

1 HOUSE BILL NO. 713
2 INTRODUCED BY B. MERCER

3
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 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 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.

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

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

26 (b) The review committee shall offer to meet with defense counsel to afford the defense counsel an
27 opportunity to present any arguments against a decision to seek the death penalty. The review committee shall
28 also offer to meet with the prosecution to afford the prosecution an opportunity to present comments.

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

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

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

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8 **NEW SECTION. Section 2. Submission of case materials to attorney general when death a**
9 **possible punishment.** (1) When an offense charged by a prosecutor is punishable by death, the prosecutor
10 shall obtain the authorization of the attorney general before declaring an intention to seek the death penalty.
11 For any offense eligible to be punished by death, the prosecutor shall submit to the attorney general the
12 following materials:

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

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

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

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

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

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

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

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

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

26 (2) The prosecutor's memorandum must include:

27 (a) a narrative of the case facts and separate list of the supporting evidence;

28 (b) a discussion of the relevant prosecutorial considerations;

- 1 (c) a discussion of the state interest in charging the case, as well as seeking the death penalty.
2 This discussion must include an analysis of:
- 3 (i) any applicable aggravating circumstances pursuant to 46-18-303;
 - 4 (ii) any applicable mitigating circumstances pursuant to 46-18-304; and
 - 5 (iii) the prosecutor's conclusion on whether the aggravating circumstances sufficiently outweigh the
6 mitigating circumstances to justify a sentence of death or whether the aggravating circumstances alone are
7 sufficient to justify a sentence of death; and
- 8 (d) the prosecutor's recommendation on whether the death penalty should be sought and a
9 description of the process used by the prosecutor to arrive at that recommendation.

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11 NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified
12 as an integral part of Title 46, chapter 18, part 3, and the provisions of Title 46, chapter 18, part 3, apply to
13 [sections 1 and 2].

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