

SENATE BILL NO. 15  
INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A COURT IMPOSING A DEATH SENTENCE MAY ALSO IMPOSE A SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF RELEASE AND PROVIDE THAT THE DEATH SENTENCE IS TO BE EXECUTED ONLY IF THE DEFENDANT IS CONVICTED OF ANOTHER FELONY; AND AMENDING SECTIONS 46-18-305 AND 46-19-103, MCA."

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

**Section 1.** Section 46-18-305, MCA, is amended to read:

**"46-18-305. Effect of aggravating and mitigating circumstances.** (1) In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency.

(2) A court imposing a sentence of death may also sentence the defendant to life in prison without the possibility of release, under the conditions provided in 46-18-219(2)(a) through (2)(e), and provide that the sentence of death is to be executed only if the defendant is convicted of another felony.

(3) If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense."

**Section 2.** Section 46-19-103, MCA, is amended to read:

**"46-19-103. Execution of death sentence.** (1) (a) ~~in~~ Subject to subsection (1)(c), in pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the date the sentence is pronounced.

(b) If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 days or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(c) If, as allowed by 46-18-305, execution of a sentence of death is not to be carried out unless the defendant is convicted of another felony, within 30 days after the sentence for a subsequent felony has become final, the court that imposed the sentence of death shall set a date of execution of the sentence of death for not less than 20 days or more than 90 days from the day the execution date is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the Montana state prison or the Montana women's prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a coroner or deputy coroner pronounces that the defendant is dead.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or the warden's designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) (a) An execution must be performed by a person selected by the warden and trained to administer a lethal injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state.

(b) The warden shall allow the execution to be observed by no more than 12 witnesses, excluding department of corrections staff necessary to carry out the execution. The witnesses must, to the extent possible, include three persons from the news media, three persons designated by the family of the victim of the crime, three persons designated by the person to be executed, and three persons chosen by the department of corrections.

(c) A proposed witness is subject to rejection by the department of corrections if the department has reason to believe that the witness:

(i) poses a risk to the safety or security of department of corrections personnel, the other witnesses, or

other persons; or

(ii) is likely to disrupt proceedings ~~due to~~ because of the witness's emotional or mental state.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time it was executed.

(8) The rejection of a witness under subsection (6)(c) is not grounds for stay of the execution."

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