

1 HOUSE BILL NO. 713

2 INTRODUCED BY B. MERCER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROSECUTION OF
5 OFFENSES FOR WHICH DEATH IS A POSSIBLE PENALTY; REQUIRING A PROSECUTOR TO SUBMIT
6 CERTAIN MATERIALS TO THE ATTORNEY GENERAL BEFORE DECLARING AN INTENTION TO SEEK
7 THE DEATH PENALTY AS PUNISHMENT FOR AN OFFENSE; CREATING A REVIEW COMMITTEE TO
8 CONSIDER MATERIALS AND OTHER ARGUMENTS; AND REQUIRING THE ATTORNEY GENERAL TO
9 DETERMINE WHETHER THE DEATH PENALTY ~~MUST~~ MAY BE SOUGHT."

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

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13 NEW SECTION. **Section 1. Attorney general authorization required to seek death penalty --**
14 **review committee.** (1) After commencing a prosecution of an offense punishable by death and as soon as
15 practicable, a prosecutor shall submit the materials required by [section 2] to the attorney general, ~~regardless of~~
16 ~~whether if~~ the prosecutor recommends that the state seek the death penalty.

17 (2) A prosecutor shall take all necessary steps to preserve the opportunity to seek the death
18 penalty in a case for which the offense is punishable by death if the county attorney or the attorney general
19 wishes to seek the death penalty.

20 (3) A prosecutor may not seek to impose the death penalty without prior written authorization of the
21 attorney general as provided in [section 2] and this section. Nothing in [section 2] or this section requires
22 authorization by the attorney general in the early stages of a case before a prosecutor has submitted the
23 materials required by [section 2].

24 (4) (a) When the attorney general receives an authorization request and the materials required by
25 [section 2], the attorney general shall convene a review committee composed of state prosecutors, appellate
26 attorneys, and county attorneys selected at the discretion of the attorney general.

27 (b) The review committee shall offer to meet with defense counsel or to review a written
28 submission to afford the defense counsel an opportunity to present any arguments against a decision to seek

1 the death penalty. The review committee shall also offer to meet with the prosecution prosecutor to afford the
2 prosecution prosecutor an opportunity to present comments arguments in favor of the recommendation to seek
3 the death penalty.

4 (c) After consideration of all materials and arguments, the review committee shall meet with the
5 attorney general to discuss the materials submitted and whether the state should seek the death penalty.

6 (d) After meeting with the review committee and considering the submitted materials, the attorney
7 general shall determine in writing whether the death penalty must may be sought in the case.

8 (5) The attorney general may not designate to a subordinate the decision whether to authorize a
9 prosecutor to seek the death penalty.

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11 NEW SECTION. Section 2. Submission of case materials to attorney general when death a

12 possible punishment and is sought by prosecutor. (1) When an offense charged by a prosecutor is
13 punishable by death, the prosecutor shall obtain the authorization of the attorney general before declaring an
14 intention to seek the death penalty in a court filing. For any offense eligible to be punished by death, the
15 prosecutor shall submit to the attorney general the following materials:

16 (a) a death penalty evaluation for each defendant, using a form provided by the attorney general;

17 (b) a prosecution memorandum, including the analysis described in subsection (2);

18 (c) a copy of the charging document for each defendant charged;

19 (d) any written materials submitted by the defense in opposition to a decision to seek the death
20 penalty;

21 (e) background information on and the criminal record of each defendant charged;

22 (f) background information on and the criminal record of each victim;

23 (g) the views of the victim's family on seeking the death penalty and other evidence of impacts on
24 the victim or the victim's family;

25 (h) for a defendant who is not a citizen of the United States, an analysis of whether the
26 requirements of the Vienna Convention on Consular Relations have been satisfied; and

27 (i) any other documents or evidence determined appropriate and significant by the attorney
28 general.

