

1 *Senate* BILL NO. *149*
 2 INTRODUCED BY *Haydt*
 3 *By request Montana Board of Crime Control*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 IMPOSITION OF THE DEATH PENALTY IN CERTAIN CASES; TO PROVIDE
 6 PROCEDURES AND REQUIREMENTS FOR THE AUTHORIZATION OF SUCH
 7 PENALTY; TO PROVIDE FOR A SEPARATE SENTENCING HEARING TO
 8 DETERMINE THE EXISTENCE OR NONEXISTENCE OF AGGRAVATING OR
 9 MITIGATING CIRCUMSTANCES; TO PROVIDE THAT THE DEATH PENALTY
 10 MAY NOT BE IMPOSED UNLESS THE COURT FINDS ONE OR MORE OF THE
 11 AGGRAVATING CIRCUMSTANCES AND FINDS THAT THERE ARE NO
 12 MITIGATING CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO CALL
 13 FOR LENIENCY; TO PROVIDE THAT THE DETERMINATION OF THE COURT
 14 SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT; TO
 15 PROVIDE FOR AUTOMATIC REVIEW OF A JUDGMENT OF CONVICTION AND
 16 SENTENCE OF DEATH; AMENDING SECTIONS 94-5-102, 94-5-303,
 17 94-5-617, AND 94-5-622, R.C.M. 1947; REPEALING SECTIONS
 18 94-5-105, 94-5-304, AND 95-2206.1, R.C.M. 1947."
 19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 21 Section 1. Sentence of death — hearing on imposition
 22 of death penalty. When a defendant is found guilty of or
 23 pleads guilty to an offense for which the sentence of death
 24 may be imposed, the judge who presided at the trial or
 25 before whom the guilty plea was entered shall conduct a

1 separate sentencing hearing to determine the existence or
 2 nonexistence of the circumstances set forth in [sections 3
 3 and 4] for the purpose of determining the sentence to be
 4 imposed. The hearing shall be conducted before the court
 5 alone.
 6 Section 2. Sentencing hearing — evidence that may be
 7 received. In the sentencing hearing, evidence may be
 8 presented as to any matter the court considers relevant to
 9 the sentence, including but not limited to the nature and
 10 circumstances of the crime, the defendant's character,
 11 background, history, mental and physical condition, and any
 12 other facts in aggravation or mitigation of the penalty. Any
 13 evidence the court considers to have probative force may be
 14 received regardless of its admissibility under the rules
 15 governing admission of evidence at criminal trials. Evidence
 16 admitted at the trial relating to such aggravating or
 17 mitigating circumstances shall be considered without
 18 reintroducing it at the sentencing proceeding. The state and
 19 the defendant or his counsel shall be permitted to present
 20 argument for or against sentence of death.
 21 Section 3. Aggravating circumstances. Aggravating
 22 circumstances are any of the following:
 23 (1) The offense was deliberate homicide and was
 24 committed by a person serving a sentence of imprisonment in
 25 the state prison.

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1 (2) The offense was deliberate homicide and was
 2 committed by a defendant who had been previously convicted
 3 of another deliberate homicide.

4 (3) The offense was deliberate homicide and was
 5 committed by means of torture.

6 (4) The offense was deliberate homicide and was
 7 committed by a person lying in wait or ambush.

8 (5) The offense was deliberate homicide and was
 9 committed as a part of a scheme or operation which, if
 10 completed, would result in the death of more than one
 11 person.

12 (6) The offense was deliberate homicide and the victim
 13 was a peace officer killed while performing his duty.

14 (7) The offense was aggravated kidnaping which
 15 resulted in the death of the victim.

16 Section 4. Mitigating circumstances. Mitigating
 17 circumstances are any of the following:

18 (1) The defendant has no significant history of prior
 19 criminal activity.

20 (2) The offense was committed while the defendant was
 21 under the influence of extreme mental or emotional
 22 disturbance.

23 (3) The defendant acted under extreme duress or under
 24 the substantial domination of another person.

25 (4) The capacity of the defendant to appreciate the

1 criminality of his conduct or to conform his conduct to the
 2 requirements of law was substantially impaired.

3 (5) The victim was a participant in the defendant's
 4 conduct or consented to the act.

5 (6) The defendant was an accomplice in an offense
 6 committed by another person, and his participation was
 7 relatively minor.

8 (7) The defendant, at the time of the commission of
 9 the crime, was less than 18 years of age.

10 (8) Any other fact exists in mitigation of the
 11 penalty.

12 Section 5. Consideration of aggravating and mitigating
 13 factors in determining sentence. In determining whether to
 14 impose a sentence of death or imprisonment, the court shall
 15 take into account the aggravating and mitigating
 16 circumstances enumerated in [sections 3 and 4] and shall
 17 impose a sentence of death if it finds one or more of the
 18 aggravating circumstances and finds that there are no
 19 mitigating circumstances sufficiently substantial to call
 20 for leniency.

21 Section 6. Specific written findings of fact. In each
 22 case in which the court imposes the death sentence, the
 23 determination of the court shall be supported by specific
 24 written findings of fact as to the existence or nonexistence
 25 of each of the circumstances set forth in [sections 3 and

1 4]. The written findings of fact shall be substantiated by
2 the records of the trial and the sentencing proceeding.

3 Section 7. Automatic review of sentence. The judgment
4 of conviction and sentence of death are subject to automatic
5 review by the supreme court of Montana as provided for in
6 [sections 8 through 10].

7 Section 8. Review of death sentence — priority of
8 review — time for review. The judgment of conviction and
9 sentence of death are subject to automatic review by the
10 supreme court of Montana within 60 days after certification
11 by the sentencing court of the entire record, unless the time
12 is extended by the supreme court for good cause shown. The
13 review by the supreme court has priority over all other
14 cases and shall be heard in accordance with rules
15 promulgated by the supreme court. The sentence review shall
16 be in addition to direct appeal, if taken, and the review
17 and appeal shall be consolidated for consideration.

18 Section 9. Transcript and records of trial
19 transmitted. The clerk of the trial court, within 10 days
20 after receiving the transcript, shall transmit the entire
21 record and transcript to the supreme court.

22 Section 10. Supreme court to make determination as to
23 the sentence. The supreme court shall consider the
24 punishment as well as any errors enumerated by way of
25 appeal. With regard to the sentence, the court shall

1 determine:

2 (1) whether the sentence of death was imposed under
3 the influence of passion, prejudice, or any other arbitrary
4 factor;

5 (2) whether the evidence supports the judge's finding
6 of the existence or nonexistence of the aggravating or
7 mitigating circumstances enumerated in [sections 3 and 4];
8 and

9 (3) whether the sentence of death is excessive or
10 disproportionate to the penalty imposed in similar cases,
11 considering both the crime and the defendant. The court
12 shall include in its decision a reference to those similar
13 cases it took into consideration.

14 Section 11. Section 94-5-102, R.C.M. 1947, is amended
15 to read as follows:

16 "94-5-102. Deliberate homicide. (1) Except as
17 provided in ~~section~~ 94-5-103(1)(a), criminal homicide
18 constitutes deliberate homicide if:

19 (a) it is committed purposely or knowingly; or
20 (b) it is committed while the offender is engaged in
21 or is an accomplice in the commission of, ~~or~~ an attempt to
22 commit, or flight after committing or attempting to commit
23 robbery, sexual intercourse without consent, arson,
24 burglary, kidnaping, felonious escape, or any other felony
25 which involves the use or threat of physical force or

1 violence against any individual.

2 (2) A person convicted of the offense of deliberate
3 homicide shall be punished by death as provided in ~~section~~
4 ~~94-5-105~~, [sections 1 through 10 of this act] or by
5 imprisonment in the state prison for any term not to exceed
6 ~~one hundred (100) years.~~"

7 Section 12. Section 94-5-303, R.C.M. 1947, is amended
8 to read as follows:

9 "94-5-303. Aggravated kidnaping. (1) A person commits
10 the offense of aggravated kidnaping if he knowingly or
11 purposely and without lawful authority restrains another
12 person by either secreting or holding him in a place of
13 isolation, or by using or threatening to use physical force,
14 with any of the following purposes:

15 (a) to hold for ransom or reward, or as a shield or
16 hostage; or

17 (b) to facilitate commission of any felony or flight
18 thereafter; or

19 (c) to inflict bodily injury on or to terrorize the
20 victim or another; or

21 (d) to interfere with the performance of any
22 governmental or political function; or

23 (e) to hold another in a condition of involuntary
24 servitude.

25 (2) A person convicted of the offense of aggravated

1 kidnaping shall be punished by death as provided in ~~section~~
2 ~~94-5-304~~, [sections 1 through 10 of this act] or be
3 imprisoned in the state prison for any term not to exceed
4 ~~one hundred (100) years~~ unless he has voluntarily released
5 the victim, alive, in a safe place, and not suffering from
6 serious bodily injury, in which event he shall be imprisoned
7 in the state prison for any term not to exceed ~~ten (10)~~
8 years."

9 Section 13. Section 94-5-617, R.C.M. 1947, is amended
10 to read as follows:

11 "94-5-617. Protection of life and health of infant.
12 (1) A person commits the offense of criminal homicide, as
13 defined in sections 94-5-101 through ~~94-5-105~~ 94-5-104, if
14 he purposely, knowingly, or negligently causes the death of
15 a premature infant born alive, if such infant is viable.

16 (2) Whenever a premature infant which is the subject
17 of abortion if is born alive and is viable, it becomes a
18 dependent and neglected child subject to the provisions of
19 state law, unless:

20 (a) the termination of the pregnancy is necessary to
21 preserve the life of the mother; or

22 (b) the mother and her spouse, or either of them, have
23 agreed in writing in advance of the abortion, or within
24 ~~seventy-two (72) hours~~ thereafter, to accept the parental
25 rights and responsibilities of the premature infant if it

1 survives the abortion procedure.

2 (3) No person may use any premature infant born alive
3 for any type of scientific research, or other kind of
4 experimentation except as necessary to protect or preserve
5 the life and health of such premature infant born alive.

6 (4) The department shall make regulations to provide
7 for the humane disposition of dead infants or fetuses.

8 (5) Violation of subsection (3) of this section is a
9 felony."

10 Section 14. Section 94-5-622, R.C.M. 1947, is amended
11 to read as follows:

12 "94-5-622. Penalties. (1) A person convicted of
13 criminal homicide under this act is subject to the penalties
14 prescribed by sections 94-5-101 through ~~94-5-105~~ 94-5-104.

15 (2) A person convicted of a felony other than criminal
16 homicide under this act is subject to a fine not to exceed
17 one thousand dollars (\$1,000), or imprisonment in the state
18 prison for a term not to exceed five (5) years, or both.

19 (3) A person convicted of a misdemeanor under this act
20 is subject to a fine not to exceed five hundred dollars
21 (\$500), or imprisonment in the county jail for a term not to
22 exceed six (6) months, or both."

23 Section 15. Severability. If a part of this act is
24 invalid, all valid parts that are severable from the invalid
25 part remain in effect. If a part of this act is invalid in

1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

4 Section 16. Repealer. Sections 94-5-105, 94-5-304, and
5 95-2206.1, R.C.M. 1947, are repealed.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 149

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
6 IMPOSITION OF THE DEATH PENALTY IN CERTAIN CASES; TO PROVIDE
7 PROCEDURES AND REQUIREMENTS FOR THE AUTHORIZATION OF SUCH
8 PENALTY; TO PROVIDE FOR A SEPARATE SENTENCING HEARING TO
9 DETERMINE THE EXISTENCE OR NONEXISTENCE OF AGGRAVATING OR
10 MITIGATING CIRCUMSTANCES; TO PROVIDE THAT THE DEATH PENALTY
11 MAY NOT BE IMPOSED UNLESS THE COURT FINDS ONE OR MORE OF THE
12 AGGRAVATING CIRCUMSTANCES AND FINDS THAT THERE ARE NO
13 MITIGATING CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO CALL
14 FOR LENIENCY; TO PROVIDE THAT THE DETERMINATION OF THE COURT
15 SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT; TO
16 PROVIDE FOR AUTOMATIC REVIEW OF A JUDGMENT OF CONVICTION AND
17 SENTENCE OF DEATH; AMENDING SECTIONS 94-5-102, 94-5-303,
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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 Section 1. Sentence of death — hearing on imposition
23 of death penalty. When a defendant is found guilty of or
24 pleads guilty to an offense for which the sentence of death
25 may be imposed, the judge who presided at the trial or

1 before whom the guilty plea was entered shall conduct a
2 separate sentencing hearing to determine the existence or
3 nonexistence of the circumstances set forth in [sections 3
4 and 4] for the purpose of determining the sentence to be
5 imposed. The hearing shall be conducted before the court
6 alone.

7 Section 2. Sentencing hearing — evidence that may be
8 received. In the sentencing hearing, evidence may be
9 presented as to any matter the court considers relevant to
10 the sentence, including but not limited to the nature and
11 circumstances of the crime, the defendant's character,
12 background, history, mental and physical condition, and any
13 other facts in aggravation or mitigation of the penalty. Any
14 evidence the court considers to have probative force may be
15 received regardless of its admissibility under the rules
16 governing admission of evidence at criminal trials. Evidence
17 admitted at the trial relating to such aggravating or
18 mitigating circumstances shall be considered without
19 reintroducing it at the sentencing proceeding. The state and
20 the defendant or his counsel shall be permitted to present
21 argument for or against sentence of death.

22 Section 3. Aggravating circumstances. Aggravating
23 circumstances are any of the following:

24 (1) The offense was deliberate homicide and was
25 committed by a person serving a sentence of imprisonment in

SECOND READING

1 the state prison.

2 (2) The offense was deliberate homicide and was
3 committed by a defendant who had been previously convicted
4 of another deliberate homicide.

5 (3) The offense was deliberate homicide and was
6 committed by means of torture.

7 (4) The offense was deliberate homicide and was
8 committed by a person lying in wait or ambush.

9 (5) The offense was deliberate homicide and was
10 committed as a part of a scheme or operation which, if
11 completed, would result in the death of more than one
12 person.

13 (6) The offense was deliberate homicide AS DEFINED IN
14 SUBSECTION (1) (A) OF 9A-5-102 and the victim was a peace
15 officer killed while performing his duty.

16 (7) The offense was aggravated kidnaping which
17 resulted in the death of the victim.

18 Section 4. Mitigating circumstances. Mitigating
19 circumstances are any of the following:

20 (1) The defendant has no significant history of prior
21 criminal activity.

22 (2) The offense was committed while the defendant was
23 under the influence of extreme mental or emotional
24 disturbance.

25 (3) The defendant acted under extreme duress or under

1 the substantial domination of another person.

2 (4) The capacity of the defendant to appreciate the
3 criminality of his conduct or to conform his conduct to the
4 requirements of law was substantially impaired.

5 (5) The victim was a participant in the defendant's
6 conduct or consented to the act.

7 (6) The defendant was an accomplice in an offense
8 committed by another person, and his participation was
9 relatively minor.

10 (7) The defendant, at the time of the commission of
11 the crime, was less than 18 years of age.

12 (8) Any other fact exists in mitigation of the
13 penalty.

14 Section 5. Consideration of aggravating and mitigating
15 factors in determining sentence. In determining whether to
16 impose a sentence of death or imprisonment, the court shall
17 take into account the aggravating and mitigating
18 circumstances enumerated in [sections 3 and 4] and shall
19 impose a sentence of death if it finds one or more of the
20 aggravating circumstances and finds that there are no
21 mitigating circumstances sufficiently substantial to call
22 for leniency. IF THE COURT DOES NOT IMPOSE A SENTENCE OF
23 DEATH AND ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED IN
24 (SECTION 3 OF THIS ACT) EXISTS, THE COURT MAY INCREASE A
25 SENTENCE OF IMPRISONMENT FOR LIFE OR FOR ANY TERM

1 AUTHORIZED BY THE STATUTE DEFINING THE OFFENSE.

2 Section 6. Specific written findings of fact. In each
3 case in which the court imposes the death sentence, the
4 determination of the court shall be supported by specific
5 written findings of fact as to the existence or nonexistence
6 of each of the circumstances set forth in [sections 3 and
7 4]. The written findings of fact shall be substantiated by
8 the records of the trial and the sentencing proceeding.

9 Section 7. Automatic review of sentence. The judgment
10 of conviction and sentence of death are subject to automatic
11 review by the supreme court of Montana as provided for in
12 [sections 8 through 10].

13 Section 8. Review of death sentence — priority of
14 review — time for review. The judgment of conviction and
15 sentence of death are subject to automatic review by the
16 supreme court of Montana within 60 days after certification
17 by the sentencing court of the entire record unless the time
18 is extended by the supreme court for good cause shown. The
19 review by the supreme court has priority over all other
20 cases and shall be heard in accordance with rules
21 promulgated by the supreme court. The sentence review shall
22 be in addition to direct appeal, if taken, and the review
23 and appeal shall be consolidated for consideration.

24 Section 9. Transcript and records of trial
25 transmitted. The clerk of the trial court, within 10 days

1 after receiving the transcript, shall transmit the entire
2 record and transcript to the supreme court.

3 Section 10. Supreme court to make determination as to
4 the sentence. The supreme court shall consider the
5 punishment as well as any errors enumerated by way of
6 appeal. With regard to the sentence, the court shall
7 determine:

8 (1) whether the sentence of death was imposed under
9 the influence of passion, prejudice, or any other arbitrary
10 factor;

11 (2) whether the evidence supports the judge's finding
12 of the existence or nonexistence of the aggravating or
13 mitigating circumstances enumerated in [sections 3 and 4];
14 and

15 (3) whether the sentence of death is excessive or
16 disproportionate to the penalty imposed in similar cases,
17 considering both the crime and the defendant. The court
18 shall include in its decision a reference to those similar
19 cases it took into consideration.

20 Section 11. Section 94-5-102, R.C.M. 1987, is amended
21 to read as follows:

22 "94-5-102. Deliberate homicide. (1) Except as
23 provided in ~~section~~ 94-5-103(1)(a), criminal homicide
24 constitutes deliberate homicide if:

25 (a) it is committed purposely or knowingly; or

1 (b) it is committed while the offender is engaged in
 2 or is an accomplice in the commission of, ~~or~~ an attempt to
 3 commit, or flight after committing or attempting to commit
 4 robbery, sexual intercourse without consent, arson,
 5 burglary, kidnaping, felonious escape, or any other felony
 6 which involves the use or threat of physical force or
 7 violence against any individual.

8 (2) A person convicted of the offense of deliberate
 9 homicide shall be punished by death OR LIFE IMPRISONMENT as
 10 provided in ~~section 94-5-105~~, [sections 1 through 10 of this
 11 act] or by imprisonment in the state prison for any term not
 12 to exceed ~~one hundred (100)~~ years."

13 Section 12. Section 94-5-303, R.C.M. 1947, is amended
 14 to read as follows:

15 "94-5-303. Aggravated kidnaping. (1) A person commits
 16 the offense of aggravated kidnaping if he knowingly or
 17 purposely and without lawful authority restrains another
 18 person by either secreting or holding him in a place of
 19 isolation, or by using or threatening to use physical force,
 20 with any of the following purposes:

21 (a) to hold for ransom or reward, or as a shield or
 22 hostage; or

23 (b) to facilitate commission of any felony or flight
 24 thereafter; or

25 (c) to inflict bodily injury on or to terrorize the

1 victim or another; or

2 (d) to interfere with the performance of any
 3 governmental or political function; or

4 (e) to hold another in a condition of involuntary
 5 servitude.

6 (2) A person convicted of the offense of aggravated
 7 kidnaping shall be punished by death OR LIFE IMPRISONMENT as
 8 provided in ~~section 94-5-304~~, [sections 1 through 10 of this
 9 act] or be imprisoned in the state prison for any term not
 10 to exceed ~~one hundred (100)~~ years unless he has voluntarily
 11 released the victim, alive, in a safe place, and not
 12 suffering from serious bodily injury, in which event he
 13 shall be imprisoned in the state prison for any term not to
 14 exceed ~~ten (10)~~ years."

15 Section 13. Section 94-5-617, R.C.M. 1947, is amended
 16 to read as follows:

17 "94-5-617. Protection of life and health of infant.

18 (1) A person commits the offense of criminal homicide, as
 19 defined in sections 94-5-101 through ~~94-5-105~~ 94-5-104, if
 20 he purposely, knowingly, or negligently causes the death of
 21 a premature infant born alive, if such infant is viable.

22 (2) Whenever a premature infant which is the subject
 23 of abortion if is born alive and is viable, it becomes a
 24 dependent and neglected child subject to the provisions of
 25 state law, unless:

1 (a) the termination of the pregnancy is necessary to
2 preserve the life of the mother; or

3 (b) the mother and her spouse, or either of them, have
4 agreed in writing in advance of the abortion, or within
5 seventy-two (72) hours thereafter, to accept the parental
6 rights and responsibilities of the premature infant if it
7 survives the abortion procedure.

8 (3) No person may use any premature infant born alive
9 for any type of scientific research, or other kind of
10 experimentation except as necessary to protect or preserve
11 the life and health of such premature infant born alive.

12 (4) The department shall make regulations to provide
13 for the humane disposition of dead infants or fetuses.

14 (5) Violation of subsection (3) of this section is a
15 felony."

16 Section 14. Section 94-5-622, R.C.M. 1947, is amended
17 to read as follows:

18 *94-5-622. Penalties. (1) A person convicted of
19 criminal homicide under this act is subject to the penalties
20 prescribed by sections 94-5-101 through ~~94-5-105~~ 94-5-104.

21 (2) A person convicted of a felony other than criminal
22 homicide under this act is subject to a fine not to exceed
23 one thousand dollars (\$1,000), or imprisonment in the state
24 prison for a term not to exceed five (5) years, or both.

25 (3) A person convicted of a misdemeanor under this act

1 is subject to a fine not to exceed five hundred dollars
2 (\$500), or imprisonment in the county jail for a term not to
3 exceed six (6) months, or both."

4 Section 15. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 16. Repealer. Sections 94-5-105, 94-5-304, and
11 95-2206.1, R.C.M. 1947, are repealed.

-End-

1 SENATE BILL NO. 149

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL

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15 SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT; TO
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25 may be imposed, the judge who presided at the trial or

1 before whom the guilty plea was entered shall conduct a
2 separate sentencing hearing to determine the existence or
3 nonexistence of the circumstances set forth in [sections 3
4 and 4] for the purpose of determining the sentence to be
5 imposed. The hearing shall be conducted before the court
6 alone.

7 Section 2. Sentencing hearing -- evidence that may be
8 received. In the sentencing hearing, evidence may be
9 presented as to any matter the court considers relevant to
10 the sentence, including but not limited to the nature and
11 circumstances of the crime, the defendant's character,
12 background, history, mental and physical condition, and any
13 other facts in aggravation or mitigation of the penalty. Any
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16 governing admission of evidence at criminal trials. Evidence
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18 mitigating circumstances shall be considered without
19 reintroducing it at the sentencing proceeding. The state and
20 the defendant or his counsel shall be permitted to present
21 argument for or against sentence of death.

22 Section 3. Aggravating circumstances. Aggravating
23 circumstances are any of the following:

24 (1) The offense was deliberate homicide and was
25 committed by a person serving a sentence of imprisonment in

1 the state prison.

2 (2) The offense was deliberate homicide and was
3 committed by a defendant who had been previously convicted
4 of another deliberate homicide.

5 (3) The offense was deliberate homicide and was
6 committed by means of torture.

7 (4) The offense was deliberate homicide and was
8 committed by a person lying in wait or ambush.

9 (5) The offense was deliberate homicide and was
10 committed as a part of a scheme or operation which, if
11 completed, would result in the death of more than one
12 person.

13 (6) The offense was deliberate homicide AS DEFINED IN
14 SUBSECTION (1)(A) OF 9A-5-102 and the victim was a peace
15 officer killed while performing his duty.

16 (7) The offense was aggravated kidnaping which
17 resulted in the death of the victim.

18 Section 4. Mitigating circumstances. Mitigating
19 circumstances are any of the following:

20 (1) The defendant has no significant history of prior
21 criminal activity.

22 (2) The offense was committed while the defendant was
23 under the influence of extreme mental or emotional
24 disturbance.

25 (3) The defendant acted under extreme duress or under

1 the substantial domination of another person.

2 (4) The capacity of the defendant to appreciate the
3 criminality of his conduct or to conform his conduct to the
4 requirements of law was substantially impaired.

5 (5) The victim was a participant in the defendant's
6 conduct or consented to the act.

7 (6) The defendant was an accomplice in an offense
8 committed by another person, and his participation was
9 relatively minor.

10 (7) The defendant, at the time of the commission of
11 the crime, was less than 18 years of age.

12 (8) Any other fact exists in mitigation of the
13 penalty.

14 Section 5. Consideration of aggravating and mitigating
15 factors in determining sentence. In determining whether to
16 impose a sentence of death or imprisonment, the court shall
17 take into account the aggravating and mitigating
18 circumstances enumerated in [sections 3 and 4] and shall
19 impose a sentence of death if it finds one or more of the
20 aggravating circumstances and finds that there are no
21 mitigating circumstances sufficiently substantial to call
22 for leniency. IF THE COURT DOES NOT IMPOSE A SENTENCE OF
23 DEATH AND ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED IN
24 (SECTION 3 OF THIS ACT) EXISTS, THE COURT MAY IMPOSE A
25 SENTENCE OF IMPRISONMENT FOR LIFE OR FOR ANY TERM

1 AUTHORIZED BY THE STATUTE DEFINING THE OFFENSE.

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9 Section 7. Automatic review of sentence. The judgment
10 of conviction and sentence of death are subject to automatic
11 review by the supreme court of Montana as provided for in
12 [sections 8 through 10].

13 Section 8. Review of death sentence — priority of
14 review — time for review. The judgment of conviction and
15 sentence of death are subject to automatic review by the
16 supreme court of Montana within 60 days after certification
17 by the sentencing court of the entire record unless the time
18 is extended by the supreme court for good cause shown. The
19 review by the supreme court has priority over all other
20 cases and shall be heard in accordance with rules
21 promulgated by the supreme court. The sentence review shall
22 be in addition to direct appeal, if taken, and the review
23 and appeal shall be consolidated for consideration.

24 Section 9. Transcript and records of trial
25 transmitted. The clerk of the trial court, within 10 days

1 after receiving the transcript, shall transmit the entire
2 record and transcript to the supreme court.

3 Section 10. Supreme court to make determination as to
4 the sentence. The supreme court shall consider the
5 punishment as well as any errors enumerated by way of
6 appeal. With regard to the sentence, the court shall
7 determine:

8 (1) whether the sentence of death was imposed under
9 the influence of passion, prejudice, or any other arbitrary
10 factor;

11 (2) whether the evidence supports the judge's finding
12 of the existence or nonexistence of the aggravating or
13 mitigating circumstances enumerated in [sections 3 and 4];
14 and

15 (3) whether the sentence of death is excessive or
16 disproportionate to the penalty imposed in similar cases,
17 considering both the crime and the defendant. The court
18 shall include in its decision a reference to those similar
19 cases it took into consideration.

20 Section 11. Section 94-5-102, R.C.M. 1947, is amended
21 to read as follows:

22 "94-5-102. Deliberate homicide. (1) Except as
23 provided in ~~section~~ 94-5-103(1)(a), criminal homicide
24 constitutes deliberate homicide if:

25 (a) it is committed purposely or knowingly; or

1 (b) it is committed while the offender is engaged in
 2 or is an accomplice in the commission of, ~~or~~ an attempt to
 3 commit, or flight after committing or attempting to commit
 4 robbery, sexual intercourse without consent, arson,
 5 burglary, kidnaping, felonious escape, or any other felony
 6 which involves the use or threat of physical force or
 7 violence against any individual.

8 (2) A person convicted of the offense of deliberate
 9 homicide shall be punished by death OR LIFE IMPRISONMENT as
 10 provided in ~~section 94-5-105, [sections 1 through 10 of this~~
 11 act] or by imprisonment in the state prison for any term not
 12 to exceed ~~one-hundred-(100)~~ years."

13 Section 12. Section 94-5-303, R.C.M. 1947, is amended
 14 to read as follows:

15 "94-5-303. Aggravated kidnaping. (1) A person commits
 16 the offense of aggravated kidnaping if he knowingly or
 17 purposely and without lawful authority restrains another
 18 person by either secreting or holding him in a place of
 19 isolation, or by using or threatening to use physical force,
 20 with any of the following purposes:

21 (a) to hold for ransom or reward, or as a shield or
 22 hostage; or

23 (b) to facilitate commission of any felony or flight
 24 thereafter; or

25 (c) to inflict bodily injury on or to terrorize the

1 victim or another; or

2 (d) to interfere with the performance of any
 3 governmental or political function; or

4 (e) to hold another in a condition of involuntary
 5 servitude.

6 (2) A person convicted of the offense of aggravated
 7 kidnaping shall be punished by death OR LIFE IMPRISONMENT as
 8 provided in ~~section 94-5-304, [sections 1 through 10 of this~~
 9 act] or be imprisoned in the state prison for any term not
 10 to exceed ~~one-hundred-(100)~~ years unless he has voluntarily
 11 released the victim, alive, in a safe place, and not
 12 suffering from serious bodily injury, in which event he
 13 shall be imprisoned in the state prison for any term not to
 14 exceed ~~ten-(10)~~ years."

15 Section 13. Section 94-5-617, R.C.M. 1947, is amended
 16 to read as follows:

17 "94-5-617. Protection of life and health of infant.

18 (1) A person commits the offense of criminal homicide, as
 19 defined in sections 94-5-101 through ~~94-5-105~~ 94-5-104, if
 20 he purposely, knowingly, or negligently causes the death of
 21 a premature infant born alive, if such infant is viable.

22 (2) Whenever a premature infant which is the subject
 23 of abortion if is born alive and is viable, it becomes a
 24 dependent and neglected child subject to the provisions of
 25 state law, unless:

1 (a) the termination of the pregnancy is necessary to
2 preserve the life of the mother; or

3 (b) the mother and her spouse, or either of them, have
4 agreed in writing in advance of the abortion, or within
5 seventy-two (72) hours thereafter, to accept the parental
6 rights and responsibilities of the premature infant if it
7 survives the abortion procedure.

8 (3) No person may use any premature infant born alive
9 for any type of scientific research, or other kind of
10 experimentation except as necessary to protect or preserve
11 the life and health of such premature infant born alive.

12 (4) The department shall make regulations to provide
13 for the humane disposition of dead infants or fetuses.

14 (5) Violation of subsection (3) of this section is a
15 felony."

16 Section 14. Section 94-5-622, R.C.M. 1947, is amended
17 to read as follows:

18 "94-5-622. Penalties. (1) A person convicted of
19 criminal homicide under this act is subject to the penalties
20 prescribed by sections 94-5-101 through ~~94-5-105~~ 94-5-104.

21 (2) A person convicted of a felony other than criminal
22 homicide under this act is subject to a fine not to exceed
23 one thousand dollars (\$1,000), or imprisonment in the state
24 prison for a term not to exceed five (5) years, or both.

25 (3) A person convicted of a misdemeanor under this act

1 is subject to a fine not to exceed five hundred dollars
2 (\$500), or imprisonment in the county jail for a term not to
3 exceed six (6) months, or both."

4 Section 15. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 16. Repealer. Sections 94-5-105, 94-5-304, and
11 95-2206.1, R.C.M. 1947, are repealed.

-End-

1 SENATE BILL NO. 149

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
6 IMPOSITION OF THE DEATH PENALTY IN CERTAIN CASES; TO PROVIDE
7 PROCEDURES AND REQUIREMENTS FOR THE AUTHORIZATION OF SUCH
8 PENALTY; TO PROVIDE FOR A SEPARATE SENTENCING HEARING TO
9 DETERMINE THE EXISTENCE OR NONEXISTENCE OF AGGRAVATING OR
10 MITIGATING CIRCUMSTANCES; TO PROVIDE THAT THE DEATH PENALTY
11 MAY NOT BE IMPOSED UNLESS THE COURT FINDS ONE OR MORE OF THE
12 AGGRAVATING CIRCUMSTANCES AND FINDS THAT THERE ARE NO
13 MITIGATING CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO CALL
14 FOR LENIENCY; TO PROVIDE THAT THE DETERMINATION OF THE COURT
15 SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT; TO
16 PROVIDE FOR AUTOMATIC REVIEW OF A JUDGMENT OF CONVICTION AND
17 SENTENCE OF DEATH; AMENDING SECTIONS 94-5-102, 94-5-303,
18 94-5-617, AND 94-5-622, R.C.M. 1947; REPEALING SECTIONS
19 94-5-105, 94-5-304, AND 95-2206-1, R.C.M. 1947."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 Section 1. Sentence of death -- hearing on imposition
23 of death penalty. When a defendant is found guilty of or
24 pleads guilty to an offense for which the sentence of death
25 may be imposed, the judge who presided at the trial or

1 before whom the guilty plea was entered shall conduct a
2 separate sentencing hearing to determine the existence or
3 nonexistence of the circumstances set forth in [sections 3
4 and 4] for the purpose of determining the sentence to be
5 imposed. The hearing shall be conducted before the court
6 alone.

7 Section 2. Sentencing hearing -- evidence that may be
8 received. In the sentencing hearing, evidence may be
9 presented as to any matter the court considers relevant to
10 the sentence, including but not limited to the nature and
11 circumstances of the crime, the defendant's character,
12 background, history, mental and physical condition, and any
13 other facts in aggravation or mitigation of the penalty. Any
14 evidence the court considers to have probative force may be
15 received regardless of its admissibility under the rules
16 governing admission of evidence at criminal trials. Evidence
17 admitted at the trial relating to such aggravating or
18 mitigating circumstances shall be considered without
19 reintroducing it at the sentencing proceeding. The state and
20 the defendant or his counsel shall be permitted to present
21 argument for or against sentence of death.

22 Section 3. Aggravating circumstances. Aggravating
23 circumstances are any of the following:

24 (1) The offense was deliberate homicide and was
25 committed by a person serving a sentence of imprisonment in

1 the state prison.

2 (2) The offense was deliberate homicide and was
3 committed by a defendant who had been previously convicted
4 of another deliberate homicide.

5 (3) The offense was deliberate homicide and was
6 committed by means of torture.

7 (4) The offense was deliberate homicide and was
8 committed by a person lying in wait or ambush.

9 (5) The offense was deliberate homicide and was
10 committed as a part of a scheme or operation which, if
11 completed, would result in the death of more than one
12 person.

13 (6) The offense was deliberate homicide AS DEFINED IN
14 SUBSECTION (1)(A) OF 94-5-102 and the victim was a peace
15 officer killed while performing his duty.

16 (7) The offense was aggravated kidnaping which
17 resulted in the death of the victim.

18 Section 4. Mitigating Circumstances. Mitigating
19 circumstances are any of the following:

20 (1) The defendant has no significant history of prior
21 criminal activity.

22 (2) The offense was committed while the defendant was
23 under the influence of extreme mental or emotional
24 disturbance.

25 (3) The defendant acted under extreme duress or under

1 the substantial domination of another person.

2 (4) The capacity of the defendant to appreciate the
3 criminality of his conduct or to conform his conduct to the
4 requirements of law was substantially impaired.

5 (5) The victim was a participant in the defendant's
6 conduct or consented to the act.

7 (6) The defendant was an accomplice in an offense
8 committed by another person, and his participation was
9 relatively minor.

10 (7) The defendant, at the time of the commission of
11 the crime, was less than 18 years of age.

12 (8) Any other fact exists in mitigation of the
13 penalty.

14 Section 5. Consideration of aggravating and mitigating
15 factors in determining sentence. In determining whether to
16 impose a sentence of death or imprisonment, the court shall
17 take into account the aggravating and mitigating
18 circumstances enumerated in [sections 3 and 4] and shall
19 impose a sentence of death if it finds one or more of the
20 aggravating circumstances and finds that there are no
21 mitigating circumstances sufficiently substantial to call
22 for leniency. IF THE COURT DOES NOT IMPOSE A SENTENCE OF
23 DEATH AND ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED IN
24 (SECTION 3 OF THIS ACT) EXISTS, THE COURT MAY IMPOSE A
25 SENTENCE OF IMPRISONMENT FOR LIFE OR FOR ANY TERM

1 AUTHORIZED BY THE STATUTE DEFINING THE OFFENSE.

2 Section 6. Specific written findings of fact. In each
3 case in which the court imposes the death sentence, the
4 determination of the court shall be supported by specific
5 written findings of fact as to the existence or nonexistence
6 of each of the circumstances set forth in [sections 3 and
7 4]. The written findings of fact shall be substantiated by
8 the records of the trial and the sentencing proceeding.

9 Section 7. Automatic review of sentence. The judgment
10 of conviction and sentence of death are subject to automatic
11 review by the supreme court of Montana as provided for in
12 [sections 8 through 10].

13 Section 8. Review of death sentence -- priority of
14 review -- time for review. The judgment of conviction and
15 sentence of death are subject to automatic review by the
16 supreme court of Montana within 60 days after certification
17 by the sentencing court of the entire record unless the time
18 is extended by the supreme court for good cause shown. The
19 review by the supreme court has priority over all other
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1 after receiving the transcript, shall transmit the entire
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4 the sentence. The supreme court shall consider the
5 punishment as well as any errors enumerated by way of
6 appeal. With regard to the sentence, the court shall
7 determine:

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9 the influence of passion, prejudice, or any other arbitrary
10 factor;

11 (2) whether the evidence supports the judge's finding
12 of the existence or nonexistence of the aggravating or
13 mitigating circumstances enumerated in [sections 3 and 4];
14 and

15 (3) whether the sentence of death is excessive or
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19 cases it took into consideration.

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 2 or is an accomplice in the commission of, or an attempt to
 3 commit, or flight after committing or attempting to commit
 4 robbery, sexual intercourse without consent, arson,
 5 burglary, kidnaping, felonious escape, or any other felony
 6 which involves the use or threat of physical force or
 7 violence against any individual.

8 (2) A person convicted of the offense of deliberate
 9 homicide shall be punished by death OR LIFE IMPRISONMENT as
 10 provided in ~~section 94-5-105, [sections 1 through 10 of this~~
 11 ~~act]~~ or by imprisonment in the state prison for any term not
 12 to exceed ~~one-hundred-(100) years.~~"

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 19 isolation, or by using or threatening to use physical force,
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 22 hostage; or

23 (b) to facilitate commission of any felony or flight
 24 thereafter; or

25 (c) to inflict bodily injury on or to terrorize the

1 victim or another; or

2 (d) to interfere with the performance of any
 3 governmental or political function; or

4 (e) to hold another in a condition of involuntary
 5 servitude.

6 (2) A person convicted of the offense of aggravated
 7 kidnaping shall be punished by death OR LIFE IMPRISONMENT as
 8 provided in ~~section 94-5-304, [sections 1 through 10 of this~~
 9 ~~act]~~ or be imprisoned in the state prison for any term not
 10 to exceed ~~one-hundred-(100) years~~ unless he has voluntarily
 11 released the victim, alive, in a safe place, and not
 12 suffering from serious bodily injury, in which event he
 13 shall be imprisoned in the state prison for any term not to
 14 exceed ~~ten-(10) years.~~"

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 21 a premature infant born alive, if such infant is viable.

22 (2) Whenever a premature infant which is the subject
 23 of abortion if is born alive and is viable, it becomes a
 24 dependent and neglected child subject to the provisions of
 25 state law, unless:

1 (a) the termination of the pregnancy is necessary to
2 preserve the life of the mother; or

3 (b) the mother and her spouse, or either of them, have
4 agreed in writing in advance of the abortion, or within
5 seventy-two (72) hours thereafter, to accept the parental
6 rights and responsibilities of the premature infant if it
7 survives the abortion procedure.

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9 for any type of scientific research, or other kind of
10 experimentation except as necessary to protect or preserve
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22 homicide under this act is subject to a fine not to exceed
23 one thousand dollars (\$1,000), or imprisonment in the state
24 prison for a term not to exceed five (5) years, or both.

25 (3) A person convicted of a misdemeanor under this act

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2 (\$500), or imprisonment in the county jail for a term not to
3 exceed six (6) months, or both."

4 Section 15. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 16. Repealer. Sections 94-5-105, 94-5-304, and
11 95-2206.1, R.C.M. 1947, are repealed.

-End-