

HOUSE BILL 72

Introduced by J. Rice

1/03	Introduced
1/03	Fiscal Note Requested
1/03	Referred to Judiciary
1/07	First Reading
1/12	Fiscal Note Received
1/15	Fiscal Note Printed
1/17	Hearing
1/18	Committee Report--Bill Passed as Amended
1/25	2nd Reading Passed
1/28	3rd Reading Passed
	Transmitted to Senate
1/29	First Reading
1/29	Referred to Judiciary
2/07	Hearing
2/26	Tabled in Committee

HOUSE BILL NO. 72

INTRODUCED BY J. RICE

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDUCE THE PRETRIAL JAIL POPULATION BY PROVIDING SPEEDIER RESOLUTION OF MISDEMEANOR CRIMINAL CASES; TO PROVIDE FOR EARLY REVIEW AND SCREENING OF MISDEMEANOR CASES AND THE EARLY RELEASE OF CERTAIN MISDEMEANOR DEFENDANTS; TO REQUIRE COURTS TO TRY TO EXPEDITE THE PROSECUTION OF CERTAIN DEFENDANTS HELD IN CUSTODY; TO IMPOSE A LIMIT ON THE TIME A DEFENDANT MAY BE HELD PRIOR TO TRIAL; AMENDING SECTIONS 46-7-102 AND 46-9-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Release of defendants --

definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Release" means temporary or partial freedom of a defendant from lawful custody either before judgment of conviction or after judgment of conviction if the defendant has appealed.

(2) "Release criteria" includes the following:

(a) the defendant's employment status, employment

history, and financial condition;

(b) the nature and extent of the defendant's family relationships;

(c) the defendant's past and present residences;

(d) names of persons who agree to assist the defendant in attending court at the proper time;

(e) the nature of the current charge;

(f) the defendant's prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required;

(g) any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) any facts tending to indicate that the defendant has strong ties to the community; and

(i) any other facts tending to indicate that the defendant is likely to appear before the court when required to do so.

(3) "Release decision" means a determination by a judge that is based on release criteria and that establishes the form of release most likely to ensure the defendant's court appearance.

NEW SECTION. Section 2. Release assistance officer.

(1) The presiding judge in a judicial district may appoint a release assistance officer and release assistance deputies who are responsible to the release assistance officer.



1 (2) Except when impracticable, the release assistance
 2 officer shall interview every person detained pursuant to
 3 law and charged with a misdemeanor.

4 (3) The release assistance officer shall verify release
 5 criteria information and may either:

6 (a) timely submit a written report to the judge that
 7 contains but is not limited to an evaluation of the release
 8 criteria and a recommendation for the form of release; or

9 (b) if delegated release authority by the presiding
 10 judge in the judicial district, make the release decision.

11 NEW SECTION. Section 3. Misdemeanor -- release
 12 decision. (1) A person in custody for a misdemeanor is
 13 entitled to bail or must be taken before a judge without
 14 undue delay. If the person is not released on bail or
 15 otherwise released before the initial appearance, the judge
 16 shall advise the person of the right to bail.

17 (2) If a person in custody for a misdemeanor does not
 18 request bail at the time of initial appearance, the judge
 19 shall make a release decision regarding the person within 48
 20 hours after the initial appearance.

21 (3) The judge shall impose the least onerous condition
 22 reasonably likely to ensure the person's later court
 23 appearance. A person in custody must be released on personal
 24 recognizance unless release criteria show to the
 25 satisfaction of the judge that such a release is

1 unwarranted.

2 (4) Upon a finding that release of the person is
 3 warranted but that release on personal recognizance is
 4 unwarranted, the judge shall impose bail.

5 (5) Before the release decision is made, the county
 6 attorney may address the court in relation to the release.

7 (6) This section must be liberally construed to carry
 8 out the purpose of relying upon criminal sanctions instead
 9 of financial loss to ensure the court appearance of the
 10 defendant.

11 (7) The release decision must be based on standards
 12 designed to ensure with reasonable probability that a
 13 defendant:

14 (a) appears as required for future criminal
 15 proceedings; and

16 (b) does not engage in violent criminal conduct while
 17 on release.

18 NEW SECTION. Section 4. Priority in trial schedule for
 19 defendants in custody. The court shall try to schedule trial
 20 dates for defendants in custody before the trial dates of
 21 defendants who have been released pending trial. However,
 22 this provision is subject to the right of all defendants to
 23 be tried without unreasonable delay.

24 NEW SECTION. Section 5. Limitation on time defendant
 25 held prior to trial -- release of defendant if time

1 exceeded. (1) Except as provided in [section 6], a defendant
 2 may not be held in custody prior to the trial for more than
 3 60 days after the date of arrest unless the trial is
 4 continued with the express consent of the defendant.

5 (2) If a trial is not held within the period provided
 6 in subsection (1), the court shall release the defendant:

7 (a) on the defendant's personal recognizance;

8 (b) in the custody of a third party as provided in
 9 46-9-111; or

10 (c) upon whatever additional reasonable terms and
 11 conditions the court considers just and in accordance with
 12 the provisions of this chapter.

13 NEW SECTION. Section 6. Application of time
 14 limitations on trial. (1) [Section 5] does not apply to a
 15 person:

16 (a) charged with deliberate homicide, aggravated
 17 kidnapping, conspiracy to commit deliberate homicide or
 18 aggravated kidnapping, or attempted deliberate homicide or
 19 aggravated kidnapping; or

20 (b) who has been previously convicted as a persistent
 21 felony offender when the offender has a felony conviction
 22 for deliberate homicide or aggravated kidnapping within the
 23 5-year period preceding the date of the alleged commission
 24 of the present offense.

25 (2) If the defendant is extradited from another

1 jurisdiction and if law enforcement authorities from the
 2 other jurisdiction and this state have conducted the
 3 extradition with all practicable speed, the 60-day period
 4 does not begin until the defendant enters Montana. The
 5 original 60-day period may not be extended more than an
 6 additional 60 days except if the delay has been caused by
 7 the defendant in opposing the extradition.

8 (3) Any reasonable delay resulting from an examination
 9 or hearing regarding the defendant's mental condition or
 10 competency to stand trial or resulting from a motion or
 11 appeal by the defendant may not be included in the 60-day
 12 period.

13 (4) If a victim or witness to the offense in question
 14 is unable to testify within the original 60-day period
 15 because of injuries received at the time the alleged offense
 16 was committed, the court may order an extension of not more
 17 than 60 days. For the same reason, the court may order a
 18 second extension of not more than 60 days. However, the
 19 defendant may not be held in custody before trial for more
 20 than 180 days.

21 (5) Any period following the defendant's arrest in
 22 which the defendant is not actually in custody may not be
 23 included in the 60-day computation.

24 **Section 7.** Section 46-7-102, MCA, is amended to read:

25 "46-7-102. Duty of the court at initial appearance. (1)

1 The judge shall inform the defendant:
 2 (a) of the charge against him;
 3 (b) of his right to counsel;
 4 (c) of his right to have counsel assigned by a court of
 5 record in accordance with the provisions of 46-8-101;
 6 (d) that he is not required to make a statement and
 7 that any statement made by him may be offered in evidence at
 8 his trial.

9 (2) The judge shall admit the defendant to bail or
 10 other release in accordance with the provisions of this
 11 title."

12 **Section 8.** Section 46-9-111, MCA, is amended to read:

13 "46-9-111. Release Conditions for release on own
 14 personal recognizance. (1) Any A person in custody, if
 15 otherwise eligible for bail, may be released on his personal
 16 recognizance subject to such conditions as the court may
 17 reasonably prescribe to assure his appearance when required.
 18 Any A person released as herein provided ~~shall~~ in this
 19 section must be fully apprised by the court of the penalty
 20 provided for failure to comply with the terms of his
 21 recognizance.

22 (2) Release on personal recognizance under subsection
 23 (1) may include but is not limited to one or more of the
 24 following conditions:

25 (a) release of the defendant into the care of a

1 qualified person or organization responsible for supervising
 2 the defendant and assisting the defendant to appear in
 3 court. The supervising person or organization is not
 4 financially responsible for the defendant and may not be
 5 required to forfeit money if the defendant fails to appear
 6 in court. However, the supervising person or organization
 7 shall notify the court immediately if the defendant breaches
 8 the conditions of the release.

9 (b) reasonable regulations on the activities,
 10 movements, associations, and residence of the defendant,
 11 including, if the court finds it appropriate, restriction of
 12 the defendant to the defendant's own residence or to the
 13 premises of the residence;

14 (c) release of the defendant from custody during work
 15 hours; or

16 (d) any other reasonable restriction designed to ensure
 17 the defendant's court appearance."

18 NEW SECTION. Section 9. Codification instruction.
 19 [Sections 1 through 6] are intended to be codified as an
 20 integral part of Title 46, chapter 9, and the provisions of
 21 Title 46 apply to [sections 1 through 6].

22 NEW SECTION. Section 10. Severability. If a part of
 23 [this act] is invalid, all valid parts that are severable
 24 from the invalid part remain in effect. If a part of [this
 25 act] is invalid in one or more of its applications, the part

HB 0072/01

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 11. Applicability.** [This act]
4 applies to proceedings begun after [the effective date of
5 this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0072, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to reduce the pretrial jail population by providing speedier resolution of misdemeanor criminal cases; to provide for early review and screening of misdemeanor cases and the early release of certain misdemeanor defendants; to require courts to try to expedite the prosecution of certain defendants held in custody; and imposing a time limit on holding defendants prior to trial.

ASSUMPTIONS:


1. The primary impact of this bill will be in reducing jail populations, overcrowding, and costs of incarceration for local governments.

FISCAL IMPACT:

The fiscal impact to state government will be minimal.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local government general fund expenditures should be reduced due to reductions in jail populations and incarceration periods.



ROD SUNDSTED, BUDGET DIRECTOR 1-11-91 DATE
Office of Budget and Program Planning



JAMES RICE, PRIMARY SPONSOR 1-14-91 DATE

Fiscal Note for HB0072, as introduced

HB 72

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 72
 2 INTRODUCED BY J. RICE
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
 4 ON ADULT AND JUVENILE DETENTION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REDUCE THE PRETRIAL
 7 JAIL POPULATION BY PROVIDING SPEEDIER RESOLUTION OF
 8 MISDEMEANOR CRIMINAL CASES; TO PROVIDE FOR EARLY REVIEW AND
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 10 CERTAIN MISDEMEANOR DEFENDANTS; TO REQUIRE COURTS TO TRY TO
 11 EXPEDITE THE PROSECUTION OF CERTAIN DEFENDANTS HELD IN
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 13 HELD PRIOR TO TRIAL; AMENDING SECTIONS 46-7-102 AND
 14 46-9-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 NEW SECTION. **Section 1.** Release of defendants --
 18 definitions. As used in [sections 1 through 6 5], the
 19 following definitions apply:

20 (1) "Release" means temporary or partial freedom of a
 21 defendant CHARGED WITH A MISDEMEANOR from lawful custody
 22 either before judgment of conviction or after judgment of
 23 conviction if the defendant has appealed.

24 (2) "Release criteria" includes the following:
 25 (a) the defendant's employment status, employment

1 history, and financial condition;
 2 (b) the nature and extent of the defendant's family
 3 relationships;
 4 (c) the defendant's past and present residences;
 5 (d) names of persons who agree to assist the defendant
 6 in attending court at the proper time;
 7 (e) the nature of the current charge;
 8 (f) the defendant's prior criminal record, if any, and,
 9 if the defendant previously has been released pending trial,
 10 whether the defendant appeared as required;
 11 (g) any facts indicating the possibility of violations
 12 of law if the defendant is released without regulations;
 13 (h) any facts tending to indicate that the defendant
 14 has strong ties to the community; and
 15 (i) any other facts tending to indicate that the
 16 defendant is likely to appear before the court when required
 17 to do so.
 18 (3) "Release decision" means a determination by a judge
 19 that is based on release criteria and that establishes the
 20 form of release most likely to ensure the defendant's court
 21 appearance.

22 NEW SECTION. **Section 2.** Release assistance officer.
 23 (1) The presiding judge in a judicial district may appoint a
 24 release assistance officer and release assistance deputies
 25 who are responsible to the release assistance officer.

SECOND READING



1 (2) Except when impracticable, the release assistance
 2 officer shall interview every person detained pursuant to
 3 law and charged with a misdemeanor.

4 (3) The release assistance officer shall verify release
 5 criteria information and may either:

6 (a) timely submit a written report to the judge that
 7 contains but is not limited to an evaluation of the release
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 19 defendants in custody. The court shall try to schedule trial
 20 dates for defendants in custody ON MISDEMEANOR CHARGES
 21 before the trial dates of defendants who have been released
 22 pending trial. However, this provision is subject to the
 23 right of all defendants to be tried without unreasonable
 24 delay.

25 NEW SECTION. Section 5. Limitation on time defendant

1 held prior to trial -- release of defendant if time
 2 exceeded. (1) Except--as--provided--in--{section--6}7--a A
 3 defendant CHARGED WITH A MISDEMEANOR may not be held in
 4 custody prior to the trial for more than 60 days after the
 5 date of arrest unless the trial is continued with the
 6 express consent of the defendant.

7 (2) If a trial is not held within the period provided
 8 in subsection (1), the court shall release the defendant:

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10 (b) in the custody of a third party as provided in
 11 46-9-111; or

12 (c) upon whatever additional reasonable terms and
 13 conditions the court considers just and in accordance with
 14 the provisions of this chapter.

15 ~~NEW SECTION. Section 6. Application-----of-----time~~
 16 ~~limitations on trial. {1} {Section 5} does not apply to a~~
 17 ~~person:~~

18 (a) ~~charged with deliberate homicide, aggravated~~
 19 ~~kidnapping, conspiracy to commit deliberate homicide or~~
 20 ~~aggravated kidnapping, or attempted deliberate homicide or~~
 21 ~~aggravated kidnapping; or~~

22 (b) ~~who has been previously convicted as a persistent~~
 23 ~~felony offender when the offender has a felony conviction~~
 24 ~~for deliberate homicide or aggravated kidnapping within the~~
 25 ~~5-year period preceding the date of the alleged commission~~

1 of the present offense.

2 (2) ~~If the defendant is extradited from another~~
 3 ~~jurisdiction and if law enforcement authorities from the~~
 4 ~~other jurisdiction and this state have conducted the~~
 5 ~~extradition with all practicable speed, the 60-day period~~
 6 ~~does not begin until the defendant enters Montana. The~~
 7 ~~original 60-day period may not be extended more than an~~
 8 ~~additional 60 days except if the delay has been caused by~~
 9 ~~the defendant in opposing the extradition.~~

10 (3) ~~Any reasonable delay resulting from an examination~~
 11 ~~or hearing regarding the defendant's mental condition or~~
 12 ~~competency to stand trial or resulting from a motion or~~
 13 ~~appeal by the defendant may not be included in the 60-day~~
 14 ~~period.~~

15 (4) ~~If a victim or witness to the offense in question~~
 16 ~~is unable to testify within the original 60-day period~~
 17 ~~because of injuries received at the time the alleged offense~~
 18 ~~was committed, the court may order an extension of not more~~
 19 ~~than 60 days. For the same reason, the court may order a~~
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 21 ~~defendant may not be held in custody before trial for more~~
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 24 ~~which the defendant is not actually in custody may not be~~
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1 **Section 6.** Section 46-7-102, MCA, is amended to read:
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 3 The judge shall inform the defendant:
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 7 record in accordance with the provisions of 46-8-101;
 8 (d) that he is not required to make a statement and
 9 that any statement made by him may be offered in evidence at
 10 his trial.
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 12 other release in accordance with the provisions of this
 13 title."
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 16 personal recognizance. (1) Any A person in custody, if
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 18 recognizance subject to such conditions as the court may
 19 reasonably prescribe to assure his appearance when required.
 20 Any A person released as herein provided shall in this
 21 section must be fully apprised by the court of the penalty
 22 provided for failure to comply with the terms of his
 23 recognizance.
 24 (2) Release on personal recognizance under subsection
 25 (1) may include but is not limited to one or more of the

1 following conditions:
 2 (a) release of the defendant into the care of a
 3 qualified person or organization responsible for supervising
 4 the defendant and assisting the defendant to appear in
 5 court. The supervising person or organization is not
 6 financially responsible for the defendant and may not be
 7 required to forfeit money if the defendant fails to appear
 8 in court. However, the supervising person or organization
 9 shall notify the court immediately if the defendant breaches
 10 the conditions of the release.
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 12 movements, associations, and residence of the defendant,
 13 including, if the court finds it appropriate, restriction of
 14 the defendant to the defendant's own residence or to the
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 17 hours; or
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 20 NEW SECTION. Section 8. Codification instruction.
 21 [Sections 1 through 6] are intended to be codified as an
 22 integral part of Title 46, chapter 9, and the provisions of
 23 Title 46 apply to [sections 1 through 6 5].
 24 NEW SECTION. Section 9. Severability. If a part of
 25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this
2 act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are
4 severable from the invalid applications.

5 NEW SECTION. **Section 10.** Applicability. [This act]
6 applies to proceedings begun after [the effective date of
7 this act].

-End-

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- 10 (b) in the custody of a third party as provided in
 11 46-9-111; or

12 (c) upon whatever additional reasonable terms and
 13 conditions the court considers just and in accordance with
 14 the provisions of this chapter.

15 NEW SECTION Section 6 Application-----of-----time
 16 limitations-on-trial;--{1}--{Section-5}--does-not--apply--to--a
 17 person:

18 (a)--charged--with--deliberate--homicide;--aggravated
 19 kidnapping;--conspiracy--to--commit--deliberate--homicide--or
 20 aggravated--kidnapping;--or--attempted--deliberate--homicide--or
 21 aggravated--kidnapping;--or

22 (b)--who--has--been--previously--convicted--as--a--persistent
 23 felony--offender--when--the--offender--has--a--felony--conviction
 24 for--deliberate--homicide--or--aggravated--kidnapping--within--the
 25 5-year--period--preceding--the--date--of--the--alleged--commission

1 of-the-present-offense:

2 (2)--If--the--defendant--is--extradited--from--another
 3 jurisdiction--and--if--law--enforcement--authorities--from--the
 4 other--jurisdiction--and--this--state--have--conducted--the
 5 extradition--with--all--practicable--speed;--the--60-day-period
 6 does-not-begin--until--the--defendant--enters--Montana;--The
 7 original--60-day--period--may--not--be--extended--more--than--an
 8 additional--60-days--except--if--the--delay--has--been--caused--by
 9 the--defendant--in--opposing--the--extradition;

10 (3)--Any--reasonable--delay--resulting--from--an--examination
 11 or--hearing--regarding--the--defendant's--mental--condition--or
 12 competency--to--stand--trial--or--resulting--from--a--motion--or
 13 appeal--by--the--defendant--may--not--be--included--in--the--60-day
 14 period.

15 (4)--If--a--victim--or--witness--to--the--offense--in--question
 16 is--unable--to--testify--within--the--original--60-day--period
 17 because--of--injuries--received--at--the--time--the--alleged--offense
 18 was--committed;--the--court--may--order--an--extension--of--not--more
 19 than--60--days;--For--the--same--reason;--the--court--may--order--a
 20 second--extension--of--not--more--than--60--days;--However;--the
 21 defendant--may--not--be--held--in--custody--before--trial--for--more
 22 than--180--days.

23 (5)--Any--period--following--the--defendant's--arrest--in
 24 which--the--defendant--is--not--actually--in--custody--may--not--be
 25 included--in--the--60-day--computation.

1 **Section 6.** Section 46-7-102, MCA, is amended to read:

2 "46-7-102. **Duty of the court at initial appearance.** (1)
3 The judge shall inform the defendant:
4 (a) of the charge against him;
5 (b) of his right to counsel;
6 (c) of his right to have counsel assigned by a court of
7 record in accordance with the provisions of 46-8-101;
8 (d) that he is not required to make a statement and
9 that any statement made by him may be offered in evidence at
10 his trial.

11 (2) The judge shall admit the defendant to bail or
12 other release in accordance with the provisions of this
13 title."

14 **Section 7.** Section 46-9-111, MCA, is amended to read:

15 "46-9-111. **Release** Conditions for release on own
16 personal recognizance. (1) Any A person in custody, if
17 otherwise eligible for bail, may be released on his personal
18 recognizance subject to such conditions as the court may
19 reasonably prescribe to assure his appearance when required.
20 Any A person released as herein provided shall in this
21 section must be fully apprised by the court of the penalty
22 provided for failure to comply with the terms of his
23 recognizance.

24 (2) Release on personal recognizance under subsection
25 (1) may include but is not limited to one or more of the

1 following conditions:

2 (a) release of the defendant into the care of a
3 qualified person or organization responsible for supervising
4 the defendant and assisting the defendant to appear in
5 court. The supervising person or organization is not
6 financially responsible for the defendant and may not be
7 required to forfeit money if the defendant fails to appear
8 in court. However, the supervising person or organization
9 shall notify the court immediately if the defendant breaches
10 the conditions of the release.

11 (b) reasonable regulations on the activities,
12 movements, associations, and residence of the defendant,
13 including, if the court finds it appropriate, restriction of
14 the defendant to the defendant's own residence or to the
15 premises of the residence;

16 (c) release of the defendant from custody during work
17 hours; or

18 (d) any other reasonable restriction designed to ensure
19 the defendant's court appearance."

20 **NEW SECTION. Section 8. Codification instruction.**

21 [Sections 1 through 6] are intended to be codified as an
22 integral part of Title 46, chapter 9, and the provisions of
23 Title 46 apply to [sections 1 through 6 5].

24 **NEW SECTION. Section 9. Severability.** If a part of
25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this
2 act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are
4 severable from the invalid applications.

5 NEW SECTION. **Section 10.** Applicability. [This act]
6 applies to proceedings begun after [the effective date of
7 this act].

-End-