

SENATE BILL NO. 125

INTRODUCED BY VAN VALKENBURG, J. RICE

IN THE SENATE

JANUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 29, 1993	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
JANUARY 30, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 34; NOES, 8.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 10, 1993	SECOND READING, CONCURRED IN.
MARCH 12, 1993	THIRD READING, CONCURRED IN. AYES, 88; NOES, 8.
MARCH 13, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 16, 1993	RECEIVED FROM HOUSE.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.

MARCH 17, 1993

ON MOTION, CONSIDERATION PASSED
TILL THE 62ND LEGISLATIVE DAY.

MARCH 19, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 20, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 125
 2 INTRODUCED BY Sen. Valtenberg
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 5 LAW REGARDING CRIMINAL PROCEDURE; INCREASING THE AMOUNT OF
 6 GUARANTEED ARREST BOND CERTIFICATES; ELIMINATING THE USE OF
 7 SEALED AFFIDAVITS IN SUPPORT OF A MOTION TO FILE A CHARGE OR
 8 WARRANT; PROVIDING FOR THE WRITTEN ACKNOWLEDGEMENT OF
 9 INFORMATION FOR A GUILTY PLEA; REQUIRING THE KEEPING OF A
 10 LIST OF PERSONS TO WHOM SUBPOENAS ARE ISSUED; CLARIFYING THE
 11 DISCLOSURE REQUIREMENTS REGARDING INFORMANTS; EXPANDING THE
 12 USE OF VICTIM IMPACT STATEMENTS; CODIFYING THE NOTICE
 13 REQUIREMENTS FOR THE DISCLOSURE OF THE INTENDED USE OF
 14 EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS; AMENDING SECTIONS
 15 46-1-202, 46-4-306, 46-5-101, 46-6-201, 46-6-210, 46-6-312,
 16 46-8-113, 46-8-115, 46-8-201, 46-9-201, 46-9-412, 46-9-505,
 17 46-10-202, 46-11-110, 46-11-302, 46-11-332, 46-11-401,
 18 46-11-405, 46-11-601, 46-11-701, 46-12-210, 46-12-211,
 19 46-13-108, 46-13-110, 46-13-202, 46-13-203, 46-13-210,
 20 46-14-312, 46-15-101, 46-15-116, 46-15-201, 46-15-202,
 21 46-15-322, 46-15-323, 46-15-324, 46-16-107, 46-16-116,
 22 46-16-122, 46-16-130, 46-17-311, 46-18-111, 46-18-112,
 23 46-18-117, 46-18-201, 46-18-202, 46-18-203, AND 46-18-222,
 24 MCA; AND REPEALING SECTIONS 46-10-201, 46-16-107, 46-17-101,
 25 46-17-103, 46-17-204, 46-17-205, 46-17-211, AND 46-17-301,

1 MCA."

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

4 **Section 1.** Section 46-1-202, MCA, is amended to read:

5 "46-1-202. Definitions. As used in this title, unless
 6 the context requires otherwise, the following definitions
 7 apply:

8 (1) "Arraignment" means the formal act of calling the
 9 defendant into open court to enter a plea answering a
 10 charge.

11 (2) "Arrest" means taking a person into custody in the
 12 manner authorized by law.

13 (3) "Arrest warrant" means a written order from a court
 14 directed to a peace officer or to some other person
 15 specifically named commanding that officer or person to
 16 arrest another. The term includes the original warrant of
 17 arrest and a copy certified by the issuing court.

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

21 (5) "Charge" means a written statement that accuses a
 22 person of the commission of an offense, that is presented to
 23 a court, and that is contained in a complaint, information,
 24 or indictment.

25 (6) "Concealment" means any act or deception done

~~purposely-or-knowingly-upon-or-outside--the--premises--of--a
wholesale--or-retail-store-or-other-mercantile-establishment
with-the-intent-to-deprive-the-merchant-of-all--or--part--of
the-value-of-the-merchandise.~~

{7}(6) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

{8}(7) "Court" means a place where justice is judicially administered and includes the judge of the court.

{9}(8) "Included offense" means an offense that:

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

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

{10}(9) "Judge" means a person who is vested by law with the power to perform judicial functions.

{11}(10) "Judgment" means an adjudication by a court

that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

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

{13}(12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

{14}(13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

{15}(14) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

{16}(15) "Parole" means the release to the community of

a prisoner by a decision of the board of pardons prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and the supervision of the department of corrections and human services.

{17}(16) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

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

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

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

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous 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.

{19}(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

{20}(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

{21}(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections and human services upon direction of the court.

{22}(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

{23}(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

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

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

1 †24†(23) "Search warrant" means an order that is:

2 (a) in writing;

3 (b) in the name of the state;

4 (c) signed by a judge;

5 (d) a particular description of the place, object, or
6 person to be searched and the evidence, contraband, or
7 person to be seized; and

8 (e) directed to a peace officer and commands the peace
9 officer to search for evidence, contraband, or persons.

10 †25†(24) "Sentence" means the judicial disposition of a
11 criminal proceeding upon a plea, verdict, or finding of
12 guilty.

13 †26†(25) "Statement" means:

14 (a) a writing signed or otherwise adopted or approved
15 by a person;

16 (b) a video or audio recording of a person's
17 communications or a transcript of the communications; and

18 (c) a writing containing a summary of a person's oral
19 communications or admissions.

20 †27†(26) "Summons" means a written order issued by the
21 court that commands a person to appear before a court at a
22 stated time and place to answer a charge for the offense set
23 forth in the order.

24 †28†(27) "Superseded notes" means handwritten notes,
25 including field notes, that have been substantially

1 incorporated into a statement. The notes may not be
2 considered a statement and are not subject to disclosure
3 except as provided in 46-15-324.

4 †29†(28) "Temporary road block" means any structure,
5 device, or means used by a peace officer for the purpose of
6 controlling all traffic through a point on the highway where
7 all vehicles may be slowed or stopped.

8 †30†(29) "Witness" means a person whose testimony is
9 desired in a proceeding or investigation by a grand jury or
10 in a criminal action, prosecution, or proceeding.

11 †31†(30) "Work product" means legal research, records,
12 correspondence, reports, and memoranda, both written and
13 oral, to the extent that they contain the opinions,
14 theories, and conclusions of the prosecutor, defense
15 counsel, or their staff or investigators."

16 **Section 2.** Section 46-4-306, MCA, is amended to read:

17 **"46-4-306. Applicability of other laws -- costs. (1)**
18 The fees and mileage of witnesses subpoenaed pursuant to
19 this part are the same as those required in criminal
20 actions. The state shall bear all costs, including the cost
21 of service, when the application for the subpoena is made by
22 the attorney general, and the appropriate county shall bear
23 all costs, including the cost of service, when the
24 application for the subpoena is made by a county attorney,
25 and the appropriate city shall bear all costs, including the

cost of service, when the application for the subpoena is made by a city attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-112, 46-15-113, and 46-15-120.

(3) All investigative costs, including testing of evidence and persons, must be borne by the governmental entity requesting the investigation."

Section 3. Section 46-5-101, MCA, is amended to read:

"46-5-101. Searches and seizures -- when authorized. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46 when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with judicially recognized exceptions to the warrant requirement."

Section 4. Section 46-6-201, MCA, is amended to read:

"46-6-201. Issuance of arrest warrant upon complaint.

~~{1}-A-complaint, as the basis of an arrest warrant, shall be in writing;~~

~~{2}-When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses;~~

~~{3}~~ If it appears from the contents of the complaint and the examination of the complainant and from the examination of other witnesses or affidavits, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county--attorney prosecutor, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint."

Section 5. Section 46-6-210, MCA, is amended to read:

"46-6-210. Arrest by peace officer. A peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds:

(1) that a warrant for the person's arrest has been issued in this state, except that unless otherwise provided by law, a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or

(2) that a felony warrant for the person's arrest has been issued in another jurisdiction."

Section 6. Section 46-6-312, MCA, is amended to read:

1 ~~"46-6-312. Manner of arrest without warrant. A peace~~
 2 officer ~~or--person~~ making an arrest without a warrant shall
 3 inform the person to be arrested of the officer's authority,
 4 of the intention to arrest that person, and of the cause of
 5 the arrest, except when the person to be arrested is
 6 actually engaged in the commission of or in an attempt to
 7 commit an offense or is pursued immediately after its
 8 commission, after an escape, or when the giving of the
 9 information will imperil the arrest."

10 **Section 7.** Section 46-8-113, MCA, is amended to read:

11 ~~"46-8-113. Payment for court-appointed counsel by~~
 12 defendant. (1) The court may require a convicted defendant
 13 to pay the costs of court-appointed counsel as a part of or
 14 a condition under the sentence imposed as provided in Title
 15 46.

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

19 (3) The court may not sentence a defendant to pay the
 20 costs of court-appointed counsel unless the defendant is or
 21 will be able to pay them. In determining the amount and
 22 method of payment of costs, the court shall take into
 23 account the financial resources of the defendant and the
 24 nature of the burden that payment of costs will impose.

25 (4) A defendant who has been sentenced to pay costs and

1 ~~who-is-able-to-but-refuses-or-fails-to-pay-those--costs~~ may
 2 at any time petition the court that sentenced the defendant
 3 for remission of the payment of costs or of any unpaid
 4 portion of the costs. If it appears to the satisfaction of
 5 the court that payment of the amount due will impose
 6 manifest hardship on the defendant or the defendant's
 7 immediate family, the court may remit all or part of the
 8 amount due in costs or modify the method of payment."

9 **Section 8.** Section 46-8-115, MCA, is amended to read:

10 ~~"46-8-115. Effect of nonpayment. (1) When a defendant~~
 11 who is sentenced to pay the costs of court-appointed counsel
 12 defaults in payment of the costs or of any installment, the
 13 court on motion of the ~~county-attorney~~ prosecutor or on its
 14 own motion may require ~~him~~ the defendant to show cause why
 15 the default should not be treated as contempt of court and
 16 may issue a show cause citation or an arrest warrant
 17 requiring the defendant's appearance.

18 (2) Unless the defendant shows that the default was not
 19 attributable to an intentional refusal to obey the order of
 20 the court or to a failure on the defendant's part to make a
 21 good faith effort to make the payment, the court may find
 22 that the default constitutes civil contempt.

23 (3) The term of imprisonment for contempt for
 24 nonpayment of the costs of court-appointed counsel must be
 25 set forth in the judgment and may not exceed 1 day for each

1 \$25 of the payment, 30 days if the order for payment of
 2 costs was imposed upon conviction of a misdemeanor, or 1
 3 year in any other case, whichever is the shorter period. A
 4 person committed for nonpayment of costs must be given
 5 credit toward payment for each day of imprisonment at the
 6 rate specified in the judgment.

7 (4) If it appears to the satisfaction of the court that
 8 the default in the payment of costs is not contempt, the
 9 court may enter an order allowing the defendant additional
 10 time for payment, reducing the amount of the payment or of
 11 each installment, or revoking the order for payment of the
 12 unpaid portion of the costs in whole or in part.

13 (5) A default in the payment of costs or any
 14 installment may be collected by any means authorized by law
 15 for the enforcement of a judgment. The writ of execution for
 16 the collection of costs may not discharge a defendant
 17 committed to imprisonment for contempt until the amount of
 18 the payment for costs has actually been collected."

19 **Section 9.** Section 46-8-201, MCA, is amended to read:

20 "46-8-201. Remuneration of appointed counsel. (1)
 21 Whenever in a criminal proceeding an attorney represents or
 22 defends any person by order of the court on the ground that
 23 the person is financially unable to employ counsel, the
 24 attorney must be paid for the services a sum as a district
 25 court judge or justice of the state supreme court certifies

1 to be a reasonable compensation and be reimbursed for
 2 reasonable costs incurred in the criminal proceeding.

3 (2) The expense of implementing subsection (1) is
 4 chargeable as provided in 3-5-901 to the county in which the
 5 proceeding arose, the state, or both, except that:

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

10 (b) when there has been an arrest by agents of the
 11 department of fish, wildlife, and parks or agents of the
 12 department of justice and the charge is prosecuted by
 13 personnel of the state agency that made the charge, the
 14 expense must be borne by the prosecuting state agency."

15 **Section 10.** Section 46-9-201, MCA, is amended to read:

16 "46-9-201. Who may admit to bail. A judge may admit to
 17 bail any defendant properly appearing before him the judge
 18 in a bail proceeding. When bound over to any court or judge
 19 having jurisdiction of the offense charged, bail must be
 20 continued provided that the court or judge having
 21 jurisdiction may increase, reduce, or substitute bail. On
 22 appeal, a judge before whom the trial was had or a judge
 23 having the power to issue a writ of habeas corpus may admit
 24 the defendant to bail. For purposes of this section, a
 25 defendant's appearance before a judge may be either by

1 physical appearance before the court or by two-way
2 electronic audio-video communication as provided in ~~46-9-115~~
3 46-9-206."

4 **Section 11.** Section 46-9-412, MCA, is amended to read:

5 "46-9-412. Guaranteed arrest bond certificates. (1) A
6 domestic or foreign surety company that has qualified to
7 transact surety business in this state may, in any year,
8 become surety in an amount not exceeding \$500 \$1,000 with
9 respect to any guaranteed arrest bond certificates issued in
10 the year by an automobile club or association or by an
11 insurance company authorized to write automobile liability
12 insurance within this state by filing with the commissioner
13 of insurance an undertaking to become surety.

14 (2) The form of the undertaking must be prescribed by
15 the commissioner of insurance and must include those matters
16 required by 46-9-401."

17 **Section 12.** Section 46-9-505, MCA, is amended to read:

18 "46-9-505. Issuance of arrest warrant -- redetermining
19 bail. (1) Upon failure to comply with any condition of a
20 bail or recognizance, the court having jurisdiction at the
21 time of ~~such~~ the failure may, in addition to any other
22 action provided by law, issue a warrant for the arrest of
23 the person ~~at-liberty-on-bail-or-on-his-own-recognizance.~~

24 (2) On verified application by the state prosecutor
25 setting forth facts or circumstances constituting a breach

1 or threatened breach of any of the conditions of the bail or
2 a threat or an attempt to influence the pending proceeding,
3 the court may issue a warrant for the arrest of the
4 defendant.

5 (3) Upon the arrest, the defendant ~~shall~~ must be
6 brought before the court without unnecessary delay and the
7 court shall conduct a hearing and determine bail in
8 accordance with 46-9-311."

9 **Section 13.** Section 46-10-202, MCA, is amended to read:

10 "46-10-202. Presentation of evidence. (1) The defendant
11 may not enter a plea. The judge shall hear the evidence
12 without unnecessary delay. All witnesses must be examined in
13 the presence of the defendant. The defendant may
14 cross-examine witnesses against the defendant and may
15 introduce evidence in the defendant's own behalf. For
16 purposes of this section, a preliminary examination
17 conducted by the use of two-way electronic audio-video
18 communication that allows all of the participants to be
19 observed and heard by all other participants and that allows
20 the defendant to cross-examine witnesses is considered to be
21 an examination of a witness in the presence of the
22 defendant. Two-way electronic ~~audio-visual~~ audio-video
23 communication may not be used unless the defendant's counsel
24 is physically present with ~~his-client~~ the defendant, unless
25 this requirement is waived by the defendant.

(2) During the examination of a 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 communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his the defendant's counsel, if any, can communicate privately, and so that the defendant and his the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination."

Section 14. Section 46-11-110, MCA, is amended to read:

"46-11-110. Filing complaint. ~~{1}~~ When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant and or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge may-be-filed.

~~{2}--if-it-appears-from--an--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-shall-issue-a-summons-or-an-arrest warrant--"~~

Section 15. Section 46-11-302, MCA, is amended to read:

"46-11-302. Challenges to grand jury or grand jurors.

(1) The ~~county-attorney-or-attorney-general~~ prosecutor may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or permanently, and in the latter event, the court may impanel

another person in place of the juror discharged.

(3) A motion to dismiss the indictment may be based on the ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment may not be dismissed on the ground that one or more members are not legally qualified if it appears from the record kept pursuant to this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment."

Section 16. Section 46-11-332, MCA, is amended to read:

"46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue a an arrest warrant or summons for the defendant.

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

Section 17. Section 46-11-401, MCA, is amended to read:

"46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate municipality and must specify the district court in which the charge is filed. The charge must be a plain, concise,

and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

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

(3) If the charge is by complaint, it must be signed on oath by a peace officer, by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

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

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 18. Section 46-11-405, MCA, is amended to read:

"46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may,

at any time before the defendants have gone into their defense, on the application of the county--attorney prosecutor, direct any defendant to be discharged so that he the defendant may be a witness for the state prosecution.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to require the defendant to put him on his a defense, the court must order him that defendant to be discharged before the evidence is closed so that he the discharged defendant may be a witness for his the codefendant."

Section 19. Section 46-11-601, MCA, is amended to read:

"46-11-601. Recognizance by or deposition of witness.

(1) If the defendant is held to answer after a preliminary examination, or after the defendant has waived a preliminary examination, or after the district court has granted leave to file an information, or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written

undertaking may be remanded to custody but ~~shall~~ may not be held longer than is necessary to take his the witness's deposition. After the deposition is taken, the witness must be immediately discharged.

(3) ~~Such~~ The deposition must be taken in the presence of the county-attorney prosecutor and the defendant and his the defendant's counsel unless either the county--attorney prosecutor or the defendant and his the defendant's counsel fail to attend after reasonable notice of the time and place set for taking the deposition."

Section 20. Section 46-11-701, MCA, is amended to read:

"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own

1 motion.

2 (3) The judge may close a preliminary hearing, bail
3 hearing, or any other pretrial proceeding, including a
4 hearing on a motion to suppress, and may seal the record
5 only if:

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

9 (b) the prejudicial effect of the information on trial
10 fairness cannot be avoided by any reasonable alternative
11 means.

12 (4) Whenever all or part of any pretrial proceeding is
13 held in chambers or otherwise closed to the public under
14 this section, a complete record must be kept and made
15 available to the public following the completion of the
16 trial or earlier if consistent with trial fairness.

17 (5) When the judge determines that all or part of a
18 document filed in support of a charge or warrant would
19 present a clear and present danger to the defendant's right
20 to a fair trial, the document or portion of the document
21 must be sealed until the trial is completed unless the
22 document or portion of the document must be used for trial
23 fairness.

24 {6}--An-affidavit-filed-in-support-of-a-motion-for-leave
25 to--file-a-charge-or-warrant-must-be-sealed-unless-the-judge

1 determines--that--disclosure--of--the--information--in--the
2 affidavit--is--required--to--protect--the-health,-safety,-or
3 welfare-of-the-public:"

4 **Section 21.** Section 46-12-210, MCA, is amended to read:

5 "46-12-210. Advice to defendant. (1) Before accepting a
6 plea of guilty, the court shall determine that the defendant
7 understands the following:

8 {1} (a) (i) the nature of the charge for which the
9 plea is offered;

10 {b}(ii) the mandatory minimum penalty provided by law,
11 if any;

12 {c}(iii) the maximum penalty provided by law, including
13 the effect of any penalty enhancement provision or special
14 parole restriction; and

15 {d}(iv) when applicable, the requirement that the court
16 may also order the defendant to make restitution of the
17 costs and assessments provided by law;

18 {2}(b) if the defendant is not represented by an
19 attorney, the fact that he the defendant has the right to be
20 represented by an attorney at every stage of the proceeding
21 against him and that, if necessary, one will be appointed to
22 represent the defendant;

23 {3}(c) that the defendant has the right:

24 {a}(i) to plead not guilty or to persist in that plea
25 if it has already been made;

{b}(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

{c}(iii) to confront and cross-examine witnesses against the defendant; and

{d}(iv) not to be compelled to reveal personally incriminating information;

{4}(d) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

{5}(e) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial; and

{6}(f) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 22. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure. (1) The

prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

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

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

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no

1 right to withdraw the plea.

2 (3) If the court accepts a plea agreement, the court
3 shall inform the defendant that it will embody in the
4 judgment and sentence the disposition provided for in the
5 plea agreement.

6 (4) If the court rejects the a plea agreement of the
7 type specified in subsection (1)(a) or (1)(b), the court
8 shall, on the record, inform the parties of this fact and
9 advise the defendant that the court is not bound by the plea
10 agreement, afford the defendant an opportunity to withdraw
11 the plea, and advise the defendant that if the defendant
12 persists in the guilty plea, the disposition of the case may
13 be less favorable to the defendant than that contemplated by
14 the plea agreement."

15 **Section 23.** Section 46-13-108, MCA, is amended to read:

16 **"46-13-108. Notice by prosecutor seeking persistent**
17 **felony offender status.** (1) Except for good cause shown, if
18 the prosecution seeks treatment of the accused as a
19 persistent felony offender, notice of that fact must be
20 given at or before the omnibus hearing pursuant to ~~46-13-101~~
21 46-13-110.

22 (2) The notice must specify the alleged prior
23 convictions and may not be made known to the jury before the
24 verdict is returned except as allowed by the Montana Rules
25 of Evidence.

1 (3) If the defendant objects to the allegations
2 contained in the notice, the judge shall conduct a hearing
3 to determine if the allegations in the notice are true.

4 (4) The hearing must be held before the judge alone. If
5 the judge finds any allegations of the prior convictions are
6 true, the accused must be sentenced as provided by law.

7 (5) The notice must be filed and sealed until the time
8 of trial or until a plea of guilty is given by the
9 defendant."

10 **Section 24.** Section 46-13-110, MCA, is amended to read:

11 **"46-13-110. Omnibus hearing.** (1) Within a reasonable
12 time following the entry of a not guilty plea but not less
13 than 30 days before trial, the court shall hold an omnibus
14 hearing.

15 (2) The purpose of the hearing is to expedite the
16 procedures leading up to the trial of the defendant.

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

21 (a) joinder and severance of offenses or defendants,
22 46-11-404, 46-13-210 and 46-13-211;

23 (b) double jeopardy, 46-11-410, 46-11-503, and
24 46-11-504;

25 (c) the need for exclusion of the public and for

1 sealing records of any pretrial proceedings, 46-11-701;
 2 (d) notification of the existence of a plea agreement,
 3 46-12-211;
 4 (e) disclosure and discovery motions, Title 46, chapter
 5 15, part 3;
 6 (f) notice of reliance on certain defenses, 46-15-323;
 7 (g) notice of seeking ~~enhanced--punishment~~ persistent
 8 felony offender status, ~~46-13-503~~ 46-13-108;
 9 (h) notice of other crimes, wrongs, or acts, ~~46-13-503~~
 10 [section 48];
 11 (i) motion to suppress, 46-13-301 and 46-13-302;
 12 (j) motion to dismiss, 46-13-401 and 46-13-402;
 13 (k) motion for change of place of trial, 46-13-203
 14 through 46-13-205;
 15 (l) reasonableness of bail, Title 46, chapter 9; and
 16 (m) stipulations.
 17 (4) At the conclusion of the hearing, a court-approved
 18 memorandum of the matters settled must be signed by the
 19 court and counsel and filed with the court.
 20 (5) Any motions made pursuant to subsections (1)
 21 through (3) may be ruled on by the court at the time of the
 22 hearing, where appropriate, or may be scheduled for briefing
 23 and further hearing as the court considers necessary."
 24 **Section 25.** Section 46-13-202, MCA, is amended to read:
 25 "46-13-202. Motion for continuance. (1) The defendant

1 or the state prosecutor may move for a continuance. If the
 2 motion is made more than 30 days after arraignment or at any
 3 time after trial has begun, the court may require that it be
 4 supported by affidavit.
 5 (2) The court may upon the motion of either party or
 6 upon the court's own motion order a continuance if the
 7 interests of justice so require.
 8 (3) All motions for continuance are addressed to the
 9 discretion of the trial court and ~~shall~~ must be considered
 10 in the light of the diligence shown on the part of the
 11 movant. This section ~~shall~~ must be construed to the end that
 12 criminal cases are tried with due diligence consonant with
 13 the rights of the defendant and the state prosecution to a
 14 speedy trial."
 15 **Section 26.** Section 46-13-203, MCA, is amended to read:
 16 "46-13-203. Change of place of trial 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 district court determines that there exists
 22 in the county in which the prosecution is pending such
 23 prejudice that a fair trial cannot be had, the district
 24 court shall:
 25 (a) transfer the cause to any other county in which a

1 fair trial may be had;

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

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

7 **Section 27.** Section 46-13-210, MCA, is amended to read:

8 "46-13-210. Trial of indictments, informations,
9 complaints, or defendants together. The court may order two
10 or more indictments, informations, complaints, or defendants
11 to be tried together if the interests of justice require and
12 the charges or defendants could have been joined in a single
13 indictment, information, or complaint as provided for in
14 ~~46-12-2137-46-15-3227-and-46-15-323~~ 46-11-404."

15 **Section 28.** Section 46-14-312, MCA, is amended to read:

16 "46-14-312. Sentence to be imposed. (1) If the court
17 finds that the defendant at the time of the commission of
18 the offense of which the defendant was convicted did not
19 suffer from a mental disease or defect as described in
20 46-14-311, the court shall sentence the defendant as
21 provided in Title 46, chapter 18.

22 (2) If the court finds that the defendant at the time
23 of the commission of the offense suffered from a mental
24 disease or defect as described in 46-14-311, any mandatory
25 minimum sentence prescribed by law for the offense need not

1 apply and the court shall sentence the defendant to be
2 committed to the custody of the director of the department
3 of corrections and human services to be placed in an
4 appropriate institution for custody, care, and treatment for
5 a definite period of time not to exceed the maximum term of
6 imprisonment that could be imposed under subsection (1). The
7 authority of the court with regard to sentencing is the same
8 as authorized in Title 46, chapter 18, if the treatment of
9 the individual and the protection of the public are provided
10 for.

11 (3) Either the director or a defendant whose sentence
12 has been imposed under subsection (2) may petition the
13 sentencing court for review of the sentence if the
14 professional person certifies that:

15 (a) the defendant no longer suffers from a mental
16 disease or defect;

17 (b) the defendant's mental disease or defect no longer
18 renders him the defendant unable to appreciate the
19 criminality of ~~his~~ the defendant's conduct or to conform ~~his~~
20 the defendant's conduct to the requirements of law; or

21 (c) the defendant suffers from a mental disease or
22 defect that makes him the defendant a danger to himself ~~the~~
23 defendant or others, but either there is no treatment
24 available for ~~his~~ the mental disease or defect or he ~~the~~
25 defendant refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 29. Section 46-15-101, MCA, is amended to read:

"46-15-101. Subpoenas. (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony. The court shall maintain a list of the names of the persons to whom subpoenas are issued.

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

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive."

Section 30. Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness

shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the appropriate city or county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed 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 required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed 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 required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a

1 portion of the witness expenses. The county shall deposit
 2 the amount reimbursed in its general fund unless the county
 3 has a district court fund. If the county has a district
 4 court fund, the amount reimbursed must be deposited in the
 5 district court fund."

6 **Section 31.** Section 46-15-201, MCA, is amended to read:

7 "46-15-201. When depositions may be taken. (1) In
 8 district or municipal court cases, a deposition may be taken
 9 if it appears that a prospective witness:

10 (a) is likely to be either unable to attend or
 11 otherwise prevented from attending a trial or hearing;

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

14 (c) is unwilling to provide relevant information to a
 15 requesting party and the witness's testimony is material and
 16 necessary in order to prevent a failure of justice. The
 17 ~~district~~ court shall, upon motion of any party and proper
 18 notice, order that the testimony of the witness be taken by
 19 deposition and that any designated books, papers, documents,
 20 or tangible objects, not privileged, be introduced at the
 21 time the deposition is taken.

22 (2) The witness whose deposition is to be taken may be
 23 required by subpoena to attend at any place designated by
 24 the ~~district~~ court, taking into account the convenience of
 25 the parties and of the witness.

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

11 **Section 32.** Section 46-15-202, MCA, is amended to read:

12 "46-15-202. Procedure for taking depositions. (1) The
 13 party at whose instance a deposition is to be taken shall
 14 give to every other party reasonable written notice of the
 15 time and place for taking the deposition. The notice must
 16 state the name and address of each person to be examined. On
 17 motion of the party upon whom the notice is served, the
 18 municipal or district court for cause shown may extend or
 19 shorten the time or change the place for taking the
 20 deposition.

21 (2) A deposition must be taken in the manner provided
 22 in civil actions. The ~~district~~ court, upon request, may
 23 direct that a deposition be taken on written interrogatories
 24 in the manner provided in civil actions. However, a
 25 deposition may not be taken of a party defendant without his

1 the defendant's consent, and the scope and manner of
2 examination and cross-examination must be restricted as
3 would be allowed in the trial itself.

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

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

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

21 (6) A defendant not in custody who fails to appear,
22 without good cause, at the taking of a deposition after
23 being notified of the time and place set for the deposition
24 will be considered to have waived the right to be present as
25 provided in 46-16-122. The waiver includes a waiver of any

1 objection to the taking and use of the deposition based upon
2 that right.

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

12 **Section 33.** Section 46-15-322, MCA, is amended to read:

13 **"46-15-322. Disclosure by prosecution.** (1) Upon
14 request, the prosecutor shall make available to the
15 defendant for examination and reproduction the following
16 material and information within the prosecutor's possession
17 or control:

18 (a) the names, addresses, and statements of all persons
19 whom the prosecutor may call as witnesses in the
20 case-in-chief case in chief;

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

23 (c) all written reports or statements of experts who
24 have personally examined the defendant or any evidence in
25 the particular case, together with the results of physical

1 examinations, scientific tests, experiments, or comparisons;

2 (d) all papers, documents, photographs, or tangible
3 objects that the prosecutor may use at trial or that were
4 obtained from or purportedly belong to the defendant; and

5 (e) all material or information that tends to mitigate
6 or negate the defendant's guilt as to the offense charged or
7 that would tend to reduce the defendant's potential
8 sentence.

9 (2) At the same time, the prosecutor shall inform the
10 defendant of, and make available to the defendant for
11 examination and reproduction, any written or recorded
12 material or information within the prosecutor's control
13 regarding:

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

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

18 (c) whether the case has involved an informant and, if
19 so, the informant's identity if the defendant is entitled to
20 know either or both of these facts under Rule 502 of the
21 Montana Rules of Evidence and 46-15-324(3).

22 (3) The prosecutor may impose reasonable conditions,
23 including an appropriate stipulation concerning chain of
24 custody, to protect physical evidence produced under
25 subsection (1)(d).

1 (4) The prosecutor's obligation of disclosure extends
2 to material and information in the possession or control of
3 members of the prosecutor's staff and of any other persons
4 who have participated in the investigation or evaluation of
5 the case.

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

17 (6) The prosecutor shall furnish to the defendant no
18 later than 5 days before trial or at a later time as the
19 court may for good cause permit, together with their
20 statements, a list of the names and addresses of all persons
21 whom the prosecutor intends to call as rebuttal witnesses to
22 evidence of good character or the defenses of alibi,
23 compulsion, entrapment, justifiable use of force, or
24 mistaken identity or the defense that the defendant did not
25 have a particular state of mind that is an element of the

1 offense charged."

2 **Section 34.** Section 46-15-323, MCA, is amended to read:

3 "46-15-323. Disclosure by defendant. (1) At any time
4 after the filing in district court of an indictment or
5 information, the defendant, in connection with the
6 particular crime charged, shall upon written request of the
7 prosecutor and approval of the court:

- 8 (a) appear in a lineup;
- 9 (b) speak for identification by witnesses;
- 10 (c) be fingerprinted, palm printed, footprinted, or
11 voiceprinted;
- 12 (d) pose for photographs not involving reenactment of
13 an event;
- 14 (e) try on clothing;
- 15 (f) permit the taking of samples of his hair, blood,
16 saliva, urine, or other specified materials that involve no
17 unreasonable bodily intrusions;
- 18 (g) provide handwriting samples; or
- 19 (h) submit to a reasonable physical or medical
20 inspection; however, the inspection does not include
21 psychiatric or psychological examination.

22 (2) Within 10 days after the omnibus hearing in
23 district court or at a later time as the court may for good
24 cause permit, the defendant shall provide the prosecutor
25 with a written notice of the defendant's intention to

1 introduce evidence at trial of good character or the
2 defenses of alibi, compulsion, entrapment, justifiable use
3 of force, or mistaken identity.

4 (3) Within 10 days after receiving a report of the
5 defendant's mental condition from a psychiatrist or
6 psychologist or at a later time as the court may for good
7 cause permit, the defendant shall provide the prosecutor
8 with a written notice of the defendant's intention to
9 introduce evidence at trial of the defense that due to a
10 mental disease or defect, the defendant did not have a
11 particular state of mind that is an essential element of the
12 offense charged.

13 (4) The notice must specify for each defense the names
14 and addresses of the persons, other than the defendant, whom
15 the defendant may call as witnesses in support of the
16 defense, together with all written reports or statements
17 made by them, including all reports and statements
18 concerning the results of physical examinations, scientific
19 tests, experiments, or comparisons, except that the
20 defendant need not include a privileged report or statement
21 unless he the defendant intends to use the privileged report
22 or statement, or the witness who made it, at trial.

23 (5) Prior to trial the defendant may, upon motion and
24 showing of good cause, add to the list of witnesses the
25 names of any additional witnesses and disclose their reports

1 or statements as required by this section. After the trial
2 commences, no witnesses may be called by the defendant in
3 support of these defenses unless the name of the witness is
4 included on the list and the witness's report or statement
5 has been disclosed as required by this section, except for
6 good cause shown.

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

11 (a) the names, addresses, and statements of all
12 persons, other than the defendant, whom the defendant may
13 call as witnesses in the defense case-in-chief case in
14 chief, together with their statements;

15 (b) the names and addresses of experts whom the
16 defendant may call at trial, together with the results of
17 their physical examinations, scientific tests, experiments,
18 or comparisons, including all written reports and statements
19 made by these experts in connection with the particular
20 case; and

21 (c) all papers, documents, photographs, and other
22 tangible objects that the defendant may use at trial.

23 (7) The defendant's obligation under this section
24 extends to material and information within the possession or
25 control of the defendant, defense counsel, and defense

1 counsel's staff or investigators.

2 (8) Upon motion of the prosecutor showing that the
3 prosecutor has substantial need in the preparation of the
4 case for additional material or information not otherwise
5 provided for, that the prosecutor is unable, without undue
6 hardship, to obtain the substantial equivalent by other
7 means, and that disclosure of the material or information
8 will not violate the defendant's constitutional rights, the
9 court, in its discretion, may order any person to make the
10 material or information available to the prosecutor. The
11 court may, upon request of any person affected by the order,
12 vacate or modify the order if compliance would be
13 unreasonable or oppressive. The defense counsel may not be
14 required to prepare or disclose summaries of witnesses'
15 testimony."

16 **Section 35.** Section 46-15-324, MCA, is amended to read:

17 **"46-15-324. Materials not subject to disclosure.** (1)
18 Except as provided in this section, disclosure is not
19 required for the superseded notes or work product of the
20 prosecuting or defense attorney.

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

24 (3) Disclosure of the existence of an informant or the
25 identity of an informant who will not be called to testify

1 is not required if:

2 (a) disclosure would result in substantial risk to the
3 informant or to the informant's operational effectiveness;
4 and

5 (b) the failure to disclose will not infringe the
6 constitutional rights of the accused."

7 **Section 36.** Section 46-16-107, MCA, is amended to read:

8 "46-16-107. Failure of county--attorney prosecutor to
9 attend. If the county-attorney prosecutor fails to attend
10 the trial, the court may appoint some attorney-at-law to
11 perform his the prosecutor's duties."

12 **Section 37.** Section 46-16-116, MCA, is amended to read:

13 "46-16-116. Peremptory challenges. (1) Each defendant
14 is allowed eight peremptory challenges in capital cases and
15 six in all other cases tried in the district court before a
16 12-person jury. There may not be additional challenges for
17 separate counts charged in the indictment or information.

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

21 (3) The state is allowed the same number of peremptory
22 challenges as all of the defendants.

23 (4) In a criminal case tried before a six-person jury,
24 the state prosecution and all the defendants are allowed
25 three peremptory challenges each.

1 (5) When the parties in a criminal case in the district
2 court agree upon a jury consisting of a number of persons
3 other than 6 or 12, they shall also agree in writing upon
4 the number of peremptory challenges to be allowed."

5 **Section 38.** Section 46-16-122, MCA, is amended to read:

6 "46-16-122. Absence of defendant from trial. (1) In a
7 misdemeanor case, if the defendant fails to appear in
8 person, either at the time set for the trial or at any time
9 during the course of the trial and if the defendant's
10 counsel is authorized to act on the defendant's behalf, the
11 court shall proceed with the trial unless good cause for
12 continuance exists.

13 (2) If the defendant's counsel is not authorized to act
14 on the defendant's behalf as provided in subsection (1) or
15 if the defendant is not represented by counsel, the court,
16 in its discretion, may do one or more of the following:

17 (a) order a continuance;

18 (b) order bail forfeited;

19 (c) issue a bench an arrest warrant; or

20 (d) proceed with the trial after finding that the
21 defendant had knowledge of the trial date and is voluntarily
22 absent.

23 (3) After the trial of a felony offense has commenced
24 in the defendant's presence, the absence of the defendant
25 during the trial may not prevent the trial from continuing

up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity."

Section 39. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) The Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(a)(i) that the defendant may not commit any offense;

(b)(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(c)(iii) that the defendant shall participate in a

supervised rehabilitation program, which may include treatment, counseling, training, or education;

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

(e)(v) any other reasonable conditions.

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

(3)(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4)(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court."

Section 40. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on

appeal from a justice's ~~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 for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court."

Section 41. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required.

(1) Upon the acceptance of a plea or upon a verdict or finding of guilty to ~~one-or-more-felony-offenses~~ an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years of age when the offense was committed, the district court shall direct the probation officer to make a presentence investigation and report. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a

misdemeanor. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the ~~department-of-commerce~~ supreme court administrator under Title 3, chapter 5, part 9.

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

Section 42. Section 46-18-112, MCA, is amended to read:

"46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

- (a) the defendant's characteristics, circumstances, needs, and potentialities;
- (b) the defendant's criminal record and social history;
- (c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged; and

(e) ~~except--in-capital-cases-in-which-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.

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

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

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

Section 43. Section 46-18-117, MCA, is amended to read:

"46-18-117. **Correction of sentence.** The court may correct an ~~illegal~~ erroneous sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court."

Section 44. Section 46-18-201, MCA, is amended to read:

"46-18-201. **Sentences that may be imposed.** (1) Whenever

a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

1 (xi) home arrest as provided in Title 46, chapter 18,
 2 part 10;
 3 (xii) any other reasonable conditions considered
 4 necessary for rehabilitation or for the protection of
 5 society; or
 6 (xiii) any combination of the above.
 7 (b) suspend execution of sentence for a period up to
 8 the maximum sentence allowed or for a period of 6 months,
 9 whichever is greater, for each particular offense. The
 10 sentencing judge may impose on the defendant any reasonable
 11 restrictions or conditions during the period of suspended
 12 sentence. Reasonable restrictions or conditions may include
 13 any of those listed in subsection (1)(a).
 14 (c) impose a fine as provided by law for the offense;
 15 (d) require payment of costs as provided in 46-18-232
 16 or payment of costs of court-appointed counsel as provided
 17 in 46-8-113;
 18 (e) commit the defendant to a correctional institution,
 19 with or without a fine as provided by law for the offense;
 20 (f) with the approval of the facility or program, order
 21 the offender to be placed in a community corrections
 22 facility or program as provided in 53-30-321;
 23 (g) impose any combination of subsections (1)(b)
 24 through (1)(f).
 25 (2) If a financial obligation is imposed as a condition

1 under subsection (1)(a), sentence may be deferred for a
 2 period not exceeding 2 years for a misdemeanor or for a
 3 period not exceeding 6 years for a felony, regardless of
 4 whether any other conditions are imposed.

5 (3) If any restrictions or conditions imposed under
 6 subsection (1)(a) or (1)(b) are violated, the court shall
 7 consider any elapsed time and either expressly allow part or
 8 all of it as a credit against the sentence or reject all or
 9 part as a credit and state its reasons in the order. Credit,
 10 however, must be allowed for jail or home arrest time
 11 already served.

12 (4) Except as provided in 45-9-202 and 46-18-222, the
 13 imposition or execution of the first 2 years of a sentence
 14 of imprisonment imposed under the following sections may not
 15 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
 16 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
 17 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
 18 (5)(d), 45-9-102(4), and 45-9-103(2).

19 (5) Except as provided in 46-18-222, the imposition or
 20 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 (6) Except as provided in 46-18-222, imposition of
 24 sentence in a felony case may not be deferred in the case of
 25 a defendant who has been convicted of a felony on a prior

1 occasion, whether or not the sentence was imposed,
2 imposition of the sentence was deferred, or execution of the
3 sentence was suspended.

4 (7) If the victim was less than 16 years old, the
5 imposition or execution of the first 30 days of a sentence
6 of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505,
7 or 45-5-507 may not be deferred or suspended. Section
8 46-18-222 does not apply to the first 30 days of the
9 imprisonment.

10 (8) In imposing a sentence on a defendant convicted of
11 a sexual offense as defined in 46-23-502, the court may not
12 waive the registration requirement provided in 46-18-254,
13 46-18-255, and Title 46, chapter 23, part 5.

14 (9) A person convicted of a sexual offense, as defined
15 in 46-23-502, and sentenced to imprisonment in the state
16 prison shall enroll in the educational phase of the prison's
17 sexual offender program.

18 (10) In sentencing a nonviolent felony offender, the
19 court shall first consider alternatives to imprisonment of
20 the offender in the state prison, including placement of the
21 offender in a community corrections facility or program. In
22 considering alternatives to imprisonment, the court shall
23 examine the sentencing criteria contained in 46-18-225. If
24 the offender is subsequently sentenced to the state prison
25 or a women's correctional facility, the court shall state

1 its reasons why alternatives to imprisonment were not
2 selected, based on the criteria contained in 46-18-225."

3 **Section 45.** Section 46-18-202, MCA, is amended to read:

4 "46-18-202. Additional restrictions on sentence. (1)
5 The district court may also impose any of the following
6 restrictions or conditions on the sentence provided for in
7 46-18-201 which that it considers necessary to obtain the
8 objectives of rehabilitation and the protection of society:

9 (a) prohibition of the defendant's holding public
10 office;

11 (b) prohibition of ~~his~~ the defendant's owning or
12 carrying a dangerous weapon;

13 (c) restrictions on ~~his~~ the defendant's freedom of
14 association;

15 (d) restrictions on ~~his~~ the defendant's freedom of
16 movement;

17 (e) any other limitation reasonably related to the
18 objectives of rehabilitation and the protection of society.

19 (2) Whenever the district court imposes a sentence of
20 imprisonment in the state prison for a term exceeding 1
21 year, the court may also impose the restriction that the
22 defendant be ineligible for parole and participation in the
23 supervised release program while serving ~~his~~ that term. If
24 such a restriction is to be imposed, the court shall state
25 the reasons for it in writing. If the court finds that the

1 restriction is necessary for the protection of society, it
2 shall impose the restriction as part of the sentence and the
3 judgment shall contain a statement of the reasons for the
4 restriction.

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

9 (4) When the district court imposes a sentence of
10 probation as defined in 46-23-1001, any probation agreement
11 signed by the defendant may contain a clause waiving
12 extradition."

13 **Section 46.** Section 46-18-203, MCA, is amended to read:

14 "46-18-203. Revocation of suspended or deferred
15 sentence. (1) Upon the filing of a petition for revocation,
16 ~~accompanied-by-an-affidavit~~ showing probable cause that the
17 defendant has violated any condition of a sentence or any
18 condition of a deferred imposition of sentence, the court
19 may issue an order for a hearing on revocation. The order
20 must require the defendant to appear at a specified time and
21 place for the hearing and be served by delivering a copy of
22 the petition and order to the defendant personally. The
23 court may also issue an arrest warrant directing any peace
24 officer or a probation officer to arrest the defendant and
25 bring the defendant before the court.

1 (2) The petition for a revocation must be filed with
2 the sentencing court during the period of suspension or
3 deferral. Expiration of the period of suspension or deferral
4 after the petition is filed does not deprive the court of
5 its jurisdiction to rule on the petition.

6 (3) The provisions pertaining to bail, as set forth in
7 Title 46, chapter 9, are applicable to persons arrested
8 pursuant to this section.

9 (4) Without unnecessary delay, the defendant must be
10 brought before the court, and the defendant must be advised
11 of:

- 12 (a) the allegations of the petition;
- 13 (b) the opportunity to appear and to present evidence
- 14 in the defendant's own behalf;
- 15 (c) the opportunity to question adverse witnesses; and
- 16 (d) the right to be represented by counsel at the
- 17 revocation hearing pursuant to Title 46, chapter 8, part 1.

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

- 21 (a) the defendant admits the allegations and waives the
- 22 right to a hearing; or
- 23 (b) the relief to be granted is favorable to the
- 24 defendant, and the prosecutor, after having been given
- 25 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 (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

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

(a) continue the suspended or deferred sentence without a change in conditions;

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

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

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

(8) If the court finds that the prosecution has not proved, 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 must be dismissed and the defendant, if in custody, immediately released."

Section 47. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by ~~subsections (4), (5), and (6) of~~ 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

1 (3) the defendant, at the time of the commission of the
 2 offense for which he the defendant is to be sentenced, was
 3 acting under unusual and substantial duress, although not
 4 such duress as would constitute a defense to the
 5 prosecution;

6 (4) the defendant was an accomplice, the conduct
 7 constituting the offense was principally the conduct of
 8 another, and the defendant's participation was relatively
 9 minor;

10 (5) where--applicable in a case in which the threat of
 11 bodily injury or actual infliction of bodily injury is an
 12 actual element of the crime, no serious bodily injury was
 13 inflicted on the victim unless a weapon was used in the
 14 commission of the offense; or

15 (6) the offense was committed under 45-5-502(3) and the
 16 court determines that treatment of the defendant in a local
 17 community affords a better opportunity for rehabilitation of
 18 the defendant and for the ultimate protection of society, in
 19 which case the court shall include in its judgment a
 20 statement of the reasons for its determination."

21 **NEW SECTION. Section 48. Notice by prosecutor of other**
 22 **crimes, wrongs, or acts.** (1) Except for good cause shown, if
 23 the prosecutor intends to use evidence of other crimes,
 24 wrongs, or acts pursuant to Rule 404(b), Montana Rules of
 25 Evidence, notice must be given at or before the omnibus

1 hearing held pursuant to 46-13-110.

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

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

8 **NEW SECTION. Section 49. Codification instruction.**
 9 [Section 48] is intended to be codified as an integral part
 10 of Title 46, chapter 13, part 1, and the provisions of Title
 11 46, chapter 13, part 1, apply to [section 48].

12 **NEW SECTION. Section 50. Repealer.** Sections 46-10-201,
 13 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205,
 14 46-17-211, and 46-17-301, MCA, are repealed.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0125, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

act generally revising the law regarding criminal procedure.

SUMPTIONS:

The bill will have no material fiscal impact to state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties with district court funds will be required to deposit certain district court reimbursement payments in those funds rather than the county general fund. Cities will become responsible for certain deposition-related expenses for municipal court proceedings; those expenses are the responsibility of the state under current law.

Dave Lewis 1-23-93

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 1-23-93

FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0125, as introduced

SB 125

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 125

INTRODUCED BY VAN VALKENBURG, J. RICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGARDING CRIMINAL PROCEDURE; INCREASING THE AMOUNT OF GUARANTEED ARREST BOND CERTIFICATES; ELIMINATING THE USE OF SEALED AFFIDAVITS IN SUPPORT OF A MOTION TO FILE A CHARGE OR WARRANT; PROVIDING FOR THE WRITTEN ACKNOWLEDGEMENT OF INFORMATION FOR A GUILTY PLEA; REQUIRING THE KEEPING OF A LIST OF PERSONS TO WHOM SUBPOENAS ARE ISSUED; CLARIFYING THE DISCLOSURE REQUIREMENTS REGARDING INFORMANTS; EXPANDING THE USE OF VICTIM IMPACT STATEMENTS; CODIFYING THE NOTICE REQUIREMENTS FOR THE DISCLOSURE OF THE INTENDED USE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS; AMENDING SECTIONS 46-1-202, 46-4-306, 46-5-101, 46-6-201, 46-6-210, 46-6-312, 46-8-113, 46-8-115, 46-8-201, 46-9-201, 46-9-412, 46-9-505, 46-10-202, 46-11-110, 46-11-302, 46-11-332, 46-11-401, 46-11-405, 46-11-601, 46-11-701, 46-12-210, 46-12-211, 46-13-108, 46-13-110, 46-13-202, 46-13-203, 46-13-210, 46-14-312, 46-15-101, 46-15-116, 46-15-201, 46-15-202, 46-15-322, 46-15-323, 46-15-324, 46-16-107, 46-16-116, 46-16-122, 46-16-130, 46-17-311, 46-18-111, 46-18-112, 46-18-117, 46-18-201, 46-18-202, 46-18-203, AND 46-18-222, MCA; AND REPEALING SECTIONS 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, AND 46-17-301,

MCA."

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

Section 1. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

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

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

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

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

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Concealment" means any act or deception done

~~purposely-or-knowingly-upon-or-outside--the--premises--of--a
wholesale--or-retail-store-or-other-mercantile-establishment
with-the-intent-to-deprive-the-merchant-of-all--or--part--of
the-value-of-the-merchandise;~~

{7}{6} "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

{8}{7} "Court" means a place where justice is judicially administered and includes the judge of the court.

{9}{8} "Included offense" means an offense that:

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

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

{10}{9} "Judge" means a person who is vested by law with the power to perform judicial functions.

{11}{10} "Judgment" means an adjudication by a court

that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

{12}{11} "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its 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 other or additional arrangements.

{13}{12} "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

{14}{13} "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

{15}{14} "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

{16}{15} "Parole" means the release to the community of

1 a prisoner by a decision of the board of pardons prior to
2 the expiration of the prisoner's term subject to conditions
3 imposed by the board of pardons and the supervision of the
4 department of corrections and human services.

5 ~~(17)~~(16) "Peace officer" means any person who by virtue
6 of the person's office or public employment is vested by law
7 with a duty to maintain public order and make arrests for
8 offenses while acting within the scope of the person's
9 authority.

10 ~~(18)~~(17) "Persistent felony offender" means an offender
11 who has previously been convicted of a felony and who is
12 presently being sentenced for a second felony committed on a
13 different occasion than the first. An offender is considered
14 to have been previously convicted of a felony if:

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

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

21 (i) the previous felony conviction; or

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

25 (c) the offender has not been pardoned on the ground of

1 innocence and the conviction has not been set aside at the
2 postconviction hearing.

3 ~~(19)~~(18) "Place of trial" means the geographical
4 location and political subdivision in which the court that
5 will hear the cause is situated.

6 ~~(20)~~(19) "Preliminary examination" means a hearing
7 before a judge for the purpose of determining if there is
8 probable cause to believe a felony has been committed by the
9 defendant.

10 ~~(21)~~(20) "Probation" means release by the court without
11 imprisonment of a defendant found guilty of a crime. The
12 release is subject to the supervision of the department of
13 corrections and human services upon direction of the court.

14 ~~(22)~~(21) "Prosecutor" means an elected or appointed
15 attorney who is vested by law with the power to initiate and
16 carry out criminal proceedings on behalf of the state or a
17 political subdivision.

18 ~~(23)~~(22) "Same transaction" means conduct consisting of
19 a series of acts or omissions that are motivated by:

20 (a) a purpose to accomplish a criminal objective and
21 that are necessary or incidental to the accomplishment of
22 that objective; or

23 (b) a common purpose or plan that results in the
24 repeated commission of the same offense or effect upon the
25 same person or the property of the same person.

1 †24†(23) "Search warrant" means an order that is:

2 (a) in writing;

3 (b) in the name of the state;

4 (c) signed by a judge;

5 (d) a particular description of the place, object, or
6 person to be searched and the evidence, contraband, or
7 person to be seized; and

8 (e) directed to a peace officer and commands the peace
9 officer to search for evidence, contraband, or persons.

10 †25†(24) "Sentence" means the judicial disposition of a
11 criminal proceeding upon a plea, verdict, or finding of
12 guilty.

13 †26†(25) "Statement" means:

14 (a) a writing signed or otherwise adopted or approved
15 by a person;

16 (b) a video or audio recording of a person's
17 communications or a transcript of the communications; and

18 (c) a writing containing a summary of a person's oral
19 communications or admissions.

20 †27†(26) "Summons" means a written order issued by the
21 court that commands a person to appear before a court at a
22 stated time and place to answer a charge for the offense set
23 forth in the order.

24 †28†(27) "Superseded notes" means handwritten notes,
25 including field notes, that have been substantially

1 incorporated into a statement. The notes may not be
2 considered a statement and are not subject to disclosure
3 except as provided in 46-15-324.

4 †29†(28) "Temporary road block" means any structure,
5 device, or means used by a peace officer for the purpose of
6 controlling all traffic through a point on the highway where
7 all vehicles may be slowed or stopped.

8 †30†(29) "Witness" means a person whose testimony is
9 desired in a proceeding or investigation by a grand jury or
10 in a criminal action, prosecution, or proceeding.

11 †31†(30) "Work product" means legal research, records,
12 correspondence, reports, and memoranda, both written and
13 oral, to the extent that they contain the opinions,
14 theories, and conclusions of the prosecutor, defense
15 counsel, or their staff or investigators."

16 **Section 2.** Section 46-4-306, MCA, is amended to read:

17 "46-4-306. Applicability of other laws -- costs. (1)
18 The fees and mileage of witnesses subpoenaed pursuant to
19 this part are the same as those required in criminal
20 actions. The state shall bear all costs, including the cost
21 of service, when the application for the subpoena is made by
22 the attorney general, and the appropriate county shall bear
23 all costs, including the cost of service, when the
24 application for the subpoena is made by a county attorney,
25 and the appropriate city shall bear all costs, including the

1 cost of service, when the application for the subpoena is
2 made by a city attorney.

3 (2) All provisions relating to subpoenas in criminal
4 actions apply to subpoenas issued pursuant to this part,
5 including the provisions of 46-15-112, 46-15-113, and
6 46-15-120.

7 (3) All investigative costs, including testing of
8 evidence and persons, must be borne by the governmental
9 entity requesting the investigation."

10 **Section 3.** Section 46-5-101, MCA, is amended to read:

11 "46-5-101. Searches and seizures -- when authorized. A
12 search of a person, object, or place may be made and
13 evidence, contraband, and persons may be seized in
14 accordance with Title 46 when a search is made:

15 (1) by the authority of a search warrant; or

16 (2) in accordance with judicially recognized exceptions
17 to the warrant requirement."

18 **Section 4.** Section 46-6-201, MCA, is amended to read:

19 "46-6-201. Issuance of arrest warrant upon complaint.

20 ~~{1}-A-complaint-as-the-basis-of-an-arrest-warrant-shall-be~~
21 ~~in-writing;~~

22 ~~{2}--When-a-complaint-is-presented-to-a-court-charging-a~~
23 ~~person-with-the-commission-of-an-offense--the--court--shall~~
24 ~~examine--upon--oath-the-complainant-and-may-also-examine-any~~
25 ~~witnesses;~~

1 {3} If it appears from the contents of the complaint
2 and the examination of the complainant and from the
3 examination of other witnesses or affidavits, if any, that
4 there is probable cause to believe that the person against
5 whom the complaint was made has committed an offense, a
6 warrant shall be issued by the court for the arrest of the
7 person complained against. The court, in its discretion, may
8 issue a summons instead of a warrant. Upon the request of
9 the county--attorney prosecutor, the court shall issue a
10 summons instead of a warrant. More than one warrant or
11 summons may issue on the same complaint."

12 **Section 5.** Section 46-6-210, MCA, is amended to read:

13 "46-6-210. Arrest by peace officer. A peace officer may
14 arrest a person when the officer has a warrant commanding
15 that the person be arrested or when the officer believes on
16 reasonable grounds:

17 (1) that a warrant for the person's arrest has been
18 issued in this state, except that unless otherwise provided
19 by law, a warrant for violation of a city ordinance may not
20 be acted upon unless the person is located within the limits
21 of the city in which the violation is alleged to have
22 occurred; or

23 (2) that a felony warrant for the person's arrest has
24 been issued in another jurisdiction."

25 **Section 6.** Section 46-6-312, MCA, is amended to read:

"46-6-312. Manner of arrest without warrant. A peace officer ~~or--person~~ making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest."

Section 7. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment for court-appointed counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

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

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

(4) A defendant who has been sentenced to pay costs and

~~who is able to but refuses or fails to pay those--costs~~ may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 8. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the county-attorney prosecutor or on its own motion may require him the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

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

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each

\$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

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

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

Section 9. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a district court judge or justice of the state supreme court certifies

to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city 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."

Section 10. Section 46-9-201, MCA, is amended to read:

"46-9-201. Who may admit to bail. A judge may admit to bail any defendant properly appearing before him the judge in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by

1 physical appearance before the court or by two-way
2 electronic audio-video communication as provided in 46-9-115
3 46-9-206."

4 **Section 11.** Section 46-9-412, MCA, is amended to read:

5 "46-9-412. Guaranteed arrest bond certificates. (1) A
6 domestic or foreign surety company that has qualified to
7 transact surety business in this state may, in any year,
8 become surety in an amount not exceeding \$500 \$1,000 with
9 respect to any guaranteed arrest bond certificates issued in
10 the year by an automobile club or association or by an
11 insurance company authorized to write automobile liability
12 insurance within this state by filing with the commissioner
13 of insurance an undertaking to become surety.

14 (2) The form of the undertaking must be prescribed by
15 the commissioner of insurance and must include those matters
16 required by 46-9-401."

17 **Section 12.** Section 46-9-505, MCA, is amended to read:

18 "46-9-505. Issuance of arrest warrant -- redetermining
19 bail. (1) Upon failure to comply with any condition of a
20 bail or recognizance, the court having jurisdiction at the
21 time of such the failure may, in addition to any other
22 action provided by law, issue a warrant for the arrest of
23 the person ~~at liberty on bail or on his own recognizance.~~

24 (2) On verified application by the state prosecutor
25 setting forth facts or circumstances constituting a breach

1 or threatened breach of any of the conditions of the bail or
2 a threat or an attempt to influence the pending proceeding,
3 the court may issue a warrant for the arrest of the
4 defendant.

5 (3) Upon the arrest, the defendant ~~shall~~ must be
6 brought before the court without unnecessary delay and the
7 court shall conduct a hearing and determine bail in
8 accordance with 46-9-311."

9 **Section 13.** Section 46-10-202, MCA, is amended to read:

10 "46-10-202. Presentation of evidence. (1) The defendant
11 may not enter a plea. The judge shall hear the evidence
12 without unnecessary delay. All witnesses must be examined in
13 the presence of the defendant. The defendant may
14 cross-examine witnesses against the defendant and may
15 introduce evidence in the defendant's own behalf. For
16 purposes of this section, a preliminary examination
17 conducted by the use of two-way electronic audio-video
18 communication that allows all of the participants to be
19 observed and heard by all other participants and that allows
20 the defendant to cross-examine witnesses is considered to be
21 an examination of a witness in the presence of the
22 defendant. Two-way electronic ~~audio-visual~~ audio-video
23 communication may not be used unless the defendant's counsel
24 is physically present with ~~his client~~ the defendant, unless
25 this requirement is waived by the defendant.

(2) During the examination of a 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 communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his the defendant's counsel, if any, can communicate privately, and so that the defendant and his the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination."

Section 14. Section 46-11-110, MCA, is amended to read:

"46-11-110. **Filing complaint.** ~~{+}~~ When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant SWORN COMPLAINT and or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge may-be-filed.

~~{2}--if-it-appears-from--an--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-shall-issue-a-summons-or-an-arrest warrant--"~~

Section 15. Section 46-11-302, MCA, is amended to read:

"46-11-302. **Challenges to grand jury or grand jurors.**
(1) The ~~county-attorney-or-attorney-general~~ prosecutor may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or

1 permanently, and in the latter event, the court may impanel
2 another person in place of the juror discharged.

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

11 **Section 16.** Section 46-11-332, MCA, is amended to read:

12 "46-11-332. Presenting the indictment. (1) An
13 indictment, when found by the grand jury, must be signed by
14 and presented by the foreman to the district court in the
15 presence of the grand jury and must be filed with the clerk.
16 The district court shall then issue a an arrest warrant or
17 summons for the defendant.

18 (2) If a complaint or information is pending against
19 the defendant and eight jurors do not concur in finding an
20 indictment, the foreman shall report the decision to the
21 district court judge."

22 **Section 17.** Section 46-11-401, MCA, is amended to read:

23 "46-11-401. Form of charge. (1) The charge must be in
24 writing and in the name of the state or the appropriate
25 municipality and must specify the district court in which

1 the charge is filed. The charge must be a plain, concise,
2 and definite statement of the offense charged, including the
3 name of the offense, whether the offense is a misdemeanor or
4 felony, the name of the person charged, and the time and
5 place of the offense as definitely as can be determined. The
6 charge must state for each count the official or customary
7 citation of the statute, rule, regulation, or other
8 provision of law that the defendant is alleged to have
9 violated.

10 (2) If the charge is by information or indictment, it
11 must include endorsed on the information or indictment the
12 names of the witnesses for the state, if known.

13 (3) If the charge is by complaint, it must be signed on
14 oath by a peace officer, by a person having knowledge of the
15 facts, or by the prosecutor.

16 (4) If the charge is by information, it must be signed
17 by the prosecutor. If the charge is by indictment, it must
18 be signed by the foreman of the grand jury.

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

21 (6) A charge may not be dismissed because of a formal
22 defect that does not tend to prejudice a substantial right
23 of the defendant."

24 **Section 18.** Section 46-11-405, MCA, is amended to read:

25 "46-11-405. Discharge of codefendant. (1) When two or

1 more persons are included in the same charge, the court may,
 2 at any time before the defendants have gone into their
 3 defense, on the application of the county--attorney
 4 prosecutor, direct any defendant to be discharged so that he
 5 the defendant may be a witness for the state prosecution.

6 (2) When two or more persons are included in the same
 7 indictment or information and the court is of the opinion
 8 that in regard to a particular defendant there is not
 9 sufficient evidence to require the defendant to put him on
 10 his a defense, the court must order him that defendant to be
 11 discharged before the evidence is closed so that he the
 12 discharged defendant may be a witness for his the
 13 codefendant."

14 **Section 19.** Section 46-11-601, MCA, is amended to read:

15 "46-11-601. Recognizance by or deposition of witness.
 16 (1) If the defendant is held to answer after a preliminary
 17 examination, or after the defendant has waived a preliminary
 18 examination, or after the district court has granted leave
 19 to file an information, or after an indictment has been
 20 returned, the judge may:

21 (a) require any material witness for the state or
 22 defendant to enter into a written undertaking to appear at
 23 the trial; and

24 (b) provide for the forfeiture of a sum certain in the
 25 event the witness does not appear at the trial.

1 (2) Any witness who refuses to enter into a written
 2 undertaking may be remanded to custody but ~~shall~~ may not be
 3 held longer than is necessary to take his the witness's
 4 deposition. After the deposition is taken, the witness must
 5 be immediately discharged.

6 (3) ~~Such~~ The deposition must be taken in the presence
 7 of the county-attorney prosecutor and the defendant and his
 8 the defendant's counsel unless either the county--attorney
 9 prosecutor or the defendant and his the defendant's counsel
 10 fail to attend after reasonable notice of the time and place
 11 set for taking the deposition."

12 **Section 20.** Section 46-11-701, MCA, is amended to read:

13 "46-11-701. Pretrial proceedings -- exclusion of public
 14 and sealing of records. (1) Except as provided in this
 15 section, pretrial proceedings and records of those
 16 proceedings are open to the public. If, at the pretrial
 17 proceedings, testimony or evidence is presented that is
 18 likely to threaten the fairness of a trial, the presiding
 19 officer shall advise those present of the danger and shall
 20 seek the voluntary cooperation of the news media in delaying
 21 dissemination of potentially prejudicial information until
 22 the impaneling of the jury or until an earlier time
 23 consistent with the administration of justice.

24 (2) The defendant may move that all or part of the
 25 proceeding be closed to the public, or with the consent of

1 the defendant, the judge may take action on the judge's own
2 motion.

3 (3) The judge may close a preliminary hearing, bail
4 hearing, or any other pretrial proceeding, including a
5 hearing on a motion to suppress, and may seal the record
6 only if:

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

10 (b) the prejudicial effect of the information on trial
11 fairness cannot be avoided by any reasonable alternative
12 means.

13 (4) Whenever all or part of any pretrial proceeding is
14 held in chambers or otherwise closed to the public under
15 this section, a complete record must be kept and made
16 available to the public following the completion of the
17 trial or earlier if consistent with trial fairness.

18 (5) When the judge determines that all or part of a
19 document filed in support of a charge or warrant would
20 present a clear and present danger to the defendant's right
21 to a fair trial, the document or portion of the document
22 must be sealed until the trial is completed unless the
23 document or portion of the document must be used for trial
24 fairness.

25 ~~{6}--An affidavit filed in support of a motion for leave~~

1 ~~to--file-a-charge-or-warrant-must-be-sealed-unless-the-judge~~
2 ~~determines--that--disclosure--of--the--information--in--the~~
3 ~~affidavit--is--required--to--protect--the-health,-safety,-or~~
4 ~~welfare-of-the-public."~~

5 **Section 21.** Section 46-12-210, MCA, is amended to read:

6 "46-12-210. Advice to defendant. (1) Before accepting a
7 plea of guilty, the court shall determine that the defendant
8 understands the following:

9 ~~{1}~~ (a) (i) the nature of the charge for which the
10 plea is offered;

11 ~~{b}~~(ii) the mandatory minimum penalty provided by law,
12 if any;

13 ~~{c}~~(iii) the maximum penalty provided by law, including
14 the effect of any penalty enhancement provision or special
15 parole restriction; and

16 ~~{d}~~(iv) when applicable, the requirement that the court
17 may also order the defendant to make restitution of the
18 costs and assessments provided by law;

19 ~~{2}~~(b) if the defendant is not represented by an
20 attorney, the fact that he the defendant has the right to be
21 represented by an attorney at every stage of the proceeding
22 ~~against him~~ and that, if necessary, one will be appointed to
23 represent the defendant;

24 ~~{3}~~(c) that the defendant has the right:

25 ~~{a}~~(i) to plead not guilty or to persist in that plea

1 if it has already been made;

2 {b}{ii} to be tried by a jury and at the trial has the
3 right to the assistance of counsel;

4 {c}{iii} to confront and cross-examine witnesses against
5 the defendant; and

6 {d}{iv} not to be compelled to reveal personally
7 incriminating information;

8 {4}{d} that if the defendant pleads guilty in
9 fulfillment of a plea agreement, the court is not required
10 to accept the terms of the agreement and that the defendant
11 may not be entitled to withdraw the plea if the agreement is
12 not accepted pursuant to 46-12-211;

13 {5}{e} that if the defendant's plea of guilty is
14 accepted by the courts, there will not be a further trial of
15 any kind, so that by pleading guilty the defendant waives
16 the right to a trial; and

17 {6}{f} that if the defendant is not a United States
18 citizen, a guilty plea might result in deportation from or
19 exclusion from admission to the United States or denial of
20 naturalization under federal law.

21 (2) The requirements of subsection (1) may be
22 accomplished by the defendant filing a written
23 acknowledgment of the information contained in subsection
24 (1)."

25 **Section 22.** Section 46-12-211, MCA, is amended to read:

1 "46-12-211. Plea agreement procedure. (1) The
2 prosecutor and the attorney for the defendant, or the
3 defendant when acting pro se, may engage in discussions with
4 a view toward reaching an agreement that, upon the entering
5 of a plea of guilty to a charged offense or to a lesser or
6 related offense, the prosecutor will do any of the
7 following:

8 (a) move for dismissal of other charges;

9 (b) agree that a specific sentence is the appropriate
10 disposition of the case; or

11 (c) make a recommendation, or agree not to oppose the
12 defendant's request, for a particular sentence, with the
13 understanding that the recommendation or request may not be
14 binding upon the court.

15 (2) If a plea agreement has been reached by the
16 parties, the court shall, on the record, require a
17 disclosure of the agreement in open court or, on a showing
18 of good cause in camera, at the time the plea is offered. If
19 the agreement is of the type specified in subsection (1)(a)
20 or (1)(b), the court may accept or reject the agreement, or
21 may defer its decision as to the acceptance or rejection
22 until there has been an opportunity to consider the
23 presentence report. If the agreement is of the type
24 specified in subsection (1)(c), the court shall advise the
25 defendant that, if the court does not accept the

1 recommendation or request, the defendant nevertheless has no
2 right to withdraw the plea.

3 (3) If the court accepts a plea agreement, the court
4 shall inform the defendant that it will embody in the
5 judgment and sentence the disposition provided for in the
6 plea agreement.

7 (4) If the court rejects the a plea agreement of the
8 type specified in subsection (1)(a) or (1)(b), the court
9 shall, on the record, inform the parties of this fact and
10 advise the defendant that the court is not bound by the plea
11 agreement, afford the defendant an opportunity to withdraw
12 the plea, and advise the defendant that if the defendant
13 persists in the guilty plea, the disposition of the case may
14 be less favorable to the defendant than that contemplated by
15 the plea agreement."

16 **Section 23.** Section 46-13-108, MCA, is amended to read:

17 "46-13-108. Notice by prosecutor seeking persistent
18 felony offender status. (1) Except for good cause shown, if
19 the prosecution seeks treatment of the accused as a
20 persistent felony offender, notice of that fact must be
21 given at or before the omnibus hearing pursuant to ~~46-13-101~~
22 46-13-110.

23 (2) The notice must specify the alleged prior
24 convictions and may not be made known to the jury before the
25 verdict is returned except as allowed by the Montana Rules

1 of Evidence.

2 (3) If the defendant objects to the allegations
3 contained in the notice, the judge shall conduct a hearing
4 to determine if the allegations in the notice are true.

5 (4) The hearing must be held before the judge alone. If
6 the judge finds any allegations of the prior convictions are
7 true, the accused must be sentenced as provided by law.

8 (5) The notice must be filed and sealed until the time
9 of trial or until a plea of guilty is given by the
10 defendant."

11 **Section 24.** Section 46-13-110, MCA, is amended to read:

12 "46-13-110. Omnibus hearing. (1) Within a reasonable
13 time following the entry of a not guilty plea but not less
14 than 30 days before trial, the court shall hold an omnibus
15 hearing.

16 (2) The purpose of the hearing is to expedite the
17 procedures leading up to the trial of the defendant.

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

22 (a) joinder and severance of offenses or defendants,
23 46-11-404, 46-13-210 and 46-13-211;

24 (b) double jeopardy, 46-11-410, 46-11-503, and
25 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking ~~enhanced--punishment~~ persistent felony offender status, ~~46-13-503~~ 46-13-108;

(h) notice of other crimes, wrongs, or acts, ~~46-13-503~~ [section 48];

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(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."

Section 25. Section 46-13-202, MCA, is amended to read:

"46-13-202. Motion for continuance. (1) The defendant or the state prosecutor may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and ~~shall~~ must be considered in the light of the diligence shown on the part of the movant. This section ~~shall~~ must be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state prosecution to a speedy trial."

Section 26. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

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

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

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

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

Section 27. Section 46-13-210, MCA, is amended to read:

"46-13-210. Trial of indictments, informations, complaints, or defendants together. The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in ~~46-12-213, 46-15-322, and 46-15-323~~ 46-11-404."

Section 28. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory

minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him the defendant unable to appreciate the criminality of his the defendant's conduct or to conform his the defendant's conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him the defendant a danger to himself the defendant or others, but either there is no treatment available for his the mental disease or defect or he the

1 defendant refuses to cooperate with treatment.

2 (4) The sentencing court may make any order not
3 inconsistent with its original sentencing authority except
4 that the length of confinement or supervision must be equal
5 to that of the original sentence. The professional person
6 shall review the defendant's status each year."

7 **Section 29.** Section 46-15-101, MCA, is amended to read:

8 "46-15-101. Subpoenas. (1) After the filing of charges
9 and upon the request of the prosecuting attorney, the
10 defendant, or the defendant's attorney, the clerk of the
11 court shall issue subpoenas with the name of the person to
12 whom each subpoena is directed, commanding the person to
13 appear and to give testimony. The court shall maintain a
14 list of the names of the persons to whom subpoenas are
15 issued.

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

20 (3) The court, upon a timely motion, may quash or
21 modify a subpoena if compliance would be unreasonable or
22 oppressive."

23 **Section 30.** Section 46-15-116, MCA, is amended to read:

24 "46-15-116. Fees, costs, and expenses. (1) When a
25 person attends before a judge, grand jury, or court as a

1 witness in a criminal case upon a subpoena, the witness
2 shall receive the witness fee prescribed by Title 26,
3 chapter 2, part 5. The court, on motion by either party, may
4 allow additional fees for expert witnesses.

5 (2) The court may determine the reasonable and
6 necessary expenses of subpoenaed witnesses and order the
7 clerk of the court to pay the expenses from the appropriate
8 city or county treasury.

9 (3) When a person is subpoenaed in this state to
10 testify in another state or is subpoenaed from another state
11 to testify in this state, the person must be paid for
12 lodging, mileage or travel, and per diem, the sum equal to
13 that allowed by Title 2, chapter 18, part 5, for each day
14 that the person is required to travel and attend as a
15 witness. If the state where the witness is found has by
16 statutory enactment required that the subpoenaed witness be
17 paid an amount in excess of the amount specified in this
18 section, the witness may be paid the amount required by that
19 state.

20 (4) According to procedures required by the supreme
21 court administrator, under 3-5-902, the clerk of the
22 district court shall submit to the administrator a detailed
23 statement containing a list of witnesses and the amount of
24 expenses paid to each witness by the county. Upon receipt
25 and verification of the statement, the administrator shall

1 promptly reimburse the designated county for all or a
 2 portion of the witness expenses. The county shall deposit
 3 the amount reimbursed in its general fund unless the county
 4 has a district court fund. If the county has a district
 5 court fund, the amount reimbursed must be deposited in the
 6 district court fund."

7 **Section 31.** Section 46-15-201, MCA, is amended to read:
 8 "46-15-201. When depositions may be taken. (1) In
 9 district or municipal court cases, a deposition may be taken
 10 if it appears that a prospective witness:

11 (a) is likely to be either unable to attend or
 12 otherwise prevented from attending a trial or hearing;

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

15 (c) is unwilling to provide relevant information to a
 16 requesting party and the witness's testimony is material and
 17 necessary in order to prevent a failure of justice. The
 18 district court shall, upon motion of any party and proper
 19 notice, order that the testimony of the witness be taken by
 20 deposition and that any designated books, papers, documents,
 21 or tangible objects, not privileged, be introduced at the
 22 time the deposition is taken.

23 (2) The witness whose deposition is to be taken may be
 24 required by subpoena to attend at any place designated by
 25 the district court, taking into account the convenience of

1 the parties and of the witness.

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

12 **Section 32.** Section 46-15-202, MCA, is amended to read:

13 "46-15-202. Procedure for taking depositions. (1) The
 14 party at whose instance a deposition is to be taken shall
 15 give to every other party reasonable written notice of the
 16 time and place for taking the deposition. The notice must
 17 state the name and address of each person to be examined. On
 18 motion of the party upon whom the notice is served, the
 19 municipal or district court for cause shown may extend or
 20 shorten the time or change the place for taking the
 21 deposition.

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

1 deposition may not be taken of a party defendant without his
2 the defendant's consent, and the scope and manner of
3 examination and cross-examination must be restricted as
4 would be allowed in the trial itself.

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

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

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

22 (6) A defendant not in custody who fails to appear,
23 without good cause, at the taking of a deposition after
24 being notified of the time and place set for the deposition
25 will be considered to have waived the right to be present as

1 provided in 46-16-122. The waiver includes a waiver of any
2 objection to the taking and use of the deposition based upon
3 that right.

4 (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 the defendant's counsel for attendance at the examination
10 and the cost of the transcript of the deposition be paid by
11 the city for a municipal court proceeding or by the state
12 for a district court proceeding."

13 **Section 33.** Section 46-15-322, MCA, is amended to read:

14 "46-15-322. Disclosure by prosecution. (1) Upon
15 request, the prosecutor shall make available to the
16 defendant for examination and reproduction the following
17 material and information within the prosecutor's possession
18 or control:

19 (a) the names, addresses, and statements of all persons
20 whom the prosecutor may call as witnesses in the
21 case-in-chief case in chief;

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

24 (c) all written reports or statements of experts who
25 have personally examined the defendant or any evidence in

1 the particular case, together with the results of physical
2 examinations, scientific tests, experiments, or comparisons;

3 (d) all papers, documents, photographs, or tangible
4 objects that the prosecutor may use at trial or that were
5 obtained from or purportedly belong to the defendant; and

6 (e) all material or information that tends to mitigate
7 or negate the defendant's guilt as to the offense charged or
8 that would tend to reduce the defendant's potential
9 sentence.

10 (2) At the same time, the prosecutor shall inform the
11 defendant of, and make available to the defendant for
12 examination and reproduction, any written or recorded
13 material or information within the prosecutor's control
14 regarding:

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

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

19 (c) whether the case has involved an informant and, if
20 so, the informant's identity if the defendant is entitled to
21 know either or both of these facts under Rule 502 of the
22 Montana Rules of Evidence and 46-15-324(3).

23 (3) The prosecutor may impose reasonable conditions,
24 including an appropriate stipulation concerning chain of
25 custody, to protect physical evidence produced under

1 subsection (1)(d).

2 (4) The prosecutor's obligation of disclosure extends
3 to material and information in the possession or control of
4 members of the prosecutor's staff and of any other persons
5 who have participated in the investigation or evaluation of
6 the case.

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

18 (6) The prosecutor shall furnish to the defendant no
19 later than 5 days before trial or at a later time as the
20 court may for good cause permit, together with their
21 statements, a list of the names and addresses of all persons
22 whom the prosecutor intends to call as rebuttal witnesses to
23 evidence of good character or the defenses of alibi,
24 compulsion, entrapment, justifiable use of force, or
25 mistaken identity or the defense that the defendant did not

1 have a particular state of mind that is an element of the
2 offense charged."

3 **Section 34.** Section 46-15-323, MCA, is amended to read:

4 "46-15-323. Disclosure by defendant. (1) At any time
5 after the filing in district court of an indictment or
6 information, the defendant, in connection with the
7 particular crime charged, shall upon written request of the
8 prosecutor and approval of the court:

9 (a) appear in a lineup;

10 (b) speak for identification by witnesses;

11 (c) be fingerprinted, palm printed, footprinted, or
12 voiceprinted;

13 (d) pose for photographs not involving reenactment of
14 an event;

15 (e) try on clothing;

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

19 (g) provide handwriting samples; or

20 (h) submit to a reasonable physical or medical
21 inspection; however, the inspection does not include
22 psychiatric or psychological examination.

23 (2) Within 10 days after the omnibus hearing in
24 district court or at a later time as the court may for good
25 cause permit, the defendant shall provide the prosecutor

1 with a written notice of the defendant's intention to
2 introduce evidence at trial of good character or the
3 defenses of alibi, compulsion, entrapment, justifiable use
4 of force, or mistaken identity.

5 (3) Within 10 days after receiving a report of the
6 defendant's mental condition from a psychiatrist or
7 psychologist or at a later time as the court may for good
8 cause permit, the defendant shall provide the prosecutor
9 with a written notice of the defendant's intention to
10 introduce evidence at trial of the defense that due to a
11 mental disease or defect, the defendant did not have a
12 particular state of mind that is an essential element of the
13 offense charged.

14 (4) The notice must specify for each defense the names
15 and addresses of the persons, other than the defendant, whom
16 the defendant may call as witnesses in support of the
17 defense, together with all written reports or statements
18 made by them, including all reports and statements
19 concerning the results of physical examinations, scientific
20 tests, experiments, or comparisons, except that the
21 defendant need not include a privileged report or statement
22 unless he the defendant intends to use the privileged report
23 or statement, or the witness who made it, at trial.

24 (5) Prior to trial the defendant may, upon motion and
25 showing of good cause, add to the list of witnesses the

1 names of any additional witnesses and disclose their reports
 2 or statements as required by this section. After the trial
 3 commences, no witnesses may be called by the defendant in
 4 support of these defenses unless the name of the witness is
 5 included on the list and the witness's report or statement
 6 has been disclosed as required by this section, except for
 7 good cause shown.

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

12 (a) the names, addresses, and statements of all
 13 persons, other than the defendant, whom the defendant may
 14 call as witnesses in the defense case-in-chief case in
 15 chief, together with their statements;

16 (b) the names and addresses of experts whom the
 17 defendant may call at trial, together with the results of
 18 their physical examinations, scientific tests, experiments,
 19 or comparisons, including all written reports and statements
 20 made by these experts in connection with the particular
 21 case; and

22 (c) all papers, documents, photographs, and other
 23 tangible objects that the defendant may use at trial.

24 (7) The defendant's obligation under this section
 25 extends to material and information within the possession or

1 control of the defendant, defense counsel, and defense
 2 counsel's staff or investigators.

3 (8) Upon motion of the prosecutor showing that the
 4 prosecutor has substantial need in the preparation of the
 5 case for additional material or information not otherwise
 6 provided for, that the prosecutor is unable, without undue
 7 hardship, to obtain the substantial equivalent by other
 8 means, and that disclosure of the material or information
 9 will not violate the defendant's constitutional rights, the
 10 court, in its discretion, may order any person to make the
 11 material or information available to the prosecutor. The
 12 court may, upon request of any person affected by the order,
 13 vacate or modify the order if compliance would be
 14 unreasonable or oppressive. The defense counsel may not be
 15 required to prepare or disclose summaries of witnesses'
 16 testimony."

17 **Section 35.** Section 46-15-324, MCA, is amended to read:

18 **"46-15-324. Materials not subject to disclosure.** (1)
 19 Except as provided in this section, disclosure is not
 20 required for the superseded notes or work product of the
 21 prosecuting or defense attorney.

22 (2) If exculpatory information is contained in the
 23 superseded notes or work product of the prosecution, that
 24 information must be disclosed.

25 (3) Disclosure of the existence of an informant or the

identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to the informant's operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused."

Section 36. Section 46-16-107, MCA, is amended to read:

"46-16-107. Failure of county--attorney prosecutor to attend. If the county-attorney prosecutor fails to attend the trial, the court may appoint some attorney-at-law to perform his the prosecutor's duties."

Section 37. Section 46-16-116, MCA, is amended to read:

"46-16-116. Peremptory challenges. (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

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

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the state prosecution and all the defendants are allowed

three peremptory challenges each.

(5) When the parties in a criminal case in the district court 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."

Section 38. Section 46-16-122, MCA, is amended to read:

"46-16-122. Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench an arrest warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant

during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity."

Section 39. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) The Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

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

(3)(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4)(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court."

Section 40. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are

1 preserved for appeal pursuant to 46-12-204, all cases on
 2 appeal from a justice's ~~7-municipal~~ or city court must be
 3 tried anew in the district court and may be tried before a
 4 jury of six selected in the same manner as for other
 5 criminal cases. An appeal from a municipal court to the
 6 district court is governed by 3-6-110.

7 (2) The defendant may appeal to the district court by
 8 filing written notice of intention to appeal within 10 days
 9 after a judgment is rendered following trial. In the case of
 10 an appeal by the prosecution, the notice must be filed
 11 within 10 days of the date the order complained of is given.
 12 The prosecution may only appeal in the cases provided for in
 13 46-20-103.

14 (3) Within 30 days of filing the notice of appeal, the
 15 court shall transfer the entire record of the court of
 16 limited jurisdiction to the district court."

17 **Section 41.** Section 46-18-111, MCA, is amended to read:

18 "46-18-111. Presentence investigation -- when required.

19 (1) Upon the acceptance of a plea or upon a verdict or
 20 finding of guilty to one-or-more-felony-offenses an--offense
 21 under--45-5-502--through--45-5-505,--45-5-507,--or--45-5-625
 22 against--a-victim-who-was-less-than-16-years-of-age-when-the
 23 offense-was-committed ONE OR MORE FELONY OFFENSES, the
 24 district court shall direct the probation officer to make a
 25 presentence investigation and report. The district court

1 may, in its discretion, order a presentence investigation
 2 for a defendant convicted of a misdemeanor. The IF THE
 3 DEFENDANT WAS CONVICTED OF AN OFFENSE UNDER 45-5-502,
 4 45-5-503, 45-5-504, 45-5-505, 45-5-507, OR 45-5-625 AGAINST
 5 A VICTIM WHO WAS LESS THAN 16 YEARS OF AGE WHEN THE OFFENSE
 6 WAS COMMITTED, THE investigation must include an evaluation
 7 of the defendant and a recommendation as to treatment by a
 8 person qualified under guidelines established by the
 9 department of corrections and human services. All costs
 10 related to the evaluation must be paid by the defendant. If
 11 the defendant is determined by the district court to be
 12 indigent, all costs related to the evaluation are the
 13 responsibility of the district court and must be paid by the
 14 department-of-commerce supreme court administrator under
 15 Title 3, chapter 5, part 9.

16 (2) If the district court finds that the record
 17 contains information sufficient to enable the meaningful
 18 exercise of discretion during sentencing, the defendant may
 19 waive a presentence investigation and report. Both the
 20 finding and the defendant's waiver must be made in open
 21 court on the record."

22 **Section 42.** Section 46-18-112, MCA, is amended to read:

23 "46-18-112. Content of presentence investigation
 24 report. (1) Whenever an investigation is required, the
 25 probation officer shall promptly inquire into and report

1 upon:

2 (a) the defendant's characteristics, circumstances,
3 needs, and potentialities;

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

5 (c) the circumstances of the offense;

6 (d) the time of the defendant's detention for the
7 offenses charged; and

8 (e) ~~except--in-capital-cases-in-which-the-death-penalty~~
9 ~~may-be-imposed,~~ the harm caused, as a result of the offense,
10 to the victim, the victim's immediate family, and the
11 community.

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

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

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

23 **Section 43.** Section 46-18-117, MCA, is amended to read:

24 "46-18-117. Correction of sentence. The court may
25 correct an ~~illegal~~ erroneous sentence or disposition at any

1 time and may correct a sentence imposed in an illegal manner
2 within 120 days after the sentence is imposed or after
3 remand from an appellate court."

4 **Section 44.** Section 46-18-201, MCA, is amended to read:

5 "46-18-201. Sentences that may be imposed. (1) Whenever
6 a person has been found guilty of an offense upon a verdict
7 or a plea of guilty, the court may:

8 (a) defer imposition of sentence, except as provided in
9 61-8-714 and 61-8-722 for sentences for driving under the
10 influence of alcohol or drugs, for a period, except as
11 otherwise provided, not exceeding 1 year for any misdemeanor
12 or for a period not exceeding 3 years for any felony. The
13 sentencing judge may impose upon the defendant any
14 reasonable restrictions or conditions during the period of
15 the deferred imposition. Reasonable restrictions or
16 conditions may include:

17 (i) jail base release;

18 (ii) jail time not exceeding 180 days;

19 (iii) conditions for probation;

20 (iv) restitution;

21 (v) payment of the costs of confinement;

22 (vi) payment of a fine as provided in 46-18-231;

23 (vii) payment of costs as provided in 46-18-232 and
24 46-18-233;

25 (viii) payment of costs of court-appointed counsel as

1 provided in 46-8-113;

2 (ix) with the approval of the facility or program, order

3 the offender to be placed in a community corrections

4 facility or program as provided in 53-30-321;

5 (x) community service;

6 (xi) home arrest as provided in Title 46, chapter 18,

7 part 10;

8 (xii) any other reasonable conditions considered

9 necessary for rehabilitation or for the protection of

10 society; or

11 (xiii) any combination of the above.

12 (b) suspend execution of sentence for a period up to

13 the maximum sentence allowed or for a period of 6 months,

14 whichever is greater, for each particular offense. The

15 sentencing judge may impose on the defendant any reasonable

16 restrictions or conditions during the period of suspended

17 sentence. Reasonable restrictions or conditions may include

18 any of those listed in subsection (1)(a).

19 (c) impose a fine as provided by law for the offense;

20 (d) require payment of costs as provided in 46-18-232

21 or payment of costs of court-appointed counsel as provided

22 in 46-8-113;

23 (e) commit the defendant to a correctional institution,

24 with or without a fine as provided by law for the offense;

25 (f) with the approval of the facility or program, order

1 the offender to be placed in a community corrections

2 facility or program as provided in 53-30-321;

3 (g) impose any combination of subsections (1)(b)

4 through (1)(f).

5 (2) If a financial obligation is imposed as a condition

6 under subsection (1)(a), sentence may be deferred for a

7 period not exceeding 2 years for a misdemeanor or for a

8 period not exceeding 6 years for a felony, regardless of

9 whether any other conditions are imposed.

10 (3) If any restrictions or conditions imposed under

11 subsection (1)(a) or (1)(b) are violated, the court shall

12 consider any elapsed time and either expressly allow part or

13 all of it as a credit against the sentence or reject all or

14 part as a credit and state its reasons in the order. Credit,

15 however, must be allowed for jail or home arrest time

16 already served.

17 (4) Except as provided in 45-9-202 and 46-18-222, the

18 imposition or execution of the first 2 years of a sentence

19 of imprisonment imposed under the following sections may not

20 be deferred or suspended: 45-5-103, 45-5-202(3) relating to

21 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),

22 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and

23 (5)(d), 45-9-102(4), and 45-9-103(2).

24 (5) Except as provided in 46-18-222, the imposition or

25 execution of the first 10 years of a sentence of

1 imprisonment imposed under 45-5-102 may not be deferred or
2 suspended.

3 (6) Except as provided in 46-18-222, imposition of
4 sentence in a felony case may not be deferred in the case of
5 a defendant who has been convicted of a felony on a prior
6 occasion, whether or not the sentence was imposed,
7 imposition of the sentence was deferred, or execution of the
8 sentence was suspended.

9 (7) If the victim was less than 16 years old, the
10 imposition or execution of the first 30 days of a sentence
11 of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505,
12 or 45-5-507 may not be deferred or suspended. Section
13 46-18-222 does not apply to the first 30 days of the
14 imprisonment.

15 (8) In imposing a sentence on a defendant convicted of
16 a sexual offense as defined in 46-23-502, the court may not
17 waive the registration requirement provided in 46-18-254,
18 46-18-255, and Title 46, chapter 23, part 5.

19 (9) A person convicted of a sexual offense, as defined
20 in 46-23-502, and sentenced to imprisonment in the state
21 prison shall enroll in the educational phase of the prison's
22 sexual offender program.

23 (10) In sentencing a nonviolent felony offender, the
24 court shall first consider alternatives to imprisonment of
25 the offender in the state prison, including placement of the

1 offender in a community corrections facility or program. In
2 considering alternatives to imprisonment, the court shall
3 examine the sentencing criteria contained in 46-18-225. If
4 the offender is subsequently sentenced to the state prison
5 or a women's correctional facility, the court shall state
6 its reasons why alternatives to imprisonment were not
7 selected, based on the criteria contained in 46-18-225."

8 **Section 45.** Section 46-18-202, MCA, is amended to read:

9 **"46-18-202. Additional restrictions on sentence.** (1)
10 The district court may also impose any of the following
11 restrictions or conditions on the sentence provided for in
12 46-18-201 which that it considers necessary to obtain the
13 objectives of rehabilitation and the protection of society:

14 (a) prohibition of the defendant's holding public
15 office;

16 (b) prohibition of his the defendant's owning or
17 carrying a dangerous weapon;

18 (c) restrictions on his the defendant's freedom of
19 association;

20 (d) restrictions on his the defendant's freedom of
21 movement;

22 (e) any other limitation reasonably related to the
23 objectives of rehabilitation and the protection of society.

24 (2) Whenever the district court imposes a sentence of
25 imprisonment in the state prison for a term exceeding 1

1 year, the court may also impose the restriction that the
 2 defendant be ineligible for parole and participation in the
 3 supervised release program while serving his that term. If
 4 such a restriction is to be imposed, the court shall state
 5 the reasons for it in writing. If the court finds that the
 6 restriction is necessary for the protection of society, it
 7 shall impose the restriction as part of the sentence and the
 8 judgment shall contain a statement of the reasons for the
 9 restriction.

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

14 (4) When the district court imposes a sentence of
 15 probation as defined in 46-23-1001, any probation agreement
 16 signed by the defendant may contain a clause waiving
 17 extradition."

18 **Section 46.** Section 46-18-203, MCA, is amended to read:

19 "46-18-203. Revocation of suspended or deferred
 20 sentence. (1) Upon the filing of a petition for revocation
 21 accompanied-by-an-affidavit showing probable cause that the
 22 defendant has violated any condition of a sentence or any
 23 condition of a deferred imposition of sentence, the court
 24 may issue an order for a hearing on revocation. The order
 25 must require the defendant to appear at a specified time and

1 place for the hearing and be served by delivering a copy of
 2 the petition and order to the defendant personally. The
 3 court may also issue an arrest warrant directing any peace
 4 officer or a probation officer to arrest the defendant and
 5 bring the defendant before the court.

6 (2) The petition for a revocation must be filed with
 7 the sentencing court during the period of suspension or
 8 deferral. Expiration of the period of suspension or deferral
 9 after the petition is filed does not deprive the court of
 10 its jurisdiction to rule on the petition.

11 (3) The provisions pertaining to bail, as set forth in
 12 Title 46, chapter 9, are applicable to persons arrested
 13 pursuant to this section.

14 (4) Without unnecessary delay, the defendant must be
 15 brought before the court, and the defendant must be advised
 16 of:

17 (a) the allegations of the petition;

18 (b) the opportunity to appear and to present evidence
 19 in the defendant's own behalf;

20 (c) the opportunity to question adverse witnesses; and

21 (d) the right to be represented by counsel at the
 22 revocation hearing pursuant to Title 46, chapter 8, part 1.

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

1 (a) the defendant admits the allegations and waives the
2 right to a hearing; or

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

9 (6) At the hearing, the prosecution shall prove, by a
10 preponderance of the evidence, that there has been a
11 violation of the terms and conditions of the suspended or
12 deferred sentence. However, when a failure to pay
13 restitution is the basis for the petition, the defendant may
14 excuse the violation by showing sufficient evidence that the
15 failure to pay restitution was not attributable to a failure
16 on the defendant's part to make a good faith effort to
17 obtain sufficient means to make the restitution payments as
18 ordered.

19 (7) If the court finds that the defendant has violated
20 the terms and conditions of the suspended or deferred
21 sentence, the court may:

22 (a) continue the suspended or deferred sentence without
23 a change in conditions;

24 (b) continue the suspended sentence with modified or
25 additional terms and conditions;

1 (c) revoke the suspension of sentence and require the
2 defendant to serve either the sentence imposed or any lesser
3 sentence; or

4 (d) if the sentence was deferred, impose any sentence
5 that might have been originally imposed.

6 (8) If the court finds that the prosecution has not
7 proved, by a preponderance of the evidence, that there has
8 been a violation of the terms and conditions of the
9 suspended or deferred sentence, the petition must be
10 dismissed and the defendant, if in custody, immediately
11 released."

12 **Section 47.** Section 46-18-222, MCA, is amended to read:

13 "46-18-222. Exceptions to mandatory minimum sentences
14 and restrictions on deferred imposition and suspended
15 execution of sentence. All mandatory minimum sentences
16 prescribed by the laws of this state and the restrictions on
17 deferred imposition and suspended execution of sentence
18 prescribed by subsections-(4)-(5)-and-(6)-of 46-18-201(4)
19 through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do
20 not apply if:

21 (1) the defendant was less than 18 years of age at the
22 time of the commission of the offense for which he the
23 defendant is to be sentenced;

24 (2) the defendant's mental capacity, at the time of the
25 commission of the offense for which he the defendant is to

1 be sentenced, was significantly impaired, although not so
2 impaired as to constitute a defense to the prosecution.
3 However, a voluntarily induced intoxicated or drugged
4 condition may not be considered an impairment for the
5 purposes of this subsection.

6 (3) the defendant, at the time of the commission of the
7 offense for which he the defendant is to be sentenced, was
8 acting under unusual and substantial duress, although not
9 such duress as would constitute a defense to the
10 prosecution;

11 (4) the defendant was an accomplice, the conduct
12 constituting the offense was principally the conduct of
13 another, and the defendant's participation was relatively
14 minor;

15 (5) where--applicable in a case in which the threat of
16 bodily injury or actual infliction of bodily injury is an
17 actual element of the crime, no serious bodily injury was
18 inflicted on the victim unless a weapon was used in the
19 commission of the offense; or

20 (6) the offense was committed under 45-5-502(3) and the
21 court determines that treatment of the defendant in a local
22 community affords a better opportunity for rehabilitation of
23 the defendant and for the ultimate protection of society, in
24 which case the court shall include in its judgment a
25 statement of the reasons for its determination."

1 NEW SECTION. Section 48. Notice by prosecutor of other
2 crimes, wrongs, or acts. (1) Except for good cause shown, if
3 the prosecutor intends to use evidence of other crimes,
4 wrongs, or acts pursuant to Rule 404(b), Montana Rules of
5 Evidence, notice must be given at or before the omnibus
6 hearing held pursuant to 46-13-110.

7 (2) The notice must specify the other crimes, wrongs,
8 or acts and must include a statement as to the purpose for
9 which the evidence is to be offered.

10 (3) The notice must be filed and sealed until the time
11 of trial or until a plea of guilty is entered by the
12 defendant.

13 NEW SECTION. Section 49. Codification instruction.
14 [Section 48] is intended to be codified as an integral part
15 of Title 46, chapter 13, part 1, and the provisions of Title
16 46, chapter 13, part 1, apply to [section 48].

17 NEW SECTION. Section 50. Repealer. Sections 46-10-201,
18 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205,
19 46-17-211, and 46-17-301, MCA, are repealed.

-End-

SENATE BILL NO. 125

INTRODUCED BY VAN VALKENBURG, J. RICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGARDING CRIMINAL PROCEDURE; INCREASING THE AMOUNT OF GUARANTEED ARREST BOND CERTIFICATES; ELIMINATING THE USE OF SEALED AFFIDAVITS IN SUPPORT OF A MOTION TO FILE A CHARGE OR WARRANT; PROVIDING FOR THE WRITTEN ACKNOWLEDGEMENT OF INFORMATION FOR A GUILTY PLEA; REQUIRING THE KEEPING OF A LIST OF PERSONS TO WHOM SUBPOENAS ARE ISSUED; CLARIFYING THE DISCLOSURE REQUIREMENTS REGARDING INFORMANTS; EXPANDING THE USE OF VICTIM IMPACT STATEMENTS; CODIFYING THE NOTICE REQUIREMENTS FOR THE DISCLOSURE OF THE INTENDED USE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS; AMENDING SECTIONS 46-1-202, 46-4-306, 46-5-101, 46-6-201, 46-6-210, 46-6-312, 46-8-113, 46-8-115, 46-8-201, 46-9-201, 46-9-412, 46-9-505, 46-10-202, 46-11-110, 46-11-302, 46-11-332, 46-11-401, 46-11-405, 46-11-601, 46-11-701, 46-12-210, 46-12-211, 46-13-108, 46-13-110, 46-13-202, 46-13-203, 46-13-210, 46-14-312, 46-15-101, 46-15-116, 46-15-201, 46-15-202, 46-15-322, 46-15-323, 46-15-324, 46-16-107, 46-16-116, 46-16-122, 46-16-130, 46-17-311, 46-18-111, 46-18-112, 46-18-117, 46-18-201, 46-18-202, 46-18-203, AND 46-18-222, MCA; AND REPEALING SECTIONS 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, AND 46-17-301,

MCA."

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

Section 1. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

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

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

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

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

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Concealment" means any act or deception done

~~purposely or knowingly upon or outside the premises of a
wholesale or retail store or other mercantile establishment
with the intent to deprive the merchant of all or part of
the value of the merchandise.~~

{7}{6} "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

{8}{7} "Court" means a place where justice is judicially administered and includes the judge of the court.

{9}{8} "Included offense" means an offense that:

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

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

{10}{9} "Judge" means a person who is vested by law with the power to perform judicial functions.

{11}{10} "Judgment" means an adjudication by a court

that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

{12}{11} "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its 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 other or additional arrangements.

{13}{12} "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

{14}{13} "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

{15}{14} "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

{16}{15} "Parole" means the release to the community of

1 a prisoner by a decision of the board of pardons prior to
2 the expiration of the prisoner's term subject to conditions
3 imposed by the board of pardons and the supervision of the
4 department of corrections and human services.

5 ~~(17)~~(16) "Peace officer" means any person who by virtue
6 of the person's office or public employment is vested by law
7 with a duty to maintain public order and make arrests for
8 offenses while acting within the scope of the person's
9 authority.

10 ~~(18)~~(17) "Persistent felony offender" means an offender
11 who has previously been convicted of a felony and who is
12 presently being sentenced for a second felony committed on a
13 different occasion than the first. An offender is considered
14 to have been previously convicted of a felony if:

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

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

21 (i) the previous felony conviction; or

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

25 (c) the offender has not been pardoned on the ground of

1 innocence and the conviction has not been set aside at the
2 postconviction hearing.

3 ~~(19)~~(18) "Place of trial" means the geographical
4 location and political subdivision in which the court that
5 will hear the cause is situated.

6 ~~(20)~~(19) "Preliminary examination" means a hearing
7 before a judge for the purpose of determining if there is
8 probable cause to believe a felony has been committed by the
9 defendant.

10 ~~(21)~~(20) "Probation" means release by the court without
11 imprisonment of a defendant found guilty of a crime. The
12 release is subject to the supervision of the department of
13 corrections and human services upon direction of the court.

14 ~~(22)~~(21) "Prosecutor" means an elected or appointed
15 attorney who is vested by law with the power to initiate and
16 carry out criminal proceedings on behalf of the state or a
17 political subdivision.

18 ~~(23)~~(22) "Same transaction" means conduct consisting of
19 a series of acts or omissions that are motivated by:

20 (a) a purpose to accomplish a criminal objective and
21 that are necessary or incidental to the accomplishment of
22 that objective; or

23 (b) a common purpose or plan that results in the
24 repeated commission of the same offense or effect upon the
25 same person or the property of the same person.

1 ~~(24)~~(23) "Search warrant" means an order that is:

2 (a) in writing;

3 (b) in the name of the state;

4 (c) signed by a judge;

5 (d) a particular description of the place, object, or

6 person to be searched and the evidence, contraband, or

7 person to be seized; and

8 (e) directed to a peace officer and commands the peace

9 officer to search for evidence, contraband, or persons.

10 ~~(25)~~(24) "Sentence" means the judicial disposition of a

11 criminal proceeding upon a plea, verdict, or finding of

12 guilty.

13 ~~(26)~~(25) "Statement" means:

14 (a) a writing signed or otherwise adopted or approved

15 by a person;

16 (b) a video or audio recording of a person's

17 communications or a transcript of the communications; and

18 (c) a writing containing a summary of a person's oral

19 communications or admissions.

20 ~~(27)~~(26) "Summons" means a written order issued by the

21 court that commands a person to appear before a court at a

22 stated time and place to answer a charge for the offense set

23 forth in the order.

24 ~~(28)~~(27) "Superseded notes" means handwritten notes,

25 including field notes, that have been substantially

1 incorporated into a statement. The notes may not be

2 considered a statement and are not subject to disclosure

3 except as provided in 46-15-324.

4 ~~(29)~~(28) "Temporary road block" means any structure,

5 device, or means used by a peace officer for the purpose of

6 controlling all traffic through a point on the highway where

7 all vehicles may be slowed or stopped.

8 ~~(30)~~(29) "Witness" means a person whose testimony is

9 desired in a proceeding or investigation by a grand jury or

10 in a criminal action, prosecution, or proceeding.

11 ~~(31)~~(30) "Work product" means legal research, records,

12 correspondence, reports, and memoranda, both written and

13 oral, to the extent that they contain the opinions,

14 theories, and conclusions of the prosecutor, defense

15 counsel, or their staff or investigators."

16 **Section 2.** Section 46-4-306, MCA, is amended to read:

17 "46-4-306. Applicability of other laws -- costs. (1)

18 The fees and mileage of witnesses subpoenaed pursuant to

19 this part are the same as those required in criminal

20 actions. The state shall bear all costs, including the cost

21 of service, when the application for the subpoena is made by

22 the attorney general, and the appropriate county shall bear

23 all costs, including the cost of service, when the

24 application for the subpoena is made by a county attorney,

25 and the appropriate city shall bear all costs, including the

1 cost of service, when the application for the subpoena is
2 made by a city attorney.

3 (2) All provisions relating to subpoenas in criminal
4 actions apply to subpoenas issued pursuant to this part,
5 including the provisions of 46-15-112, 46-15-113, and
6 46-15-120.

7 (3) All investigative costs, including testing of
8 evidence and persons, must be borne by the governmental
9 entity requesting INITIATING the investigation."

10 **Section 3.** Section 46-5-101, MCA, is amended to read:

11 "46-5-101. Searches and seizures -- when authorized. A
12 search of a person, object, or place may be made and
13 evidence, contraband, and persons may be seized in
14 accordance with Title 46 when a search is made:

15 (1) by the authority of a search warrant; or

16 (2) in accordance with judicially recognized exceptions
17 to the warrant requirement."

18 **Section 4.** Section 46-6-201, MCA, is amended to read:

19 "46-6-201. Issuance of arrest warrant upon complaint.

20 ~~{1}-A-complaint, as the basis of an arrest warrant, shall be~~
21 ~~in writing.~~

22 ~~{2}-When a complaint is presented to a court charging a~~
23 ~~person with the commission of an offense, the court shall~~
24 ~~examine upon oath the complainant and may also examine any~~
25 ~~witnesses.~~

1 ~~{3}~~ If it appears from the contents of the complaint
2 and the examination of the complainant and from the
3 examination of other witnesses or affidavits, if any, that
4 there is probable cause to believe that the person against
5 whom the complaint was made has committed an offense, a
6 warrant shall be issued by the court for the arrest of the
7 person complained against. The court, in its discretion, may
8 issue a summons instead of a warrant. Upon the request of
9 the county--attorney prosecutor, the court shall issue a
10 summons instead of a warrant. More than one warrant or
11 summons may issue on the same complaint."

12 **Section 5.** Section 46-6-210, MCA, is amended to read:

13 "46-6-210. Arrest by peace officer. A peace officer may
14 arrest a person when the officer has a warrant commanding
15 that the person be arrested or when the officer believes on
16 reasonable grounds:

17 (1) that a warrant for the person's arrest has been
18 issued in this state, except that unless otherwise provided
19 by law, a warrant for violation of a city ordinance may not
20 be acted upon unless the person is located within the limits
21 of the city in which the violation is alleged to have
22 occurred; or

23 (2) that a felony warrant for the person's arrest has
24 been issued in another jurisdiction."

25 **Section 6.** Section 46-6-312, MCA, is amended to read:

"46-6-312. Manner of arrest without warrant. A peace officer or--person making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest."

Section 7. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment for court-appointed counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

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

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

(4) A defendant who has been sentenced to pay costs and

who-is-able-to-but-refuses-or-fails-to-pay-those--costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 8. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the county-attorney prosecutor or on its own motion may require him the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

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

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each

\$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

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

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

Section 9. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a district court judge or justice of the state supreme court certifies

to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city 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."

Section 10. Section 46-9-201, MCA, is amended to read:

"46-9-201. Who may admit to bail. A judge may admit to bail any defendant properly appearing before him the judge in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by

1 physical appearance before the court or by two-way
2 electronic audio-video communication as provided in 46-9-115
3 46-9-206."

4 **Section 11.** Section 46-9-412, MCA, is amended to read:

5 "46-9-412. Guaranteed arrest bond certificates. (1) A
6 domestic or foreign surety company that has qualified to
7 transact surety business in this state may, in any year,
8 become surety in an amount not exceeding \$500 \$1,000 with
9 respect to any guaranteed arrest bond certificates issued in
10 the year by an automobile club or association or by an
11 insurance company authorized to write automobile liability
12 insurance within this state by filing with the commissioner
13 of insurance an undertaking to become surety.

14 (2) The form of the undertaking must be prescribed by
15 the commissioner of insurance and must include those matters
16 required by 46-9-401."

17 **Section 12.** Section 46-9-505, MCA, is amended to read:

18 "46-9-505. Issuance of arrest warrant -- redetermining
19 bail. (1) Upon failure to comply with any condition of a
20 bail or recognizance, the court having jurisdiction at the
21 time of such the failure may, in addition to any other
22 action provided by law, issue a warrant for the arrest of
23 the person ~~at liberty on bail or on his own recognizance.~~

24 (2) On verified application by the state prosecutor
25 setting forth facts or circumstances constituting a breach

1 or threatened breach of any of the conditions of the bail or
2 a threat or an attempt to influence the pending proceeding,
3 the court may issue a warrant for the arrest of the
4 defendant.

5 (3) Upon the arrest, the defendant ~~shall~~ must be
6 brought before the court without unnecessary delay and the
7 court shall conduct a hearing and determine bail in
8 accordance with 46-9-311."

9 **Section 13.** Section 46-10-202, MCA, is amended to read:

10 "46-10-202. Presentation of evidence. (1) The defendant
11 may not enter a plea. The judge shall hear the evidence
12 without unnecessary delay. All witnesses must be examined in
13 the presence of the defendant. The defendant may
14 cross-examine witnesses against the defendant and may
15 introduce evidence in the defendant's own behalf. For
16 purposes of this section, a preliminary examination
17 conducted by the use of two-way electronic audio-video
18 communication that allows all of the participants to be
19 observed and heard by all other participants and that allows
20 the defendant to cross-examine witnesses is considered to be
21 an examination of a witness in the presence of the
22 defendant. Two-way electronic ~~audio-visual~~ audio-video
23 communication may not be used unless the defendant's counsel
24 is physically present with ~~his client~~ the defendant, unless
25 this requirement is waived by the defendant.

(2) During the examination of a 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 communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his the defendant's counsel, if any, can communicate privately, and so that the defendant and his the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination."

Section 14. Section 46-11-110, MCA, is amended to read:

"46-11-110. Filing complaint. {1} When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant SWORN COMPLAINT and or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge may-be-filed.

{2}--If-it-appears-from--an--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-shall-issue-a-summons-or-an-arrest warrant."

Section 15. Section 46-11-302, MCA, is amended to read:

"46-11-302. Challenges to grand jury or grand jurors.

(1) The county-attorney-or-attorney-general prosecutor may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or

1 permanently, and in the latter event, the court may impanel
2 another person in place of the juror discharged.

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

11 **Section 16.** Section 46-11-332, MCA, is amended to read:

12 "46-11-332. Presenting the indictment. (1) An
13 indictment, when found by the grand jury, must be signed by
14 and presented by the foreman to the district court in the
15 presence of the grand jury and must be filed with the clerk.
16 The district court shall then issue a an arrest warrant or
17 summons for the defendant.

18 (2) If a complaint or information is pending against
19 the defendant and eight jurors do not concur in finding an
20 indictment, the foreman shall report the decision to the
21 district court judge."

22 **Section 17.** Section 46-11-401, MCA, is amended to read:

23 "46-11-401. Form of charge. (1) The charge must be in
24 writing and in the name of the state or the appropriate
25 municipality and must specify the district court in which

1 the charge is filed. The charge must be a plain, concise,
2 and definite statement of the offense charged, including the
3 name of the offense, whether the offense is a misdemeanor or
4 felony, the name of the person charged, and the time and
5 place of the offense as definitely as can be determined. The
6 charge must state for each count the official or customary
7 citation of the statute, rule, regulation, or other
8 provision of law that the defendant is alleged to have
9 violated.

10 (2) If the charge is by information or indictment, it
11 must include endorsed on the information or indictment the
12 names of the witnesses for the state, if known.

13 (3) If the charge is by complaint, it must be signed on
14 oath by a peace officer, by a person having knowledge of the
15 facts, or by the prosecutor.

16 (4) If the charge is by information, it must be signed
17 by the prosecutor. If the charge is by indictment, it must
18 be signed by the foreman of the grand jury.

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

21 (6) A charge may not be dismissed because of a formal
22 defect that does not tend to prejudice a substantial right
23 of the defendant."

24 **Section 18.** Section 46-11-405, MCA, is amended to read:

25 "46-11-405. Discharge of codefendant. (1) When two or

1 more persons are included in the same charge, the court may,
 2 at any time before the defendants have gone into their
 3 defense, on the application of the county---attorney
 4 prosecutor, direct any defendant to be discharged so that he
 5 the defendant may be a witness for the state prosecution.

6 (2) When two or more persons are included in the same
 7 indictment or information and the court is of the opinion
 8 that in regard to a particular defendant there is not
 9 sufficient evidence to require the defendant to put him on
 10 his a defense, the court must order him that defendant to be
 11 discharged before the evidence is closed so that he the
 12 discharged defendant may be a witness for his the
 13 codefendant."

14 **Section 19.** Section 46-11-601, MCA, is amended to read:

15 "46-11-601. Recognizance by or deposition of witness.

16 (1) If the defendant is held to answer after a preliminary
 17 examination, or after the defendant has waived a preliminary
 18 examination, or after the district court has granted leave
 19 to file an information, or after an indictment has been
 20 returned, the judge may:

21 (a) require any material witness for the state or
 22 defendant to enter into a written undertaking to appear at
 23 the trial; and

24 (b) provide for the forfeiture of a sum certain in the
 25 event the witness does not appear at the trial.

1 (2) Any witness who refuses to enter into a written
 2 undertaking may be remanded to custody but shall may not be
 3 held longer than is necessary to take his the witness's
 4 deposition. After the deposition is taken, the witness must
 5 be immediately discharged.

6 (3) Such The deposition must be taken in the presence
 7 of the county-attorney prosecutor and the defendant and his
 8 the defendant's counsel unless either the county---attorney
 9 prosecutor or the defendant and his the defendant's counsel
 10 fail to attend after reasonable notice of the time and place
 11 set for taking the deposition."

12 **Section 20.** Section 46-11-701, MCA, is amended to read:

13 "46-11-701. Pretrial proceedings -- exclusion of public
 14 and sealing of records. (1) Except as provided in this
 15 section, pretrial proceedings and records of those
 16 proceedings are open to the public. If, at the pretrial
 17 proceedings, testimony or evidence is presented that is
 18 likely to threaten the fairness of a trial, the presiding
 19 officer shall advise those present of the danger and shall
 20 seek the voluntary cooperation of the news media in delaying
 21 dissemination of potentially prejudicial information until
 22 the impaneling of the jury or until an earlier time
 23 consistent with the administration of justice.

24 (2) The defendant may move that all or part of the
 25 proceeding be closed to the public, or with the consent of

1 the defendant, the judge may take action on the judge's own
2 motion.

3 (3) The judge may close a preliminary hearing, bail
4 hearing, or any other pretrial proceeding, including a
5 hearing on a motion to suppress, and may seal the record
6 only if:

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

10 (b) the prejudicial effect of the information on trial
11 fairness cannot be avoided by any reasonable alternative
12 means.

13 (4) Whenever all or part of any pretrial proceeding is
14 held in chambers or otherwise closed to the public under
15 this section, a complete record must be kept and made
16 available to the public following the completion of the
17 trial or earlier if consistent with trial fairness.

18 (5) When the judge determines that all or part of a
19 document filed in support of a charge or warrant would
20 present a clear and present danger to the defendant's right
21 to a fair trial, the document or portion of the document
22 must be sealed until the trial is completed unless the
23 document or portion of the document must be used for trial
24 fairness.

25 {6}--An-affidavit-filed-in-support-of-a-motion-for-leave

1 to--file-a-charge-or-warrant-must-be-sealed-unless-the-judge
2 determines--that--disclosure--of--the--information--in--the
3 affidavit--is--required--to--protect--the-health-safety-or
4 welfare-of-the-public."

5 Section 21. Section 46-12-210, MCA, is amended to read:

6 "46-12-210. Advice to defendant. (1) Before accepting a
7 plea of guilty, the court shall determine that the defendant
8 understands the following:

9 {1} (a) (i) the nature of the charge for which the
10 plea is offered;

11 {b} (ii) the mandatory minimum penalty provided by law,
12 if any;

13 {c} (iii) the maximum penalty provided by law, including
14 the effect of any penalty enhancement provision or special
15 parole restriction; and

16 {d} (iv) when applicable, the requirement that the court
17 may also order the defendant to make restitution of the
18 costs and assessments provided by law;

19 {2} (b) if the defendant is not represented by an
20 attorney, the fact that he the defendant has the right to be
21 represented by an attorney at every stage of the proceeding
22 against him and that, if necessary, one will be appointed to
23 represent the defendant;

24 {3} (c) that the defendant has the right:

25 {a} (i) to plead not guilty or to persist in that plea

1 if it has already been made;

2 ~~(b)~~(iii) to be tried by a jury and at the trial has the
3 right to the assistance of counsel;

4 ~~(c)~~(iii) to confront and cross-examine witnesses against
5 the defendant; and

6 ~~(d)~~(iv) not to be compelled to reveal personally
7 incriminating information;

8 ~~(4)~~(d) that if the defendant pleads guilty in
9 fulfillment of a plea agreement, the court is not required
10 to accept the terms of the agreement and that the defendant
11 may not be entitled to withdraw the plea if the agreement is
12 not accepted pursuant to 46-12-211;

13 ~~(5)~~(e) that if the defendant's plea of guilty is
14 accepted by the courts, there will not be a further trial of
15 any kind, so that by pleading guilty the defendant waives
16 the right to a trial; and

17 ~~(6)~~(f) that if the defendant is not a United States
18 citizen, a guilty plea might result in deportation from or
19 exclusion from admission to the United States or denial of
20 naturalization under federal law.

21 (2) The requirements of subsection (1) may be
22 accomplished by the defendant filing a written
23 acknowledgment of the information contained in subsection
24 (1)."

25 **Section 22.** Section 46-12-211, MCA, is amended to read:

1 "46-12-211. Plea agreement procedure. (1) The
2 prosecutor and the attorney for the defendant, or the
3 defendant when acting pro se, may engage in discussions with
4 a view toward reaching an agreement that, upon the entering
5 of a plea of guilty to a charged offense or to a lesser or
6 related offense, the prosecutor will do any of the
7 following:

8 (a) move for dismissal of other charges;

9 (b) agree that a specific sentence is the appropriate
10 disposition of the case; or

11 (c) make a recommendation, or agree not to oppose the
12 defendant's request, for a particular sentence, with the
13 understanding that the recommendation or request may not be
14 binding upon the court.

15 (2) If a plea agreement has been reached by the
16 parties, the court shall, on the record, require a
17 disclosure of the agreement in open court or, on a showing
18 of good cause in camera, at the time the plea is offered. If
19 the agreement is of the type specified in subsection (1)(a)
20 or (1)(b), the court may accept or reject the agreement, or
21 may defer its decision as to the acceptance or rejection
22 until there has been an opportunity to consider the
23 presentence report. If the agreement is of the type
24 specified in subsection (1)(c), the court shall advise the
25 defendant that, if the court does not accept the

1 recommendation or request, the defendant nevertheless has no
2 right to withdraw the plea.

3 (3) If the court accepts a plea agreement, the court
4 shall inform the defendant that it will embody in the
5 judgment and sentence the disposition provided for in the
6 plea agreement.

7 (4) If the court rejects the a plea agreement of the
8 type specified in subsection (1)(a) or (1)(b), the court
9 shall, on the record, inform the parties of this fact and
10 advise the defendant that the court is not bound by the plea
11 agreement, afford the defendant an opportunity to withdraw
12 the plea, and advise the defendant that if the defendant
13 persists in the guilty plea, the disposition of the case may
14 be less favorable to the defendant than that contemplated by
15 the plea agreement."

16 **Section 23.** Section 46-13-108, MCA, is amended to read:

17 "46-13-108. Notice by prosecutor seeking persistent
18 felony offender status. (1) Except for good cause shown, if
19 the prosecution seeks treatment of the accused as a
20 persistent felony offender, notice of that fact must be
21 given at or before the omnibus hearing pursuant to ~~46-13-108~~
22 46-13-110.

23 (2) The notice must specify the alleged prior
24 convictions and may not be made known to the jury before the
25 verdict is returned except as allowed by the Montana Rules

1 of Evidence.

2 (3) If the defendant objects to the allegations
3 contained in the notice, the judge shall conduct a hearing
4 to determine if the allegations in the notice are true.

5 (4) The hearing must be held before the judge alone. If
6 the judge finds any allegations of the prior convictions are
7 true, the accused must be sentenced as provided by law.

8 (5) The notice must be filed and sealed until the time
9 of trial or until a plea of guilty is given by the
10 defendant."

11 **Section 24.** Section 46-13-110, MCA, is amended to read:

12 "46-13-110. Omnibus hearing. (1) Within a reasonable
13 time following the entry of a not guilty plea but not less
14 than 30 days before trial, the court shall hold an omnibus
15 hearing.

16 (2) The purpose of the hearing is to expedite the
17 procedures leading up to the trial of the defendant.

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

22 (a) joinder and severance of offenses or defendants,
23 46-11-404, 46-13-210 and 46-13-211;

24 (b) double jeopardy, 46-11-410, 46-11-503, and
25 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking enhanced--punishment persistent felony offender status, 46-13-503 46-13-108;

(h) notice of other crimes, wrongs, or acts, 46-13-503 [section 48];

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(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."

Section 25. Section 46-13-202, MCA, is amended to read:

"46-13-202. Motion for continuance. (1) The defendant or the state prosecutor may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and ~~shall~~ must be considered in the light of the diligence shown on the part of the movant. This section ~~shall~~ must be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state prosecution to a speedy trial."

Section 26. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

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

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

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

6 (c) take any other action designed to ensure that a
7 fair trial may be had."

8 **Section 27.** Section 46-13-210, MCA, is amended to read:

9 "46-13-210. Trial of indictments, informations,
10 complaints, or defendants together. The court may order two
11 or more indictments, informations, complaints, or defendants
12 to be tried together if the interests of justice require and
13 the charges or defendants could have been joined in a single
14 indictment, information, or complaint as provided for in
15 46-12-213, 46-15-322, and 46-15-323 46-11-404."

16 **Section 28.** Section 46-14-312, MCA, is amended to read:

17 "46-14-312. Sentence to be imposed. (1) If the court
18 finds that the defendant at the time of the commission of
19 the offense of which the defendant was convicted did not
20 suffer from a mental disease or defect as described in
21 46-14-311, the court shall sentence the defendant as
22 provided in Title 46, chapter 18.

23 (2) If the court finds that the defendant at the time
24 of the commission of the offense suffered from a mental
25 disease or defect as described in 46-14-311, any mandatory

1 minimum sentence prescribed by law for the offense need not
2 apply and the court shall sentence the defendant to be
3 committed to the custody of the director of the department
4 of corrections and human services to be placed in an
5 appropriate institution for custody, care, and treatment for
6 a definite period of time not to exceed the maximum term of
7 imprisonment that could be imposed under subsection (1). The
8 authority of the court with regard to sentencing is the same
9 as authorized in Title 46, chapter 18, if the treatment of
10 the individual and the protection of the public are provided
11 for.

12 (3) Either the director or a defendant whose sentence
13 has been imposed under subsection (2) may petition the
14 sentencing court for review of the sentence if the
15 professional person certifies that:

16 (a) the defendant no longer suffers from a mental
17 disease or defect;

18 (b) the defendant's mental disease or defect no longer
19 renders him the defendant unable to appreciate the
20 criminality of his the defendant's conduct or to conform his
21 the defendant's conduct to the requirements of law; or

22 (c) the defendant suffers from a mental disease or
23 defect that makes him the defendant a danger to himself the
24 defendant or others, but either there is no treatment
25 available for his the mental disease or defect or he the

1 defendant refuses to cooperate with treatment.

2 (4) The sentencing court may make any order not
3 inconsistent with its original sentencing authority except
4 that the length of confinement or supervision must be equal
5 to that of the original sentence. The professional person
6 shall review the defendant's status each year."

7 **Section 29.** Section 46-15-101, MCA, is amended to read:

8 "46-15-101. Subpoenas. (1) After the filing of charges
9 and upon the request of the prosecuting attorney, the
10 defendant, or the defendant's attorney, the clerk of the
11 court shall issue subpoenas with the name of the person to
12 whom each subpoena is directed, commanding the person to
13 appear and to give testimony. The court shall maintain a
14 list of the names of the persons to whom subpoenas are
15 issued.

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

20 (3) The court, upon a timely motion, may quash or
21 modify a subpoena if compliance would be unreasonable or
22 oppressive."

23 **Section 30.** Section 46-15-116, MCA, is amended to read:

24 "46-15-116. Fees, costs, and expenses. (1) When a
25 person attends before a judge, grand jury, or court as a

1 witness in a criminal case upon a subpoena, the witness
2 shall receive the witness fee prescribed by Title 26,
3 chapter 2, part 5. The court, on motion by either party, may
4 allow additional fees for expert witnesses.

5 (2) The court may determine the reasonable and
6 necessary expenses of subpoenaed witnesses and order the
7 clerk of the court to pay the expenses from the appropriate
8 city or county treasury.

9 (3) When a person is subpoenaed in this state to
10 testify in another state or is subpoenaed from another state
11 to testify in this state, the person must be paid for
12 lodging, mileage or travel, and per diem, the sum equal to
13 that allowed by Title 2, chapter 18, part 5, for each day
14 that the person is required to travel and attend as a
15 witness. If the state where the witness is found has by
16 statutory enactment required that the subpoenaed witness be
17 paid an amount in excess of the amount specified in this
18 section, the witness may be paid the amount required by that
19 state.

20 (4) According to procedures required by the supreme
21 court administrator, under 3-5-902, the clerk of the
22 district court shall submit to the administrator a detailed
23 statement containing a list of witnesses and the amount of
24 expenses paid to each witness by the county. Upon receipt
25 and verification of the statement, the administrator shall

promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund."

Section 31. Section 46-15-201, MCA, is amended to read:

"46-15-201. When depositions may be taken. (1) In district or municipal court cases, a deposition may be taken if it appears that a prospective witness:

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

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

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The district court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(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.

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

Section 32. Section 46-15-202, MCA, is amended to read:

"46-15-202. Procedure for taking depositions. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the municipal or district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. The district court, upon request, may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. However, a

1 deposition may not be taken of a party defendant without his
2 the defendant's consent, and the scope and manner of
3 examination and cross-examination must be restricted as
4 would be allowed in the trial itself.

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

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

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

22 (6) A defendant not in custody who fails to appear,
23 without good cause, at the taking of a deposition after
24 being notified of the time and place set for the deposition
25 will be considered to have waived the right to be present as

1 provided in 46-16-122. The waiver includes a waiver of any
2 objection to the taking and use of the deposition based upon
3 that right.

4 (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 the defendant's counsel for attendance at the examination
10 and the cost of the transcript of the deposition be paid by
11 the city for a municipal court proceeding or by the state
12 for a district court proceeding."

13 **Section 33.** Section 46-15-322, MCA, is amended to read:

14 "46-15-322. Disclosure by prosecution. (1) Upon
15 request, the prosecutor shall make available to the
16 defendant for examination and reproduction the following
17 material and information within the prosecutor's possession
18 or control:

19 (a) the names, addresses, and statements of all persons
20 whom the prosecutor may call as witnesses in the
21 case-in-chief case in chief;

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

24 (c) all written reports or statements of experts who
25 have personally examined the defendant or any evidence in

1 the particular case, together with the results of physical
2 examinations, scientific tests, experiments, or comparisons;

3 (d) all papers, documents, photographs, or tangible
4 objects that the prosecutor may use at trial or that were
5 obtained from or purportedly belong to the defendant; and

6 (e) all material or information that tends to mitigate
7 or negate the defendant's guilt as to the offense charged or
8 that would tend to reduce the defendant's potential
9 sentence.

10 (2) At the same time, the prosecutor shall inform the
11 defendant of, and make available to the defendant for
12 examination and reproduction, any written or recorded
13 material or information within the prosecutor's control
14 regarding:

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

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

19 (c) whether the case has involved an informant and, if
20 so, the informant's identity if the defendant is entitled to
21 know either or both of these facts under Rule 502 of the
22 Montana Rules of Evidence and 46-15-324(3).

23 (3) The prosecutor may impose reasonable conditions,
24 including an appropriate stipulation concerning chain of
25 custody, to protect physical evidence produced under

1 subsection (1)(d).

2 (4) The prosecutor's obligation of disclosure extends
3 to material and information in the possession or control of
4 members of the prosecutor's staff and of any other persons
5 who have participated in the investigation or evaluation of
6 the case.

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

18 (6) The prosecutor shall furnish to the defendant no
19 later than 5 days before trial or at a later time as the
20 court may for good cause permit, together with their
21 statements, a list of the names and addresses of all persons
22 whom the prosecutor intends to call as rebuttal witnesses to
23 evidence of good character or the defenses of alibi,
24 compulsion, entrapment, justifiable use of force, or
25 mistaken identity or the defense that the defendant did not

1 have a particular state of mind that is an element of the
2 offense charged."

3 **Section 34.** Section 46-15-323, MCA, is amended to read:

4 "46-15-323. Disclosure by defendant. (1) At any time
5 after the filing in district court of an indictment or
6 information, the defendant, in connection with the
7 particular crime charged, shall upon written request of the
8 prosecutor and approval of the court:

- 9 (a) appear in a lineup;
- 10 (b) speak for identification by witnesses;
- 11 (c) be fingerprinted, palm printed, footprinted, or
12 voiceprinted;
- 13 (d) pose for photographs not involving reenactment of
14 an event;
- 15 (e) try on clothing;
- 16 (f) permit the taking of samples of his hair, blood,
17 saliva, urine, or other specified materials that involve no
18 unreasonable bodily intrusions;
- 19 (g) provide handwriting samples; or
- 20 (h) submit to a reasonable physical or medical
21 inspection; however, the inspection does not include
22 psychiatric or psychological examination.

23 (2) Within 10 days after the omnibus hearing in
24 district court or at a later time as the court may for good
25 cause permit, the defendant shall provide the prosecutor

1 with a written notice of the defendant's intention to
2 introduce evidence at trial of good character or the
3 defenses of alibi, compulsion, entrapment, justifiable use
4 of force, or mistaken identity.

5 (3) Within 10 days after receiving a report of the
6 defendant's mental condition from a psychiatrist or
7 psychologist or at a later time as the court may for good
8 cause permit, the defendant shall provide the prosecutor
9 with a written notice of the defendant's intention to
10 introduce evidence at trial of the defense that due to a
11 mental disease or defect, the defendant did not have a
12 particular state of mind that is an essential element of the
13 offense charged.

14 (4) The notice must specify for each defense the names
15 and addresses of the persons, other than the defendant, whom
16 the defendant may call as witnesses in support of the
17 defense, together with all written reports or statements
18 made by them, including all reports and statements
19 concerning the results of physical examinations, scientific
20 tests, experiments, or comparisons, except that the
21 defendant need not include a privileged report or statement
22 unless he the defendant intends to use the privileged report
23 or statement, or the witness who made it, at trial.

24 (5) Prior to trial the defendant may, upon motion and
25 showing of good cause, add to the list of witnesses the

names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) 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:

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

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

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

(7) The defendant's obligation under this section extends to material and information within the possession or

control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) 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 means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 35. Section 46-15-324, MCA, is amended to read:

"46-15-324. 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.

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

(3) Disclosure of the existence of an informant or the

identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to the informant's operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused."

Section 36. Section 46-16-107, MCA, is amended to read:

"46-16-107. Failure of county--attorney prosecutor to attend. If the county-attorney prosecutor fails to attend the trial, the court may appoint some attorney-at-law to perform his the prosecutor's duties."

Section 37. Section 46-16-116, MCA, is amended to read:

"46-16-116. Peremptory challenges. (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

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

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the state prosecution and all the defendants are allowed

three peremptory challenges each.

(5) When the parties in a criminal case in the district court 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."

Section 38. Section 46-16-122, MCA, is amended to read:

"46-16-122. Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench an arrest warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant

during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity."

Section 39. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) The Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(a)(i) that the defendant may not commit any offense;

(b)(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(c)(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

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

(e)(v) any other reasonable conditions.

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

(3)(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4)(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court."

Section 40. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are

1 preserved for appeal pursuant to 46-12-204, all cases on
 2 appeal from a justice's, ~~municipal~~ or city court must be
 3 tried anew in the district court and may be tried before a
 4 jury of six selected in the same manner as for other
 5 criminal cases. An appeal from a municipal court to the
 6 district court is governed by 3-6-110.

7 (2) The defendant may appeal to the district court by
 8 filing written notice of intention to appeal within 10 days
 9 after a judgment is rendered following trial. In the case of
 10 an appeal by the prosecution, the notice must be filed
 11 within 10 days of the date the order complained of is given.
 12 The prosecution may only appeal in the cases provided for in
 13 46-20-103.

14 (3) Within 30 days of filing the notice of appeal, the
 15 court shall transfer the entire record of the court of
 16 limited jurisdiction to the district court."

17 **Section 41.** Section 46-18-111, MCA, is amended to read:

18 "46-18-111. Presentence investigation -- when required.

19 (1) Upon the acceptance of a plea or upon a verdict or
 20 finding of guilty to ~~one or more felony offenses~~ an offense
 21 under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625
 22 against a victim who was less than 16 years of age when the
 23 offense was committed ONE OR MORE FELONY OFFENSES, the
 24 district court shall direct the probation officer to make a
 25 presentence investigation and report. The district court

1 may, in its discretion, order a presentence investigation
 2 for a defendant convicted of a misdemeanor. The IF THE
 3 DEFENDANT WAS CONVICTED OF AN OFFENSE UNDER 45-5-502,
 4 45-5-503, 45-5-504, 45-5-505, 45-5-507, OR 45-5-625 AGAINST
 5 A VICTIM WHO WAS LESS THAN 16 YEARS OF AGE WHEN THE OFFENSE
 6 WAS COMMITTED, THE investigation must include an evaluation
 7 of the defendant and a recommendation as to treatment by a
 8 person qualified under guidelines established by the
 9 department of corrections and human services. All costs
 10 related to the evaluation must be paid by the defendant. If
 11 the defendant is determined by the district court to be
 12 indigent, all costs related to the evaluation are the
 13 responsibility of the district court and must be paid by the
 14 ~~department of commerce~~ supreme court administrator under
 15 Title 3, chapter 5, part 9.

16 (2) If the district court finds that the record
 17 contains information sufficient to enable the meaningful
 18 exercise of discretion during sentencing, the defendant may
 19 waive a presentence investigation and report. Both the
 20 finding and the defendant's waiver must be made in open
 21 court on the record."

22 **Section 42.** Section 46-18-112, MCA, is amended to read:

23 "46-18-112. Content of presentence investigation
 24 report. (1) Whenever an investigation is required, the
 25 probation officer shall promptly inquire into and report

1 upon:

2 (a) the defendant's characteristics, circumstances,
3 needs, and potentialities;

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

5 (c) the circumstances of the offense;

6 (d) the time of the defendant's detention for the
7 offenses charged; and

8 (e) ~~except--in-capital-cases-in-which-the-death-penalty~~
9 ~~may-be-imposed~~; the harm caused, as a result of the offense,
10 to the victim, the victim's immediate family, and the
11 community.

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

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

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

23 **Section 43.** Section 46-18-117, MCA, is amended to read:

24 "46-18-117. Correction of sentence. The court may
25 correct an illegal erroneous sentence or disposition at any

1 time and may correct a sentence imposed in an illegal manner
2 within 120 days after the sentence is imposed or after
3 remand from an appellate court."

4 **Section 44.** Section 46-18-201, MCA, is amended to read:

5 "46-18-201. Sentences that may be imposed. (1) Whenever
6 a person has been found guilty of an offense upon a verdict
7 or a plea of guilty, the court may:

8 (a) defer imposition of sentence, except as provided in
9 61-8-714 and 61-8-722 for sentences for driving under the
10 influence of alcohol or drugs, for a period, except as
11 otherwise provided, not exceeding 1 year for any misdemeanor
12 or for a period not exceeding 3 years for any felony. The
13 sentencing judge may impose upon the defendant any
14 reasonable restrictions or conditions during the period of
15 the deferred imposition. Reasonable restrictions or
16 conditions may include:

17 (i) jail base release;

18 (ii) jail time not exceeding 180 days;

19 (iii) conditions for probation;

20 (iv) restitution;

21 (v) payment of the costs of confinement;

22 (vi) payment of a fine as provided in 46-18-231;

23 (vii) payment of costs as provided in 46-18-232 and
24 46-18-233;

25 (viii) payment of costs of court-appointed counsel as

1 provided in 46-8-113;

2 (ix) with the approval of the facility or program, order
3 the offender to be placed in a community corrections
4 facility or program as provided in 53-30-321;

5 (x) community service;

6 (xi) home arrest as provided in Title 46, chapter 18,
7 part 10;

8 (xii) any other reasonable conditions considered
9 necessary for rehabilitation or for the protection of
10 society; or

11 (xiii) any combination of the above.

12 (b) suspend execution of sentence for a period up to
13 the maximum sentence allowed or for a period of 6 months,
14 whichever is greater, for each particular offense. The
15 sentencing judge may impose on the defendant any reasonable
16 restrictions or conditions during the period of suspended
17 sentence. Reasonable restrictions or conditions may include
18 any of those listed in subsection (1)(a).

19 (c) impose a fine as provided by law for the offense;

20 (d) require payment of costs as provided in 46-18-232
21 or payment of costs of court-appointed counsel as provided
22 in 46-8-113;

23 (e) commit the defendant to a correctional institution,
24 with or without a fine as provided by law for the offense;

25 (f) with the approval of the facility or program, order

1 the offender to be placed in a community corrections
2 facility or program as provided in 53-30-321;

3 (g) impose any combination of subsections (1)(b)
4 through (1)(f).

5 (2) If a financial obligation is imposed as a condition
6 under subsection (1)(a), sentence may be deferred for a
7 period not exceeding 2 years for a misdemeanor or for a
8 period not exceeding 6 years for a felony, regardless of
9 whether any other conditions are imposed.

10 (3) If any restrictions or conditions imposed under
11 subsection (1)(a) or (1)(b) are violated, the court shall
12 consider any elapsed time and either expressly allow part or
13 all of it as a credit against the sentence or reject all or
14 part as a credit and state its reasons in the order. Credit,
15 however, must be allowed for jail or home arrest time
16 already served.

17 (4) Except as provided in 45-9-202 and 46-18-222, the
18 imposition or execution of the first 2 years of a sentence
19 of imprisonment imposed under the following sections may not
20 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
21 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
22 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
23 (5)(d), 45-9-102(4), and 45-9-103(2).

24 (5) Except as provided in 46-18-222, the imposition or
25 execution of the first 10 years of a sentence of

1 imprisonment imposed under 45-5-102 may not be deferred or
2 suspended.

3 (6) Except as provided in 46-18-222, imposition of
4 sentence in a felony case may not be deferred in the case of
5 a defendant who has been convicted of a felony on a prior
6 occasion, whether or not the sentence was imposed,
7 imposition of the sentence was deferred, or execution of the
8 sentence was suspended.

9 (7) If the victim was less than 16 years old, the
10 imposition or execution of the first 30 days of a sentence
11 of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505,
12 or 45-5-507 may not be deferred or suspended. Section
13 46-18-222 does not apply to the first 30 days of the
14 imprisonment.

15 (8) In imposing a sentence on a defendant convicted of
16 a sexual offense as defined in 46-23-502, the court may not
17 waive the registration requirement provided in 46-18-254,
18 46-18-255, and Title 46, chapter 23, part 5.

19 (9) A person convicted of a sexual offense, as defined
20 in 46-23-502, and sentenced to imprisonment in the state
21 prison shall enroll in the educational phase of the prison's
22 sexual offender program.

23 (10) In sentencing a nonviolent felony offender, the
24 court shall first consider alternatives to imprisonment of
25 the offender in the state prison, including placement of the

1 offender in a community corrections facility or program. In
2 considering alternatives to imprisonment, the court shall
3 examine the sentencing criteria contained in 46-18-225. If
4 the offender is subsequently sentenced to the state prison
5 or a women's correctional facility, the court shall state
6 its reasons why alternatives to imprisonment were not
7 selected, based on the criteria contained in 46-18-225."

8 **Section 45.** Section 46-18-202, MCA, is amended to read:

9 "46-18-202. Additional restrictions on sentence. (1)
10 The district court may also impose any of the following
11 restrictions or conditions on the sentence provided for in
12 46-18-201 which that it considers necessary to obtain the
13 objectives of rehabilitation and the protection of society:

14 (a) prohibition of the defendant's holding public
15 office;

16 (b) prohibition of his the defendant's owning or
17 carrying a dangerous weapon;

18 (c) restrictions on his the defendant's freedom of
19 association;

20 (d) restrictions on his the defendant's freedom of
21 movement;

22 (e) any other limitation reasonably related to the
23 objectives of rehabilitation and the protection of society.

24 (2) Whenever the district court imposes a sentence of
25 imprisonment in the state prison for a term exceeding 1

year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

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

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

Section 46. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation, ~~accompanied-by-an-affidavit~~ showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and

place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(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 its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in 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 Title 46, chapter 8, part 1.

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

1 (a) the defendant admits the allegations and waives the
2 right to a hearing; or

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

9 (6) At the hearing, the prosecution shall prove, by a
10 preponderance of the evidence, that there has been a
11 violation of the terms and conditions of the suspended or
12 deferred sentence. However, when a failure to pay
13 restitution is the basis for the petition, the defendant may
14 excuse the violation by showing sufficient evidence that the
15 failure to pay restitution was not attributable to a failure
16 on the defendant's part to make a good faith effort to
17 obtain sufficient means to make the restitution payments as
18 ordered.

19 (7) If the court finds that the defendant has violated
20 the terms and conditions of the suspended or deferred
21 sentence, the court may:

22 (a) continue the suspended or deferred sentence without
23 a change in conditions;

24 (b) continue the suspended sentence with modified or
25 additional terms and conditions;

1 (c) revoke the suspension of sentence and require the
2 defendant to serve either the sentence imposed or any lesser
3 sentence; or

4 (d) if the sentence was deferred, impose any sentence
5 that might have been originally imposed.

6 (8) If the court finds that the prosecution has not
7 proved, by a preponderance of the evidence, that there has
8 been a violation of the terms and conditions of the
9 suspended or deferred sentence, the petition must be
10 dismissed and the defendant, if in custody, immediately
11 released."

12 **Section 47.** Section 46-18-222, MCA, is amended to read:

13 "46-18-222. Exceptions to mandatory minimum sentences
14 and restrictions on deferred imposition and suspended
15 execution of sentence. All mandatory minimum sentences
16 prescribed by the laws of this state and the restrictions on
17 deferred imposition and suspended execution of sentence
18 prescribed by subsections ~~(4)~~, ~~(5)~~, and ~~(6)~~ of 46-18-201(4)
19 through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do
20 not apply if:

21 (1) the defendant was less than 18 years of age at the
22 time of the commission of the offense for which he the
23 defendant is to be sentenced;

24 (2) the defendant's mental capacity, at the time of the
25 commission of the offense for which he the defendant is to

1 be sentenced, was significantly impaired, although not so
2 impaired as to constitute a defense to the prosecution.
3 However, a voluntarily induced intoxicated or drugged
4 condition may not be considered an impairment for the
5 purposes of this subsection.

6 (3) the defendant, at the time of the commission of the
7 offense for which he the defendant is to be sentenced, was
8 acting under unusual and substantial duress, although not
9 such duress as would constitute a defense to the
10 prosecution;

11 (4) the defendant was an accomplice, the conduct
12 constituting the offense was principally the conduct of
13 another, and the defendant's participation was relatively
14 minor;

15 (5) where--applicable in a case in which the threat of
16 bodily injury or actual infliction of bodily injury is an
17 actual element of the crime, no serious bodily injury was
18 inflicted on the victim unless a weapon was used in the
19 commission of the offense; or

20 (6) the offense was committed under 45-5-502(3) and the
21 court determines that treatment of the defendant in a local
22 community affords a better opportunity for rehabilitation of
23 the defendant and for the ultimate protection of society, in
24 which case the court shall include in its judgment a
25 statement of the reasons for its determination."

1 NEW SECTION. Section 48. Notice by prosecutor of other
2 crimes, wrongs, or acts. (1) Except for good cause shown, if
3 the prosecutor intends to use evidence of other crimes,
4 wrongs, or acts pursuant to Rule 404(b), Montana Rules of
5 Evidence, notice must be given at or before the omnibus
6 hearing held pursuant to 46-13-110.

7 (2) The notice must specify the other crimes, wrongs,
8 or acts and must include a statement as to the purpose for
9 which the evidence is to be offered.

10 (3) The notice must be filed and sealed until the time
11 of trial or until a plea of guilty is entered by the
12 defendant.

13 NEW SECTION. Section 49. Codification instruction.
14 [Section 48] is intended to be codified as an integral part
15 of Title 46, chapter 13, part 1, and the provisions of Title
16 46, chapter 13, part 1, apply to [section 48].

17 NEW SECTION. Section 50. Repealer. Sections 46-10-201,
18 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205,
19 46-17-211, and 46-17-301, MCA, are repealed.

-End-

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 125 (third reading copy -- blue) be concurred in as amended .

Signed: Russell C. Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Fagg

1. Title, line 21.
Strike: "46-16-107,"

2. Page 9, line 7.
Strike: "All"
Insert: "Each"
Strike: "costs"
Insert: "cost"

3. Page 9, line 9.
Strike: "INITIATING the investigation"
Insert: "whose action created the cost, unless another
governmental entity agrees to or by law is required to bear
the cost"

4. Page 29, line 11.
Strike: "48"
Insert: "47"

5. Page 45, lines 8 through 12.
Strike: section 36 in its entirety
Renumber: subsequent sections

6. Page 62, lines 14 and 16.
Strike: "48"
Insert: "47"

HOUSE

-END-

SB 125

SENATE BILL NO. 125

INTRODUCED BY VAN VALKENBURG, J. RICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGARDING CRIMINAL PROCEDURE; INCREASING THE AMOUNT OF GUARANTEED ARREST BOND CERTIFICATES; ELIMINATING THE USE OF SEALED AFFIDAVITS IN SUPPORT OF A MOTION TO FILE A CHARGE OR WARRANT; PROVIDING FOR THE WRITTEN ACKNOWLEDGEMENT OF INFORMATION FOR A GUILTY PLEA; REQUIRING THE KEEPING OF A LIST OF PERSONS TO WHOM SUBPOENAS ARE ISSUED; CLARIFYING THE DISCLOSURE REQUIREMENTS REGARDING INFORMANTS; EXPANDING THE USE OF VICTIM IMPACT STATEMENTS; CODIFYING THE NOTICE REQUIREMENTS FOR THE DISCLOSURE OF THE INTENDED USE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS; AMENDING SECTIONS 46-1-202, 46-4-306, 46-5-101, 46-6-201, 46-6-210, 46-6-312, 46-8-113, 46-8-115, 46-8-201, 46-9-201, 46-9-412, 46-9-505, 46-10-202, 46-11-110, 46-11-302, 46-11-332, 46-11-401, 46-11-405, 46-11-601, 46-11-701, 46-12-210, 46-12-211, 46-13-108, 46-13-110, 46-13-202, 46-13-203, 46-13-210, 46-14-312, 46-15-101, 46-15-116, 46-15-201, 46-15-202, 46-15-322, 46-15-323, 46-15-324, ~~46-16-107~~, 46-16-116, 46-16-122, 46-16-130, 46-17-311, 46-18-111, 46-18-112, 46-18-117, 46-18-201, 46-18-202, 46-18-203, AND 46-18-222, MCA; AND REPEALING SECTIONS 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, AND 46-17-301,

MCA."

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

Section 1. Section 46-I-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

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

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

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

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

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

~~(6) "Concealment" means any act or deception done~~



~~purposely or knowingly upon or outside the premises of a
wholesale or retail store or other mercantile establishment
with the intent to deprive the merchant of all or part of
the value of the merchandise.~~

~~†7†(6)~~ "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

~~†8†(7)~~ "Court" means a place where justice is judicially administered and includes the judge of the court.

~~†9†(8)~~ "Included offense" means an offense that:

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

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

~~†10†(9)~~ "Judge" means a person who is vested by law with the power to perform judicial functions.

~~†11†(10)~~ "Judgment" means an adjudication by a court

that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

~~†12†(11)~~ "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its 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 other or additional arrangements.

~~†13†(12)~~ "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

~~†14†(13)~~ "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

~~†15†(14)~~ "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

~~†16†(15)~~ "Parole" means the release to the community of

1 a prisoner by a decision of the board of pardons prior to
2 the expiration of the prisoner's term subject to conditions
3 imposed by the board of pardons and the supervision of the
4 department of corrections and human services.

5 ~~(17)~~(16) "Peace officer" means any person who by virtue
6 of the person's office or public employment is vested by law
7 with a duty to maintain public order and make arrests for
8 offenses while acting within the scope of the person's
9 authority.

10 ~~(18)~~(17) "Persistent felony offender" means an offender
11 who has previously been convicted of a felony and who is
12 presently being sentenced for a second felony committed on a
13 different occasion than the first. An offender is considered
14 to have been previously convicted of a felony if:

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

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

21 (i) the previous felony conviction; or

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

25 (c) the offender has not been pardoned on the ground of

1 innocence and the conviction has not been set aside at the
2 postconviction hearing.

3 ~~(19)~~(18) "Place of trial" means the geographical
4 location and political subdivision in which the court that
5 will hear the cause is situated.

6 ~~(20)~~(19) "Preliminary examination" means a hearing
7 before a judge for the purpose of determining if there is
8 probable cause to believe a felony has been committed by the
9 defendant.

10 ~~(21)~~(20) "Probation" means release by the court without
11 imprisonment of a defendant found guilty of a crime. The
12 release is subject to the supervision of the department of
13 corrections and human services upon direction of the court.

14 ~~(22)~~(21) "Prosecutor" means an elected or appointed
15 attorney who is vested by law with the power to initiate and
16 carry out criminal proceedings on behalf of the state or a
17 political subdivision.

18 ~~(23)~~(22) "Same transaction" means conduct consisting of
19 a series of acts or omissions that are motivated by:

20 (a) a purpose to accomplish a criminal objective and
21 that are necessary or incidental to the accomplishment of
22 that objective; or

23 (b) a common purpose or plan that results in the
24 repeated commission of the same offense or effect upon the
25 same person or the property of the same person.

1 ~~(24)~~(23) "Search warrant" means an order that is:

2 (a) in writing;

3 (b) in the name of the state;

4 (c) signed by a judge;

5 (d) a particular description of the place, object, or
6 person to be searched and the evidence, contraband, or
7 person to be seized; and

8 (e) directed to a peace officer and commands the peace
9 officer to search for evidence, contraband, or persons.

10 ~~(25)~~(24) "Sentence" means the judicial disposition of a
11 criminal proceeding upon a plea, verdict, or finding of
12 guilty.

13 ~~(26)~~(25) "Statement" means:

14 (a) a writing signed or otherwise adopted or approved
15 by a person;

16 (b) a video or audio recording of a person's
17 communications or a transcript of the communications; and

18 (c) a writing containing a summary of a person's oral
19 communications or admissions.

20 ~~(27)~~(26) "Summons" means a written order issued by the
21 court that commands a person to appear before a court at a
22 stated time and place to answer a charge for the offense set
23 forth in the order.

24 ~~(28)~~(27) "Superseded notes" means handwritten notes,
25 including field notes, that have been substantially

1 incorporated into a statement. The notes may not be
2 considered a statement and are not subject to disclosure
3 except as provided in 46-15-324.

4 ~~(29)~~(28) "Temporary road block" means any structure,
5 device, or means used by a peace officer for the purpose of
6 controlling all traffic through a point on the highway where
7 all vehicles may be slowed or stopped.

8 ~~(30)~~(29) "Witness" means a person whose testimony is
9 desired in a proceeding or investigation by a grand jury or
10 in a criminal action, prosecution, or proceeding.

11 ~~(31)~~(30) "Work product" means legal research, records,
12 correspondence, reports, and memoranda, both written and
13 oral, to the extent that they contain the opinions,
14 theories, and conclusions of the prosecutor, defense
15 counsel, or their staff or investigators."

16 **Section 2.** Section 46-4-306, MCA, is amended to read:

17 **"46-4-306. Applicability of other laws -- costs. (1)**
18 The fees and mileage of witnesses subpoenaed pursuant to
19 this part are the same as those required in criminal
20 actions. The state shall bear all costs, including the cost
21 of service, when the application for the subpoena is made by
22 the attorney general, and the appropriate county shall bear
23 all costs, including the cost of service, when the
24 application for the subpoena is made by a county attorney,
25 and the appropriate city shall bear all costs, including the

1 cost of service, when the application for the subpoena is
2 made by a city attorney.

3 (2) All provisions relating to subpoenas in criminal
4 actions apply to subpoenas issued pursuant to this part,
5 including the provisions of 46-15-112, 46-15-113, and
6 46-15-120.

7 (3) All EACH investigative costs COST, including
8 testing of evidence and persons, must be borne by the
9 governmental entity requesting INITIATING the--investigation
10 WHOSE ACTION CREATED THE COST, UNLESS ANOTHER GOVERNMENTAL
11 ENTITY AGREES TO OR BY LAW IS REQUIRED TO BEAR THE COST."

12 **Section 3.** Section 46-5-101, MCA, is amended to read:

13 "46-5-101. Searches and seizures -- when authorized. A
14 search of a person, object, or place may be made and
15 evidence, contraband, and persons may be seized in
16 accordance with Title 46 when a search is made:

17 (1) by the authority of a search warrant; or

18 (2) in accordance with judicially recognized exceptions
19 to the warrant requirement."

20 **Section 4.** Section 46-6-201, MCA, is amended to read:

21 "46-6-201. Issuance of arrest warrant upon complaint.

22 ~~{1}-A-complaint-as-the-basis-of-an-arrest-warrant-shall-be~~
23 ~~in-writing-~~

24 ~~{2}-When-a-complaint-is-presented-to-a-court-charging-a~~
25 ~~person-with-the-commission-of-an-offense--the--court--shall~~

1 ~~examine--upon--oath-the-complainant-and-may-also-examine-any~~
2 ~~witnesses-~~

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

14 **Section 5.** Section 46-6-210, MCA, is amended to read:

15 "46-6-210. Arrest by peace officer. A peace officer may
16 arrest a person when the officer has a warrant commanding
17 that the person be arrested or when the officer believes on
18 reasonable grounds:

19 (1) that a warrant for the person's arrest has been
20 issued in this state, except that unless otherwise provided
21 by law, a warrant for violation of a city ordinance may not
22 be acted upon unless the person is located within the limits
23 of the city in which the violation is alleged to have
24 occurred; or

25 (2) that a felony warrant for the person's arrest has

been issued in another jurisdiction."

Section 6. Section 46-6-312, MCA, is amended to read:

"46-6-312. Manner of arrest without warrant. A peace officer or--person making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest."

Section 7. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment for court-appointed counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

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

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the

nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and ~~who-is-able-to-but-refuses-or-fails-to-pay-those--costs~~ may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 8. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the county-attorney prosecutor or on its own motion may require him the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

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

(3) The term of imprisonment for contempt for

nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each \$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

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

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

Section 9. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the

attorney must be paid for the services a sum as a district court judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city 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."

Section 10. Section 46-9-201, MCA, is amended to read:

"46-9-201. Who may admit to bail. A judge may admit to bail any defendant properly appearing before him the judge in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit

the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in ~~46-9-115~~ 46-9-206."

Section 11. Section 46-9-412, MCA, is amended to read:

"46-9-412. **Guaranteed arrest bond certificates.** (1) A domestic or foreign surety company that has qualified to transact surety business in this state may, in any year, become surety in an amount not exceeding ~~\$500~~ \$1,000 with respect to any guaranteed arrest bond certificates issued in the year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The form of the undertaking must be prescribed by the commissioner of insurance and must include those matters required by 46-9-401."

Section 12. Section 46-9-505, MCA, is amended to read:

"46-9-505. **Issuance of arrest warrant -- redetermining bail.** (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of ~~such~~ the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person ~~at-liberty-on-bail-or-on-his-own-recognizance.~~

(2) On verified application by the state prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant ~~shall~~ must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311."

Section 13. Section 46-10-202, MCA, is amended to read:

"46-10-202. **Presentation of evidence.** (1) The defendant may not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against the defendant and may introduce evidence in the defendant's own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic ~~audio-visual~~ audio-video communication may not be used unless the defendant's counsel

1 is physically present with ~~his client~~ the defendant, unless
2 this requirement is waived by the defendant.

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

9 (3) An objection to evidence on the ground that it has
10 been acquired by unlawful means is not properly made at the
11 preliminary examination. Motions to suppress must be made to
12 the trial court as provided in 46-13-302.

13 (4) For purposes of a hearing under this chapter, a
14 defendant may, in the discretion of the court, appear before
15 the court either by physical appearance or by two-way
16 electronic audio-video communication. The audio-video
17 communication must operate so that the defendant and the
18 judge can see each other simultaneously and converse with
19 each other, so that the defendant and ~~his~~ the defendant's
20 counsel, if any, can communicate privately, and so that the
21 defendant and ~~his~~ the defendant's counsel are both
22 physically present in the same place during the two-way
23 electronic audio-video communication. The defendant may
24 waive the requirement that ~~his~~ counsel be in the defendant's
25 physical presence during the two-way electronic audio-video

1 communication. A judge may order a defendant's physical
2 appearance in court for a preliminary examination."

3 **Section 14.** Section 46-11-110, MCA, is amended to read:

4 "46-11-110. Filing complaint. ~~{1}~~ When a complaint is
5 presented to a court charging a person with the commission
6 of an offense, the court shall examine the complainant SWORN
7 COMPLAINT and or any affidavits, if filed, to determine
8 whether probable cause exists to allow the filing of a
9 charge may-be-filed.

10 ~~{2}--if-it-appears-from--an--affidavit--filed--with--the~~
11 ~~charge--or--from--testimony-of-the-complainant-that-there-is~~
12 ~~probable-cause-to-believe-that-an-offense-has-been-committed~~
13 ~~and-that-the-person-against-whom--the--charge--is--made--has~~
14 ~~committed--it,--the-court-shall-issue-a-summons-or-an-arrest~~
15 ~~warrant."~~

16 **Section 15.** Section 46-11-302, MCA, is amended to read:

17 "46-11-302. Challenges to grand jury or grand jurors.
18 (1) The ~~county-attorney-or-attorney-general~~ prosecutor may
19 challenge the panel of a grand jury on the ground that the
20 grand jury was not selected, drawn, or summoned according to
21 law and may challenge an individual juror on the ground that
22 the juror is not legally qualified. Challenges must be made
23 before the administration of the oath of the jurors, may be
24 oral or in writing, and must be tried and decided by the
25 court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or permanently, and in the latter event, the court may impanel another person in place of the juror discharged.

(3) A motion to dismiss the indictment may be based on the ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment may not be dismissed on the ground that one or more members are not legally qualified if it appears from the record kept pursuant to this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment."

Section 16. Section 46-11-332, MCA, is amended to read:

"46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue a an arrest warrant or summons for the defendant.

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

Section 17. Section 46-11-401, MCA, is amended to read:

"46-11-401. Form of charge. (1) The charge must be in

writing and in the name of the state or the appropriate municipality and must specify the district court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

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

(3) If the charge is by complaint, it must be signed on oath by a peace officer, by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

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

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 18. Section 46-11-405, MCA, is amended to read:

"46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county--attorney prosecutor, direct any defendant to be discharged so that he the defendant may be a witness for the state prosecution.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to require the defendant to put him on his a defense, the court must order him that defendant to be discharged before the evidence is closed so that he the discharged defendant may be a witness for his the codefendant."

Section 19. Section 46-11-601, MCA, is amended to read:

"46-11-601. Recognizance by or deposition of witness.

(1) If the defendant is held to answer after a preliminary examination, or after the defendant has waived a preliminary examination, or after the district court has granted leave to file an information, or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but ~~shall~~ may not be held longer than is necessary to take his the witness's deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such The deposition must be taken in the presence of the county--attorney prosecutor and the defendant and his the defendant's counsel unless either the county--attorney prosecutor or the defendant and his the defendant's counsel fail to attend after reasonable notice of the time and place set for taking the deposition."

Section 20. Section 46-11-701, MCA, is amended to read:

"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

1 (2) The defendant may move that all or part of the
2 proceeding be closed to the public, or with the consent of
3 the defendant, the judge may take action on the judge's own
4 motion.

5 (3) The judge may close a preliminary hearing, bail
6 hearing, or any other pretrial proceeding, including a
7 hearing on a motion to suppress, and may seal the record
8 only if:

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

12 (b) the prejudicial effect of the information on trial
13 fairness cannot be avoided by any reasonable alternative
14 means.

15 (4) Whenever all or part of any pretrial proceeding is
16 held in chambers or otherwise closed to the public under
17 this section, a complete record must be kept and made
18 available to the public following the completion of the
19 trial or earlier if consistent with trial fairness.

20 (5) When the judge determines that all or part of a
21 document filed in support of a charge or warrant would
22 present a clear and present danger to the defendant's right
23 to a fair trial, the document or portion of the document
24 must be sealed until the trial is completed unless the
25 document or portion of the document must be used for trial

1 fairness.

2 ~~(6) An affidavit filed in support of a motion for leave~~
3 ~~to file a charge or warrant must be sealed unless the judge~~
4 ~~determines that disclosure of the information in the~~
5 ~~affidavit is required to protect the health, safety, or~~
6 ~~welfare of the public."~~

7 **Section 21.** Section 46-12-210, MCA, is amended to read:

8 **"46-12-210. Advice to defendant.** (1) Before accepting a
9 plea of guilty, the court shall determine that the defendant
10 understands the following:

11 ~~(1)~~ (a) (i) the nature of the charge for which the
12 plea is offered;

13 ~~(b)~~ (ii) the mandatory minimum penalty provided by law,
14 if any;

15 ~~(c)~~ (iii) the maximum penalty provided by law, including
16 the effect of any penalty enhancement provision or special
17 parole restriction; and

18 ~~(d)~~ (iv) when applicable, the requirement that the court
19 may also order the defendant to make restitution of the
20 costs and assessments provided by law;

21 ~~(2)~~ (b) if the defendant is not represented by an
22 attorney, the fact that he the defendant has the right to be
23 represented by an attorney at every stage of the proceeding
24 ~~against him~~ and that, if necessary, one will be appointed to
25 represent the defendant;

1 ~~3~~(c) that the defendant has the right:
 2 ~~a~~(i) to plead not guilty or to persist in that plea
 3 if it has already been made;
 4 ~~b~~(ii) to be tried by a jury and at the trial has the
 5 right to the assistance of counsel;
 6 ~~e~~(iii) to confront and cross-examine witnesses against
 7 the defendant; and
 8 ~~d~~(iv) not to be compelled to reveal personally
 9 incriminating information;
 10 ~~4~~(d) that if the defendant pleads guilty in
 11 fulfillment of a plea agreement, the court is not required
 12 to accept the terms of the agreement and that the defendant
 13 may not be entitled to withdraw the plea if the agreement is
 14 not accepted pursuant to 46-12-211;
 15 ~~5~~(e) that if the defendant's plea of guilty is
 16 accepted by the courts, there will not be a further trial of
 17 any kind, so that by pleading guilty the defendant waives
 18 the right to a trial; and
 19 ~~6~~(f) that if the defendant is not a United States
 20 citizen, a guilty plea might result in deportation from or
 21 exclusion from admission to the United States or denial of
 22 naturalization under federal law.
 23 (2) The requirements of subsection (1) may be
 24 accomplished by the defendant filing a written
 25 acknowledgment of the information contained in subsection

1 (1)."

2 **Section 22.** Section 46-12-211, MCA, is amended to read:

3 "46-12-211. Plea agreement procedure. (1) The
 4 prosecutor and the attorney for the defendant, or the
 5 defendant when acting pro se, may engage in discussions with
 6 a view toward reaching an agreement that, upon the entering
 7 of a plea of guilty to a charged offense or to a lesser or
 8 related offense, the prosecutor will do any of the
 9 following:

- 10 (a) move for dismissal of other charges;
 11 (b) agree that a specific sentence is the appropriate
 12 disposition of the case; or
 13 (c) make a recommendation, or agree not to oppose the
 14 defendant's request, for a particular sentence, with the
 15 understanding that the recommendation or request may not be
 16 binding upon the court.
 17 (2) If a plea agreement has been reached by the
 18 parties, the court shall, on the record, require a
 19 disclosure of the agreement in open court or, on a showing
 20 of good cause in camera, at the time the plea is offered. If
 21 the agreement is of the type specified in subsection (1)(a)
 22 or (1)(b), the court may accept or reject the agreement, or
 23 may defer its decision as to the acceptance or rejection
 24 until there has been an opportunity to consider the
 25 presentence report. If the agreement is of the type

specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

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

(4) If the court rejects the a plea agreement of the type specified in subsection (1)(a) or (1)(b), 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 the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement."

Section 23. Section 46-13-108, MCA, is amended to read:

"46-13-108. Notice by prosecutor seeking persistent felony offender status. (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to ~~46-13-101~~ 46-13-110.

(2) The notice must specify the alleged prior

convictions and may not be made known to the jury before the verdict is returned 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.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant."

Section 24. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the 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 must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210 and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking enhanced--punishment persistent felony offender status, 46-13-503 46-13-108;

(h) notice of other crimes, wrongs, or acts, 46-13-503 [section 40 47];

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(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."

Section 25. Section 46-13-202, MCA, is amended to read:

"46-13-202. Motion for continuance. (1) The defendant or the state prosecutor may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and ~~shall~~ must be considered in the light of the diligence shown on the part of the movant. This section ~~shall~~ must be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state prosecution to a speedy trial."

Section 26. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

(2) If the district court determines that there exists in the county in which the prosecution is pending such

1 prejudice that a fair trial cannot be had, the district
2 court shall:

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

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

8 (c) take any other action designed to ensure that a
9 fair trial may be had."

10 **Section 27.** Section 46-13-210, MCA, is amended to read:

11 "46-13-210. Trial of indictments, informations,
12 complaints, or defendants together. The court may order two
13 or more indictments, informations, complaints, or defendants
14 to be tried together if the interests of justice require and
15 the charges or defendants could have been joined in a single
16 indictment, information, or complaint as provided for in
17 ~~46-12-213, 46-15-322, and 46-15-323~~ 46-11-404."

18 **Section 28.** Section 46-14-312, MCA, is amended to read:

19 "46-14-312. Sentence to be imposed. (1) If the court
20 finds that the defendant at the time of the commission of
21 the offense of which the defendant was convicted did not
22 suffer from a mental disease or defect as described in
23 46-14-311, the court shall sentence the defendant as
24 provided in Title 46, chapter 18.

25 (2) If the court finds that the defendant at the time

1 of the commission of the offense suffered from a mental
2 disease or defect as described in 46-14-311, any mandatory
3 minimum sentence prescribed by law for the offense need not
4 apply and the court shall sentence the defendant to be
5 committed to the custody of the director of the department
6 of corrections and human services to be placed in an
7 appropriate institution for custody, care, and treatment for
8 a definite period of time not to exceed the maximum term of
9 imprisonment that could be imposed under subsection (1). The
10 authority of the court with regard to sentencing is the same
11 as authorized in Title 46, chapter 18, if the treatment of
12 the individual and the protection of the public are provided
13 for.

14 (3) Either the director or a defendant whose sentence
15 has been imposed under subsection (2) may petition the
16 sentencing court for review of the sentence if the
17 professional person certifies that:

18 (a) the defendant no longer suffers from a mental
19 disease or defect;

20 (b) the defendant's mental disease or defect no longer
21 renders him the defendant unable to appreciate the
22 criminality of his the defendant's conduct or to conform his
23 the defendant's conduct to the requirements of law; or

24 (c) the defendant suffers from a mental disease or
25 defect that makes him the defendant a danger to himself the

defendant or others, but either there is no treatment available for his the mental disease or defect or he the defendant refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 29. Section 46-15-101, MCA, is amended to read:

"46-15-101. Subpoenas. (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony. The court shall maintain a list of the names of the persons to whom subpoenas are issued.

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

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive."

Section 30. Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the appropriate city or county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed 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 required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed 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 required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of

expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund."

Section 31. Section 46-15-201, MCA, is amended to read:

"46-15-201. When depositions may be taken. (1) In district or municipal court cases, a deposition may be taken if it appears that a prospective witness:

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

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

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The district court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(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.

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

Section 32. Section 46-15-202, MCA, is amended to read:

"46-15-202. Procedure for taking depositions. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the municipal or district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. The district court, upon request, may

1 direct that a deposition be taken on written interrogatories
2 in the manner provided in civil actions. However, a
3 deposition may not be taken of a party defendant without his
4 the defendant's consent, and the scope and manner of
5 examination and cross-examination must be restricted as
6 would be allowed in the trial itself.

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

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

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

24 (6) A defendant not in custody who fails to appear,
25 without good cause, at the taking of a deposition after

1 being notified of the time and place set for the deposition
2 will be considered to have waived the right to be present as
3 provided in 46-16-122. The waiver includes a waiver of any
4 objection to the taking and use of the deposition based upon
5 that right.

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

15 **Section 33.** Section 46-15-322, MCA, is amended to read:

16 **"46-15-322. Disclosure by prosecution.** (1) Upon
17 request, the prosecutor shall make available to the
18 defendant for examination and reproduction the following
19 material and information within the prosecutor's possession
20 or control:

21 (a) the names, addresses, and statements of all persons
22 whom the prosecutor may call as witnesses in the
23 case-in-chief case in chief;

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

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

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

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

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

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor may impose reasonable conditions,

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

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

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

(6) 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 statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi,

1 compulsion, entrapment, justifiable use of force, or
2 mistaken identity or the defense that the defendant did not
3 have a particular state of mind that is an element of the
4 offense charged."

5 **Section 34.** Section 46-15-323, MCA, is amended to read:

6 "46-15-323. Disclosure by defendant. (1) At any time
7 after the filing in district court of an indictment or
8 information, the defendant, in connection with the
9 particular crime charged, shall upon written request of the
10 prosecutor and approval of the court:

- 11 (a) appear in a lineup;
- 12 (b) speak for identification by witnesses;
- 13 (c) be fingerprinted, palm printed, footprinted, or
14 voiceprinted;
- 15 (d) pose for photographs not involving reenactment of
16 an event;
- 17 (e) try on clothing;
- 18 (f) permit the taking of samples of his hair, blood,
19 saliva, urine, or other specified materials that involve no
20 unreasonable bodily intrusions;
- 21 (g) provide handwriting samples; or
- 22 (h) submit to a reasonable physical or medical
23 inspection; however, the inspection does not include
24 psychiatric or psychological examination.

25 (2) Within 10 days after the omnibus hearing in

1 district court or at a later time as the court may for good
2 cause permit, the defendant shall provide the prosecutor
3 with a written notice of the defendant's intention to
4 introduce evidence at trial of good character or the
5 defenses of alibi, compulsion, entrapment, justifiable use
6 of force, or mistaken identity.

7 (3) Within 10 days after receiving a report of the
8 defendant's mental condition from a psychiatrist or
9 psychologist or at a later time as the court may for good
10 cause permit, the defendant shall provide the prosecutor
11 with a written notice of the defendant's intention to
12 introduce evidence at trial of the defense that due to a
13 mental disease or defect, the defendant did not have a
14 particular state of mind that is an essential element of the
15 offense charged.

16 (4) The notice must specify for each defense the names
17 and addresses of the persons, other than the defendant, whom
18 the defendant may call as witnesses in support of the
19 defense, together with all written reports or statements
20 made by them, including all reports and statements
21 concerning the results of physical examinations, scientific
22 tests, experiments, or comparisons, except that the
23 defendant need not include a privileged report or statement
24 unless he the defendant intends to use the privileged report
25 or statement, or the witness who made it, at trial.

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

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

14 (a) the names, addresses, and statements of all
 15 persons, other than the defendant, whom the defendant may
 16 call as witnesses in the defense case-in-chief case in
 17 chief, together with their statements;

18 (b) the names and addresses of experts whom the
 19 defendant may call at trial, together with the results of
 20 their physical examinations, scientific tests, experiments,
 21 or comparisons, including all written reports and statements
 22 made by these experts in connection with the particular
 23 case; and

24 (c) all papers, documents, photographs, and other
 25 tangible objects that the defendant may use at trial.

1 (7) The defendant's obligation under this section
 2 extends to material and information within the possession or
 3 control of the defendant, defense counsel, and defense
 4 counsel's staff or investigators.

5 (8) Upon motion of the prosecutor showing that the
 6 prosecutor has substantial need in the preparation of the
 7 case for additional material or information not otherwise
 8 provided for, that the prosecutor is unable, without undue
 9 hardship, to obtain the substantial equivalent by other
 10 means, and that disclosure of the material or information
 11 will not violate the defendant's constitutional rights, the
 12 court, in its discretion, may order any person to make the
 13 material or information available to the prosecutor. The
 14 court may, upon request of any person affected by the order,
 15 vacate or modify the order if compliance would be
 16 unreasonable or oppressive. The defense counsel may not be
 17 required to prepare or disclose summaries of witnesses'
 18 testimony."

19 **Section 35.** Section 46-15-324, MCA, is amended to read:

20 "46-15-324. **Materials not subject to disclosure.** (1)
 21 Except as provided in this section, disclosure is not
 22 required for the superseded notes or work product of the
 23 prosecuting or defense attorney.

24 (2) If exculpatory information is contained in the
 25 superseded notes or work product of the prosecution, that

information must be disclosed.

(3) Disclosure of the existence of an informant or the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to the informant's operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused."

~~Section 36. Section 46-16-107, MCA, is amended to read:--~~

~~"46-16-107. Failure of county attorney prosecutor to attend--if the county attorney prosecutor fails to attend the trial, the court may appoint some attorney at law to perform his the prosecutor's duties."~~

Section 36. Section 46-16-116, MCA, is amended to read:

"46-16-116. Peremptory challenges. (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

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

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the state prosecution and all the defendants are allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court 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."

Section 37. Section 46-16-122, MCA, is amended to read:

"46-16-122. Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench an arrest warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

1 (3) After the trial of a felony offense has commenced
2 in the defendant's presence, the absence of the defendant
3 during the trial may not prevent the trial from continuing
4 up to and including the return of a verdict if the
5 defendant:

6 (a) has been removed from the courtroom for disruptive
7 behavior after receiving a warning that removal will result
8 if the defendant persists in conduct that is so disruptive
9 that the trial cannot be carried on with the defendant in
10 the courtroom; or

11 (b) is voluntarily absent and the offense is not one
12 that is punishable by death.

13 (4) Nothing in this section limits the right of the
14 court to order the defendant to be personally present at the
15 trial for purposes of identification unless defense counsel
16 stipulates to the issue of identity."

17 **Section 38.** Section 46-16-130, MCA, is amended to read:

18 "46-16-130. Pretrial diversion. (1) (a) The Prior to
19 the filing of a charge, the prosecutor and a defendant who
20 has counsel or who has voluntarily waived counsel may agree
21 to the deferral of a prosecution for a specified period of
22 time based on one or more of the following conditions:

23 (a)(i) that the defendant may not commit any offense;

24 (b)(ii) that the defendant may not engage in specified
25 activities, conduct, and associations bearing a relationship

1 to the conduct upon which the charge against the defendant
2 is based;

3 (c)(iii) that the defendant shall participate in a
4 supervised rehabilitation program, which may include
5 treatment, counseling, training, or education;

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

8 (e)(v) any other reasonable conditions.

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

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

19 (4)(d) The agreement must be terminated and the
20 prosecution automatically dismissed with prejudice upon
21 expiration and compliance with the terms of the agreement.

22 (2) After a charge has been filed, a deferral of
23 prosecution may be entered into only with the approval of
24 the court."

25 **Section 39.** Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's, 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 for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court."

Section 40. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required.

(1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years of age when the offense was committed ONE OR MORE FELONY OFFENSES, the

district court shall direct the probation officer to make a presentence investigation and report. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor. The IF THE DEFENDANT WAS CONVICTED OF AN OFFENSE UNDER 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, OR 45-5-625 AGAINST A VICTIM WHO WAS LESS THAN 16 YEARS OF AGE WHEN THE OFFENSE WAS COMMITTED, THE investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the department-of-commerce supreme court administrator under Title 3, chapter 5, part 9.

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

Section 41. Section 46-18-112, MCA, is amended to read:

"46-18-112. Content of presentence investigation

report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

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

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

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged; and

(e) ~~except--in-capital-cases-in-which-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.

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

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

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

Section 42. Section 46-18-117, MCA, is amended to read:

"46-18-117. Correction of sentence. The court may correct an illegal erroneous sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court."

Section 43. Section 46-18-201, MCA, is amended to read:

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

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and

46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(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;

(e) commit the defendant to a correctional institution,

with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of 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.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the

court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 44. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of ~~his~~ the defendant's owning or carrying a dangerous weapon;

(c) restrictions on ~~his~~ the defendant's freedom of association;

(d) restrictions on ~~his~~ the defendant's freedom of movement;

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

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

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

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

Section 45. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation, ~~accompanied-by-an-affidavit~~ showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court

may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(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 its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in 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 Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or

deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

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

(b) the relief to be granted is favorable to the defendant, and the prosecutor, 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 (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

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

(a) continue the suspended or deferred sentence without a change in conditions;

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

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

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

(8) If the court finds that the prosecution has not proved, 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 must be dismissed and the defendant, if in custody, immediately released."

Section 46. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections ~~(4)~~, ~~(5)~~, and ~~(6)~~ of 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) where--applicable in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in

which case the court shall include in its judgment a statement of the reasons for its determination."

NEW SECTION. Section 47. Notice by prosecutor of other crimes, wrongs, or acts. (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

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

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty is entered by the defendant.

NEW SECTION. Section 48. Codification instruction. [Section 48 47] is intended to be codified as an integral part of Title 46, chapter 13, part 1, and the provisions of Title 46, chapter 13, part 1, apply to [section 48 47].

NEW SECTION. Section 49. Repealer. Sections 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, and 46-17-301, MCA, are repealed.

-End-