

SENATE BILL NO. 290

INTRODUCED BY DANIELS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

January 31, 1985	Introduced and referred to Committee on Judiciary.
February 12, 1985	Committee recommend bill do pass as amended. Report adopted.
February 13, 1985	Bill printed and placed on members' desks.
February 15, 1985	Second reading, do pass.
February 16, 1985	Considered correctly engrossed.
February 18, 1985	Third reading, passed. Ayes, 49; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 15, 1985	Committee recommend bill be concurred in. Report adopted.
March 19, 1985	Second reading, concurred in.
March 21, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 21, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 290  
 2 INTRODUCED BY *Smith*  
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW  
 6 GOVERNING POSTCONVICTION AND HABEAS CORPUS RELIEF; TO  
 7 PROVIDE THAT A PETITION CHALLENGING THE REVOCATION OF A  
 8 SUSPENDED OR DEFERRED SENTENCE MUST BE PRESENTED AS A  
 9 PETITION FOR POSTCONVICTION RELIEF; AMENDING SECTIONS  
 10 46-21-101 AND 46-22-101, MCA; AND PROVIDING AN IMMEDIATE  
 11 EFFECTIVE DATE."  
 12

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

14 Section 1. Section 46-21-101, MCA, is amended to read:  
 15 "46-21-101. Circumstances in which validity of  
 16 sentence may be challenged. A person adjudged guilty of an  
 17 offense in a court of record who has no adequate remedy of  
 18 appeal and who claims that sentence was imposed in violation  
 19 of the constitution or the laws of this state or the  
 20 constitution of the United States, that the court was  
 21 without jurisdiction to impose the sentence, that a  
 22 suspended or deferred sentence was improperly revoked, or  
 23 that the sentence was in excess of the maximum authorized by  
 24 law or is otherwise subject to collateral attack upon any  
 25 ground of alleged error available under a writ of habeas

1 corpus, writ of coram nobis, or other common law or  
 2 statutory remedy may petition the court which imposed the  
 3 sentence or the supreme court to vacate, set aside, or  
 4 correct the sentence or revocation order."

5 Section 2. Section 46-22-101, MCA, is amended to read:  
 6 "46-22-101. Who may prosecute writ. (1) Except as  
 7 provided in subsection (2), every person imprisoned or  
 8 otherwise restrained of his liberty within this state may  
 9 prosecute a writ of habeas corpus to inquire into the cause  
 10 of such imprisonment or restraint and, if illegal, to be  
 11 delivered therefrom.

12 (2) Relief under this chapter is not available to  
 13 attack the validity of the conviction or sentence of a  
 14 person who has been adjudged guilty of an offense in a court  
 15 of record and has exhausted his remedy of appeal; nor is  
 16 relief under this chapter available to attack the legality  
 17 of an order revoking a suspended or deferred sentence.  
 18 Relief for such purposes is limited to the provisions of  
 19 Title 46, chapter 21."

20 NEW SECTION. Section 3. Effective date. This act is  
 21 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 SENATE BILL NO. 290  
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3 BY REQUEST OF THE DEPARTMENT OF JUSTICE  
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6 GOVERNING POSTCONVICTION AND HABEAS CORPUS RELIEF; TO  
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8 SUSPENDED OR DEFERRED SENTENCE MUST BE PRESENTED AS A  
9 PETITION FOR POSTCONVICTION RELIEF; AMENDING SECTIONS  
10 46-21-101 AND 46-22-101, MCA, ~~AND PROVIDING AN IMMEDIATE~~  
11 ~~EFFECTIVE-DATE.~~"

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19 of the constitution or the laws of this state or the  
20 constitution of the United States, that the court was  
21 without jurisdiction to impose the sentence, that a  
22 suspended or deferred sentence was improperly revoked, or  
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24 law or is otherwise subject to collateral attack upon any  
25 ground of alleged error available under a writ of habeas

1 corpus, writ of coram nobis, or other common law or  
2 statutory remedy may petition the court which imposed the  
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14 person who has been adjudged guilty of an offense in a court  
15 of record and has exhausted his remedy of appeal; nor is  
16 relief under this chapter available to attack the legality  
17 of an order revoking a suspended or deferred sentence.  
18 Relief for such purposes is limited to the provisions of  
19 Title 46, chapter 21."

20 ~~NEW-SECTION-Section-3-Effective-date-This-act-is~~  
21 ~~effective-on-passage-and-approval-~~

-End-



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 6   GOVERNING POSTCONVICTION AND HABEAS CORPUS RELIEF; TO  
 7   PROVIDE THAT A PETITION CHALLENGING THE REVOCATION OF A  
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 9   PETITION FOR POSTCONVICTION RELIEF; AMENDING SECTIONS  
 10  46-21-101 AND 46-22-101, MCA; ~~AND PROVIDING AN IMMEDIATE~~  
 11 ~~EFFECTIVE DATE.~~"

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14       Section 1. Section 46-21-101, MCA, is amended to read:  
 15       "46-21-101. Circumstances in which validity of  
 16   sentence may be challenged. A person adjudged guilty of an  
 17   offense in a court of record who has no adequate remedy of  
 18   appeal and who claims that sentence was imposed in violation  
 19   of the constitution or the laws of this state or the  
 20   constitution of the United States, that the court was  
 21   without jurisdiction to impose the sentence, that a  
 22   suspended or deferred sentence was improperly revoked, or  
 23   that the sentence was in excess of the maximum authorized by  
 24   law or is otherwise subject to collateral attack upon any  
 25   ground of alleged error available under a writ of habeas

1   corpus, writ of coram nobis, or other common law or  
 2   statutory remedy may petition the court which imposed the  
 3   sentence or the supreme court to vacate, set aside, or  
 4   correct the sentence or revocation order."

5       Section 2. Section 46-22-101, MCA, is amended to read:  
 6       "46-22-101. Who may prosecute writ. (1) Except as  
 7   provided in subsection (2), every person imprisoned or  
 8   otherwise restrained of his liberty within this state may  
 9   prosecute a writ of habeas corpus to inquire into the cause  
 10  of such imprisonment or restraint and, if illegal, to be  
 11  delivered therefrom.

12       (2) Relief under this chapter is not available to  
 13   attack the validity of the conviction or sentence of a  
 14   person who has been adjudged guilty of an offense in a court  
 15   of record and has exhausted his remedy of appeal; nor is  
 16   relief under this chapter available to attack the legality  
 17   of an order revoking a suspended or deferred sentence.  
 18   Relief for such purposes is limited to the provisions of  
 19   Title 46, chapter 21."

20       ~~NEW SECTION:--Section-3--Effective--date--This-act-is~~  
 21   ~~effective-on-passage-and-approval:~~

-End-



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A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW GOVERNING POSTCONVICTION AND HABEAS CORPUS RELIEF; TO PROVIDE THAT A PETITION CHALLENGING THE REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE MUST BE PRESENTED AS A PETITION FOR POSTCONVICTION RELIEF; AMENDING SECTIONS 46-21-101 AND 46-22-101, MCA;--AND-PROVIDING-AN-IMMEDIATE EFFECTIVE-DATE."

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

Section 1. Section 46-21-101, MCA, is amended to read:

"46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas

corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order."

Section 2. Section 46-22-101, MCA, is amended to read:

"46-22-101. Who may prosecute writ. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal; nor is relief under this chapter available to attack the legality of an order revoking a suspended or deferred sentence. Relief for such purposes is limited to the provisions of Title 46, chapter 21."

~~NEW-SECTION;--Section-3;--Effective--date;--This-act-is effective-on-passage-and-approval;~~

-End-

