

1 *Senate* BILL NO. *214*  
2 INTRODUCED BY *Thurmond Brown*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE CERTAIN  
5 CRIMES AS CAPITAL OFFENSES FOR SENTENCING PURPOSES; TO ALLOW  
6 THE SENTENCE OF LIFE IMPRISONMENT AS AN ALTERNATIVE TO THE  
7 DEATH SENTENCE IN CAPITAL OFFENSES; TO PROVIDE FOR JURY  
8 FINDINGS AS THE BASIS FOR DETERMINING THE SENTENCE IN A  
9 CAPITAL OFFENSE; AMENDING SECTIONS 94-5-102, 94-5-105,  
10 94-5-303, 94-5-304, AND 95-2206, R.C.M. 1947; AND REPEALING  
11 SECTION 95-2206.1, R.C.M. 1947."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. 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, kidnapping, 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, or, when 94-5-105 does not apply, by imprisonment  
5 in the state prison for any term not to exceed ~~one hundred~~  
6 ~~{100}~~ years."

7 Section 2. Section 94-5-105, R.C.M. 1947, is amended  
8 to read as follows:

9 "94-5-105. ~~Sentence of death for circumstances in~~  
10 which deliberate homicide is a capital offense. (1) When a  
11 defendant is convicted of the offense of deliberate  
12 homicide, the court shall impose a the sentence of death  
13 prescribed for a capital offense in [section 6 of this act]  
14 in any of the following circumstances, ~~unless there are~~  
15 ~~mitigating circumstances:~~

- 16 (a) The deliberate homicide was committed by a person  
17 serving a sentence of imprisonment in the state prison, ~~or,~~
- 18 (b) The defendant was previously convicted of another  
19 deliberate homicide, ~~or,~~
- 20 (c) The deliberate homicide was committed by means of  
21 torture, ~~or,~~
- 22 (d) The deliberate homicide was committed by a person  
23 lying in wait or ambush, ~~or,~~
- 24 (e) The deliberate homicide was committed as a part of  
25 a scheme or operation which, if completed, would result in

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1 the death of more than one person.

2 ~~(2)(f) Notwithstanding the provisions of subsection~~  
 3 ~~(1) and regardless of circumstances, when a~~ The defendant is  
 4 ~~was~~ convicted ~~of the offense of deliberate homicide~~ under  
 5 subsection (1)(a) of ~~section~~ 94-5-102, ~~in which and~~ the  
 6 victim was a peace officer killed while performing his duty  
 7 ~~the court shall impose a sentence of death."~~

8 Section 3. Section 94-5-303, R.C.M. 1947, is amended  
 9 to read as follows:

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

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

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

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

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

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

1 (2) A person convicted of the offense of aggravated  
 2 kidnapping shall be punished ~~by death~~ as provided in ~~section~~  
 3 94-5-304, or, when 94-5-304 does not apply, be imprisoned by  
 4 imprisonment in the state prison for any term not to exceed  
 5 ~~one hundred (100)~~ years unless he has voluntarily released  
 6 the victim, alive, in a safe place, and not suffering from  
 7 serious bodily injury, in which event he shall be imprisoned  
 8 in the state prison for any term not to exceed ~~ten (10)~~  
 9 years."

10 Section 4. Section 94-5-304, R.C.M. 1947, is amended  
 11 to read as follows:

12 "94-5-304. ~~Sentence of death for~~ When aggravated  
 13 kidnapping punished as a capital offense. A court shall  
 14 impose the ~~sentence of death prescribed for a capital~~  
 15 offense in [section 6, of this act] following conviction of  
 16 aggravated kidnapping if it finds that the victim is dead as  
 17 the result of the criminal conduct."

18 Section 5. Section 95-2206, R.C.M. 1947, is amended to  
 19 read as follows:

20 "95-2206. Sentence. (1) Whenever any person has been  
 21 found guilty of a crime or offense upon a verdict or a plea  
 22 of guilty the court may:

23 ~~(1)(a) Defer~~ defer imposition of sentence for a period  
 24 not to exceed ~~one (1)~~ year for any misdemeanor; for a period  
 25 not to exceed ~~three (3)~~ years for any felony. The sentencing

1 judge may impose upon the defendant any reasonable  
2 restrictions or conditions during the period of the deferred  
3 imposition. Such reasonable restrictions or conditions may  
4 include:

5 ~~(a)~~ (i) jail base release;  
6 ~~(b)~~ (ii) jail time not to exceed ~~ninety~~ (90) days;  
7 ~~(c)~~ (iii) conditions for probation;  
8 ~~(d)~~ (iv) restitution;  
9 ~~(e)~~ (v) any other reasonable conditions deemed  
10 necessary for rehabilitation or for the protection of  
11 society;

12 ~~(f)~~ (vi) any combination of the above.

13 ~~(2)~~ (b) Suspend suspend execution of sentence up to the  
14 maximum sentence allowed for the particular offense. The  
15 sentencing judge may impose on the defendant any reasonable  
16 restrictions during the period of suspended sentence. Such  
17 reasonable restrictions may include:

18 ~~(a)~~ (i) jail base release;  
19 ~~(b)~~ (ii) jail time not to exceed (90) days;  
20 ~~(c)~~ (iii) conditions for probation;  
21 ~~(d)~~ (iv) restitution;  
22 ~~(e)~~ (v) any other reasonable conditions deemed  
23 necessary for rehabilitation or for the protection of  
24 society;

25 ~~(f)~~ (vi) any combination of the above.

1 If any restrictions or conditions are violated, any  
2 elapsed time, except jail time, shall not be a credit  
3 against the sentence, unless the court shall otherwise  
4 order.

5 ~~(3)~~ (c) ~~Impose~~ impose a fine as provided by law for the  
6 offense;

7 ~~(4)~~ (d) ~~Commit~~ commit the defendant to a correctional  
8 institution with or without fine by law for the offense;

9 ~~(5)~~ (e) ~~Impose~~ impose any combination of subsections  
10 ~~(2)~~ (1) (b), ~~(3)~~ (c), or ~~(4)~~ (d) above;

11 (f) impose the penalty prescribed in [section 6 of  
12 this act], when authorized by law, for the offense.

13 ~~(6)~~ (2) The district court may also impose any of the  
14 following restrictions or conditions on the above sentence  
15 which it deems necessary to obtain the objective of  
16 rehabilitation and the protection of society:

17 (a) prohibit the defendant the right to hold public  
18 office;

19 (b) prohibit the defendant the right to own or carry a  
20 dangerous weapon;

21 (c) prohibit freedom of association;

22 (d) prohibit freedom of movement;

23 (e) any other limitation reasonably related to the  
24 objectives of rehabilitation or the protection of society.

25 ~~(7)~~ (3) The judge in the justice court shall not have

1 the authority to restrict an individual's rights as  
2 enumerated in subsection ~~46~~(2).

3 (4) Any judge who has suspended the execution of a  
4 sentence or deferred the imposition of a sentence of  
5 imprisonment under this section, or his successor, is  
6 authorized thereafter, in his discretion, during the period  
7 of such suspended sentence or deferred imposition of  
8 sentence to revoke such suspension or impose sentence and  
9 order such person committed, or may, in his discretion,  
10 order the prisoner placed under the jurisdiction of the  
11 state board of pardons as provided by law, or retain such  
12 jurisdiction with this court. Prior to the revocation of an  
13 order suspending or deferring the imposition of sentence,  
14 the person affected shall be given a hearing."

15 Section 6. There is a new R.C.M. section that reads as  
16 follows:

17 Sentence for capital offense. A person convicted of a  
18 capital offense shall be punished by death or by  
19 imprisonment in the state prison for life.

20 Section 7. There is a new R.C.M. section that reads as  
21 follows:

22 Procedure to determine sentence for capital offense.  
23 (1) When the defendant is convicted of a capital offense,  
24 the court shall conduct a separate sentencing proceeding to  
25 determine whether to sentence the defendant to death or life

1 imprisonment. The proceeding shall be conducted in the  
2 trial court before the trial jury as soon as practicable.  
3 In the proceeding, evidence may be presented as to any  
4 matter that the court considers relevant to sentence. This  
5 subsection does not authorize the introduction of any  
6 evidence secured in violation of the constitution of the  
7 United States or of the state of Montana. The state and the  
8 defendant or his counsel shall be permitted to present  
9 argument for or against the sentence of death.

10 (2) On conclusion of the presentation of the evidence,  
11 the court shall submit the following issues to the jury:

12 (a) whether the conduct of the defendant that caused  
13 the death of the deceased was committed deliberately and  
14 with the reasonable expectation that the death of the  
15 deceased or another would result;

16 (b) whether there is a probability that the defendant  
17 would commit further criminal acts of violence that would  
18 constitute a continuing threat to society; and

19 (c) if raised by the evidence, whether the conduct of  
20 the defendant in killing the deceased was unreasonable in  
21 response to the provocation, if any, by the deceased.

22 (3) The state must prove each issue submitted beyond a  
23 reasonable doubt, and the jury shall return a special  
24 verdict of "yes" or "no" on each issue submitted.

25 (4) The court shall charge the jury that:

1 (a) it may not answer any issue "yes" unless it agrees  
2 unanimously; and

3 (b) it may not answer any issue "no" unless 10 or more  
4 jurors agree.

5 (5) If the jury returns an affirmative finding on each  
6 issue submitted under this section, the court shall sentence  
7 the defendant to death. If the jury returns a negative  
8 finding on any issue submitted under this section, the court  
9 shall sentence the defendant to confinement in the state  
10 prison for life.

11 (6) The judgment of conviction and sentence of death  
12 are subject to automatic review by the Montana supreme court  
13 within 60 days after certification by the sentencing court  
14 of the entire record unless the time is extended an  
15 additional period not to exceed 30 days by the supreme court  
16 for good cause shown. The review by the supreme court has  
17 priority over all other cases and shall be heard in  
18 accordance with rules promulgated by the supreme court.

19 Section 8. Repealer. Section 95-2206,1, R.C.M. 1947,  
20 is repealed.

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