

SENATE BILL NO. 364

2/08 Introduced  
2/09 Referred to Judiciary  
2/21 Hearing  
2/23 Committee Report-Bill Pass As Amended  
2/25 2nd Reading Pass  
2/27 3rd Reading Pass  
2/27 Reconsideration  
2/27 3rd Reading Do Not Pass  
2/27 Bill Killed

1 *Senate* BILL NO. *364*  
 2 INTRODUCED BY *Rep. "Mark" Finckel Bob Brown*  
*Asst. Speaker Steve D. W. Patton - Mercer Smith*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE DEATH *O'Hara*  
 5 PENALTY FOR A PERSON WHO SELLS AN OPIATE TO A PERSON WHO *Dave Brown*  
 6 DIES FROM ITS INTRODUCTION INTO HIS BODY; AMENDING SECTIONS *Shelley*  
 7 45-9-101 AND 46-18-03, MCA."

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

10 Section 1. Section 45-9-101, MCA, is amended to read:

11 "45-9-101. Criminal sale of dangerous drugs. (1) A  
 12 person commits the offense of criminal sale of dangerous  
 13 drugs if he sells, barter, exchanges, gives away, or offers  
 14 to sell, barter, exchange, or give away or manufactures,  
 15 prepares, cultivates, compounds, or processes any dangerous  
 16 drug, as defined in 50-32-101.

17 (2) A person convicted of criminal sale of an opiate,  
 18 as defined in 50-32-101~~(18)~~(19), shall be punished by death,  
 19 as provided in 46-18-301 through 46-18-310, or imprisoned in  
 20 the state prison for a term of not less than 2 years or more  
 21 than life and may be fined not more than \$50,000, except as  
 22 provided in 46-18-222.

23 (3) A person convicted of criminal sale of a dangerous  
 24 drug included in Schedule I or Schedule II pursuant to  
 25 50-32-222 or 50-32-224, except marijuana or

1 tetrahydrocannabinols, who has a prior conviction for  
 2 criminal sale of such a drug shall be imprisoned in the  
 3 state prison for a term of not less than 10 years or more  
 4 than life and may be fined not more than \$50,000, except as  
 5 provided in 46-18-222. Upon a third or subsequent conviction  
 6 for criminal sale of such a drug, he shall be imprisoned in  
 7 the state prison for a term of not less than 20 years or  
 8 more than life and may be fined not more than \$50,000,  
 9 except as provided in 46-18-222. Whenever a conviction under  
 10 this subsection is for criminal sale of such a drug to a  
 11 minor, the sentence shall include the restriction that the  
 12 defendant be ineligible for parole and participation in the  
 13 supervised release program while serving his term.

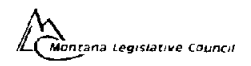
14 (4) A person convicted of criminal sale of dangerous  
 15 drugs not otherwise provided for in subsection (2) or (3)  
 16 shall be imprisoned in the state prison for a term of not  
 17 less than 1 year or more than life or be fined an amount of  
 18 not more than \$50,000, or both.

19 (5) Practitioners and agents under their supervision  
 20 acting in the course of a professional practice, as defined  
 21 by 50-32-101, are exempt from this section."

22 Section 2. Section 46-18-303, MCA, is amended to read:

23 "46-18-303. Aggravating circumstances. Aggravating  
 24 circumstances are any of the following:

25 (1) The offense was deliberate homicide and was



-2- INTRODUCED BILL  
 SB 364

1 committed by a person serving a sentence of imprisonment in  
2 the state prison.

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

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

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

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

14 (6) The offense was deliberate homicide as defined in  
15 subsection (1)(a) of 45-5-102, and the victim was a peace  
16 officer killed while performing his duty.

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

19 (8) The offense was the criminal sale of an opiate in  
20 violation of 45-9-101 to a person under 21 years of age or  
21 whose mental faculties precluded an intelligent decision  
22 concerning the introduction of the opiate into any of the  
23 body systems, and as a result of the sale and introduction  
24 the person died. The causal relationship between the  
25 introduction and death must be established by competent

1 medical testimony, and the sentencing judge must be  
2 convinced beyond reasonable doubt that the opiate sold by  
3 the defendant was the introduced opiate that caused the  
4 death of the person."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 364

INTRODUCED BY PINSONEAULT, B. BROWN, HIRSCH, ASAY,  
STIMATZ, DANIELS, GALT, MCCALLUM, SHAW, MERCER,  
SPAETH, O'HARA, SIMON, HARDING, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE DEATH  
PENALTY FOR A PERSON WHO SELLS AN-~~OP~~iate A DANGEROUS DRUG TO  
A PERSON WHO DIES FROM ITS INTRODUCTION INTO HIS BODY;  
AMENDING SECTIONS 45-9-101 AND 46-18-303, MCA."

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

Section 1. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A  
person commits the offense of criminal sale of dangerous  
drugs if he sells, barter, exchange, gives away, or offers  
to sell, barter, exchange or give away or manufactures,  
prepares, cultivates, compounds, or processes any dangerous  
drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate,  
as defined in 50-32-101~~(18)~~(19), shall be punished by death,  
as provided in 46-18-301 through 46-18-310, or imprisoned in  
the state prison for a term of not less than 2 years or more  
than life and may be fined not more than \$50,000, except as  
provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous

drug included in Schedule I or Schedule II pursuant to  
50-32-222 or 50-32-224, except marijuana or  
tetrahydrocannabinols, who has a prior conviction for  
criminal sale of such a drug shall be PUNISHED BY DEATH, AS  
PROVIDED IN 46-18-301 THROUGH 46-18-310, OR imprisoned in  
the state prison for a term of not less than 10 years or  
more than life and may be fined not more than \$50,000,  
except as provided in 46-18-222. Upon a third or subsequent  
conviction for criminal sale of such a drug, he shall be  
PUNISHED BY DEATH, AS PROVIDED IN 46-18-301 THROUGH  
46-18-310, OR imprisoned in the state prison for a term of  
not less than 20 years or more than life and may be fined  
not more than \$50,000, except as provided in 46-18-222.  
Whenever a conviction under this subsection is for criminal  
sale of such a drug to a minor, ~~the sentence~~ A SENTENCE OF  
IMPRISONMENT shall include the restriction that the  
defendant be ineligible for parole and participation in the  
supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous  
drugs not otherwise provided for in subsection (2) or (3)  
shall be PUNISHED BY DEATH, AS PROVIDED IN 46-18-301 THROUGH  
46-18-310, OR imprisoned in the state prison for a term of  
not less than 1 year or more than life or be fined an amount  
of not more than \$50,000, or both.

(5) Practitioners and agents under their supervision

1 acting in the course of a professional practice, as defined  
2 by 50-32-101, are exempt from this section."

3 Section 2. Section 46-18-303, MCA, is amended to read:

4 "46-18-303. Aggravating circumstances. Aggravating  
5 circumstances are any of the following:

6 (1) The offense was deliberate homicide and was  
7 committed by a person serving a sentence of imprisonment in  
8 the state prison.

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

12 (3) The offense was deliberate homicide and was  
13 committed by means of torture.

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

16 (5) The offense was deliberate homicide and was  
17 committed as a part of a scheme or operation which, if  
18 completed, would result in the death of more than one  
19 person.

20 (6) The offense was deliberate homicide as defined in  
21 subsection (1)(a) of 45-5-102, and the victim was a peace  
22 officer killed while performing his duty.

23 (7) The offense was aggravated kidnapping which  
24 resulted in the death of the victim.

25 (8) The offense was the criminal sale of an--opiate A

1 DANGEROUS DRUG in violation of 45-9-101 to a person under 21  
2 years of age or whose mental faculties precluded an  
3 intelligent decision concerning the introduction of the  
4 opiate DRUG into any of the body systems, and as a result of  
5 the sale and introduction the person died. The causal  
6 relationship between the introduction and death must be  
7 established by competent medical testimony, and the  
8 sentencing judge must be convinced beyond reasonable doubt  
9 that the opiate DRUG sold by the defendant was--the  
10 introduced-opiate-that caused the death of the person OR  
11 THAT THE DEATH WOULD NOT HAVE OCCURRED IF THE DRUG HA NOT  
12 BEEN INTRODUCED."

-End-

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