

## SENATE BILL NO. 172

INTRODUCED BY M. MACDONALD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING POSTCONVICTION RELIEF LAWS;  
5 REVISING THE POSTCONVICTION PETITION PROCESS AND STANDARDS OF REVIEW; REVISING WHAT  
6 CONSTITUTES NEWLY DISCOVERED EVIDENCE; PROVIDING PROTECTIONS FOR AN EXPERT WITNESS  
7 WHOSE TESTIMONY OR RESEARCH IS UNDERMINED BY LATER RESEARCH OR TECHNOLOGICAL  
8 ADVANCEMENTS; CREATING A PROCESS AND STANDARDS TO PETITION FOR RELIEF WHEN THE  
9 STATE FAILS TO TIMELY DISCLOSE FAVORABLE EVIDENCE; AMENDING SECTIONS 46-21-102 AND  
10 46-21-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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14 **Section 1.** Section 46-21-102, MCA, is amended to read:  
15 **"46-21-102. When petition may be filed.** (1) Except as provided in ~~subsection~~ subsections (2) and (3),  
16 a petition for the relief referred to in 46-21-101 may be filed at any time within 1 year of the date that the  
17 conviction becomes final. A conviction becomes final for purposes of this chapter ~~when~~:  
18 (a) when the time for appeal to the Montana supreme court expires;  
19 (b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States  
20 supreme court for review expires; or  
21 (c) if review is sought in the United States supreme court, on the date that that court issues its final order  
22 in the case.  
23 (2) (a) ~~A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light~~  
24 ~~of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which~~  
25 ~~the petitioner was convicted;~~ meets the requirements of 46-21-201(6) may be raised in a petition filed within 1  
26 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or  
27 reasonably should have discovered, the existence of the evidence, whichever is later.  
28 (b) Newly discovered evidence may include relevant forensic scientific evidence that was not available  
29 to be offered to the petitioner at the time of conviction or that undermines forensic scientific evidence presented  
30 in support of the conviction.

1 (c) In determining whether relevant forensic scientific evidence was not ascertainable on or before a  
2 specific date, the court shall consider whether the relevant forensic scientific evidence has changed:

3 (i) for a determination made with respect to an original petition, since the applicable trial date or the date  
4 of entry of plea of guilty or nolo contendere; or

5 (ii) for a determination made with respect to a second or subsequent petition, since the date on which  
6 the original petition or a previously considered petition, as applicable, was filed.

7 (d) This section does not create additional liabilities for an expert who repudiates that expert's original  
8 opinion offered at a hearing or during a trial or whose opinion has been undermined by later scientific research  
9 or technological advancements.

10 (3) A claim that alleges the state failed to timely disclose favorable evidence to the petitioner as required  
11 under the United States and Montana constitutions or state law may be raised in a petition filed within 1 year of  
12 the date on which the conviction becomes final or within 1 year of the date on which the petitioner discovers, or  
13 reasonably should have discovered, the existence of the undisclosed evidence, whichever is later. The petition  
14 must show, in light of the undisclosed evidence, that there is a reasonable probability of a different outcome at  
15 a new trial. If the petition shows the favorable evidence was intentionally or deliberately withheld, the suppression  
16 of evidence is a per se due process violation.

17 (4) This section may not be construed to provide additional evidence retention obligations for law  
18 enforcement beyond those provided in 46-5-306 through 46-5-309 or 46-21-111.

19 (5) For the purposes of this section, the following definitions apply:

20 (a) "Forensic scientific evidence" includes:

21 (i) scientific or technical knowledge;

22 (ii) a testifying forensic analyst's or expert's scientific or technical knowledge or opinion;

23 (iii) reports or testimony or both offered by an expert or forensic analyst;

24 (iv) scientific standards; or

25 (v) a scientific method or technique upon which the relevant forensic scientific evidence is based.

26 (b) "Scientific or technical knowledge" includes the knowledge of the general scientific community and  
27 all fields of scientific knowledge on which those fields or disciplines rely."

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29 **Section 2.** Section 46-21-201, MCA, is amended to read:

30 **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case

1 conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent  
2 to the county attorney in the county in which the conviction took place and to the attorney general and order that  
3 a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond  
4 to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney.  
5 Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure  
6 to state a claim for relief or it may proceed to determine the issue.

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

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

15 (2) If the death sentence has not been imposed and a hearing is required or if the interests of justice  
16 require, the court shall order the office of state public defender, provided for in 2-15-1029, to assign counsel for  
17 a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public  
18 Defender Act, Title 47, chapter 1.

19 (3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the  
20 sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and  
21 wishes to file a petition under this chapter, the court will order the office of state public defender to assign counsel  
22 who meets the Montana supreme court's standards and the office of state public defender's standards for  
23 competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

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

26 (i) order the office of state public defender to assign counsel to represent the person pending a  
27 determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that  
28 the person either has accepted the offer of assigned counsel or is unable to competently decide whether to  
29 accept the offer of assigned counsel;

30 (ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of

1 the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that  
2 the person rejected the offer with an understanding of the legal consequences of the rejection; or

3 (iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment  
4 of counsel.

5 (c) The office of state public defender may not assign counsel who has previously represented the  
6 person at any stage in the case unless the person and the counsel expressly agree to the assignment.

7 (d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but  
8 becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel  
9 as provided in subsection (3)(b)(i).

10 (e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state  
11 public defender.

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

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

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

18 (6) ~~(a) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the~~  
19 ~~judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial,~~  
20 ~~custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition~~  
21 ~~must be dismissed. If the petitioner's newly discovered evidence, when viewed in light of the evidence as a whole,~~  
22 ~~establishes a reasonable probability of a different outcome at a new trial, the court shall vacate the conviction and~~  
23 ~~order a new trial.~~

24 ~~(b) If the petitioner's newly discovered evidence, when viewed in light of the evidence as a whole,~~  
25 ~~establishes by clear and convincing evidence that the petitioner would not have been convicted, the court shall~~  
26 ~~vacate the conviction with prejudice.~~

27 ~~(7) (a) Except as provided in subsection (7)(b), if the petitioner meets the requirements of 46-21-102(3),~~  
28 ~~the court shall grant a new trial.~~

29 ~~(b) If the court determines the undisclosed evidence under 46-21-102(3) would entitle the petitioner to~~  
30 ~~the relief under subsection (6)(b), the court shall vacate the conviction with prejudice.~~

1           (8) If, after applying the applicable evidentiary standards provided in subsections (6) and (7), the court  
2 finds in favor of the petitioner, the court shall enter an appropriate order with respect to the judgment or sentence  
3 in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge  
4 that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

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6           NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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8           NEW SECTION. Section 4. Applicability. [This act] applies to a petition for postconviction relief filed  
9 on or after [the effective date of this act].

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