

HOUSE BILL NO. 338

INTRODUCED BY B. HAMLETT

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN ORDER TO SENTENCE A DEFENDANT TO THE DEATH PENALTY DNA OR BIOLOGICAL EVIDENCE LINKING THE DEFENDANT TO THE CRIME MUST HAVE BEEN ADMITTED DURING THE TRIAL AND THE JUDGE MUST MAKE SPECIFIC FINDINGS THAT THE DNA OR BIOLOGICAL EVIDENCE CONCLUSIVELY ESTABLISHES THE DEFENDANT'S GUILT; AMENDING SECTIONS 46-18-301, 46-18-305, 46-18-306, AND 46-18-310, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 46-18-301, MCA, is amended to read:

**"46-18-301. Hearing on imposition of death penalty -- definition.** (1) When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing must be conducted before the court alone.

(2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered within 120 days after the defendant is found guilty or pleads guilty or within 120 days after the Montana supreme court enters a final decision on appeal.

(b) The district court may allow not more than one extension of up to 60 days after entering findings of fact that the extension is necessary to prevent undue hardship to a party.

(3) A defendant may be sentenced to the death penalty only when DNA or biological evidence was admitted during the trial linking the defendant to the crime.

(4) As used in this part, "biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate a person of an offense."

1           **Section 2.** Section 46-18-305, MCA, is amended to read:

2           **"46-18-305. Effect of aggravating and mitigating circumstances.** (1) In determining whether to  
3 impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating  
4 circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if:

5           (a) the trier of fact found beyond a reasonable doubt, or the defendant pleaded guilty to the offense and  
6 admitted to, one or more aggravating circumstances; ~~and~~

7           (b) the court finds that there are no mitigating circumstances sufficiently substantial to call for leniency;  
8 and

9           (c) DNA or biological evidence was admitted during the defendant's trial and the court finds that the DNA  
10 or biological evidence conclusively establishes the defendant's guilt.

11           (2) If the court does not impose a sentence of death and one of the aggravating circumstances listed in  
12 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the  
13 statute defining the offense."  
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15           **Section 3.** Section 46-18-306, MCA, is amended to read:

16           **"46-18-306. Specific written findings of fact.** In each case in which the court imposes the death  
17 sentence, the determination of the court ~~shall~~ must be supported by specific written findings of fact as to the  
18 existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The court shall  
19 make a specific written finding that DNA or biological evidence was admitted during the defendant's trial and the  
20 court finds that the DNA or biological evidence conclusively establishes the defendant's guilt. The written findings  
21 of fact ~~shall~~ must be substantiated by the records of the trial and the sentencing proceeding."  
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23           **Section 4.** Section 46-18-310, MCA, is amended to read:

24           **"46-18-310. Supreme court's determination as to sentence.** (1) The supreme court shall consider  
25 the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall  
26 determine:

27           (a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other  
28 arbitrary factor;

29           (b) whether the evidence supports the trier of fact's finding of the existence or nonexistence of the  
30 aggravating circumstances enumerated in 46-18-303 and the sentencing judge's finding of the existence or

1 nonexistence of the mitigating circumstances enumerated in 46-18-304; and

2 (c) whether the evidence supports the sentencing judge's finding that the DNA or biological evidence  
3 admitted during the trial conclusively establishes the defendant's guilt; and

4 ~~(e)~~(d) whether the sentence of death is excessive or disproportionate to the penalty imposed in other  
5 cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death  
6 or a sentence other than death, considering both the crime and the defendant. The court shall include in its  
7 decision a reference to those other cases it took into consideration.

8 (2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306  
9 unless those findings are clearly erroneous. The supreme court may not substitute its judgment for that of the  
10 sentencing court in:

11 (a) assessing the credibility of witnesses;

12 (b) drawing inferences from testimonial, physical, documentary, or other evidence; or

13 (c) resolving conflicts in the evidence presented at the sentencing hearing or considered by the  
14 sentencing court."

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16 NEW SECTION. Section 5. Retroactive applicability. (1) [This act] applies retroactively, within the  
17 meaning of 1-2-109, to offenses that occurred prior to [the effective date of this act].

18 (2) A person who is under sentence of death must be resentenced by the court in which the person was  
19 convicted to life imprisonment without possibility of parole unless the court at the resentencing makes a specific  
20 written finding that DNA or biological evidence was admitted during the trial that conclusively established the  
21 person's guilt.

22 - END -