

HOUSE BILL NO. 468

Introduced: 01/24/83

Referred to Committee on Judiciary: 01/24/83

Hearing: 2/4/83

Report: 02/11/83, Do Pass, As Amended

2nd Reading: 02/14/83, Do Not Pass

Bill Killed

1 House BILL NO. 468
 2 INTRODUCED BY Swift, Phyllis, Darnall, Staher
 3 Fisher, Seifert
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SPEED THE PROCESS OF
 5 FINAL CRIMINAL CONVICTIONS BY REQUIRING THE DISMISSAL OF
 6 FELONY CHARGES NOT PROSECUTED IN A TIMELY MANNER, BY
 7 REDUCING THE TIME REQUIRED FOR CERTAIN ACTS TO BE TAKEN IN
 8 CRIMINAL APPEALS, BY SETTING A LIMIT OF 70 DAYS ON
 9 EXTENSIONS GRANTED BY THE SUPREME COURT, BY REQUIRING
 10 SANCTIONS TO BE IMPOSED BY THE SUPREME COURT WHEN A PARTY
 11 FAILS TO MEET A PROCEDURAL DEADLINE; AND BY ELIMINATING
 12 EXCEPTIONS TO THE WAIVER OF ISSUES NOT RAISED IN PETITIONS
 13 FOR POSTCONVICTION RELIEF; AMENDING SECTIONS 46-13-201,
 14 46-20-311, 46-20-312, 46-20-405, AND 46-21-105, MCA."
 15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Section 1. Section 46-13-201, MCA, is amended to read:
 18 "46-13-201. Dismissal at instance of court or
 19 prosecution. (1) The court may, either on its own motion or
 20 upon the application of the attorney prosecuting and in
 21 furtherance of justice, order an action, complaint,
 22 information, or indictment to be dismissed. The reasons of
 23 the dismissal must be set forth in an order entered upon the
 24 minutes.
 25 (2) The court, unless good cause to the contrary is

1 shown, must order the prosecution to be dismissed if a
 2 defendant whose trial has not been postponed upon his
 3 application is not brought to trial within 6 months after
 4 entry of plea upon a complaint, information, or indictment
 5 charging a misdemeanor and within 200 days after entry of
 6 plea upon a complaint, information, or indictment charging a
 7 felony.

8 (3) An order for the dismissal of an action as
 9 provided in this chapter is a bar to any other prosecution
 10 for the same offense if it is a misdemeanor, but it is not a
 11 bar if the offense is a felony."

12 Section 2. Section 46-20-311, MCA, is amended to read:
 13 "46-20-311. Transmission of the record. (1) The record
 14 on appeal, including the transcript necessary for the
 15 determination of the appeal, shall be transmitted to the
 16 supreme court within ~~40~~ 20 days after the filing of the
 17 notice of appeal unless the time is shortened or extended by
 18 an order entered under 46-20-312 or 46-20-313. Promptly
 19 after filing the notice of appeal, the appellant shall
 20 comply with the provisions of 46-20-302 and shall take any
 21 other action necessary to enable the clerk to assemble and
 22 transmit the record. If more than one appeal is filed, each
 23 appellant shall comply with the provisions of 46-20-302 and
 24 this subsection and a single record shall be transmitted
 25 within ~~40~~ 20 days after the filing of the final notice of

1 appeal.

2 (2) When the record is complete for purposes of the
3 appeal, the clerk of the district court shall transmit it to
4 the clerk of the supreme court. The clerk shall number the
5 documents comprising the record and shall transmit with the
6 record a numbered list of the documents, identifying each
7 with reasonable definiteness. Documents in bulky containers
8 and physical exhibits other than documents shall not be
9 transmitted by the clerk unless he is directed to do so by a
10 party or by the clerk of the supreme court. A party must
11 make advance arrangements with the clerk of the district
12 court for the transportation of bulky or weighty exhibits
13 and with the clerk of the supreme court for their receipt.
14 Transmission of the record is effected when the clerk of the
15 district court mails or otherwise forwards the record to the
16 supreme court. The clerk of the district court shall
17 indicate by endorsement on the face of the record or
18 otherwise the date upon which it is transmitted to the
19 supreme court."

20 Section 3. Section 46-20-312, MCA, is amended to read:

21 "46-20-312. Extension of time for transmission of
22 record. (1) The district court may extend the time for
23 transmitting the record. The request for extension must be
24 made within the time originally prescribed or within an
25 extension previously granted, and the district court shall

1 not extend the time to a day more than 90 10 days from the
2 date of filing of the first notice of appeal.

3 (2) If the district court is without authority to
4 grant the relief sought or has denied a request therefor,
5 the supreme court may on motion extend the time for
6 transmitting the record or may permit the record to be
7 transmitted and filed after the expiration of the time
8 allowed or fixed.

9 (3) A motion for an extension of time for transmitting
10 the record made in either court shall show that the
11 inability of the appellant to cause timely transmission of
12 the record is due to causes beyond his control or to
13 circumstances which may be deemed excusable neglect. If a
14 request for an extension of time for transmitting the record
15 has been previously denied, the motion shall set forth the
16 denial and shall state the reasons therefor, if any were
17 given."

18 Section 4. Section 46-20-405, MCA, is amended to read:

19 "46-20-405. Filing and service of briefs. (1) The
20 appellant shall serve and file his brief within 30 20 days
21 after the date on which the record is filed. The respondent
22 shall serve and file his brief within 30 20 days after
23 service of the brief of the appellant. The appellant may
24 serve and file a reply brief within 14 days after service of
25 the brief of the respondent, but except for good cause

1 shown, a reply brief must be served and filed at least 3
2 days before argument.

3 (2) Six copies of each brief shall be filed with the
4 clerk of the supreme court unless otherwise ordered by the
5 court, and one copy of each brief shall be served on counsel
6 for each party separately represented. The clerk will not
7 accept a brief for filing unless it is accompanied by
8 acknowledgment or proof of service as required by 46-20-502.

9 (3) If an appellant fails to file his brief within the
10 time provided by this section or within the time extended, a
11 respondent may move for dismissal of the appeal. If a
12 respondent fails to file his brief, he will not be heard at
13 oral argument except by permission of the court."

14 NEW SECTION. Section 5. Maximum period for extension.
15 No order may be made by the supreme court granting an
16 extension of more than 70 days for any act required by this
17 chapter to be done before the supreme court for which
18 extensions of time may be granted by the supreme court.

19 NEW SECTION. Section 6. Failure to meet deadline --
20 sanctions. If a party fails to do an act required by this
21 chapter to be done within a specified period of time or time
22 extended, the supreme court shall take appropriate action in
23 response to that failure, including dismissal of the case.

24 Section 7. Section 46-21-105, MCA, is amended to read:
25 "46-21-105. What grounds for relief waived if not

1 raised. All grounds for relief claimed by a petitioner under
2 this chapter must be raised in his original or amended
3 petition. Any grounds not so raised are waived ~~unless--the~~
4 ~~court--on--hearing--a--subsequent-petition--finds--grounds--for~~
5 ~~relief--asserted--therein--which--could--not--reasonably--have--been~~
6 ~~raised--in--the--original--or--amended--petition.~~ When a
7 petitioner has been afforded a direct appeal of his
8 conviction, grounds for relief that could reasonably have
9 been raised on direct appeal may not be raised in his
10 original or amended petition."

11 NEW SECTION. Section 8. Codification instruction.
12 Sections 5 and 6 are intended to be codified as an integral
13 part of Title 46, chapter 20, and the provisions of Title
14 46, chapter 20, apply to sections 5 and 6.

-End-

STATE OF MONTANA

REQUEST NO. 241-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 468 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

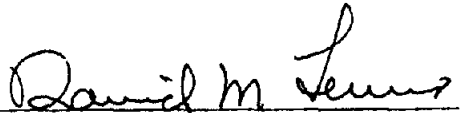
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 468 is an act to speed the process of final criminal convictions by requiring the dismissal of felony charges not prosecuted in a timely manner, by reducing the time required for certain acts to be taken in criminal appeals, by setting a limit of 70 days on extensions granted by the Supreme Court when a party fails to meet a procedural deadline and by eliminating exceptions to the waiver of issues not raised in petitions for postconviction relief and amends Sections 46-13-201, 46-20-311, 46-20-312, 46-20-405 and 46-21-105, MCA.

COMMENTS:

No dollar estimate can be made for House Bill 468. The fiscal impact would be at the local or county level where public funds are expended for court appointed counsel and court costs in felony cases. While most cases would not be affected by the limitation provisions in this bill, the few cases per year that are would probably result in a substantial savings in those costs to counties.

FISCAL NOTE 9:B/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

Approved by Committee
on Judiciary

HOUSE BILL NO. 468

INTRODUCED BY SWIFT, PHILLIPS, HANNAH,

STOBIE, FAGG, SEIFERT

A BILL FOR AN ACT ENTITLED: "AN ACT TO SPEED THE PROCESS OF FINAL CRIMINAL CONVICTIONS BY REQUIRING THE DISMISSAL OF FELONY CHARGES NOT PROSECUTED IN A TIMELY MANNER, BY REDUCING THE TIME REQUIRED FOR CERTAIN ACTS TO BE TAKEN AMOUNT OF TIME BY WHICH THE TIME PERIOD FOR TRANSMISSION OF THE RECORD MAY BE EXTENDED IN CRIMINAL APPEALS, BY SETTING A LIMIT OF 70 DAYS ON EXTENSIONS GRANTED BY THE SUPREME COURT, AND BY REQUIRING PROVIDING THAT SANCTIONS TO BE IMPOSED BY THE SUPREME COURT WHEN A PARTY FAILS TO MEET A PROCEDURAL DEADLINE; AND BY ELIMINATING EXCEPTIONS TO THE WAIVER OF ISSUES NOT RAISED IN PETITIONS FOR POSTCONVICTION RELIEF; AMENDING SECTIONS 46-13-201, 46-20-311, AND 46-20-312, 46-20-405, AND 46-21-105, MCA."

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

Section 1. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of

the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor and within 200 days after entry of plea upon a complaint, information, or indictment charging a felony.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony."

~~Section 2. Section 46-20-311, MCA, is amended to read:~~

~~"46-20-311. Transmission of the records. (1) The record on appeal including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40-28 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under 46-20-312 or 46-20-313. Promptly after filing the notice of appeal, the appellant shall comply with the provisions of 46-20-302 and shall take any other action necessary to enable the clerk to assemble and transmit the records if more than one appeal is filed, each~~

~~appellant shall comply with the provisions of 46-20-382--and
this subsection--and--a--single record shall be transmitted
within 40--20--days after the filing of the--final--notice--of
appeal.~~

~~(2)--When--the--record--is--complete--for--purposes--of--the
appeal--the--clerk--of--the--district--court--shall--transmit--it--to
the--clerk--of--the--supreme--court--The--clerk--shall--number--the
documents--comprising--the--record--and--shall--transmit--with--the
record--a--numbered--list--of--the--documents--identifying--each
with--reasonable--definiteness--Documents--in--bulky--containers
and--physical--exhibits--other--than--documents--shall--not--be
transmitted--by--the--clerk--unless--he--is--directed--to--do--so--by--a
party--or--by--the--clerk--of--the--supreme--court--A--party--must
make--advance--arrangements--with--the--clerk--of--the--district
court--for--the--transportation--of--bulky--or--weighty--exhibits
and--with--the--clerk--of--the--supreme--court--for--their--receipt
Transmission--of--the--record--is--effected--when--the--clerk--of--the
district--court--mails--or--otherwise--forwards--the--record--to--the
supreme--court--The--clerk--of--the--district--court--shall
indicate--by--endorsement--on--the--face--of--the--record--or
otherwise--the--date--upon--which--it--is--transmitted--to--the
supreme--court--"~~

Section 2. Section 46-20-312, MCA, is amended to read:

"46-20-312. Extension of time for transmission of record. (1) The district court may extend the time for

transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 10 days from the date of filing of the first notice of appeal.

(2) If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed.

(3) A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given."

Section 4--Section 46-20-405--MCA--is--amended--to--read--

"46-20-405--Filing--and--service--of--briefs--(1)--The
appellant--shall--serve--and--file--his--brief--within--30--20--days
after--the--date--on--which--the--record--is--filed--The--respondent
shall--serve--and--file--his--brief--within--30--20--days--after

~~service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent but except for good cause shown, a reply brief must be served and filed at least 3 days before arguments.~~

~~(2) Six copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by 46-20-502.~~

~~(3) If an appellant fails to file his brief within the time provided by this section or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.~~

NEW SECTION. Section 3. Maximum period for extension. No order may be made by the supreme court granting an extension of more than 70 days for any act required by this chapter to be done before the supreme court for which extensions of time may be granted by the supreme court.

NEW SECTION. Section 4. Failure to meet deadline -- sanctions. If a party fails to do an act required by this chapter to be done within a specified period of time or time extended, the supreme court shall **MAY** take appropriate

action in response to that failure, including dismissal of the case.

~~Section 7. Section 46-21-105, MCA, is amended to read: "46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition."~~

NEW SECTION. Section 5. Codification instruction. Sections 5-and-6 3 AND 4 are intended to be codified as an integral part of Title 46, chapter 20, and the provisions of Title 46, chapter 20, apply to sections 5-and-6 3 AND 4.

-End-