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Senate BILL NO. 216

INTRODUCED BY *Va Vatterburg*
Anderson *Cyr* *Johnson*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES; CLARIFYING THE STANDARDS FOR APPELLATE REVIEW OF A DEATH SENTENCE; CLARIFYING THE REQUIRED CONTENTS OF POSTCONVICTION RELIEF PETITIONS; CLARIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND DECIDED IN A POSTCONVICTION PROCEEDING; AMENDING SECTIONS 46-18-310, 46-21-104, AND 46-21-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of the State of Montana to provide persons accused of crimes with a fair and speedy trial and direct appellate review of legal issues fairly presented to the trial court; and

WHEREAS, the privilege of the writ of habeas corpus is preserved by Article II, section 19, of the Montana Constitution; and

WHEREAS, the Legislature has set forth in Title 46, chapter 21, MCA, procedures for protecting an offender's right to postconviction review of the judgment; and

WHEREAS, there is no federal constitutional right to a specific statutorily prescribed postconviction procedure; and

WHEREAS, it is the Legislature's intent that decisions of Montana juries and judgments of Montana trial courts in criminal cases, including death penalty cases, be respected and given finality by other reviewing courts unless errors affecting an offender's substantial rights have occurred; and

WHEREAS, amendments to Montana's postconviction relief and death penalty statutes will further the goal of finality by codifying certain interpretations of those statutes by the Montana Supreme Court and clarifying legislative intent with respect to other provisions.

THEREFORE, it is the policy of the State of Montana to prescribe and limit, consistent with constitutional safeguards of the criminal justice process, the authority of an appellate or other reviewing court to consider legal and factual issues determined by the trial or sentencing court.

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

1 **Section 1.** Section 46-18-310, MCA, is amended to read:

2 **"46-18-310. Supreme court's determination as to the sentence.** (1) The supreme court shall
3 consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence,
4 the court shall determine:

5 ~~(1)~~(a) whether the sentence of death was imposed under the influence of passion, prejudice, or any
6 other arbitrary factor;

7 ~~(2)~~(b) whether the evidence supports the judge's finding of the existence or nonexistence of the
8 aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

9 ~~(3)~~(c) whether the sentence of death is excessive or disproportionate to the penalty imposed in
10 similar other cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence
11 imposed was death or a sentence other than death, considering both the crime and the defendant. The
12 court shall include in its decision a reference to those ~~similar other~~ other cases it took into consideration.

13 (2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to
14 46-18-306 unless those findings are clearly erroneous. The supreme court may not substitute its judgment
15 for that of the sentencing court in assessing the credibility of witnesses; drawing inferences from
16 testimonial, physical, documentary, or other evidence; or resolving conflicts in the evidence presented at
17 the sentencing hearing or considered by the sentencing court."

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19 **Section 2.** Section 46-21-104, MCA, is amended to read:

20 **"46-21-104. Contents of petition.** (1) The petition for postconviction relief must:

21 (a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of
22 the final judgment complained of, and clearly set forth the alleged violation or violations;

23 (b) identify any previous proceedings that the petitioner may have taken to secure relief from ~~his~~
24 the conviction; and

25 (c) ~~have~~ identify all facts supporting the grounds for relief set forth in the petition and attached any
26 affidavits, records, or other evidence supporting its allegations or state why the evidence is not attached
27 establishing the existence of those facts.

28 (2) The petition must be accompanied by a supporting memorandum, including appropriate
29 arguments and citations and discussion of authorities."
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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0216, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising procedures for postjudgment review in criminal cases.

FISCAL IMPACT:

There is no fiscal impact to the state.

David Lewis 1.30.97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 1-31-97
FRED VAN VALKENBURG, PRIMARY SPONSOR DATE
Fiscal Note for SB0216, as introduced

SB216

APPROVED BY COM
ON JUDICIARY

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28 (2) The petition must be accompanied by a supporting memorandum, including appropriate
29 arguments and citations and discussion of authorities."
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1 **Section 3.** Section 46-21-105, MCA, is amended to read:

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

10 (2) When a petitioner has been afforded the opportunity for a direct appeal of the petitioner's
11 conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised
12 ~~in the original or amended petition, considered, or decided in a proceeding brought under this chapter.~~

13 (3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were
14 or could have been raised in support of the petitioner's claim for relief."

15

16 **NEW SECTION. Section 4. 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 5. Effective date.** [This act] is effective on passage and approval.

22

-END-

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