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House BILL NO. 222

INTRODUCED BY Anderson M-Taylor
Mercer Henry Epp HARP

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

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

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

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

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

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

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

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

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

(2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered within 90 days after the defendant is found guilty or pleads guilty or within 90 days after the Montana



1 supreme court enters a final decision on appeal.

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

4
 5 **Section 3.** Section 46-21-101, MCA, is amended to read:

6 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
 7 offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was
 8 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
 9 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
 10 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
 11 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
 12 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
 13 ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

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

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

19
 20 **Section 4.** Section 46-21-102, MCA, is amended to read:

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

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

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

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

29
 30 **Section 5.** Section 46-21-105, MCA, is amended to read:

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

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

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

16
 17 **Section 6.** Section 46-21-201, MCA, is amended to read:

18 **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the
 19 case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition
 20 to be served upon the county attorney in the county in which the conviction took place and upon the
 21 attorney general and order them to file a responsive pleading to the petition. Following its review of the
 22 responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for
 23 relief or it may ~~grant a prompt hearing on the petition,~~ proceed to determine the issue, ~~and make findings~~
 24 ~~of fact and conclusions with respect to the petition.~~

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

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

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

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

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

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

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

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

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

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

23 ~~(3)~~(4) The court, for good cause, may grant leave to either party to use the discovery procedures
24 available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the
25 manner that the court has ordered or to which the parties have agreed.

26 ~~(4)~~(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In
27 its discretion, the court may order the petitioner brought before the court for the hearing.

28 ~~(5)~~(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect
29 to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment,
30 retrial, custody, bail, or discharge ~~as~~ that may be necessary and proper. If the court finds for the

1 prosecution, the petition must be dismissed."
2

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

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

10 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
12 applications, the part remains in effect in all valid applications that are severable from the invalid
13 applications.
14

15 **NEW SECTION. Section 9. Applicability.** (1) Except as provided in subsection (2), [sections 3
16 through 6] apply to proceedings in which the conviction becomes final:

- 17 (a) after [the effective date of this section]; or
18 (b) during the 12 months prior to the [effective date of this section] if a petition under Title 46,
19 chapter 21, is filed within the 12 months after [the effective date of this section].

20 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
21 meet supreme court standards for counsel applies to petitions for postconviction relief filed after [the
22 effective date of standards adopted under section 7].
23

24 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act]
25 is effective on passage and approval.

26 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
27 meet supreme court standards for counsel is effective on [the effective date of standards adopted under
28 section 7].
29

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0222, as introduced


DESCRIPTION OF PROPOSED LEGISLATION:

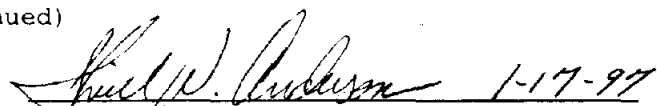
HB222 adopts standards established for death penalty cases by the federal Antiterrorism and Effective Death Penalty Act of 1996, requires appointment of counsel in post-conviction cases where a death sentence has been imposed; requires the Attorney General to petition the Montana Supreme Court for adoption of competency standards for appointed counsel in such cases; imposes time deadlines for sentencing hearings in death penalty cases; imposes time limits for filing post-conviction petitions and clarifies that second or successive petitions will not be allowed.

ASSUMPTIONS:

1. The Department of Justice (DOJ) Legal Services Division handles all criminal cases on direct appeal to the Montana Supreme Court and in federal court when a convicted person petitions for federal review of the person's conviction or sentence.
2. The case load of new appeal filings in the Appellate Legal Services Bureau increased by more than 60 percent between 1995 and 1996. The Appellate Bureau also opened 70 new post-conviction and habeas corpus case files in calendar year 1996, compared with 36 such filings in 1995 and 56 in 1994. These are cases in which direct appeals to the Montana Supreme Court have already occurred, and the offender seeks further review of the case through the state post-conviction relief statutes or the federal habeas corpus statute.
3. There are currently eight death penalty cases now in various stages of litigation. Death penalty cases are generally long-term cases that require a significantly greater investment of attorney time to process. Appellate attorneys on the Attorney General's staff devoted approximately 1,200 hours to work on death penalty cases in calendar year 1994. From April 1 to May 12, 1995, three attorneys on the appellate staff spent 739 hours on one death penalty case as it approached the final execution date.
4. Under current law the courts control the time lines for completing work on appeals, post-conviction petitions, and habeas corpus petitions. Time periods for completing various stages are set by court rule, but courts retain the discretion to grant extensions of time deadlines. The increase in the case load of appeals and post-conviction and habeas corpus matters in the Appellate Legal Services Bureau has required that the state's attorneys ask for frequent extensions of time deadlines.
5. By adopting the federal standards intended to reduce delay in death penalty cases, the State of Montana will be obligated to meet the new stringent time deadlines for death penalty cases in federal court, which require a petition to be filed within 180 days after state proceedings have concluded and require a final decision by the federal court within 180 days after the petition is filed. The federal law gives the parties only 120 days to complete all actions, including the preparation of all pleadings and briefs and a hearing if necessary.
6. To meet the strict time demands of the legislation, the DOJ would add one attorney (grade 19 at market - \$58,534) and a legal secretary (grade 10 - \$23,596) to the appellate program in October of 1997 and a second attorney (grade 18 - 44,147) in July of 1998 if workload would support a second position. In fiscal 1998, the salaries above are reduced to be at 75 percent due to the October start date.
7. Operating costs are estimated at \$14,615 in fiscal 1998 and \$29,380 in fiscal 1999 (the increase in fiscal 1999 is due to increased travel, communications and computer network charges). Equipment is estimated at \$5,750 in fiscal 1998 and \$2,875 in fiscal 1999 for computers and office equipment.
8. Because the legislation applies to postconviction proceedings, the bill has no fiscal impact to the Department of Corrections.

(Continued)


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


SHIELL ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0222, as introduced

HB 222

FISCAL IMPACT:

<u>Department of Justice:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	1.50	3.00
Personal Services	61,598	126,277
Operating Expenses	14,615	29,380
Equipment	<u>5,750</u>	<u>2,875</u>
Total	81,963	158,532
<u>Funding:</u>		
General Fund (01)	81,963	158,532
<u>Net Impact on Fund Balance:</u> (Revenue minus Expenses)		
General Fund (01)	(81,963)	(158,532)

In addition, the cost of postconviction proceedings funded from the District Court Criminal Reimbursement Program (general fund statutory appropriation) may increase. This potential increase cannot be estimated.

1 HOUSE BILL NO. 222

2 INTRODUCED BY ANDERSON, M. TAYLOR, MERCER, DEVANEY, CRIPPEN, HARP

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING STANDARDS ESTABLISHED FOR DEATH PENALTY
5 CASES BY THE FEDERAL ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; IMPOSING
6 A TIME LIMIT FOR THE SENTENCING HEARING IN A DEATH PENALTY CASE; GENERALLY REVISING
7 LAWS PERTAINING TO POSTCONVICTION PROCEEDINGS; AMENDING SECTIONS 46-18-102, 46-18-301,
8 46-21-101, 46-21-102, 46-21-105, AND 46-21-201, MCA; AND PROVIDING EFFECTIVE DATES AND
9 APPLICABILITY DATES."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12
13 **Section 1.** Section 46-18-102, MCA, is amended to read:14 "46-18-102. **Rendering judgment and pronouncing sentence.** (1) The judgment ~~shall~~ must be
15 rendered in open court.16 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the
17 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ the bail bond.18 (3) (a) ~~If~~ Except as provided in 46-18-301, if the verdict or finding is guilty, sentence ~~shall~~ must
19 be pronounced and judgment rendered within a reasonable time.20 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons
21 for imposing the sentence."22
23 **Section 2.** Section 46-18-301, MCA, is amended to read:24 "46-18-301. **Hearing on imposition of death penalty.** (1) When a defendant is found guilty of or
25 pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the
26 trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine
27 the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose
28 of determining the sentence to be imposed. The hearing ~~shall~~ must be conducted before the court alone.29 (2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered
30 within 90 days after the defendant is found guilty or pleads guilty or within 90 days after the Montana

1 supreme court enters a final decision on appeal.

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

4

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

6 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
7 offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was
8 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
9 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
10 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
11 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
12 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
13 ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

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

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

19

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

21 **"46-21-102. When petition may be filed.** A (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A
22 petition for the relief referred to in 46-21-101 may be filed at any time within ~~5 years~~ 1 year of the date
23 ~~of that~~ that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

24 ~~(1)(A)~~ the time for appeal to the Montana supreme court expires;

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

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

29 (2) A CLAIM THAT ALLEGES THE EXISTENCE OF NEWLY DISCOVERED EVIDENCE THAT, IF
30 PROVED AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE WOULD ESTABLISH THAT THE

1 PETITIONER DID NOT ENGAGE IN THE CRIMINAL CONDUCT FOR WHICH THE PETITIONER WAS
 2 CONVICTED, MAY BE RAISED IN A PETITION FILED WITHIN 1 YEAR OF THE DATE ON WHICH THE
 3 CONVICTION BECOMES FINAL OR THE DATE ON WHICH THE PETITIONER DISCOVERS, OR REASONABLY
 4 SHOULD HAVE DISCOVERED, THE EXISTENCE OF THE EVIDENCE, WHICHEVER IS LATER."

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

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

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

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

22
 23 **Section 6.** Section 46-21-201, MCA, is amended to read:

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

1 **(b) If the death sentence has been imposed, upon receipt of the response or responses to the**
2 **petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution**
3 **of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if**
4 **there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the**
5 **decision is not issued during that period, a party may petition the supreme court for a writ of mandate or**
6 **other appropriate writ or relief to compel the issuance of a decision.**

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

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

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

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

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

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

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

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

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

29 **{3}{4} The court, for good cause, may grant leave to either party to use the discovery procedures**
30 **available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the**

1 manner that the court has ordered or to which the parties have agreed.

2 ~~(4)~~(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In
3 its discretion, the court may order the petitioner brought before the court for the hearing.

4 ~~(5)~~(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect
5 to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment,
6 retrial, custody, bail, or discharge as that may be necessary and proper. If the court finds for the
7 prosecution, the petition must be dismissed."

8
9 **NEW SECTION. Section 7. Attorney general petition to supreme court for competency standards.**

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

15
16 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.

20
21 **NEW SECTION. Section 9. Applicability.** (1) Except as provided in subsection (2), [sections 3
22 through 6] apply to proceedings in which the conviction becomes final:

23 (a) after [the effective date of this section]; or

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

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

29
30 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act]

1 is effective on passage and approval.

2 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
3 meet supreme court standards for counsel is effective on [the effective date of standards adopted under
4 section 7].

5 -END-

1 HOUSE BILL NO. 222

2 INTRODUCED BY ANDERSON, M. TAYLOR, MERCER, DEVANEY, CRIPPEN, HARP

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING STANDARDS ESTABLISHED FOR DEATH PENALTY
5 CASES BY THE FEDERAL ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; IMPOSING
6 A TIME LIMIT FOR THE SENTENCING HEARING IN A DEATH PENALTY CASE; GENERALLY REVISING
7 LAWS PERTAINING TO POSTCONVICTION PROCEEDINGS; AMENDING SECTIONS 46-18-102, 46-18-301,
8 46-21-101, 46-21-102, 46-21-105, AND 46-21-201, MCA; AND PROVIDING EFFECTIVE DATES AND
9 APPLICABILITY DATES."

10

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

HOUSE BILL NO. 222

INTRODUCED BY ANDERSON, M. TAYLOR, MERCER, DEVANEY, CRIPPEN, HARP

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

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

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

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

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

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

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

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

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

(2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered within 90 120 days after the defendant is found guilty or pleads guilty or within 90 120 days after the

1 Montana supreme court enters a final decision on appeal.

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

4

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

6 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
7 offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was
8 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
9 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
10 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
11 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
12 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
13 ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

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

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

19

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

21 **"46-21-102. When petition may be filed.** A (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A
22 petition for the relief referred to in 46-21-101 may be filed at any time within 5 years 1 year of the date
23 of that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

24 ~~(1)(A)~~ the time for appeal to the Montana supreme court expires;

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

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

29 (2) A CLAIM THAT ALLEGES THE EXISTENCE OF NEWLY DISCOVERED EVIDENCE THAT, IF
30 PROVED AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE WOULD ESTABLISH THAT THE

1 PETITIONER DID NOT ENGAGE IN THE CRIMINAL CONDUCT FOR WHICH THE PETITIONER WAS
 2 CONVICTED, MAY BE RAISED IN A PETITION FILED WITHIN 1 YEAR OF THE DATE ON WHICH THE
 3 CONVICTION BECOMES FINAL OR THE DATE ON WHICH THE PETITIONER DISCOVERS, OR REASONABLY
 4 SHOULD HAVE DISCOVERED, THE EXISTENCE OF THE EVIDENCE, WHICHEVER IS LATER."

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

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

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

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

22
 23 **Section 6.** Section 46-21-201, MCA, is amended to read:

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

1 (b) If the death sentence has been imposed, upon receipt of the response or responses to the
2 petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution
3 of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if
4 there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the
5 decision is not issued during that period, a party may petition the supreme court for a writ of mandate or
6 other appropriate writ or relief to compel the issuance of a decision.

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

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

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

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

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

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

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

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

28 (D) IF A PETITIONER ENTITLED TO COUNSEL UNDER THIS SUBSECTION (3) IS NOT INDIGENT
29 AT THE TIME THAT THE COURT'S DETERMINATION IS MADE UNDER SUBSECTION (3)(B) BUT
30 THEREAFTER BECOMES INDIGENT AT ANY STAGE OF THE PROCEEDINGS, THE COURT SHALL APPOINT

1 COUNSEL AS PROVIDED IN SUBSECTION (3)(B)(I).

2 (E) THE EXPENSES OF COUNSEL APPOINTED PURSUANT TO THIS SUBSECTION (3) MUST BE
3 PAID AS PROVIDED IN 46-8-201.

4 ~~(F)~~ Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

5 ~~(4)~~ (4) The court, for good cause, may grant leave to either party to use the discovery procedures
6 available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the
7 manner that the court has ordered or to which the parties have agreed.

8 ~~(4)~~ (5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In
9 its discretion, the court may order the petitioner brought before the court for the hearing.

10 ~~(5)~~ (6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect
11 to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment,
12 retrial, custody, bail, or discharge ~~as~~ that may be necessary and proper. If the court finds for the
13 prosecution, the petition must be dismissed."

14

15 NEW SECTION. Section 7. Attorney general petition to supreme court for competency standards.

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

21

22 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
24 applications, the part remains in effect in all valid applications that are severable from the invalid
25 applications.

26

27 NEW SECTION. Section 9. Applicability. (1) Except as provided in subsection (2), [sections 3
28 through 6] apply to proceedings in which the conviction becomes final:

29 (a) after [the effective date of this section]; or

30 (b) during the 12 months prior to the [effective date of this section] if a petition under Title 46,

1 chapter 21, is filed within the 12 months after [the effective date of this section].

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

5

6 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act]
7 is effective on passage and approval.

8 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
9 meet supreme court standards for counsel is effective on [the effective date of standards adopted under
10 section 7].

11

-END-

HOUSE BILL NO. 222

INTRODUCED BY ANDERSON, M. TAYLOR, MERCER, DEVANEY, CRIPPEN, HARP

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

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

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

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

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

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

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

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

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

(2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered within ~~90~~ 120 days after the defendant is found guilty or pleads guilty or within ~~90~~ 120 days after the

1 Montana supreme court enters a final decision on appeal.

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

4

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

6 **"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an
 7 offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was
 8 imposed in violation of the constitution or the laws of this state or the constitution of the United States,
 9 that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was
 10 improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise
 11 subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ
 12 of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence
 13 ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

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

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

19

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

21 **"46-21-102. When petition may be filed.** A (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A
 22 petition for the relief referred to in 46-21-101 may be filed at any time within ~~5 years~~ 1 year of the date
 23 ~~of~~ that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

24 ~~(1)(A)~~ the time for appeal to the Montana supreme court expires;

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

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

29 (2) A CLAIM THAT ALLEGES THE EXISTENCE OF NEWLY DISCOVERED EVIDENCE THAT, IF
 30 PROVED AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE WOULD ESTABLISH THAT THE

1 PETITIONER DID NOT ENGAGE IN THE CRIMINAL CONDUCT FOR WHICH THE PETITIONER WAS
 2 CONVICTED, MAY BE RAISED IN A PETITION FILED WITHIN 1 YEAR OF THE DATE ON WHICH THE
 3 CONVICTION BECOMES FINAL OR THE DATE ON WHICH THE PETITIONER DISCOVERS, OR REASONABLY
 4 SHOULD HAVE DISCOVERED, THE EXISTENCE OF THE EVIDENCE, WHICHEVER IS LATER."

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

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

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

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

22
 23 **Section 6.** Section 46-21-201, MCA, is amended to read:

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

1 (b) If the death sentence has been imposed, upon receipt of the response or responses to the
2 petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution
3 of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if
4 there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the
5 decision is not issued during that period, a party may petition the supreme court for a writ of mandate or
6 other appropriate writ or relief to compel the issuance of a decision.

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

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

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

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

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

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

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

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

28 (D) IF A PETITIONER ENTITLED TO COUNSEL UNDER THIS SUBSECTION (3) IS NOT INDIGENT
29 AT THE TIME THAT THE COURT'S DETERMINATION IS MADE UNDER SUBSECTION (3)(B) BUT
30 THEREAFTER BECOMES INDIGENT AT ANY STAGE OF THE PROCEEDINGS, THE COURT SHALL APPOINT

1 COUNSEL AS PROVIDED IN SUBSECTION (3)(B)(I).

2 (E) THE EXPENSES OF COUNSEL APPOINTED PURSUANT TO THIS SUBSECTION (3) MUST BE
3 PAID AS PROVIDED IN 46-8-201.

4 ~~(4)(F)~~ Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

5 ~~(3)(4)~~ The court, for good cause, may grant leave to either party to use the discovery procedures
6 available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the
7 manner that the court has ordered or to which the parties have agreed.

8 ~~(4)(5)~~ The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In
9 its discretion, the court may order the petitioner brought before the court for the hearing.

10 ~~(5)(6)~~ If the court finds in favor of the petitioner, it shall enter an appropriate order with respect
11 to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment,
12 retrial, custody, bail, or discharge ~~as~~ that may be necessary and proper. If the court finds for the
13 prosecution, the petition must be dismissed."

14
15 NEW SECTION. Section 7. Attorney general petition to supreme court for competency standards.

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

21
22 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
24 applications, the part remains in effect in all valid applications that are severable from the invalid
25 applications.

26
27 NEW SECTION. Section 9. Applicability. (1) Except as provided in subsection (2), [sections 3
28 through 6] apply to proceedings in which the conviction becomes final:

29 (a) after [the effective date of this section]; or

30 (b) during the 12 months prior to the [effective date of this section] if a petition under Title 46,

1 chapter 21, is filed within the 12 months after [the effective date of this section].

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

5

6 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act]
7 is effective on passage and approval.

8 (2) The provision in [section 6] that the notification must state that counsel to be appointed will
9 meet supreme court standards for counsel is effective on [the effective date of standards adopted under
10 section 7].

11

-END-