

1 HOUSE BILL NO. 127

2 INTRODUCED BY J. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING STANDARDS ESTABLISHED FOR DEATH PENALTY
6 CASES BY THE FEDERAL ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; IMPOSING
7 A TIME LIMIT FOR THE SENTENCING HEARING IN A DEATH PENALTY CASE; GENERALLY REVISING
8 LAWS PERTAINING TO POSTCONVICTION PROCEEDINGS; PROVIDING AN APPROPRIATION; AMENDING
9 SECTIONS 46-18-102, 46-18-301, 46-21-101, 46-21-102, 46-21-105, AND 46-21-201, MCA; AND
10 PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 46-18-102, MCA, is amended to read:

15 **"46-18-102. Rendering judgment and pronouncing sentence.** (1) The judgment ~~shall~~ must be
16 rendered in open court.

17 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the
18 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ the bail bond.

19 (3) (a) ~~If~~ Except as provided in 46-18-301, if the verdict or finding is guilty, sentence ~~shall~~ must
20 be pronounced and judgment rendered within a reasonable time.

21 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons
22 for imposing the sentence."

23
24 **Section 2.** Section 46-18-301, MCA, is amended to read:

25 **"46-18-301. Hearing on imposition of death penalty.** (1) When a defendant is found guilty of or
26 pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the
27 trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine
28 the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose
29 of determining the sentence to be imposed. The hearing ~~shall~~ must be conducted before the court alone.

30 (2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered

1 within 90 days after the defendant is found guilty or pleads guilty or within 90 days after the Montana
 2 supreme court enters a final decision on appeal.

3 (b) The district court may allow not more than one extension of up to 60 days after entering
 4 findings of fact that the extension is necessary to prevent undue hardship to a party."

5
 6 **Section 3.** Section 46-21-101, MCA, is amended to read:

7 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
 8 offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was
 9 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
 10 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
 11 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
 12 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
 13 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
 14 ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

15 (2) If the sentence was imposed by a justice's, municipal, or city court, the petition may not be
 16 filed unless the petitioner has exhausted all appeal remedies provided by law. The petition must be filed
 17 with the district court in the county where the lower court is located.

18 ~~(3) If the person is in custody, the person may elect to file the petition directly with the supreme~~
 19 ~~court."~~

20
 21 **Section 4.** Section 46-21-102, MCA, is amended to read:

22 **"46-21-102. When petition may be filed.** A petition for the relief referred to in 46-21-101 may be
 23 filed at any time within ~~5 years~~ 1 year of the date of that the conviction becomes final. A conviction
 24 becomes final for purposes of this chapter when:

25 (1) the time for appeal to the Montana supreme court expires;

26 (2) if an appeal is taken to the Montana supreme court, the time for petitioning the United States
 27 supreme court for review expires; or

28 (3) if review is sought in the United States supreme court, on the date that that court issues its final
 29 order in the case."

30

1 **Section 5.** Section 46-21-105, MCA, is amended to read:

2 **"46-21-105. Amendment of petition -- waiver of grounds for relief.** (1) (a) All grounds for relief
 3 claimed by a petitioner under 46-21-101 must be raised in the original or amended original petition. The
 4 original petition may be amended only once. At the request of the state or on its own motion, the court
 5 shall set a deadline for the filing of ~~the an~~ amended original petition. If a hearing will be held, the deadline
 6 must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the
 7 hearing.

8 ~~(b) These grounds for relief not raised in the original or amended petition are waived unless the~~
 9 ~~court on hearing a subsequent petition finds~~ The court shall dismiss a second or subsequent petition by a
 10 person who has filed an original petition unless the second or subsequent petition raises grounds for relief
 11 that could not reasonably have been raised in the original or an amended original petition.

12 (2) When a petitioner has been afforded a direct appeal of the petitioner's conviction, grounds for
 13 relief that could reasonably have been raised on direct appeal may not be raised in the original or an
 14 amended original petition or in a second or subsequent petition. Ineffectiveness or incompetence of counsel
 15 in proceedings on an original or an amended original petition under this part may not be raised in a second
 16 or subsequent petition under this part."

17
 18 **Section 6.** Section 46-21-201, MCA, is amended to read:

19 **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the
 20 case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition
 21 to be served upon the county attorney in the county in which the conviction took place and upon the
 22 attorney general and order them to file a responsive pleading to the petition. Following its review of the
 23 responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for
 24 relief or it may ~~grant a prompt hearing on the petition, proceed to determine the issue, and make findings~~
 25 ~~of fact and conclusions with respect to the petition.~~

26 (b) If the death sentence has been imposed, upon receipt of the response or responses to the
 27 petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution
 28 of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if
 29 there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the
 30 decision is not issued during that period, a party may petition the supreme court for a writ of mandate or

1 other appropriate writ or relief to compel the issuance of a decision.

2 (c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of
3 procedure governing civil proceedings apply to the proceeding.

4 (2) If the death sentence has not been imposed and a hearing is required or if the interests of
5 justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel
6 under Title 46, chapter 8, part 1.

7 (3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final,
8 the sentencing court shall notify the sentenced person that if the person is indigent and wishes to file a
9 petition under this chapter, the court will appoint counsel who meets the Montana supreme court's
10 standards for competency of appointed counsel in proceedings under this chapter for an indigent person
11 sentenced to death.

12 (b) Within 75 days after a conviction for which a death sentence was imposed upon a person who
13 wishes to file a petition under this chapter becomes final, the sentencing court shall:

14 (i) appoint counsel to represent the person if the court finds that the person is indigent and either
15 has accepted the offer of appointment or is unable to competently decide whether to accept the offer of
16 appointed counsel;

17 (ii) if the offer is rejected by a person who understands the legal consequences of the rejection,
18 enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the
19 person rejected the offer with an understanding of the legal consequences of the rejection; or

20 (iii) if the court finds that the petitioner is not indigent, deny appointment of counsel.

21 (c) The court may not appoint counsel who has previously represented the person at any stage in
22 the case unless the person and the counsel expressly agree to the appointment.

23 (d) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

24 ~~(3)~~(4) The court, for good cause, may grant leave to either party to use the discovery procedures
25 available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the
26 manner that the court has ordered or to which the parties have agreed.

27 ~~(4)~~(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In
28 its discretion, the court may order the petitioner brought before the court for the hearing.

29 ~~(5)~~(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect
30 to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment,

1 retrial, custody, bail, or discharge ~~as~~ that may be necessary and proper. If the court finds for the
2 prosecution, the petition must be dismissed."

3
4 **NEW SECTION. Section 7. Attorney general petition to supreme court for competency standards.**

5 Within 60 days after [the effective date of this act], the attorney general shall, in compliance with 28
6 U.S.C. 2261, petition the supreme court for a court order establishing standards for competency of counsel
7 appointed to represent indigent persons in proceedings under Title 46, chapter 21, who are sentenced to
8 death. The court may hold appropriate proceedings on the petition, appoint a commission to advise it on
9 competency standards, and adopt standards.

10
11 **NEW SECTION. Section 8. Appropriation.** There is appropriated \$234,000 from the general fund
12 to the department of justice for the biennium ending June 30, 1999, to implement [this act].

13
14 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
16 applications, the part remains in effect in all valid applications that are severable from the invalid
17 applications.

18
19 **NEW SECTION. Section 10. Applicability.** (1) Except as provided in subsection (2), [sections 3
20 through 6] apply to proceedings in which the conviction becomes final:

21 (a) after [the effective date of this act]; or

22 (b) during the 12 months prior to the [effective date of this act] if a petition under Title 46, chapter
23 21, is filed within the 12 months after [the effective date of this act].

24 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
25 meet supreme court standards for counsel applies to petitions for postconviction relief filed after [the
26 effective date of standards adopted under section 7].

27
28 **NEW SECTION. Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act]
29 is effective on passage and approval.

30 (2) The provision in [section 6] that the notification must state that counsel to be appointed will

1 meet supreme court standards for counsel is effective on [the effective date of standards adopted under
2 section 7].

3 -END-