shall be sentenced as provided by law.
19 (5) The notice shall be filed and sealed until the time
20 of trial or until a plea of guilty is given by the
21 defendant.

22 <u>NEW SECTION.</u> Section 172. Notice by prosecutor of 23 other crimes, acts, or wrongs evidence. (1) Except for good 24 cause shown, if the prosecutor intends to use evidence of 25 other crimes, wrongs, or acts pursuant to Rule 404(b) of the

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Montana Rules of Evidence, notice shall be given at or
 before the omnibus hearing pursuant to [section 167].

3 (2) The notice shall specify the other crimes, wrongs,
4 or acts and include a statement as to the purpose for which
5 the evidence is to be offered.

6 (3) The notice shall be filed and sealed until the time 7 of trial or until a plea of guilty is given by the 8 defendant.

NEW SECTION. Section 173. Suppression of evidence. (1)
 A defendant aggrieved by an unlawful search and seizure may
 move the court to suppress as evidence anything obtained by
 the unlawful search and seizure.

13 (2) If the motion states facts which, if true, would
14 show that the evidence should be suppressed, the court shall
15 hear the merits of the motion at the omnibus hearing or at a
16 later date if the court orders.

17 (3) If the motion is granted, the evidence shall not be18 admissible at trial.

19 <u>NEW SECTION.</u> Section 174. Suppression of confessions 20 or admissions. (1) A defendant may move to suppress as 21 evidence any confession or admission given by him on the 22 ground that it was involuntary. The motion shall be in 23 writing and state facts showing why the confession or 24 admission was involuntary.

25

If the allegations of the motion state facts which,

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if true, show that the confession or admission was not
 voluntarily made, the court shall conduct a hearing into the
 merits of the motion. The prosecution must prove by a
 preponderance of the evidence that the confession or
 admission was voluntary.

6 (3) The issue of the admissibility of the confession or 7 admission may not be submitted to the jury. If the 8 confession or admission is determined to be admissible, the 9 circumstances surrounding the making of the confession or 10 admission may be submitted to the jury as bearing upon the 11 credibility or the weight to be given to the confession or 12 admission.

13 (4) If the motion is granted, the confession or
14 admission is admissible in evidence only for purposes of
15 impeachment against the movant at the trial of the case.

16 <u>NEW SECTION.</u> Section 175. Change for prejudice. (1) 17 The defendant or the prosecution may move for a change of 18 place of trial on the ground that there exists in the county 19 in which the charge is pending such prejudice that a fair 20 trial cannot be had in the county.

21 (2) If the court determines that there exists in the
22 county in which the prosecution is pending such prejudice
23 that a fair trial cannot be had, the court shall:

24 (a) transfer the cause to any other county in which a25 fair trial may be had;

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1 (b) direct that a jury be selected in any county where 2 a fair trial may be had and then returned to the county 3 where the prosecution is pending to try the case; or

4 (c) take any other action to ensure that a fair trial5 may be had.

6 <u>NEW SECTION.</u> Section 176. Change for other reasons. If 7 the court determines that a motion to dismiss based upon the 8 grounds of lack of jurisdiction or improper place of trial 9 is well-founded, it may, instead of ordering dismissal, 10 order the cause transferred to a court of competent 11 jurisdiction or to a proper place of trial.

12 <u>NEW SECTION.</u> Section 177. Return to original place of 13 trial. When a trial occurs after a change of place of trial 14 and a retrial is required, the cause shall be returned to 15 the county in which the charge was originally properly filed 16 for further proceedings.

NEW SECTION. Section 178. Trial 17 together of indictments, informations, complaints, or defendants. The 18 court may order two or more indictments, informations, 19 complaints, or defendants to be tried together if the 20 interests of justice require and the charges or defendants 21 could have been joined in a single indictment, information 22 or complaint as provided for in [sections 114 through 117]. 23 NEW SECTION. Section 179. Relief from prejudicial 24 joinder. (1) If it appears that a defendant or the 25

prosecution is prejudiced by a joinder of charges or
 defendants in an indictment, information, or complaint or by
 joinder for trial together, the court may order separate
 trials, grant a severance of defendants, or provide whatever
 other relief justice requires.

6 (2) In ruling on a motion by a defendant for severance 7 the court may order the prosecutor to deliver to the court 8 for inspection, in camera, any statements or confessions 9 made by the defendants that the prosecution intends to 10 introduce at trial.

11 NEW SECTION. Section 180. Dismissal at instance of court or prosecution. (1) The court may, either on its own 12 13 motion or upon the application of the prosecuting attorney, and in furtherance of justice, order a complaint, 14 information, or indictment to be dismissed. However, the 15 court may not order a dismissal of a complaint, information, 16 indictment, or a count contained in a complaint, 17 or information, or indictment, charging a felony, unless good 18 cause for dismissal is shown and the reasons for dismissal 19 are set forth in an order entered upon the minutes. 20

(2) After the entry of a plea upon a misdemeanor
charge, the court, unless good cause to the contrary is
shown, must order the prosecution to be dismissed, with
prejudice, if a defendant whose trial has not been postponed
upon the defendant's motion is not brought to trial within 6

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1 months.

NEW SECTION. Section 181. Effect of order to dismiss. 2 3 If the court directs the action to be dismissed, the defendant must, if in custody, be discharged and, if 4 admitted to bail, have the defendant's bail exonerated or 5 money deposited instead of bail refunded to the defendant. 6 NEW SECTION. Section 182. Issuing subpoenas. (1) After 7 the filing of charges and upon the request of the 8 prosecuting attorney, the defendant, or the defendant's 9 attorney, the clerk of court shall issue subpoenas with the 10 name of the person to whom each subpoena is directed 11 commanding the person to appear and to give testimony. The 12 clerk of the court shall maintain a list of the names of 13 persons to whom subpoenas are issued. 14

15 (2) A subpoena shall state the name of the court and 16 the title, if any, of the proceeding, and shall command each 17 person to whom it is directed to attend and give testimony 18 at the time and place specified in the subpoena.

19 (3) The court, upon motion made promptly, may quash or
20 modify a subpoena if compliance would be unreasonable or
21 oppressive.

22 <u>NEW SECTION.</u> Section 183. Subpoenas for the production 23 of evidence. (1) A subpoena may command the person to whom 24 it is directed to produce the books, papers, documents, or 25 other objects designated in the subpoena. LC 1439/01

1 (2) The court may direct that the books, papers, 2 documents, or other objects designated in the subpoena be 3 produced before the court at the time prior to the trial or 4 prior to the time when they are to be offered into evidence 5 and may upon their production permit the books, papers, 6 documents, or objects, or portions thereof, to be inspected 7 by the parties and their attorneys.

8 (3) The court, upon motion made promptly, may quash or
 9 modify a subpoena if compliance would be unreasonable or
 10 oppressive.

11 <u>NEW SECTION.</u> Section 184. Service of subpoenas. (1) A 12 subpoena may be served by a peace officer or by any other 13 person who is not a party and who is not less than 18 years 14 of age. A peace officer must serve any subpoena delivered to 15 him for service in his county either on the part of the 16 state or of the defendant.

17 (2) Service of a subpoena shall be made by delivering a 18 copy of the subpoena to the person named and, if ordered by 19 the court, by tendering to those residing outside the county 20 of trial the fee for 1 day's attendance and the mileage 21 allowed by law. The person making service shall without 22 delay make a written return of the service subscribed by him 23 stating the time and place of service.

24 (3) A subpoena requiring attendance of a witness at a25 hearing or trial may be served anywhere within the state of

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1 Montana.

NEW SECTION. Section 185. Subpoena for witnesses in 2 this state to testify in another state. (1) If a judge of a 3 4 court of record in any state, which by its laws has made 5 provision for commanding persons within that state to attend and testify in this state, certifies under the seal of the 6 7 court that there is a criminal prosecution pending in the 8 court or that a grand jury investigation has commenced or is 9 about to commence, that a person being within this state is 10 material witness in the prosecution or grand jury investigation, and that his presence will be required for a 11 12 specified number of days, upon presentation of the 13 certificate to any judge of a court of record in the county 14 in which the person is located, the judge shall fix a time 15 and place for a hearing and shall make an order directing 16 the witness to appear at a time and place certain for 17 hearing.

(2) If at a hearing the judge determines that the 18 19 witness is material and necessary, that it will not cause 20 undue hardship to the witness to be compelled to attend and 21 testify in a prosecution or a grand jury investigation in 22 the other state, and that the laws of the state in which the 23 prosecution is pending or grand jury is commenced or about 24 to commence will give him protection from arrest and the service of civil and criminal process, he shall issue a 25

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1 summons with a copy of the certificate attached directing 2 the witness to attend and testify in the court where the 3 prosecution is pending or where a grand jury investigation 4 has commenced or is about to commence at a time and place 5 specified in the summons. In the hearing the certificate 6 shall be prima facie evidence of all the facts stated in the 7 certificate.

8 (3) If the certificate recommends that the witness be 9 taken into custody and delivered to an officer of the 10 requesting state to assure his attendance in the requesting 11 state, the judge may, in lieu of notification of the hearing, direct that the witness be brought before him for 12 13 the hearing. At the hearing the judge may, in lieu of issuing a subpoena or summons, order that the witness be 14 15 taken into custody and delivered to an officer of the 16 requesting state.

NEW SECTION. Section 186. Subpoena of a witness in 17 18 another state to testify in this state. (1) Whenever a 19 person in any state that by its laws has made provision for 20 commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in 21 22 this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury 23 investigation which has commenced or is about to commence, a 24 judge of the court may issue a certificate under the seal of 25

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1 the court stating these facts and specifying the number of 2 days the witness will be required. The certificate shall be 3 presented to a judge of a court of record in the county in 4 which the witness is found.

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

18 (3) A witness who has appeared in accordance with the
19 provisions of the summons may not be required to remain
20 within this state for a longer period of time than the
21 period mentioned in the certificate unless otherwise ordered
22 by the court.

23 (4) The witness fees, costs, and expenses shall be24 tendered as provided in [section 188].

25 NEW SECTION. Section 187. Subpoena of witnesses for

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defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witnesses and that the presence of the witness is necessary to an adequate defense.

8 (2) If a defendant is indigent a court order must be9 obtained if more than six witnesses are to be subpoenaed.

10 <u>NEW SECTION.</u> Section 188. Pees, costs, and expenses. 11 (1) When a person appears before a judge, grand jury, or 12 court as a witness in a criminal case or investigation upon 13 a subpoena, the witness shall receive the witness fee as 14 prescribed by Title 26, part 5. The court, on motion by 15 either party, may allow additional fees for expert 16 witnesses.

17 (2) The court may determine the reasonable and 18 necessary expenses of subpoenaed witnesses and order the 19 clerk of the court to pay the expenses from the county 20 treasury.

(3) When a person is subpoenaed in this state to
testify in another state, or from another state to testify
in this state, the person must be paid for lodging, mileage
or travel, and per diem, the sum equal to that allowed by
Title 2, chapter 18, part 5, for each day that the person is

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required to travel and attend as a witness. If the state
 where the witness is found has by statutory enactment
 required that the summoned witness be paid an amount in
 excess of the amount specified in this section, the witness
 may be paid the amount required by that state.

(4) According to procedures established by the 6 department of commerce under 3-5-902, the clerk of the 7 8 district court shall submit to the department a detailed 9 statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt 10 11 and verification of the statement, the department shall promptly reimburse the designated county for all or a 12 portion of the witness expenses. The county shall deposit 13 14 the amount reimbursed in its general fund.

15 <u>NEW SECTION.</u> Section 189. Failure of witness to 16 appear. If the witness fails without good cause to attend 17 and testify as directed, he shall be punished in the manner 18 provided for punishment of any witness who disobeys an order 19 issued from a court of record in this state in accordance 20 with Title 3, chapter 1, part 5, or in accordance with 21 45-7-309.

22 <u>NEW SECTION.</u> Section 190. Exemption from arrest and 23 service of process. (1) If a person comes into this state in 24 obedience to a summons directing the person to attend and 25 testify in this state, that person may not, while in this state pursuant to such subpoena or order, be subject to
 arrest or the service of process, civil or criminal, in
 connection with matters which arose before his entrance into
 this state under the subpoena.

5 (2) If a person passes through this state while going 6 to or returning from another state in obedience to a 7 subpoena or order to attend and testify in that state, the 8 person may not, while passing through this state, be subject 9 to arrest or the service of process, civil or criminal, in 10 connection with matters which arose before the person's 11 entrance into this state under the subpoena.

<u>NEW SECTION.</u> Section 191. Right to jury trial and
waiver. (1) Defendants in all felony cases shall have a
right to trial by jury of 12 persons.

15 (2) The parties may agree in writing at any time before 16 the verdict, with the approval of the court, that the jury 17 shall consist of any number less than that to which they are 18 entitled.

19 (3) Upon written consent of the defendant, a trial by20 jury may be waived.

<u>NEW SECTION.</u> Section 192. Formation of trial jury. (1)
 Trial juries in criminal cases are formed in the same manner
 as trial juries in civil actions.

24 (2) The qualifications of jurors and excuses from jury
25 duty are prescribed in Title 3, chapter 15, part 3.

NEW SECTION. Section 193. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. Except for good cause shown, the motion shall be made at least 5 days prior to the term for which the jury is drawn.

7 (2) The motion shall be in writing supported by
8 affidavit and shall state facts that show that the jury
9 panel was improperly selected or drawn.

10 (3) If the motion states facts that show that the jury 11 panel has been improperly selected or drawn, it shall be the 12 duty of the court to conduct a hearing. The burden of proof 13 shall be on the movant.

14 (4) If the court finds that the jury panel was
15 improperly selected or drawn, the court shall order the jury
16 panel discharged and the selection or drawing of a new panel
17 in the manner provided by law.

18 <u>NEW SECTION.</u> Section 194. Examination of prospective 19 jurors. (1) The clerk of court shall make available to the 20 parties a list of prospective jurors with their 21 guestionnaires when the names have been drawn.

(2) The prosecutor and the defendant or the defendant's
attorney shall conduct the examination of prospective
jurors. The judge may conduct an additional examination. The
judge may limit the examination by the defendant, the

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defendant's attorney, or the prosecutor if the examination
 is improper.

<u>NEW SECTION.</u> Section 195. Challenges for cause. (1)
Each party may challenge jurors for cause, and each
challenge must be tried by the court.

6 (2) A challenge for cause may be taken for all or any
7 of the following reasons or for any other reason which the
8 court determines:

9 (a) consanguinity or relationship to the defendant or 10 to the person who is alleged to be injured by the offense 11 charged or on whose complaint the prosecution was 12 instituted;

13 (b) standing in the relation of guardian and ward, 14 attorney and client, master and servant, landlord and 15 tenant, or debtor and creditor with or being a member of the 16 family or in the employment of the defendant or the person 17 who is alleged to be injured by the offense charged or on 18 whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil
action or having complained against or being accused by the
defendant in a criminal prosecution;

(d) having served on the grand jury which found the
indictment or on a coroner's jury which inquired into the
death of a person whose death is the subject of the
indictment or information;

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(e) having served on a trial jury which tried another
 person for the offense charged or a related offense;

3 (f) having been a member of a jury formerly sworn to 4 try the same charge, the verdict of which was set aside or 5 which was discharged without verdict after the case was 6 submitted to it;

7 (g) having served as a juror in a civil action brought
8 against the defendant for the act charged as an offense;

9 (h) if the offense charged is punishable with death, 10 having conscientious opinions concerning the punishment as 11 would preclude his finding the defendant guilty, in which 12 case he may not be permitted or compelled to serve as a 13 juror;

14 (i) having a belief that the punishment fixed by law is
15 too severe for the offense charged; or

(j) having a state of mind in reference to the case or
to either of the parties which would prevent the juror from
acting with entire impartiality and without prejudice to the
substantial rights of either party.

(3) An excuse from service on a jury is not a cause of
challenge but the privilege of the person excused.

22 <u>NEW SECTION.</u> Section 196. Peremptory challenges. (1) 23 Each defendant shall be allowed eight peremptory challenges 24 in capital cases and six in all other cases tried in the 25 district court before a 12-person jury. There may not be 1 additional challenges for separate counts charged in the 2 indictment or information.

3 (2) If the indictment or information charges a capital
4 offense as well as lesser offenses in separate counts, the
5 maximum number of challenges is eight.

6 (3) The state shall be allowed the same number of7 peremptory challenges as all of the defendants.

8 (4) In a criminal case tried before a six-person jury,
9 the state and all the defendants shall be allowed three
10 peremptory challenges each.

(5) When the parties in a criminal case in the district
c. .et agree upon a jury consisting of a number of persons
other than 6 or 12, they shall also agree in writing upon
the number of peremptory challenges to be allowed.

NEW SECTION. Section 197. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

21 <u>NEW SECTION.</u> Section 198. Alternate juror. (1) The 22 court may direct that one or more alternate jurors be 23 selected in the same manner as principal jurors. The 24 alternate jurors shall take the same oath as the principal 25 jurors.

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(2) Each party shall have one additional peremptory
 challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are 3 4 called, shall replace jurors who, prior to the time the jury 5 arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the 6 jury in its deliberation unless called upon by the court to 7 replace a member of the jury. An alternate juror's conduct В during the period in which the jury is considering its 9 verdict shall be regulated by instructions of the trial 10 court. An alternate juror who does not replace a principal 11 juror shall be discharged after the jury arrives at its 12 13 verdict.

NEW SECTION. Section 199. Applicability of rules of evidence and civil rules. The Montana Rules of Evidence and the statutory rules of evidence in civil actions are applicable to all criminal actions except as otherwise provided.

19 <u>NEW SECTION.</u> Section 200. Defendant presumed innocent 20 -- reasonable doubt. A defendant in a criminal action is 21 presumed to be innocent until the contrary is proved, and in 22 case of a reasonable doubt whether the defendant's guilt is 23 satisfactorily shown, the defendant shall be found not 24 guilty.

25 NEW SECTION. Section 201. Competency of spouses. (1)

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Neither spouse may testify to the communications or
 conversations between spouses which occur during their
 marriage unless:

4 (a) consent of the defendant-spouse is obtained;

5 (b) the defendant-spouse has been charged with an act
6 of criminal violence against the other; or

7 (c) the defendant-spouse has been charged with abuse,
8 abandonment, or neglect of the other spouse or either
9 spouse's children.

(2) Except as provided in subsection (1), a spouse is a
competent witness for or against the other spouse.

NEW SECTION. Section 202. Testimony of person legally 12 accountable. A person may not be found guilty of an offense 13 on the testimony of one responsible or legally accountable 14 for the same offense, as defined in 45-2-301, unless the 15 testimony is corroborated by other evidence which in itself 16 17 and without the aid of the testimony of the one responsible 18 or legally accountable for the same offense tends to connect 19 the defendant with the commission of the offense.

20 <u>NEW SECTION.</u> Section 203. Use of confession. Before an 21 extrajudicial confession of the defendant to the crime 22 charged may be admitted into evidence, the prosecution must 23 introduce independent evidence tending to establish the 24 commission of the crime charged.

25 NEW SECTION. Section 204. Videotaped testimony. (1)

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For any prosecution commenced under 45-5-502(3), 45-5-503. 1 45-5-505, or 45-5-507, the testimony of the victim, at the 2 request of the victim and with the concurrence of the 3 prosecuting attorney, may be recorded by means of videotape 4 for presentation at trial. The recorded testimony may be 5 presented at trial and shall be received into evidence. The 6 victim need not be physically present in the courtroom when 7 8 the videotape is admitted into evidence.

9 (2) The procedural and evidentiary rules of the state 10 that are applicable to criminal trials within the state 11 shall apply to the videotape proceedings authorized by this 12 section.

13 (3) The district court judge, the prosecutor, the 14 victim, the defendant, the defendant's attorney, and other 15 persons as are considered necessary by the court to make the 16 recordings authorized under this section shall be allowed to 17 attend the videotape proceedings.

18 (4) Videotapes that are part of the court record are
19 subject to a protective order of the court for the purpose
20 of protecting the privacy of the victim.

21 <u>NEW SECTION.</u> Section 205. Order of trial. (1) After 22 the jury is sworn, but before the introduction of any 23 evidence, the court may give the jury general instructions 24 concerning the conduct of the trial. The court shall give 25 the jury such cautionary instructions as may be required 1 during the course of the trial.

2 (2) The prosecutor may make an opening statement and 3 shall offer evidence in support of the prosecution. The 4 detendant may make his opening statement prior to the 5 prosecutor's offer of evidence or at the close of the 6 prosecution's case but prior to the defendant's offer of 7 evidence.

8 (3) The prosecutor and the defendant may, respectively,
9 offer rebutting testimony only. However, the court, for good
10 cause, may permit either party to offer evidence upon their
11 original case at any time before the close of evidence.

12 (4) Prior to final arguments, the court shall inform
13 the parties as to the instructions that will be given and
14 read them to the jury.

(5) A written copy of the instructions, both general
and special, shall be delivered to the jury for their
consideration during deliberations following the final
arguments.

19 <u>NEW SECTION.</u> Section 206. When order may be departed 20 from. For good cause shown and in the discretion of the 21 court, the order prescribed in [section 205] may be departed 22 from.

23 <u>NEW SECTION.</u> Section 207. Evidence insufficient to go
24 to jury. When, at the close of the state's evidence or at
25 the close of all the evidence, the evidence is insufficient

to support a finding or verdict of guilty, the court may, on
 its own motion or on the motion of the defendant, dismiss
 the action and discharge the defendant. However, prior to
 dismissal, the court may allow the case to be reopened for
 good cause shown.

6 <u>NEW SECTION.</u> Section 208. Settlement of jury 7 instructions. (1) Any party may request special jury 8 instructions as provided in (section 205(4)). All requests 9 for instructions shall conform to the Uniform District Court 10 Rules and all instructions shall be settled by the court out 11 of the presence of the jury.

12 (2) A record shall be made at the settlement of13 instructions.

14 (3) A party may not assign as error any portion of the
15 instructions or omission from the instructions unless an
16 objection was made specifically stating the matter objected
17 to, and the grounds for the objection, at the settlement of
18 instructions.

19 (4) The presence of the defendant is not required20 during the settlement of instructions.

21 <u>NEW SECTION.</u> Section 209. Conduct of jury during 22 trial. (1) The jurors sworn to try an action may at any 23 time, in the discretion of the court, be permitted to 24 separate or be ordered to remain sequestered in the charge 25 of a proper officer. If sequestered, the officer must be sworn to keep the jurors together, to allow no person to
 communicate with the jury or to personally communicate with
 the jury on any subject connected with the trial, and to
 return the jury into court as directed.

5 (2) Whether sequestered or permitted to separate, at 6 each adjournment of the court, the jury shall be admonished 7 that it is their duty not to converse among themselves or 8 with anyone else on any subject connected with the trial or 9 to form or express any opinion thereon until the cause is 10 finally submitted to them.

11 (3) In all cases appealed to the supreme court, it 12 shall be conclusively considered that the court or judge 13 gave the proper admonition in accordance with the provision 14 of subsection (2) unless the record affirmatively shows the 15 contrary.

NEW SECTION. Section 210. View of relevant place or 16 17 property. When the court considers it proper that the jury 18 view any place or personal property pertinent to the case, 19 it will order the jury to be conducted in a body under the 20 custody of the sheriff or bailiff to view the place or 21 personal property in the presence of the court, the 22 prosecutor, the defendant, and his counsel. The place or 23 personal property will be shown them by a person appointed by the court for that purpose, and they may personally 24 25 inspect the same. The sheriff or bailiff must be sworn to

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suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

6 <u>NEW SECTION.</u> Section 211. Conduct of jury after 7 retirement -- advice from court. (1) When the jury retires 8 to consider its verdict, an officer of the court must be 9 appointed to keep the jurors together and to prevent 10 conversations between the jurors and others.

(2) After the jury has retired for deliberation, if 11 there is any disagreement among the jurors as to the 12 testimony or if the jurors desire to be informed on any 13 point of law arising in the cause, they must notify the 14 officer appointed to keep them together who shall then 15 notify the court. The information requested may be given in 16 the discretion of the court after consultation with the 17 18 parties.

19 <u>NEW SECTION.</u> Section 212. Items which may be taken 20 into jury room. Upon retiring for deliberation, the jury may 21 take with them the written jury instructions read by the 22 court, notes of the proceedings taken by themselves, and all 23 exhibits that have been received as evidence in the cause as 24 in the opinion of the court shall be necessary.

25 NEW SECTION. Section 213. Activity of court during

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jury's absence. While the jury is absent, the court may
 adjourn or conduct other business, but it must be open for
 every purpose connected with the cause submitted to the jury
 until a verdict is returned or the jury discharged.

5 <u>NEW SECTION.</u> Section 214. Form of verdict. (1) The 6 jury shall return a verdict as instructed by the court. The 7 verdict must be unanimous in all criminal actions. The 8 verdict shall be signed by the foreman and returned by the 9 jury to the judge in open court.

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

NEW SECTION. Section 215. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

21 <u>NEW SECTION.</u> Section 216. Verdict of not guilty --22 when defendant discharged. If a verdict of not guilty is 23 returned and the defendant is not detained for any other 24 legal cause, he must be discharged as soon as the judgment 25 is given.

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<u>NEW SECTION.</u> Section 217. conviction of lesser
 included offense. (1) The defendant may be found guilty of
 an offense necessarily included in the offense charged or of
 an attempt to commit either the offense charged or an
 offense necessarily included in the offense charged.

6 (2) A lesser included offense instruction shall be 7 given where there is a proper request by one of the parties 8 and the jury, based on the evidence, could be warranted in 9 finding the defendant guilty of a lesser offense.

10 (3) When a lesser included offense instruction is 11 given, the court shall instruct the jury that it must reach 12 a verdict on the crime charged before it may proceed to a lesser included offense. Upon the request of the defendant 13 14 at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if 15 it is unable after reasonable effort to reach a verdict on 16 17 the greater offense.

18 <u>NEW SECTION.</u> Section 218. Effect of a new trial. The 19 granting of a new trial places the parties in the same 20 position as if there had been no trial.

21 <u>NEW SECTION</u>, Section 219. Motion for a new trial. (1) 22 Following a verdict or finding of guilty, the court may 23 grant the defendant a new trial if required in the interest 24 of justice.

25 (2) The motion for a new trial must be in writing and

1 must specify the grounds for a new trial. The motion must be 2 filed by the defendant within 30 days following a verdict or 3 finding of guilty and be served upon the state.

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

6 (a) deny the motion;

7 (b) grant a new trial; or

8 (c) modify or change the verdict or finding by finding
9 the defendant guilty of a lesser included offense or finding
10 the defendant not guilty.

NEW SECTION. Section 220. Juries in misdemeanor cases.
(1) The defendant in a misdemeanor case is entitled to a jury of six qualified persons, but the parties may agree to a number less than six at any time before the verdict.

15 (2) Upon written consent of the defendant, a trial by16 jury may be waived.

NEW SECTION. Section 221. Formation of trial jury for 17 18 justice, municipal, and city courts. (i) At the time of 19 preparing the district court jury list, the county 20 commissioners and clerk and recorder shall prepare a jury 21 list for each justice and city court within the county. Each 22 list must consist of residents of the appropriate county, 23 city, or town. The lists must be selected in any reasonable 24 manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury 25

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requirements of the respective court. Additional lists may
 be prepared if required. The lists must be filed in the
 office of the clerk of the district court. The appropriate
 list must be posted in a public place in each county, city,
 or town, and the list must comprise the trial jury list for
 the ensuing year for the county, city, or town.

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

NEW SECTION. Section 222. Appeal 10 from justice. municipal, and city courts. (1) The defendant may appeal to 11 12 district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following 13 14 trial. In the case of an appeal by the prosecution the notice must be filed within 10 days of the date the order 15 complained of is given. The prosecution may appeal only in 16 the cases provided for in 46-20-103. 17

18 (2) Within 30 days of filing the notice of appeal, the
19 court shall transfer the entire record of the lower court to
20 the district court.

(3) Except for cases where legal issues are preserved
for appeal pursuant to [section 130], all misdemeanor cases
on appeal by the defendant from a justice, municipal, or
city court must be tried anew in the district court and may
be tried before a jury of six selected in the same manner as

1 for other criminal cases.

<u>NEW SECTION.</u> Section 223. Presentence investigation -when required. (1) Upon acceptance of a plea or upon a
verdict or finding of guilty to one or more felony offenses.
the court shall direct the probation officer to make a
presentence investigation and report. The court may, in its
discretion, order a presentence investigation for a
defendant convicted of a misdemeanor.

9 (2) If the court finds that the record contains 10 information sufficient to enable the meaningful exercise of 11 discretion during sentencing, the defendant may waive a 12 presentence investigation and report. Both the finding and 13 the defendant's waiver must be made in open court on the 14 record.

15 <u>NEW SECTION.</u> Section 224. Content of presentence 16 investigation report. (1) Whenever an investigation is 17 required, the probation officer shall promptly inquire into 18 and report upon:

19 (a) the defendant's characteristics, circumstances,

- 20 needs, and potentialities;
- 21 (b) the defendant's criminal record and social history;
- 22 (c) the circumstances of the offense;

23 (d) the time of the defendant's detention for the

- 24 offenses charged; and
- 25 (e) except in capital cases where the death penalty may

be imposed, the harm caused, as a result of the offense, to
 the victim, the victim's immediate family, and the
 community.

4 (2) If applicable, the court may require the officer to 5 inquire into the victim's pecuniary loss and make a 6 restitution report to the court as provided by law.

7 (3) The court may, in its discretion, require that the
8 presentence investigation report include a physical and
9 mental examination of the defendant.

10 (4) All local and state mental and correctional 11 institutions, courts, and law enforcement agencies shall 12 furnish, upon request of the officer preparing a presentence 13 investigation, the defendant's criminal record and other 14 relevant information.

NEW SECTION. Section 225. Availability 15 of the presentence investigation report. (1) All presentence 16 17 investigation reports must be a part of the court record but 18 may not be opened for public inspection. A copy of the 19 presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and 20 21 agency or institution to which the defendant is the 22 committed.

23 (2) The court having jurisdiction of the case may
24 permit other access to the presentence investigation report
25 as it considers necessary.

<u>NEW SECTION.</u> Section 226. Sentencing hearing. Before
 imposing sentence or making any other disposition upon
 acceptance of a plea or upon a verdict or finding of guilty,
 the court shall conduct a sentencing hearing without
 unreasonable delay, as follows:

6 (1) The court shall afford the parties an opportunity 7 to be heard on any matter relevant to the disposition, 8 including the applicability of sentencing enhancement 9 provisions, mandatory minimum sentences, persistent felony 10 offender status, or an exception thereto.

(2) If there is a possibility of imposing the death
 penalty, the court shall hold à hearing as provided by
 46-18-301.

14 (3) Except as provided in [sections 122 through 126], 15 the court shall address the defendant personally to 16 ascertain whether the defendant wishes to make a statement 17 and to present any information in mitigation of punishment 18 or reason why he should not be sentenced. If the defendant 19 wishes to make a statement, the court shall afford him a 20 reasonable opportunity to do so.

21 (4) The court shall impose sentence or make any other22 disposition authorized by law.

(5) In felony cases, the court shall specifically state
all reasons for the sentence, including restrictions,
conditions, or enhancements imposed, in open court on the

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1 record and in the written judgment.

2 <u>NEW SECTION.</u> Section 227. Judgment. The judgment must 3 set forth the plea, verdict or finding, and the 4 adjudication. If the defendant is convicted, it must set 5 forth the sentence or other disposition. The judgment must 6 be signed and entered of record.

7 <u>NEW SECTION.</u> Section 228. Correction of sentence. The 8 court may correct an illegal sentence or disposition at any 9 time and may correct a sentence imposed in an illegal manner 10 within 120 days after the sentence is imposed or after 11 remand from an appellate court.

NEW SECTION. Section 229. Revocation of a suspended or 12 deferred sentence. (1) Upon the filing of a petition for 13 revocation, accompanied by an affidavit showing probable 14 cause that the defendant has violated any condition of a 15 sentence or any condition of a deferred imposition of 16 sentence, the court may issue an order for a hearing on 17 18 revocation. The order must require the defendant to appear 19 at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the 20 21 defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer 22 to arrest the defendant and bring the defendant before the 23 24 court.

25 (2) The petition for a revocation must be filed with

the sentencing court during the period of suspension or
 deferral. Expiration of the period of suspension or deferral
 after the petition is filed does not deprive the court of
 jurisdiction to rule on the petition.

5 (3) The provisions pertaining to bail as set forth in 6 [sections 66 through 81] are applicable to persons arrested 7 pursuant to this section.

8 (4) Without unnecessary delay the defendant shall be
9 brought before the court and the defendant shall be advised
10 of:

11 (a) the allegations of the petition;

(b) the opportunity to appear and to present evidencein the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and
(d) the right to be represented by counsel at the
revocation hearing pursuant to [sections 58 through 65].

17 (5) A hearing is required before a suspended or
18 deferred sentence can be revoked or the terms or conditions
19 of the sentence can be modified, unless:

20 (a) the defendant admits the allegations and waives the21 right to a hearing; or

(b) the relief to be granted is favorable to the
defendant, and the prosecuting attorney, after having been
given notice of the proposed relief and a reasonable
opportunity to object, has not objected. An extension of

the term of probation is not favorable to the defendant for
 the purposes of this subsection.

(6) At the hearing the prosecution must prove that 3 there has been a violation of the terms and conditions of 4 5 the suspended or deferred sentence by a preponderance of the evidence. Provided, however, that where the failure to pay 6 restitution is the basis for the petition the defendant may 7 excuse such violation by showing sufficient evidence that 8 the failure to pay restitution was not attributable to a 9 failure on his part to make a good faith effort to obtain 10 sufficient means to make the restitution payments as 11 ordered. 12

13 (7) If the court finds that the defendant has violated
14 the terms and conditions of the suspended or deferred
15 sentence, the court may:

16 (a) continue the suspended or deferred sentence without17 a change in conditions;

(b) continue the suspended sentence with modified oradditional terms and conditions;

20 (c) revoke the suspension of sentence and require the
21 defendant to serve either the sentence imposed or any lesser
22 sentence; or

23 (d) if the sentence was deferred, impose any sentence24 which might have been originally imposed.

25 (8) If the court finds that the prosecution has not

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proven, by a preponderance of the evidence, that there has
 been a violation of the terms and conditions of the
 suspended or deferred sentence, the petition shall be
 dismissed and the defendant, if in custody, immediately
 released.

NEW SECTION, Section 230. When validity of sentence 6 may be challenged. (1) A person adjudged guilty of an 7 offense in a court of record who has no adequate remedy of я 9 appeal and who claims that a sentence was imposed in 10 violation of the constitution or the laws of this state or the Constitution of the United States, that the court was 11 12 without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or 13 that the sentence was in excess of the maximum authorized by 14 15 law or is otherwise subject to collateral attack upon any 16 ground of alleged error available under a writ of habeas 17 corpus, writ of coram nobis, or other common law or 18 statutory remedy may petition the court that imposed the 19 sentence or the supreme court to vacate, set aside, or 20 correct the sentence or revocation order.

(2) If the sentence was imposed by a justice, city, or
municipal court, the petition must be filed with the
district court in the county where the lower court is
situated.

25 (3) If the person is in custody, the person may elect

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1 to file the petition directly with the supreme court.

2 <u>NEW SECTION.</u> Section 231. When petition may be filed. 3 A petition for the relief referred to in (section 230) may 4 be filed at any time.

5 <u>NEW SECTION.</u> Section 232. Commencement of proceedings. 6 The proceeding for relief under [section 230] must be 7 commenced by filing a verified petition with the clerk of 8 the appropriate court. The clerk shall docket the petition 9 upon its receipt and bring the petition promptly to the 10 attention of the court.

<u>NEW SECTION.</u> Section 233. Contents of petition. (1)
 The petition for postconviction relief must:

13 (a) identify the proceeding in which the petitioner was
14 convicted, give the date of the rendition of the final
15 judgment complained of, and clearly set forth the alleged
16 violation or violations;

17 (b) identify any previous proceedings that the
18 petitioner may have taken to secure relief from his
19 condition:

(c) have attached to the petition any affidavits,
records, or other evidence supporting its allegations or
state why the evidence is not attached.

23 (2) The petition must be accompanied by a supporting
24 memorandum including appropriate arguments and citations and
25 discussion of authorities.

NEW SECTION. Section 234. Waiver of grounds for relief. (1) All grounds for relief claimed by a petitioner under [section 230] must be raised in the original or amended petition. Those grounds for relief not raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition.

8 (2) When a petitioner has been afforded a direct appeal
9 of his conviction, grounds for relief that could reasonably
10 have been raised on direct appeal may not be raised in the
11 original or amended petition.

12 NEW SECTION. Section 235. Proceedings on the petition. (1) Unless the petition and the files and records of the 13 14 case conclusively show that the petitioner is not entitled 15 to relief, the court shall cause notice of the petition to 16 be served upon the county attorney in the county in which 17 the conviction took place and the attorney general and order 18 them to file a responsive pleading to the petition. 19 Following its review of the responsive pleading, the court 20 may dismiss the petition as a matter of law for failure to state a claim for relief, or it may grant a prompt hearing 21 22 on the petition, determine the issue, and make findings of fact and conclusions with respect to the petition. 23

24 (2) If a hearing is required or the interests of25 justice require, the court shall appoint counsel for a

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petitioner who qualifies for the appointment of counsel 1 under [sections 58 through 65]. 2

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(3) The court, for good cause, may grant leave to 3 either party to use the discovery procedures available in 4 criminal or civil proceedings. Discovery procedures may be 5 used only to the extent and in the manner the court has 6 ordered or to which the parties have agreed. 7

(4) The court may receive proof of affidavits, 8 depositions, oral testimony, or other evidence. In its 9 discretion, the court may order the petitioner brought 10 before the court for the hearing. 11

(5) If the court finds in favor of the petitioner, it 12 shall enter an appropriate order with respect to the 13 judgment or sentence in the former proceedings and such 14 supplementary orders as to reassignment, retrial, custody, 15 bail, or discharge as may be necessary and proper. If the 16 court finds for the state, the petition must be dismissed. 17 NEW SECTION. Section 236. Record of proceedings. A 18

court that hears a petition pursuant to this rule shall keep 19 a record of the proceedings and enter its findings and 20 conclusions. 21

NEW SECTION, Section 237. Review. Either the 22 petitioner or the state may appeal to the supreme court from 23 an order entered on a petition. The appeal must be taken 24 within 60 days of the entry of the order. 25

1 NEW SECTION. Section 238. Applicability of the writ of 2 habeas corpus, (1) Except as provided in [sections 238 3 through 247), every person imprisoned or otherwise 4 restrained of his liberty within this state may prosecute a 5 writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered 6 7 from the imprisonment or restraint.

8 (2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a 9 10 person who has been adjudged quilty of an offense in a court 11 of record and has exhausted his remedy of appeal. The relief 12 under [sections 238 through 247] is not available to attack 13 the legality of an order revoking a suspended or deferred 14 sentence.

15 (3) A person may not be released on a writ of habeas 16 corpus due to any technical defect in commitment not 17 affecting his substantial rights.

18 NEW SECTION. Section 239. Application for a writ of 19 habeas corpus. (1) Application for a writ of habeas corpus 20 is made by petition signed either by the party for whose relief it is intended or by another person on the 21 22 petitioner's behalf.

23 (2) The application must specify:

24 (a) that the petitioner is unlawfully imprisoned or 25 restrained of his liberty;

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(b) why the imprisonment or restraint is unlawful: and 1 (c) where and by whom the petitioner is confined or 2 restrained. З

(3) All parties must be named if they are known or 4 otherwise described so that they may be identified. 5

(4) The petition must be verified by the oath or 6 affirmation of the party making the application. 7

NEW SECTION. Section 240. Granting a writ of habeas 8 9 corpus. (1) The writ of habeas corpus may be granted by any justice of the state supreme court or by any district court 10 11 judge upon petition by or on behalf of any person restrained 12 of his liberty within the judge's or justice's jurisdiction. 13 (2) When a writ of habeas corpus is issued, it may be made returnable before the issuing court. 14

(3) Any judge or justice authorized to grant the writ 15 16 of habeas corpus shall grant the writ without delay if it appears that the writ ought to issue. 17

18 NEW SECTION. Section 241. Form of the writ. (1) The writ of habeas corpus must be directed to the person having 19 custody of or restraining the person on whose behalf the 20 21 application is made and must command that person to have the 22 petitioner before the judge before whom the writ is 23 returnable at a time and place specified.

24 (2) The issue or issues to be determined upon return of 25 the writ may be stated either in the writ or in an order

attached to the writ. If the issues to be determined are not 1 stated in the writ or in an attached order, then a copy of 2 the petition must be attached to the writ. 3

NEW SECTION. Section 242. Service of the writ. (1) The 4 writ of habeas corpus or any associated process may be 5 issued and served on any day or at any time. 6

(2) The writ must be served upon the person to whom it 7 is directed. If the writ is directed to a state institution, 8 a copy of the writ shall be served upon the attorney 9 general. If the writ is directed to a county facility, a 10 copy of the writ must be served upon the county attorney. 11

(3) The writ must be served by the clerk of court, the 12 sheriff, or any other person directed to do so by the court. 13 (4) The writ must be served in the same manner as a 14 summons in civil actions, except when otherwise expressly 15

16 directed by the judge or court.

NEW SECTION. Section 243. Return of service. (1) The 17 person upon whom the writ is served shall make a return and 18 19 state in that return:

(a) whether the party is in that person's custody or 20 under his power or restraint; and

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(b) if the party is in custody or otherwise restrained, 22

state the authority for and cause of the custody or 23

restraint; or 24

(c) if the party has been transferred to the custody of 25

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1 or otherwise restrained by another, state to whom, the time 2 and place of transfer, the reason for the transfer, and the 3 authority under which such transfer took place.

4 (2) The return must be signed and verified by oath 5 unless the person making the return is a sworn public 6 officer making a return in his official capacity.

7 <u>NEW SECTION.</u> Section 244. Appearance of petitioner. 8 (1) The person commanded by the writ shall bring the 9 petitioner before the court as required by the writ unless 10 the petitioner cannot be brought before the court without 11 danger to his health. Sickness or infirmity must be 12 confirmed in an affidavit by the person having custody of 13 the petitioner.

14 (2) If the court is satisfied with the truth of the
15 affidavit, the court may proceed and dispose of the case as
16 if the petitioner were present, or the hearing may be
17 postponed until the petitioner is present.

18 (3) If the person commanded by the writ refuses to
19 obey, that person shall be adjudged in contempt of court.

20 <u>NEW SECTION.</u> Section 245. Bearing. (1) The court or 21 judge before whom the writ is returned shall immediately 22 proceed to hear and examine the return. The hearing may be 23 summary in nature.

24 (2) Evidence may be produced and compelled in
 25 preparation of a hearing as provided in (sections 238)

η.

1 through 247].

2 <u>NEW SECTION.</u> Section 246. Disposition of petitioner. 3 (1) If the court finds in favor of the petitioner, an 4 appropriate order must be entered with respect to the 5 judgment or sentence in the former proceeding and any 6 supplementary orders as to reassignment, retrial, custody, 7 bail, or discharge as may be necessary and proper.

8 (2) If the court finds for the state, the petitioner
9 shall be returned to custody of the person to whom the writ
10 was directed.

<u>NEW SECTION.</u> Section 247. Appeal by state. An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal as provided in [section 68]. The appeal must be taken in the same manner as in civil actions.

17 Section 248. Section 1-1-202, MCA, is amended to read: 18 "1-1-202. Terms relating to procedure and the 19 judiciary. Unless the context requires otherwise, the 20 following definitions apply in the Montana Code Annotated: 21 (1) A "deposition" is a written declaration under oath 22 or affirmation, made upon notice to the adverse party for 23 the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supremecourt, judges of the district courts, justices of the peace,

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"1-1-207. Miscellaneous terms. Unless the context municipal judges, and city judges. 1 1 requires otherwise, the following definitions apply in the (3) A "judicial record" is the record of official entry 2 2 3 Montana Code Annotated: of the proceedings in a court of justice or of the official 3 act of a judicial officer in an action or special 4 (1) "Bribe" means anything of value or advantage. 4 5 present or prospective, or any promise or undertaking to proceeding. 5 (4) "Magistrate" means any officer described---in 6 give anything of value or advantage, which is asked, given. б 7 or accepted with a corrupt intent to unlawfully influence 7 46-1-201(6) having the power to issue a warrant for the the person to whom it is given in his action, vote, or arrest of a person charged with an offense and includes; я 8 (a) the justices of the supreme court; q opinion in any public or official capacity. 9 (2) "Peace officer" means any person described in 10 10 (b) the judges of the district courts; 11 46-1-201(0) [section 2(16)]. (c) justices of the peace; and 11 (3) "Vessel", when used in reference to shipping, 12 12 (d) city or municipal judges. includes ships of all kinds, steamboats and steamships, 13 (5) An "oral examination" is an examination in the 13 canal boats, and every structure adapted to be navigated 14 14 presence of the jury or tribunal which is to decide the fact 15 from place to place." or act upon it, the testimony being heard by the jury or 15 tribunal from the lips of the witness. Section 250. Section 3-15-603, MCA, is amended to read: 16 16 (6) "Process" means a writ or summons issued in the \*3-15-603. Manner of impaneling. After the jurors have 17 17 course of judicial proceedings. 18 been selected, the grand jury shall be impaneled as 18 (7) For purposes of legal notification, the term 19 19 prescribed in 46-11-301--through--46-11-303 [sections 97 "registered mail" includes registered or certified mail. 20 20 through 112]." 21 (8) "Testify" includes every mode of oral statement Section 251. Section 7-4-2902, MCA, is amended to read: 21 22 under oath or affirmation. "7-4-2902. Vacancy in office of county coroner or 22 (9) "Writ" means an order in writing issued in the name 23 disgualification of coroner. (1) The coroner, or the board 23 of the state or of a court or judicial officer." 24 24 of county commissioners if the coroner is unable or refuses 25 **Section 249.** Section 1-1-207, MCA, is amended to read: to act, shall request the coroner or a qualified deputy 25 ~153-

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coroner of another county to be acting county coroner if the 1 2 coroner: ٦ (a) is absent or unable to attend to his duties or if the office of coroner is vacant and there are no qualified 4 5 deputies available; (b) is related to the deceased: 6 7 (c) is a potential party in an action concerning the death or his inquiry into the death may pose a conflict of 8 interest; 9 (d) has not successfully completed the basic coroner 10 course required in 7-4-2905 and there are no qualified 11 deputies available; or 12 (e) is disqualified under the provisions of 46-4-201 13 14 [section 10]. (2) The salary of and expenses incurred by an acting 15 coroner on behalf of a requesting county are an allowable 16 charge against the requesting county." 17 Section 252. Section 7-4-2912, MCA, is amended to read: 18 "7-4-2912. Coroner's register. The county coroner shall 19 keep an official register, to be labeled "coroner's 20 register",-as-provided-in-46-4-207." 21 Section 253. Section 7-16-2322, MCA, is amended to 22 23 read: "7-16-2322, Rules and ordinances to implement part. 24 (1) (a) A county park board, in addition to powers and 25

duties now given under law, has the following powers and
 duties;

3 (i) to make rules necessary or convenient to protect 4 and promote the improvement of land and facilities under the 5 care and control of said board and for the protection of 6 birds and animals inhabiting or frequenting land and 7 facilities in parks and public places;

8 (ii) to make rules for the use of land and facilities by9 the public; and

10 (iii) to provide penalties for the violation of such 11 rules.

12 (b) The rules authorized by subsection (1) have the13 force of resolutions of the county commissioners.

14 (2) The county governing body, by the adoption of an
15 ordinance in substantial compliance with the provisions of
16 7-5-103 through 7-5-107, may:

17 (a) provide that violations of specific rules adopted
18 pursuant to subsection (1) constitute criminal offenses and
19 are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county
park warden to enforce park rules and ordinances. A county
park warden is not a peace officer, as defined in 46-1-201
[section 2(16)]. The law enforcement powers of a park warden
are limited to issuing citations charging violations of park
ordinances and rules."

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Section 254. Section 7-32-201, MCA, is amended to read:
 "7-32-201. Definitions. As used in this part, the
 following definitions apply:

4 (1) "Auxiliary officer" means an unsworn, part-time, 5 volunteer member of a law enforcement agency who may perform 6 but is not limited to the performance of such functions as 7 civil defense, search and rescue, office duties, crowd and 8 traffic control, and crime prevention activities.

9 (2) "General law enforcement duties" means patrol 10 operations performed for detection, prevention, and 11 suppression of crime and the enforcement of criminal and 12 traffic codes of this state and its local governments.

13 (3) "Law enforcement agency" means a law enforcement
14 service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time,
employed member of a law enforcement agency who is a peace
officer as defined in 46-1-201(0) [section 2(16)] and has
arrest authority as described in 46-6-401 [sections 26
through 36].

(5) "Reserve officer" means a sworn, part-time,
volunteer member of a law enforcement agency who is a peace
officer as defined in 46-1-201(0) [section 2(16)] and has
arrest authority as described in 46-6-401 [sections 26
through 36] only when authorized to perform these functions
as a representative of the law enforcement agency."

Section 255. Section 7-32-233, MCA, is amended to read:
 "7-32-233. Limitation on arrest authority of auxiliary
 officer. An auxiliary officer has only the arrest authority
 granted a private person in 46-6-502-and--46-6-503 [section
 <u>39]</u>."

Section 256. Section 7-32-4303, MCA, is amended to
read:

8 "7-32-4303. Control of shoplifting. (1) The city or
9 town council may define-shoplifting-as-provided-in-46-6-501
10 and punish persons found guilty thereof of shoplifting.

11 (2) "Shoplifting" means the theft of any goods offered 12 for sale by a wholesale or retail store or other mercantile 13 establishment."

14 Section 257. Section 16-11-147, MCA, is amended to 15 read:

"16-11-147. Seizure and forfeiture of unlawful 16 cigarettes. (1) Any motor vehicle, airplane, conveyance, 17 vehicle, or other means of transportation in which 18 cigarettes are being unlawfully transported, together with 19 the cigarettes and other equipment or personal property used 20 in connection with such transportation and found in such 21 means of transportation, shall be subject to seizure by the 22 department, its duly authorized agent, any sheriff or 23 24 deputy, or other peace officer and shall be subject to 25 forfeiture in the manner hereinafter provided.

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(2) Upon the seizure of any cigarettes and within 2 1 2 days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the 3 person from whom such seizure was made, if known, and file a 4 5 copy thereof with the department. The person from whom the 6 seizure was made or any other person claiming an interest in 7 the property seized may apply for its return as provided in 46-5-302-through-46-5-305 [section 56]." 8

9 Section 258. Section 37-60-406, MCA, is amended to 10 read:

"37-60-406. Peace officer's casual employment. A peace 11 officer, as defined in 46-1-201 [section 2(16)], or a 12 13 reserve officer, as defined in 7-32-201, is not prohibited 14 or restricted from accepting and engaging in employment as a security quard during his off-duty hours, provided that he 15 16 does not advertise his services or solicit employment and 17 further provided that the chief of his department previously 18 approves the off-duty employment. A peace officer or reserve 19 officer so engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is 20 21 authorized in writing by his sheriff or chief of police."

22 Section 259. Section 44-11-303, MCA, is amended to 23 read:

\*44-11-303. Definitions. When used in this part, unless
 the context requires otherwise, the following definitions

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1 apply:

(1) "Law enforcement agency" means a public agency 2 lawfully established by statute or executive order that is 3 4 responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws. 5 (2) "Law enforcement agency of this state" or "law 6 enforcement agency of another (or any other) state" 7 includes, respectively, a law enforcement agency of a 8 ٩ political subdivision of this state and a law enforcement 10 agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an
agreement between two or more law enforcement agencies,
consistent with the purposes of this part.

14 (4) "Party law enforcement agency" means a law
15 enforcement agency that is a party to a mutual aid agreement
16 as set forth in this part.

17 (5) "Peace officer" has the meaning as the term is
18 defined in 46-1-201 [section 2(16)]."

(a) purposely or knowingly causes bodily injury to afamily member or household member; or

24 (b) purposely or knowingly causes reasonable25 apprehension of bodily injury in a family member or

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household member. The purpose to cause reasonable
 apprehension or the knowledge that reasonable apprehension
 would be caused shall be presumed in any case in which a
 person knowingly points a firearm at or in the direction of
 a family member or household member, whether or not the
 offender believes the firearm to be loaded.

7 (2) For the purposes of this section and 46-6-401 8 [section 26], "family member or household member" means a 9 spouse, former spouse, adult person related by blood or 10 marriage, or adult person of the opposite sex residing with 11 the defendant or who formerly resided with the defendant.

12 (3) A person convicted of domestic abuse for the first 13 or second time shall be fined not to exceed \$500 or be 14 imprisoned in the county jail not to exceed 6 months, or 15 both. On a third or subsequent conviction for domestic 16 abuse, the person convicted shall be fined not to exceed 17 \$50,000 or be imprisoned in the state prison for a term not 18 to exceed 5 years, or both."

Section 261. Section 45-8-209, MCA, is amended to read: "45-8-209. Harming a police dog -- penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots or kills a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner. 1 (2) A person convicted of the offense of harming a 2 police dog may be fined an amount not to exceed \$5,000 or be 3 imprisoned in the state prison for a term not to exceed 1 4 year, or both.

5 (3) As used in this section, the following definitions 6 apply:

7 (a) "Law enforcement officer" means a person who is a
8 peace officer as defined in 46-1-201 [section 2(16)].

9 (b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in
7-32-201, in the exercise of its authority;

12 (ii) specifically trained for law enforcement work; and

13 (iii) under the control of a law enforcement officer."

14 Section 262. Section 46-8-114, MCA, is amended to read: 15 "46-8-114. Time and method of payment of costs. When a 16 defendant is sentenced to pay the costs of court-appointed 17 counsel, the court may order payment to be made within a 18 specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. 19 The clerk of the district court shall disburse the payments 20 21 to the county, agency, state agency, or local government unit responsible for the expenses of court-appointed counsel 22 23 as provided for in 46-8-201 [section 65]."

24 Section 263. Section 46-16-103, MCA, is amended to 25 read:

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

4 (2) Questions of law must be decided by the court and 5 questions of fact by the jury except that on a trial for 6 criminal defamation the jury shall determine both questions 7 of law and of fact. Questions of law and fact must be 8 decided by the court when a trial by jury is waived under 9 46-16-102(2) [section 191]."

10 Section 264. Section 46-18-201, MCA, is amended to 11 read:

12 "46-18-201. Sentences that may be imposed. (1) Whenever
13 a person has been found guilty of an offense upon a verdict
14 or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences 15 for driving under the influence of alcohol or drugs, for a 16 period, except as otherwise provided, not exceeding 1 year 17 for any misdemeanor or for a period not exceeding 3 years 18 19 for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during 20 the period of the deferred imposition. Such reasonable 21 22 restrictions or conditions may include:

23 (i) jail base release;

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24 (ii) jail time not exceeding 180 days;

25 (iii) conditions for probation;

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(iv) restitution;

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2 (v) payment of the costs of confinement;

3 (vi) payment of a fine as provided in 46-18-231;

4 (vii) payment of costs as provided in 46-18-232 and 5 46-18-233;

6 (viii) payment of costs of court\_appointed counsel as 7 provided in 46-8-113 [section 62];

B (ix) community service;

9 (x) any other reasonable conditions considered 10 necessary for rehabilitation or for the protection of 11 society; or

12 (xi) any combination of the above.

13 (b) suspend execution of sentence up to the maximum 14 sentence allowed for each particular offense. The sentencing 15 judge may impose on the defendant any reasonable 16 restrictions or conditions during the period of suspended 17 sentence. Such reasonable restrictions or conditions may 18 include any of those listed in subsections (1)(a)(i) through 19 (1)(a)(xi).

(c) impose a fine as provided by law for the offense;
(d) require payment of costs as provided in 46-18-232
or payment of costs of court-appointed counsel as provided
in 46-8-113 [section 62];

(e) commit the defendant to a correctional institutionwith or without a fine as provided by law for the offense;

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1 (f) impose any combination of subsections (1)(b)
2 through (1)(e).

3 (2) If any financial obligation is imposed as a 4 condition under subsection (1)(a), sentence may be deferred 5 for a period not exceeding 2 years for any misdemeanor or 6 for a period not exceeding 6 years for any felony, 7 regardless of whether any other conditions are imposed.

8 (3) If any restrictions or conditions imposed under 9 subsection (1)(a) or (1)(b) are violated, the court shall 10 consider any elapsed time and either expressly allow part or 11 all of it as a credit against the sentence or reject all or 12 part as a credit and state its reasons in the order. Credit, 13 however, must be allowed for jail time already served.

14 (4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment 15 imposed under the following sections may not be deferred or 16 suspended: 45-5-103, 45-5-202(3) relating to aggravated 17 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) 18 and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2). 19 20 (5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of 21 imprisonment imposed under 45-5-102 may not be deferred or 22 23 suspended.

24 (6) Except as provided in 46-18-222, imposition of
25 sentence in a felony case may not be deferred in the case of

a defendant who has been convicted of a felony on a prior
 occasion whether or not the sentence was imposed, imposition
 of the sentence was deferred, or execution of the sentence
 was suspended.

5 (7) If the victim was less than 16 years old, the 6 imposition or execution of the first 30 days of a sentence 7 of imprisonment imposed under 45-5-502(3), 45-5-503, 8 45-5-504, 45-5-505, or 45-5-507 may not be deferred or 9 suspended. Section 46-18-222 does not apply to the first 30 10 days of such imprisonment."

Section 265. Section 46-18-247, MCA, is amended to read:

13 "46-18-247. Default. (1) If an offender sentenced to 14 make restitution is in default, the sentencing court, upon 15 the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-10-203 [section 229] 16 requiring the offender to show cause why he should not be 17 18 confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and 19 place for a hearing or, if he fails to appear as ordered, 20 21 issue a warrant for his arrest. The order or warrant must be 22 accompanied by written notice of the offender's right to a 23 hearing as provided in 46-10-203 [section 229].

24 (2) If the court finds that the offender's default was25 attributable to a failure on his part to make a good faith

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effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-10-203 [section 229]. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

7 (3) An order to pay restitution constitutes a judgment 8 rendered in favor of the state, and following a default in 9 the payment of restitution or any installment thereof, the 10 sentencing court may order the restitution to be collected 11 by any method authorized for the enforcement of other 12 judgments."

13 Section 266. Section 46-18-502, MCA, is amended to 14 read:

15 "46-18-502. Sentencing of persistent felony offender.
16 (1) Except as provided in subsection (2), a persistent
17 felony offender shall be imprisoned in the state prison for
18 a term of not less than 5 years or more than 100 years or
19 shall be fined an amount not to exceed \$50,000, or both, if
20 he was 21 years of age or older at the time of the
21 commission of the present offense.

(2) If the offender was a persistent felony offender,
as defined in 46-10-501 (section 2(17)), at the time of his
previous felony conviction, less than 5 years have elapsed
between the commission of the present offense and either the

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previous felony conviction or the offender's release on 1 2 parole or otherwise from prison or other commitment imposed 3 as a result of the previous felony conviction, and he was 21 4 years of age or older at the time of the commission of the 5 present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years 6 or shall be fined an amount not to exceed \$50,000, or both. 7 8 (3) Except as provided in 46-18-222, the imposition or 9 execution of the first 5 years of a sentence imposed under 10 subsection (1) or the first 10 years of a sentence imposed 11 under subsection (2) may not be deferred or suspended. 12 (4) Any sentence imposed under subsection (2) shall run 11 consecutive to any other sentence imposed." Section 267. Section 46-20-103, MCA, is amended to -14 15 read: "46-20-103. Scope of appeal by state. (1) Except as 16 17 otherwise specifically authorized, the state may not appeal in a criminal case. 18

19 (2) The state may appeal from any court order or20 judgment the substantive effect of which results in:

21 (a) dismissing a case;

22 (b) modifying or changing the verdict as provided in

23 46-16-702(3)(c) [section 219];

24 (c) granting a new trial;

25 (d) quashing an arrest or search warrant:

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1	(e) suppressing evidence;
2	(f) suppressing a confession or admission; or
3	(g) granting or denying change of venue."
4	NEW SECTION. Section 268. Repealer. Sections 46-1-101,
5	46-1-102, 46-1-201, 46-3-101 through 46-3-106, 46-3-201
6	through 46-3-206, 46-4-201 through 46-4-207, 46-4-301
7	through 46-4-306, 46-5-101 through 46-5-104, 46-5-201
8	through 46-5-209, 46-5-301 through 46-5-305, 46-5-401,
9	46-5-402, 46-5-501 through 46-5-505, 46-6-101, 46-6-104
10	through 46-6-106, 46-6-201 through 46-6-204, 46-6-301
11	through 46-6-304, 46-6-401 through 46-6-404, 46-6-411,
12	46-6-412, 46-6-421, 46-6-422, 46-6-501 through 46-6-503,
13	46-7-101 through 46-7-103, 46-8-101 through 46-8-104,
14	46-8-111 through 46-8-115, 46-8-201, 46-8-202, 46-9-101
15	through 46-9-104, 46-9-111, 46-9-201 through 46-9-205,
16	46-9-301 through 46-9-303, 46-9-311, 46-9-401 through
17	46-9-404, 46-9-411 through 46-9-414, 46-9-501 through
18	46-9-505, 46-10-101, 46-10-102, 46-10-201 through 46-10-204,
19	46-11-101, 46-11-102, 46-11-201 through 46-11-204, 46-11-301
20	through 46-11-303, 46-11-311 through 46-11-319, 46-11-331
21	through 46-11-333, 46-11-401 through 46-11-405, 46-11-501
22	through 46-11-505, 46-11-601, 46-12-101 through 46-12-105,
23	46-12-201 through 46-12-206, 46-13-101 through 46-13-106,
24	46-13-201 through 46-13-204, 46-13-301, 46-13-302, 46-14-101
25	through 46-14-103, 46-14-201 through 46-14-203, 46-14-212,

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1	46-14-213, 46-14-221, 46-14-222, 46-14-301 through
2	46-14-304, 46-14-311 through 46-14-313, 46-14-401, 46-15-101
3	through 46-15-105, 46-15-111 through 46-15-114, 46-15-201
4	through 46-15-204, 46-15-321 through 46-15-329, 46-15-331,
5	46-15-332, 46-15-401 through 46-15-403, 46-16-102,
6	46-16-108, 46-16-201, 46-16-202, 46-16-211 through
7	46-16-213, 46-16-301 through 46-16-307, 46-16-401 through
8	46-16-403, 46-16-501 through 46-16-505, 46-16-601 through
9	46-16-605, 46-16-701, 46-16-702, 46-17-101 through
10	46-17-103, 46-17-201 through 46-17-205, 46-17-211, 46-17-301
11	through 46-17-303, 46-17-311, 46-17-401 through 46-17-404,
12	46-18-102, 46-18-111 through 46-18-113, 46-18-203,
13	46-18-501, 46-18-503, 46-21-101 through 46-21-105, and
14	46-21-201 through 46-21-203, MCA, are repealed.

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1 2 INTRODUCED BY 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 4 LAW RELATING TO CRIMINAL PROCEDURE : IMPLEMENTING 5 THE RECOMMENDATIONS OF THE COMMISSION ON RULES OF CRIMINAL б 7 PROCEDURE; AMENDING SECTIONS 1-1-202, 1-1-207, 7-4-2902, 7-4-2912. 7-16-2322. 7-32-201, 7-32-233, 7-32-4303, 8 9 16-11-147, 37-60-406, 44-11-303, 45-5-206, 45-8-209, 46-8-114, 46-16-103, 46-18-201, 46-18-247, 46-18-502, AND 10 11 46-20-103, MCA; AND REPEALING SECTIONS 46-1-101, 46-1-102, 12 46-1-201, 46-3-101 THROUGH 46-3-106, 46-3-201 THROUGH 46-4-201 THROUGH 46-4-207, THROUGH 13 46-3-206, 46-4-301 14 46-4-306, 46-5-101 THROUGH 46-5-104, 46-5-201 THROUGH 15 46-5-209, 46-5-301 THROUGH 46-5-305, 46-5-401, 46-5-402, 16 46-5-501 THROUGH 46-5-505, 46-6-101, 46-6-104 THROUGH THROUGH 17 46-6-106, 46-6-201 THROUGH 46-6-204, 46-6-301 46-6-401 THROUGH 46-6-404, 46-6-411, 46-6-412, 18 46-6-304, 19 46-6-421, 46-6-422, 46-6-501 THROUGH 46-6-503, 46-7-101 20 THROUGH 46-7-103, 46-8-101 THROUGH 46-8-104, 46-8-111 21 THROUGH 46-8-115, 46-8-201, 46-8-202, 46-9-101 THROUGH 46-9-104, 46-9-111, 46-9-201 THROUGH 46-9-205, 22 46-9-301 23 THROUGH 46-9-303, 46-9-311, 46-9-401 THROUGH 46-9-404, 46-9-414, 46-9-501 THROUGH 46-9-505, THROUGH 24 46-9-411 25 46-10-101, 46-10-102, 46-10-201 THROUGH 46-10-204,

a Legislative Council

There is no change on <u>SB 347</u> and will not be reprinted. Please refer to introduced (white) or second reading (yellow) for complete text.

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INTRODUCED BILL

SB 347