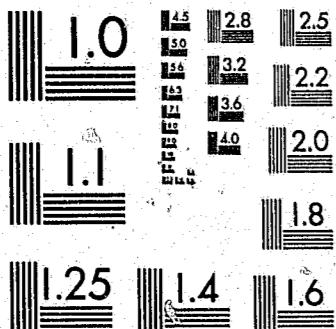


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11/27/85



Justice Research

Montana Board of Crime Control

A Publication of the Montana Board of Crime Control • 803 North Roberts Holm, MT 59620 • (406) 444-3604

THE IMPACT OF THE EXCLUSIONARY RULE UPON THE MONTANA CRIMINAL JUSTICE SYSTEM

125

Prepared by:
Research and Planning Bureau
The Montana Board of Crime Control

1984

95802

Mike Levin, Administrator
Laurence Petersen, Bureau Chief
Dianne H. Stanley, Research Statistician

This project was supported by Order Number 83-3643-T-04RS awarded by the Bureau of Justice Statistics, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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PREFACE

The Montana Board of Crime Control collects and analyzes information on a variety of criminal justice system issues. This report was conducted and prepared by The Board of Crime Control to provide more detailed information the effects of the exclusionary rule has on the Montana criminal justice system.

Dated: March 29, 1984

7
Mike Lavin,


Mike Lavin

Administrator
Montana Board of Crime Control

TABLE OF CONTENTS

	PAGE
ACKNOWLEDGEMENTS.....	1
LIST OF TABLES.....	2
EXECUTIVE SUMMARY.....	3
SECTION I, The Exclusionary Rule in Montana - An Introduction to Previous Studies.....	5
SECTION II, Data Collection Methodology and Limitations.....	10
SECTION III, Data Analysis.....	12
1. General Findings 2. Analysis of Exclusionary Rule Questions	
SECTION IV, Summary and Conclusions.....	19

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ACQUISITIONS

ACKNOWLEDGEMENTS

There were a number of people whose cooperation and assistance were vital to the completion of this report. Our thanks to all the Montana County Attorneys for their interest and participation in the project.

Special thanks to Marc Racicot, Bureau Chief, County Prosecutor Services, Montana Department of Justice, for his help in designing the survey instrument and coordinating the distribution and collection of the surveys.

We also thank Hildy Saizow, Research Associate of the Criminal Justice Statistics Association, Washington, D.C., for her technical assistance.

Montana Board of Crime Control
Mike Lavin, Administrator

Research & Planning Bureau
A. Laurence Petersen, Chief

Dianne H. Stanley, Research
Statistician

List of Tables

	Page
Felony Charges Filed.....	12
Misdemeanor Charges Filed.....	13
Outcome of Total Cases Closed.....	14
Reasons Cases Declined for Prosecution.....	15
Cases with Exclusionary Rule Questions.....	16
Rulings on Motions to Suppress Evidence.....	16
Impact of Exclusionary Rule Questions on Case Outcome...	17
Crimes Associated with Exclusionary Rule Questions.....	18

EXECUTIVE SUMMARY

The purpose of the exclusionary rule project is to measure the effect of the exclusionary rule on prosecution in Montana.

- The study results do not reflect the impact of the exclusionary rule on the criminal justice system for cases which were rejected for prosecution because they needed further investigation.
- 43 percent of the felony charges filed (230 of 535) were for felony theft. 42 percent of the misdemeanor charges filed (343 of 826) were for misdemeanor theft.
- Over 83 percent of the felony charges filed were for non-violent crimes.
- 17 percent of the felony charges filed were for crimes against persons including assault, sex offenses, kidnapping, robbery, and homicide.
- Defendants pled guilty to a charged crime in almost 65 percent of the cases (794 of 1,226 cases) and pled guilty to a lesser charge in almost 7 percent of the cases (80 of 1,226 cases).
- Charges were dismissed in 16 percent of the cases (194 of 1,226 cases). In 42 percent of the dismissed cases (81 of 194) the defendant either paid restitution, forfeited bond, or pled guilty to other charges.
- Most cases declined for prosecution, 94 percent, were declined for reasons other than the exclusionary rule.
- Almost one-fourth of the cases declined for prosecution were declined because a victim or witness was unavailable or refused to prosecute.
- Exclusionary rule questions were the reported cause of 5.9 percent of declined prosecution (6 of 106 cases).
- In most cases accepted for prosecution, 96 percent, there was no exclusionary rule question. This is 1,177 of 1,226 cases.

- There were exclusionary rule questions in 4 percent of the cases accepted for prosecution. Motions to Suppress evidence were filed by defendants in 2 percent, or 25 of 1,226 cases. Two of the Motions to Suppress evidence were granted, or .2 percent of 1,226 cases.
- Exclusionary rule questions were perceived as having impact on case outcome in 2.4 percent, or 29 of 1,226 cases accepted for prosecution.
- Exclusionary rule questions arose most often in theft, criminal trespass, and drug related charges.
- Less than one percent of the cases closed during the study period were appealed.

SECTION I.

THE EXCLUSIONARY RULE IN MONTANA - AN INTRODUCTION TO PREVIOUS STUDIES

Purpose of Study

The major purpose of the Montana exclusionary rule project is to measure the effects of the exclusionary rule on prosecutions of crimes in Montana.

Historical Perspective and Review of Previous Studies

Generally, the exclusionary rule of evidence prohibits the introduction in a criminal trial of evidence seized in violation of the Fourth Amendment to the United States Constitution. In Montana, courts have also excluded evidence which was seized in violation of the Montana Constitution. Many people have considered the advisability of abolishing or limiting the scope of the exclusionary rule.

Two major studies have investigated the impact of the exclusionary rule upon federal and state criminal prosecutions. These studies are "Impact of the Exclusionary Rule on Federal Criminal Prosecutions", issued in April, 1979 by the United States General Accounting Office, and "The Effects of the Exclusionary Rule: A Study in California", released in December, 1982 by the National Institute of Justice.

The federal study shows that Motions to Suppress evidence were filed by 11 percent of the defendants whose cases were accepted for prosecution. Motions to Suppress evidence are used by defendants to raise an issue before trial of whether evidence was improperly obtained and should be excluded at the defendant's trial. Thus, Motions to Suppress are an indicator of how often criminal defendants or their attorneys feel that an exclusionary rule question arises. In the study of federal prosecutions, defendants were successful in having evidence excluded in 1.3 percent of the total cases filed.

The California study shows that: The exclusionary rule is a factor in prosecuting state felony cases; the effects of the rule are most apparent in drug related cases; and, for many defendants, the rejected prosecution due to the exclusionary rule was only one in a series of prior arrests. However, the study also showed that evidence was excluded in only .78 percent of total felony cases filed. Almost 16.5 percent of the total cases filed were rejected for prosecution for reasons unrelated to the exclusionary rule.

The studies of federal and California prosecutions clarified certain effects of the exclusionary rule. Data is available on how often the rule has been invoked and what types of prosecutions are most often affected. However, these studies are of limited use to Montana criminal justice agencies. They are not from test areas geographically or demographically similar to Montana. In addition, the federal study pertained only to cases within federal jurisdiction accepted for prosecution.

The California report did not present information about the effects of the exclusionary rule upon misdemeanor cases. The Montana Board of Crime Control study supplements the findings of these reports by providing State of Montana data, including misdemeanor charges filed. The study also indicates the types of search and seizure problems which caused the exclusionary question to arise.

This study uses data from county attorney offices in Montana. It is the second in a series of exclusionary rule surveys conducted by the Board of Crime Control. The first study was conducted in April of 1983 by gathering data from Montana Clerks of Court. In Montana, Clerks of Court have statutory duties of maintaining court records of criminal cases in the district courts. Clerks of Court reviewed the ledgers of felony cases filed in 1981 and 1982 and reported the numbers of Motions to Suppress evidence which were filed by criminal defendants or their attorneys. Motions to Suppress evidence are used by defendants before trial to test the propriety of evidence which may be used at the defendant's trial. Therefore, it is the primary way that defendants raise exclusionary rule questions.

Survey results showed that Motions to Suppress evidence were filed in 139 (5.3 percent) of the 2,623 total felony cases filed in Montana in 1981, and in 110 (4.2 percent) of the 2,617 total felony cases filed in Montana in 1982. The trial court ruled in favor of the defendant by granting a Motion to Suppress in .7 and .8 percent of these total cases respectively. The trial court denied Motions to Suppress in 2.5 and 1.6 percent, respectively, of these total cases. Other dispositions were made on the motions in 2.1 and 1.8 percent of the cases respectively. Other dispositions included Motions to Suppress not ruled upon because of case dismissals, guilty pleas or plea bargains, or because the cases were still pending at the close of the survey period.

**DISPOSITION OF MOTIONS TO SUPPRESS EVIDENCE
AS A PERCENTAGE OF FELONY CASES FILED**

	1981		1982	
	<u>Total Number</u>	<u>% of Felony Cases</u>	<u>Total Number</u>	<u>% of Felony Cases</u>
Felony Cases Filed	2623	100	2617	100
Motions Filed	139	5.3	110	4.2
Motions Granted	19	.7	20	.8
Motion Denied	66	2.5	42	1.6
Motions With Other Disposition	54	2.1	48	1.8

Study Approach and Primary Areas of Concern

The present study examines exclusionary rule questions from the time a prosecuting attorney opens a case file through final disposition of the case.

The focus of this study is (1) to present the general findings of the study of cases closed or declined for prosecution by county attorneys; and (2) present the results of the analysis of exclusionary rule related data.

1. General Findings:

- a. What were the characteristics of the cases closed during the study period, including the type of charge, case disposition, and number of appeals?
- b. Why were cases declined for prosecution?

2. Analysis of Exclusionary Rule Questions:

- a. How many cases had exclusionary rule questions? How many Motions to Suppress evidence were filed? What was the disposition of cases with exclusionary rule questions?
- b. What impact did exclusionary rule questions have on the outcome of felony and misdemeanor cases?
- c. What types of cases involved exclusionary rule questions?

SECTION II

DATA COLLECTION METHODOLOGY AND LIMITATIONS

County attorneys in Montana have jurisdiction over the prosecution of crimes. Each of the 56 Montana counties has its own county attorney's office. In April, 1983, the Montana Board of Crime Control presented a survey proposal to the Montana County Attorneys' Association. The survey would examine how the exclusionary rule affected the outcome of cases closed or declined within a six month study period, June 1, 1983 to November 30, 1983. The Association endorsed the survey proposal and soon after that meeting, a survey form was prepared. The form was to be completed on each case closed or declined for prosecution by the prosecuting attorney. (See Appendix A for survey instrument) The survey instrument contains subjective questions which call for individual judgement by the prosecutor filling out the form. The study covers felony and misdemeanor cases with the exception of traffic offenses.

Survey instruments were mailed to all county attorneys. Six weeks after the study period began, all offices were called by the researchers to see if there were questions about the survey.

Data was collected periodically during the study period by mailing all participating offices a return envelope. The research staff visited two offices at the end of the study period and reconstructed survey data from their records.

The counties participating in this study represent 81.4 percent of the Montana population. The data was analyzed utilizing SPSS, the "Statistical Package for the Social Sciences."

LIMITATIONS

The subjective judgement of the county attorneys was required in completing the survey. The survey results show the impact of the exclusionary rule on case disposition and rejections. The attorney's subjective judgement is involved in determining this impact because it provides information both on formally filed Motions to Suppress evidence and on the perceived impact of search and seizure problems on cases in which formal Motions to Suppress evidence were not filed.

The exclusionary rule may have an immeasurable impact on the criminal justice system. Several County Attorneys thought that law enforcement officers investigate cases which are never referred for prosecution because they contain potential search and seizure problems. These attorneys suggested that no study on the impact of the exclusionary rule would be complete without an estimate from law enforcement on the number of cases that are not referred for prosecution because of potential search and seizure problems. This study does not include data from law enforcement officers and the researchers concluded it is not possible to accurately gather such information.

The low number of cases observed in this study make application of the results to other states difficult. The 1,226 cases reported appear to accurately reflect the actual number of cases filed in the participating counties when compared to the 1981 and 1982 Clerks of Court surveys. However, the small number of observations make these study results difficult to generalize to other states.

The formality of the manner of rejecting cases varies between county attorney's offices. Some offices did not submit "declined prosecutions" forms because their system of declining cases for prosecution was not as formal as needed in order to complete the "declined prosecutions" forms. Many cases may have been declined for prosecution by these offices and not reflected in the survey results.

SECTION III.

DATA ANALYSIS

1. General Findings

Felony Charges Filed

A total of 1,226 cases were closed. In some cases more than two felonies were charged, but the study recorded a maximum of two felony and two misdemeanor charges for each case. If more than two felony or two misdemeanor charges were filed, the hierarchy rule of the National Uniform Crime Reporting system was applied to determine the two most serious charges. In 482 cases the defendant was charged with one or more felonies. A total of 535 felony charges were recorded by the survey.

FELONY CHARGES FILED

Felony Charge	# of Charges	% of Total Felony Charges
Theft	230	43.0
Criminal Trespass	66	12.3
Assault/Intimidation	53	9.9
Drug Offenses	45	8.4
Criminal Mischief	38	7.1
Extradition	17	3.2
Sex Offenses	17	3.2
Obstructing Govt. Operations	15	2.8
Kidnapping /Unlawful Restraint	9	1.7
Burglary	7	1.3
Robbery	6	1.1
Homicide	5	.9
All Other	27	5.0
Total	535	100.0*

* Does not represent column total due to rounding

Misdemeanor Charges Filed

In 768 cases the defendant was charged with one or more misdemeanors. A total of 826 misdemeanor charges were recorded by the survey. Twenty six defendants were charged with both felonies and misdemeanors.

MISDEMEANOR CHARGES FILED

Misdemeanor Charge	# of Charges	% of Total Misdemeanor Charges
Theft	343	41.5
Assault/Intimidation	90	10.9
Drug Offenses	66	8.0
Disorderly Conduct	51	6.2
Criminal Trespass	43	5.2
Obstructing Govt. Operations	36	4.4
Criminal Mischief	35	4.3
Unemployment Insurance Vio.	34	4.2
Offenses Against the Family	22	2.7
Perjury	19	2.3
Fish, Wildlife & Parks Vio.	13	1.6
Sex Offenses	9	1.1
Securities Regulations Vio.	7	.8
Gambling	7	.8
Offensive/Indecent Conduct	5	.6
Weapons	5	.6
All Other	41	5.0
Total	826	100.0

The Outcome of Cases

The defendant pled guilty to one or more of the charged offenses in almost two-thirds of cases. Twelve percent of the cases were dismissed for some reason. Less than one percent of these cases were appealed.

OUTCOME OF TOTAL CASES CLOSED

<u>Outcome</u>	# of Cases	% of Total Cases
Defendant Pled Guilty to Charged Offense	794	64.7
Dismissed for Unspecified Reason	83	6.7
Defendant Pled to Lesser Charges	80	6.5
Trial, Defendant Convicted of Charged Offense	58	4.7
Dismissed, Defendant Paid Restitution	38	3.1
Defendant Forfeited Bond	22	1.8
Dismissed, Defendant Pled Guilty to Other Charges	21	1.7
Dismissed, Witness' Request	14	1.1
Dismissed, Witness Would Not Testify	12	1.0
Trial, Defendant Found Not Guilty	8	.7
Dismissed in Exchange for Testimony	4	.3
Trial, Defendant Convicted of Lesser Charges	4	.3
Deferred Prosecution	4	.3
Other Dispositions	84	6.9
Total	1,226	100.0

Participating agencies reported 106 cases were declined for prosecution. The researchers believe this number is lower than the actual number of cases brought by law enforcement officials to county attorneys for prosecution and then declined. The number is believed to be low because the survey instrument requested information only on formally declined cases and it is believed law enforcement officials presented many cases informally which were rejected and not recorded in the survey instrument. The results are included here as a matter of general interest.

REASONS CASES DECLINED FOR PROSECUTION

<u>Reason Declined</u>	# of Cases	% of 106 Cases
Victim or Witness Unavailable or Refuses to Prosecute	26	24.5
Insufficient Evidence	21	19.8
Unspecified Reason	19	17.9
No Crime Was Committed	16	15.1
The Matter Was Too Petty	13	12.3
Crime Occurred in Another Jurisdiction	4	3.8
Crime was Combined with Other Counts	1	.9
Evidence Could be Excluded Due to:		
Open Field Problem	2	1.9
Plain View Problem	1	.9
Search Incident to Improper Arrest	1	.9
Insufficient Probable Cause	1	.9
Confession/Acknowledgment Could be Suppressed	1	.9
Total	106	100.0

2. Analysis of Exclusionary Rule Questions

There were no exclusionary rule questions in 96 percent, or 1,177 of the 1,226 cases. Defendants filed Motions to Suppress evidence in 25 cases. Prosecutors perceived exclusionary rule questions in 24 other cases.

CASES WITH EXCLUSIONARY RULE QUESTIONS

	Cases	% of Total Cases Closed
No Perceived Exclusionary Rule Questions	1177	96.0
Perceived Exclusionary Rule Question		
No Motion to Suppress	24	2.0
Motion to Suppress Filed	25	2.0
Total	1226	100.0

Ninety-two percent of the Motions to Suppress evidence filed by defendants were not granted, or 23 of the 25 motions. Nineteen were not ruled upon. Two motions were granted; one because of a faulty search warrant and the other because there were plain view and probable cause problems.

RULINGS ON MOTIONS TO SUPPRESS EVIDENCE

<u>Ruling</u>	# of Motions Filed	% of Motions Filed	% of Total 1226 Cases
No Ruling, Plea Bargain	9	40.0	.7
Motion Denied	5	20.0	.4
No Ruling, Charges Dismissed	3	12.0	.2
No Ruling, Guilty Plea	3	12.0	.2
No Ruling, Motion Withdrawn	2	8.0	.2
Motion Granted	2	8.0	.2
No Ruling, Deferred Prosecution	1	4.0	.1
Total	25	100.0	2.0

There were 49 cases with exclusionary rule questions. Motions to Suppress evidence were filed by defendants in 25 of these cases. Survey respondents reported the exclusionary rule questions had no impact on the case outcome in 41 percent of the 49 cases.

The respondents concluded that exclusionary rule questions had impact on the case outcome in 59 percent of these 49 cases. This is 49 cases out of the total 1,226 cases closed. The exclusionary rule questions had impact on the case outcome in 2.4 percent of the total 1,226 cases.

IMPACT OF EXCLUSIONARY RULE QUESTIONS

	ON CASE OUTCOME	% OF 49 CASES	% OF TOTAL 1226 CASES
IMPACT	# OF CASES	% OF 49 CASES	% OF TOTAL 1226 CASES
No Impact	20	41.0	1.6
Factor in Plea Bargain	9	18.4	.7
Factor in Charge Reduction	7	14.3	.5
Caused Charge Dismissal	5	10.2	.4
Caused Charge Reduction	4	8.2	.3
Caused Plea Bargain	2	4.1	.2
Caused Deferred Prosecution	1	2.0	.1
Factor in a Dismissal	1	2.0	.1
Total	49	100.0	4.0

Exclusionary rule questions arose most often in theft, criminal trespass, and drug related charges. Motions to Suppress evidence were filed most frequently in criminal trespass and drug related charges. Evidence was suppressed in one felony theft case and one misdemeanor drug case.

CRIMES ASSOCIATED WITH EXCLUSIONARY RULE QUESTIONS

CRIME	# OF CASES WITH EXCLUSIONARY RULE QUESTIONS BUT NO MOTION TO SUPPRESS	# OF CASES WITH MOTIONS TO SUPPRESS	TOTAL # OF CASES WITH EXCLUSIONARY RULE QUESTIONS
(Felony)			
Theft	8	0	8
Criminal Trespass	4	4	8
Drug Offenses	2	5	7
Extradition	0	1	1
Inchoate Offenses	0	1	1
Assault	0	1	1
Sex Offenses	1	0	1
Arson	0	1	1
Weapons	1	0	1
(Misdemeanors)			
Gambling	0	7*	7*
Drug Offenses	2	4	6
Criminal Mischief	3	0	3
Theft	1	0	1
Disorderly Conduct	1	0	1
Weapons	1	0	1
Fish, Wildlife & Parks	0	1	1
Total	24	25	49

*7 arrests arose from one incident

SUMMARY AND CONCLUSIONS

This study provides information on the impact of the exclusionary rule on criminal prosecutions in Montana. Data was collected on 1,226 cases closed during the study period, June 1, 1983 to November 30, 1983. Survey results represent 81 percent of the Montana population.

Data provided a descriptive account of the types of felony and misdemeanor charges filed, the percentage of cases in which prosecutors perceived an exclusionary rule question, the percentage of cases in which Motions to Suppress evidence were filed, and the outcome of the cases.

A historical overview of previous exclusionary rule studies is presented along with the reported impact the exclusionary rule had on cases in those studies.

There is evidence that exclusionary rule questions have a slightly greater impact on the outcome of cases than is reflected in the percentage of Motions to Suppress evidence granted. Prosecutors perceived the exclusionary rule had an impact on the outcome of two percent (29) of the 1,226 cases closed. Motions to Suppress evidence were granted in .1 percent (2) of the 1,226 cases.

The results of this study indicate the impact the exclusionary rule has on prosecutions in Montana is very close to the impact reported on federal and California prosecutions.

The defendant pled guilty to the charged offenses or lesser charges in 72 percent of the cases.

A P P E N D I X

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FOR
KEYPUNCH
ONLY

USE THIS SIDE FOR FELONY & MISDEMEANOR CASES FILED

FIELD
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5,28
29,52

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County _____
Justice Court or District Court Case Number _____
Investigating Agency _____
Felony Charges Filed: (cite M.C.A. Section #'s) _____
Misdemeanor Charges Filed: (cite M.C.A. Section #'s) _____

1. Was a Motion to Suppress Evidence filed in the case?
 No, and there was no search and seizure problem in the case (skip to fifth question)
 No, but there was a search and seizure problem in the case (skip to fourth question)
 Yes, concerning the charges(s): (cite M.C.A. Section #'s) _____

2. What was the outcome of the Suppression Motion being filed?

No ruling; guilty plea to charged offense(s)
 No ruling; plea bargain
 No ruling; motion was withdrawn
 No ruling; charges were dismissed
 Motion granted in part
 Motion denied
 Other (explain) _____

3. If motion granted in whole or in part, indicate the reason(s).

Open field problem
 Plain view problem
 Search incident to improper arrest or stop
 Search incident to arrest or stop too broad
 Search incident to arrest or stop too remote in time
 Insufficient probable cause for arrest
 Warrantless search made when there was time to obtain warrant
 Consent to search given but not valid
 Faulty search warrant
 Evidence seized beyond scope of search warrant
 Lack of exigent circumstances
 Insufficient reliability of informant
 Other (explain) _____

4. Overall, what impact did the search and seizure problem or suppression motion have on the case outcome?

No impact
 It was a factor in a charge dismissal
 It alone accounted for a charge dismissal
 It was a factor in a charge reduction
 It alone accounted for a charge reduction
 It was a factor in a plea bargain
 It precipitated and resulted in a plea bargain

5. What was the outcome of the case?

Case dismissed; insufficient evidence
 Case dismissed; in exchange for testimony
 Case dismissed; defendant was charged with parole or probation violation
 Case dismissed; defendant pled to other charges
 Case dismissed; due to suppression of admission or confession
 Defendant pled to one or more of the charged offenses
 Defendant pled to lesser charge(s)
 Trial; convicted on charged offense(s)
 Trial; convicted on lesser charge(s)
 Trial; not guilty
 Other (explain) _____

6. Was this case appealed to the Montana Supreme Court?

Yes (Enter date of appeal _____)
 No

SEE REVERSE SIDE FOR DECLINED PROSECUTION

Revised 6/83

FOR
KEYPUNCH
ONLY

USE THIS SIDE FOR DECLINED PROSECUTIONS

Field

1,2

County _____
Case Number Assigned by Investigating Agency _____

3,4

Investigating Agency _____
Felony Crimes Investigated: (cite M.C.A. Section #'s) _____

5,28

Misdemeanor Crimes Investigated: (cite M.C.A. Section #'s) _____

29,52 _____

We are of the opinion that charge(s) should not be filed for the following reasons:

53

- Victim unavailable or declines to prosecute
- Witness unavailable
- Crime is combined with other counts
- No crime was committed
- The matter is too petty to warrant prosecution
- The crime occurred in another jurisdiction
- Insufficient evidence
- Evidence could be excluded due to:
 - Open field problem
 - Plain view problem
 - Search incident to improper arrest or stop
 - Search incident to arrest or stop too broad
 - Search incident to arrest or stop too remote in time
 - Insufficient probable cause for arrest
 - Warrantless search made when there was time to obtain warrant
 - Consent to search given but not valid
 - Faulty search warrant
 - Evidence seized beyond scope of search warrant
 - Lack of exigent circumstances
 - Suppression of admission or confession
 - Other (explain) _____
- Other reason for not filing charge(s) (explain)

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Helena, MT 59620
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END