

HOUSE BILL NO. 697  
INTRODUCED BY J. JAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA DEATH PENALTY STUDY COMMISSION; PROVIDING THE POWERS AND DUTIES OF THE COMMISSION; DELAYING EXECUTION OF A DEATH SENTENCE UNTIL 60 DAYS AFTER THE COMMISSION ISSUES A REPORT OF ITS FINDINGS; PROVIDING AN APPROPRIATION; AMENDING SECTION 46-18-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Legislative findings and declarations -- definition.** (1) The legislature finds and declares that:

(a) life is the most valuable possession of a human being, so the state should exercise utmost care to protect its residents' lives from homicide, accident, or arbitrary or wrongful taking by the state;

(b) the experience of this state with the death penalty has been characterized by significant expenditures of money and time;

(c) the financial costs of attempting to implement the death penalty statutes may not be justifiable in light of the other needs of this state;

(d) there is a lack of any meaningful procedure to ensure uniform application of the death penalty in each county throughout the state;

(e) there is public concern that racial and socioeconomic factors influence the decisions to seek or impose the death penalty;

(f) there has been increasing public awareness, in Montana and in other states, of cases of individuals wrongfully convicted of murder;

(g) the legislature is troubled that the possibility of a mistake in the death penalty process may undermine public confidence in our criminal justice system;

(h) the execution of an innocent person by the state would be a grave and irreversible injustice;

(i) many Montana residents may favor life in prison without parole, or life in prison without parole with restitution to the victims, as alternatives to the death penalty; and

(j) in order for the state to protect its moral and ethical integrity, Montana shall ensure that the application

of the death penalty is impartial, uncorrupted, equitable, competent, and in line with evolving standards of decency.

(2) As used in [sections 1 through 4], "Montana death penalty study commission" or "commission" means the Montana death penalty study commission created in [section 2].

**NEW SECTION. Section 2. Montana death penalty study commission established.** (1) There is a Montana death penalty study commission.

(2) The commission is composed of 13 members, to be appointed as follows:

(a) five members appointed by the governor, all of whom shall represent the diverse ethnic and religious groups in Montana;

(b) two members appointed by the president of the senate, one of whom is a republican, and one of whom is a democrat;

(c) two members appointed by the speaker of the house, one of whom is a republican, and one of whom is a democrat;

(d) the state's chief public defender or the chief public defender's designee;

(e) the attorney general or the attorney general's designee;

(f) the president of the Montana state bar association or the president's designee; and

(g) a representative of the Montana county attorneys association, to be chosen by that association.

(3) Members of the commission must be appointed no later than July 15, 2007.

(4) The commission is allocated to the department of justice for administrative purposes, as provided in 2-15-121.

(5) The members of the commission shall serve without compensation, but must be reimbursed for necessary expenses incurred in the performance of their duties.

(6) At its first meeting, the commission shall choose a presiding officer from among its members. The commission shall meet at the call of the presiding officer or three-quarters of its members. The commission shall determine its methods of operation.

(7) A vacancy in the membership of the commission must be filled in the same manner and by the same entity as the original appointment.

(8) All agencies of state government and political subdivisions of the state shall cooperate with the commission in the execution of its business.

**NEW SECTION. Section 3. Duties of commission.** (1) The commission shall study all aspects of the death penalty as currently administered in Montana, including the following issues:

(a) whether the death penalty rationally serves a legitimate penological intent, such as deterrence;

(b) whether there is a significant difference between the cost of the death penalty from indictment to execution and the cost of life in prison without parole. In considering the overall cost of the death penalty in Montana, the cost of all the capital trials that result in life sentences as well as the death sentences that are reversed on appeal must be considered.

(c) whether the death penalty is consistent with evolving standards of decency;

(d) whether the selection of defendants in Montana for capital trials is arbitrary, unfair, or discriminatory in any way and whether there is arbitrary, unfair, or discriminatory variability at any stage of the criminal justice process;

(e) whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison;

(f) whether the penological interest in executing some of those guilty of murder is sufficiently compelling that the risk of an irreversible mistake is acceptable; and

(g) whether there are alternatives to the death penalty that would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of the families of the victims of those who receive the death penalty.

(2) The commission shall make findings and recommendations and issue a report to the governor and the legislature as provided in 5-11-210, including any recommendations for legislation that the commission believes to be necessary or appropriate.

**NEW SECTION. Section 4. Delay in execution of death sentence.** Beginning July 1, 2007, if a defendant in a criminal action or proceeding has been sentenced to death pursuant to Title 46, chapter 18, part 3, the sentence of death may not be executed prior to 60 days after the issuance of the report of the commission pursuant to [section 3].

**Section 5.** 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 must be conducted before the court alone.

(2) (a) Subject to [section 4] and subsection (2)(b) of this section, the sentence must be pronounced and judgment rendered within 120 days after the defendant is found guilty or pleads guilty or within 120 days after the Montana supreme court enters a final decision on appeal.

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

NEW SECTION. **Section 6. Appropriation.** The amount of \$60,000 is appropriated from the general fund to the department of justice, for the biennium ending June 30, 2009, for the purposes of [sections 1 through 4].

NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 9. Termination.** [This act] terminates January 1, 2009.

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