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 2 INTRODUCED BY *Sliter* *Brainard* *Stoval*
SB BILL NO. *202*
Wells
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON TWICE
 5 CONVICTED OF CERTAIN OFFENSES INVOLVING THE SALE OR BARTER OF, OR AN OFFER TO SELL OR
 6 BARTER, DRUGS; AND AMENDING SECTIONS 45-9-101 AND 46-18-303, MCA."
 7

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

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

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

14 (2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an
15 opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2
16 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. If the
17 person was previously convicted of an offense under subsection (3) or (5) or this subsection or of an
18 offense under the laws of another state or of the United States that if committed in this state would be an
19 offense under subsection (3) or (5) or this subsection and if each offense included a sale or barter or offer
20 to sell or barter as an element of the offense, the person shall be:

21 (a) punished by death as provided in 46-18-301 through 46-18-310; or

22 (b) by life imprisonment if the court determines that the sentence of death cannot be imposed
23 under 46-18-301 through 46-18-310.

24 (3) (a) Except as provided in subsection (3)(b), a person convicted of criminal sale of a dangerous
25 drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or
26 tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the
27 state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000,
28 except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug,
29 the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and
30 may be fined not more than \$50,000, except as provided in 46-18-222.

1 (b) If the person was previously convicted of an offense under subsection (2) or (5) or this
2 subsection (3) or of an offense under the laws of another state or of the United States that if committed
3 in this state would be an offense under subsection (2) or (5) or this subsection (3) and if each offense
4 included a sale or barter or offer to sell or barter as an element of the offense, the person shall be punished
5 by:

6 (i) death as provided in 46-18-301 through 46-18-310; or

7 (iii) by life imprisonment if the court determines that the sentence of death cannot be imposed under
8 46-18-301 through 46-18-310.

9 (4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection
10 (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life
11 or be fined an amount of not more than \$50,000, or both.

12 (5) A person who was an adult at the time of sale and who is convicted of criminal sale of
13 dangerous drugs to a minor shall be sentenced as follows:

14 (a) If convicted of a first offense pursuant to subsection (2), the person shall be imprisoned in the
15 state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except
16 as provided in 46-18-222. If convicted of a subsequent offense under subsection (2) the person shall be
17 punished as provided for a subsequent offense under subsection (2).

18 (b) ~~(i) # Except as provided in subsection (5)(b)(ii), if convicted of the sale of a dangerous drug~~
19 ~~included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of~~
20 ~~such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life~~
21 ~~and may be fined not more than \$50,000, except as provided in 46-18-222.~~

22 (ii) If the person was previously convicted of an offense under subsection (2) or (3) or this
23 subsection (5) or of an offense under the laws of another state or of the United States that if committed
24 in this state would be an offense under subsection (2) or (3) or this subsection (5) and if each offense
25 included a sale or barter or offer to sell or barter as an element of the offense, the offender shall be
26 punished by:

27 (A) death as provided in 46-18-301 through 46-18-310; or

28 (B) by life imprisonment if the court determines that the sentence of death cannot be imposed
29 under 46-18-301 through 46-18-310.

30 ~~(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to~~

1 ~~50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be~~
 2 ~~imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than~~
 3 ~~\$50,000, except as provided in 46-18-222.~~

4 ~~(c)~~ If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison
 5 for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided
 6 in 46-18-222.

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

9
 10 **Section 2.** Section 46-18-303, MCA, is amended to read:

11 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

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

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

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

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

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

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

22 (7) The offense was aggravated kidnapping which resulted in the death of the victim or the death
 23 by direct action of the defendant of a person who rescued or attempted to rescue the victim.

24 (8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping
 25 committed while incarcerated at the state prison by a person who has been previously:

26 (a) convicted of the offense of deliberate homicide; or

27 (b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the
 28 convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum
 29 prison term is not less than 2 years.

30 (9) The offense was deliberate homicide and was committed by a person during the course of

1 committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the
2 victim was less than 18 years of age.

3 (10) The offense was one for which the death penalty is provided under 45-9-101 for the second
4 commission of certain offenses under that section and the defendant has a previous conviction of such an
5 offense or of an offense under the laws of another state or of the United States that if committed in this
6 state, would be such an offense in this state."

7 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0202, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for a death sentence for a person twice convicted of certain offenses involving the sale or barter of drugs.

ASSUMPTIONS:

1. The Department of Justice (DOJ) is responsible for representing the state in all capital cases following the conviction and imposition of sentence. In addition, the DOJ frequently assists local prosecutors during trial and sentencing of cases in which the death sentence may be imposed. Currently, the DOJ is handling approximately seven death penalty cases. Of the seven, four of the cases were handled at the prosecution and/or sentencing level by the County Prosecutor Services Bureau. All appeals in state and federal courts have been handled by attorneys in the Appellate Legal Services Bureau.
2. Capital cases require a significantly greater investment of attorney time than other criminal cases, both in preparation for sentencing and in the appeals that follow. For example, in one death penalty case, approximately 1200 hours of attorney time were spent during the year in which the offender's first petition for post-conviction relief was filed in state district court. In another case--the only case in which the death penalty was carried out in recent history--attorneys spent over 700 hours during the final four weeks prior to the execution.
3. Because the investment of attorney time depends greatly on the facts and issues involved in the case, the impact to the DOJ cannot be predicted with certainty. It is assumed that a death sentence will be imposed in approximately one-half of the cases that qualify for a death sentence under the bill. Based on the figures provided by the Department of Corrections (DOC), it is assumed that 6 additional death sentences will be imposed during the biennium. It is further assumed that very few of the cases will reach the appeal stage during the biennium and that the DOJ, County Prosecutor Services Bureau, would handle 4 of the 6 during the trial or sentencing phase, or both.
4. The DOJ would be required to add 1.00 FTE, attorney, grade 19, at a cost of \$48,149 per year, and a 0.25 FTE, administrative support position, grade 10, at a cost of \$5,899 per year. Because the bill will only apply to offenses committed after the effective date of the act, the new staff would not be added until January 1998. Operating costs are estimated at \$2,702 in fiscal year 1998 and \$5,405 in fiscal year 1999 (supplies, computer network charges, phones, travel, etc). Equipment is estimated at \$7,500 in fiscal year 1998 only for computers, desks, chairs, file cabinets. This fiscal impact would be an addition to the Legal Services Division budget as contained in the Governor's Executive Budget.
5. The length of the appeal process in the most recent death sentence execution was 22 years, but the national average is significantly less.
6. There were a total of 6 offenders re-convicted of 45-9-101, MCA, criminal sale of dangerous drugs in fiscal year 1995. The average time served in prison for these offenders is one year.
7. The DOC assumes that this bill applies to offenses committed after 10/1/97.
8. This legislation increases the availability of the death penalty. Therefore, the number of appeals from district court to the supreme court could increase.

FISCAL IMPACT:

The cost of appeals funded from the District Court Criminal Reimbursement Program (general fund statutory appropriation) may increase. This potential increase cannot be estimated.

(Continued)

David Lewis 6/20 1/25/97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

W.E. Glaser 1/27/97
WILLIAM GLASER, PRIMARY SPONSOR DATE

Fiscal Note for SB0202, as introduced

SB 202

Expenditures:

Department of Justice (Not included in the Executive Budget)

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	0.63	1.25
Personal Services	27,025	54,048
Operating expenses	2,702	5,405
Equipment	<u>7,500</u>	<u>0</u>
Total	37,227	59,453

Funding:

General Fund (01)	37,227	59,453
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Fiscal Impact:

General Fund (01)	(37,227)	(59,453)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Defense costs in capital cases are paid out of the District Court Reimbursement Fund and, if funding runs out, by the counties. These costs would also increase.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional appellate staff would be necessary in future biennia as the new capital cases move through the appeal and post-conviction process.

There could be a long range negative fiscal impact of this bill as the number of years of incarceration for these offenders would increase from 1 to significantly more and up to 22 years. The Department of Corrections would also incur the cost of execution.

TECHNICAL NOTES:

If HB 222 passes, it will require stricter time deadlines in capital cases. The Department of Justice has requested additional funding for implementing the deadlines required by HB222, and the additional staff would be responsible for handling any capital cases that result from SB 201/202. However, if HB 222 passes and additional funds are not appropriated, the Department of Justice would not be able to handle any new capital cases with existing resources.