



1997 ASSEMBLY BILL 245

April 3, 1997 - Introduced by Representatives HANDRICK, AINSWORTH, DOBYNS, GUNDERSON, HOVEN, KAUFERT, LADWIG, F. LASEE, MUSSER, OLSEN and SCHAFER, cosponsored by Senators A. LASEE, BUETTNER and FITZGERALD. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 939.50 (1) (a), 939.50 (3) (a) and 973.015; **to renumber and**
2 **amend** 940.01 (1); **to amend** 301.048 (2) (b), 302.11 (1m), 303.065 (1), 304.02
3 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2),
4 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 961.335 (1), 971.17 (1),
5 972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.014 (1) (intro.), 973.032 (2)
6 (b), 973.09 (1) (c) and 978.07 (1) (c) 1.; and **to create** 301.046 (3) (cm), 304.06
7 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (b), 940.01 (1) (c) and
8 (d), 961.335 (1m), 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes;
9 **relating to:** providing a penalty of either death or life imprisonment for
10 first-degree intentional homicide, affecting parole eligibility and granting
11 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (without parole eligibility) for first-degree intentional homicide committed by a person 16 years old or older.

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The procedure for determining whether or not the death penalty would be imposed is the subject of a proceeding separate from the regular trial. After a conviction finding that the homicide occurred, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

If the jury is not waived, the jury hears the evidence, and then gives to the court an advisory sentence of either life imprisonment or death. The court, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the court must sentence the person to life imprisonment without the possibility of parole. If the court chooses the death sentence it must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. One physician and 12 citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 301.046 (3) (cm) of the statutes is created to read:

2 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.

3 **SECTION 2.** 301.048 (2) (b) of the statutes is amended to read:

4 301.048 (2) (b) He or she is a prisoner serving a felony sentence for a felony not
5 punishable by death or life imprisonment and the department directs him or her to
6 participate in the program.

7 **SECTION 3.** 302.11 (1m) of the statutes is amended to read:

8 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
9 Except as provided in ss. 304.06 (1t), 939.62 (2m) and 973.014, the parole commission

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1 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition
2 of a death sentence is not eligible for parole.

3 **SECTION 4.** 303.065 (1) of the statutes is amended to read:

4 303.065 (1) The department may grant work release privileges to any person
5 incarcerated within the state prisons, except that no person serving a life sentence
6 may be considered for work release until he or she has reached parole eligibility
7 under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever is applicable, and no person
8 serving a life sentence under s. 939.62 (2m) or, 973.014 (1) (c) or 973.015 (3) (b) or
9 awaiting imposition of a death sentence may be considered for work release.

10 **SECTION 5.** 304.02 (5) of the statutes is amended to read:

11 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
12 sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting imposition of a death
13 sentence is not eligible for release to parole supervision under this section.

14 **SECTION 6.** 304.06 (1) (b) of the statutes is amended to read:

15 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or
16 973.0135, the parole commission may parole an inmate of the Wisconsin state
17 prisons or any felon or any person serving at least one year or more in a county house
18 of correction or a county reforestation camp organized under s. 303.07, when he or
19 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
20 is greater. Except as provided in sub. (1t) or s. 939.62 (2m) or 973.014, the parole
21 commission may parole an inmate serving a life term when he or she has served 20
22 years, as modified by the formula under s. 302.11 (1) and subject to extension using
23 the formulas under s. 302.11 (2). The person serving the life term shall be given
24 credit for time served prior to sentencing under s. 973.155, including good time under
25 s. 973.155 (4). The secretary may grant special action parole releases under s.

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1 304.02. The department or the parole commission shall not provide any convicted
2 offender or other person sentenced to the department's custody any parole eligibility
3 or evaluation until the person has been confined at least 60 days following
4 sentencing. The parole commission may not parole an inmate who is awaiting
5 imposition of a death sentence.

6 **SECTION 7.** 304.06 (1t) of the statutes is created to read:

7 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015 (3)
8 (b), the prisoner is not eligible for parole.

9 **SECTION 8.** 304.071 (2) of the statutes is amended to read:

10 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1) (b) or (1t),
11 939.62 (2m), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for
12 parole under this section.

13 **SECTION 9.** 939.22 (7) of the statutes is created to read:

14 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
15 which one or more of the possible penalties is death or life imprisonment.

16 **SECTION 10.** 939.30 (2) of the statutes is amended to read:

17 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is~~
18 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
19 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

20 **SECTION 11.** 939.31 of the statutes is amended to read:

21 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41
22 (1x), whoever, with intent that a crime be committed, agrees or combines with
23 another for the purpose of committing that crime may, if one or more of the parties
24 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
25 to exceed the maximum provided for the completed crime; except that for a

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1 conspiracy to commit a crime for which the penalty is punishable by death or life
2 imprisonment, the actor is guilty of a Class B felony.

3 **SECTION 12.** 939.32 (1) (a) of the statutes is amended to read:

4 939.32 (1) (a) Whoever attempts to commit a crime for which the penalty is
5 punishable by death or life imprisonment is guilty of a Class B felony.

6 **SECTION 13.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

7 **SECTION 14.** 939.50 (1) (ag) of the statutes is created to read:

8 939.50 (1) (ag) Class AA felony.

9 **SECTION 15.** 939.50 (2) of the statutes is amended to read:

10 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so
11 specified in chs. 939 to 951.

12 **SECTION 16.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

13 **SECTION 17.** 939.50 (3) (ag) of the statutes is created to read:

14 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
15 under s. 973.015.

16 **SECTION 18.** 939.60 of the statutes is amended to read:

17 **939.60 Felony and misdemeanor defined.** A crime punishable by death or
18 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a
19 misdemeanor.

20 **SECTION 19.** 939.624 (2) of the statutes is amended to read:

21 939.624 (2) If a person has one or more prior convictions for a serious violent
22 crime or a crime punishable by death or life imprisonment and subsequently
23 commits a serious violent crime, the court shall sentence the person to not less than
24 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any

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1 applicable penalty enhancement. The court shall not place the defendant on
2 probation.

3 **SECTION 20.** 939.625 (1) (b) 2. of the statutes is amended to read:

4 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
5 than 5 years or is a life term or the felony is punishable by death, the maximum term
6 of imprisonment for the felony may be increased by not more than 5 years.

7 **SECTION 21.** 939.63 (1) (a) 2. of the statutes is amended to read:

8 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
9 5 years or is a life term or the felony is punishable by death, the maximum term of
10 imprisonment for the felony may be increased by not more than 5 years.

11 **SECTION 22.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and
12 amended to read:

13 940.01 (1) (a) Except as provided in pars. (b) and (c) and sub. (2), whoever
14 causes the death of another human being with intent to kill that person or another
15 is guilty of a Class ~~A~~ AA felony.

16 **SECTION 23.** 940.01 (1) (b) of the statutes is created to read:

17 940.01 (1) (b) Notwithstanding s. 939.05, a person is subject to par. (a) as a
18 party to a crime only if that person had intended that a person be killed.

19 **SECTION 24.** 940.01 (1) (c) and (d) of the statutes are created to read:

20 940.01 (1) (c) A person is subject to par. (a) only if the person is 16 years old or
21 older when he or she commits the offense.

22 (d) Except as provided in sub. (2), whoever causes the death of another human
23 being with intent to kill that person or another, but who is not subject to par. (a) for
24 any reason provided under par. (b) or (c), is guilty of a Class A felony.

25 **SECTION 25.** 961.335 (1) of the statutes is amended to read:

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1 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application the
2 controlled substances board may issue a permit authorizing a person to
3 manufacture, obtain, possess, use, administer or dispense a controlled substance for
4 purposes of scientific research, instructional activities, chemical analysis or other
5 special uses, without restriction because of enumeration. No person shall engage in
6 any such activity without a permit issued under this section, except that an
7 individual may be designated and authorized to receive the permit for a college or
8 university department, research unit or similar administrative organizational unit
9 and students, laboratory technicians, research specialists or chemical analysts
10 under his or her supervision may be permitted possession and use of controlled
11 substances for these purposes without obtaining an individual permit.

12 **SECTION 26.** 961.335 (1m) of the statutes is created to read:

13 961.335 (1m) Upon the application of the secretary of corrections for a permit
14 to obtain a controlled substance for purposes of an execution under s. 973.017, the
15 controlled substances board shall issue a permit under this section.

16 **SECTION 27.** 967.02 (1m) of the statutes is created to read:

17 967.02 (1m) “Crime punishable by death or life imprisonment” has the
18 meaning given in s. 939.22 (7).

19 **SECTION 28.** 971.17 (1) of the statutes is amended to read:

20 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
21 of mental disease or mental defect, the court shall commit the person to the
22 department of health and family services for a specified period not exceeding
23 two-thirds of the maximum term of imprisonment that could be imposed under s.
24 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
25 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,

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1 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b) and 940.25 (1b) and 961.48
2 and other penalty enhancement statutes, as applicable, subject to the credit
3 provisions of s. 973.155. If the ~~maximum term of imprisonment~~ crime is punishable
4 by death or life imprisonment, the commitment period specified by the court may be
5 life, subject to termination under sub. (5).

6 **SECTION 29.** 972.03 of the statutes is amended to read:

7 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
8 challenges except as otherwise provided in this section. When the crime charged is
9 punishable by death or life imprisonment the state is entitled to 6 peremptory
10 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
11 than one defendant, the court shall divide the challenges as equally as practicable
12 among them; and if their defenses are adverse and the court is satisfied that the
13 protection of their rights so requires, the court may allow the defendants additional
14 challenges. If the crime is punishable by death or life imprisonment, the total
15 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
16 defendants and 18 if there are more than 2 defendants; in other felony cases 6
17 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
18 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
19 defendant is entitled to 3 peremptory challenges, except that if there are 2
20 defendants, the court shall allow the defense 4 peremptory challenges, and if there
21 are more than 2 defendants, the court shall allow the defense 6 peremptory
22 challenges. Each side shall be allowed one additional peremptory challenge if
23 additional jurors are to be impaneled under s. 972.04 (1).

24 **SECTION 30.** 972.13 (6) of the statutes is amended to read:

25 972.13 (6) The following forms may be used for judgments:

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1 STATE OF WISCONSIN

2 County

3 In Court

4 The State of Wisconsin

5 vs.

6(Name of defendant)

7 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

8 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
9 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
10 (no contest) on the day of, 19.., of the crime of in violation of s.; and the
11 court having asked the defendant whether the defendant has anything to state why
12 sentence should not be pronounced, and no sufficient grounds to the contrary being
13 shown or appearing to the court.

14 *IT IS ADJUDGED That the defendant is guilty as convicted.

15 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

16 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
17 state prisons (county jail of county) for an indeterminate term of not more than....

18 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
19 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
20 and the following conditions:....

21 *IT IS ADJUDGED That the defendant is hereby committed to detention in
22 (the defendant's place of residence or place designated by judge) for a term of not
23 more than....

24 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
25 costs of this action).

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1 *IT IS ADJUDGED That the defendant pay restitution to....

2 *IT IS ADJUDGED That the defendant is restricted in his or her use of
3 computers as follows:....

4 *The at is designated as the Reception Center to which the defendant
5 shall be delivered by the sheriff.

6 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
7 to the sheriff who shall forthwith execute the same and deliver it to the warden.

8 Dated this day of, 19...

9 BY THE COURT

10 Date of Offense,

11 District Attorney,

12 Defense Attorney

13 *Strike inapplicable paragraphs.

14 STATE OF WISCONSIN

15 County

16 In Court

17 The State of Wisconsin

18 vs.

19(Name of defendant)

20 On the day of, 19.., the district attorney appeared for the state and the
21 defendant appeared in person and by the defendant's attorney.

22 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

23 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
24 of the jury (by the court) and is therefore ordered discharged forthwith.

25 Dated this day of, 19...

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1 BY THE COURT

2 **SECTION 31.** 973.013 (1) (b) of the statutes is amended to read:

3 973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor
4 for the maximum term fixed by the court, subject to the power of actual release from
5 confinement by parole by the department or by pardon as provided by law. If a person
6 is sentenced for a definite time for an offense for which the person may be sentenced
7 under this section, the person is in legal effect sentenced as required by this section,
8 said definite time being the maximum period. ~~A~~ Except as provided in s. 973.015,
9 a defendant convicted of a crime for which the minimum penalty is life shall be
10 sentenced for life.

11 **SECTION 32** 973.0135 (3) of the statutes is amended to read:

12 973.0135 (3) A person is not subject to this section if the current serious felony
13 is punishable by death or life imprisonment.

14 **SECTION 33.** 973.014 (1) (intro.) of the statutes is amended to read:

15 973.014 (1) (intro.) Except as provided in sub. (2) and s. 973.015 (3) (b), when
16 a court sentences a person to life imprisonment for a crime committed on or after July
17 1, 1988, the court shall make a parole eligibility determination regarding the person
18 and choose one of the following options:

19 **SECTION 34.** 973.015 of the statutes is renumbered 973.019.

20 **SECTION 35.** 973.015 of the statutes is created to read:

21 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

22 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
23 separate sentencing proceeding to determine whether the defendant should be
24 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
25 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury

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1 is unable to reconvene for a hearing on the issue of penalty, the trial judge may
2 summon a new jury to determine the issue of the imposition of the penalty. If the trial
3 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
4 sentencing proceeding before a jury summoned for that purpose unless the
5 defendant waives a jury.

6 (b) In the proceeding, the court shall admit any evidence that may be relevant
7 to the sentence regarding any mitigating circumstance. The court shall admit any
8 other evidence according to the rules of evidence applicable at a criminal trial. The
9 court shall provide the defendant with a fair opportunity to rebut any hearsay
10 statements. This paragraph does not authorize the introduction of any evidence
11 secured in violation of the state or federal constitution. The state has the burden of
12 proof, beyond a reasonable doubt, regarding the existence of aggravating
13 circumstances. The defendant has the burden of proof, by a preponderance of the
14 evidence, regarding mitigating circumstances. The court shall permit the state and
15 the defendant or his or her counsel to present arguments for or against a sentence
16 of death.

17 (2) Unless the defendant waives the right to a jury, the jury shall deliberate
18 after hearing all of the evidence and, by a majority vote, shall render an advisory
19 sentence of life imprisonment or death to the court, based upon the following
20 matters:

21 (a) The existence of aggravating circumstances under sub. (5).

22 (b) The existence of mitigating circumstances under sub. (6).

23 (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,
24 after weighing the aggravating and mitigating circumstances, shall enter a sentence
25 of life imprisonment or death, but if the court imposes a sentence of death, it shall

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1 set forth in writing its findings upon which the sentence of death is based as to the
2 facts:

3 1. That sufficient aggravating circumstances exist under sub. (5); and

4 2. That there are insufficient mitigating circumstances under sub. (6) to
5 outweigh the aggravating circumstances.

6 (b) In each case in which the court imposes the death sentence, the court must
7 support its determination by specific written findings of fact based upon the
8 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
9 proceedings. If the court does not make the findings requiring the death sentence,
10 the court shall impose a sentence of life imprisonment. If the court imposes life
11 imprisonment, it shall provide that the sentence is without the possibility of parole.

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

18 (5) The court and jury shall consider one or more of the following as
19 aggravating circumstances:

20 (a) The Class AA felony was committed by a person under sentence of
21 imprisonment.

22 (b) The defendant has been previously convicted of a Class AA felony or any
23 other crime for which the death sentence may be imposed.

24 (c) The Class AA felony was committed for the purpose of avoiding or
25 preventing a lawful arrest or effecting an escape from custody.

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1 (d) The defendant knowingly created a great risk to many persons.

2 (e) The Class AA felony was committed to disrupt or hinder the lawful exercise
3 of any governmental function or the enforcement of laws.

4 (f) The defendant intentionally caused bodily harm or mental anguish to the
5 victim or another before the victim died.

6 (g) During the commission of the offense, the defendant enjoyed or was utterly
7 indifferent to the suffering of another.

8 (h) The Class AA felony was committed in a cold, calculated and premeditated
9 manner without any pretense of moral or legal justification.

10 (i) The defendant's attitude or behavior shows a lack of remorse.

11 **(6)** The court and jury shall consider as a mitigating factor any aspect of the
12 defendant's character, background or record or any of the circumstances of the
13 offense that the defendant offers as a basis for a sentence other than death.
14 Mitigating circumstances may include, but are not limited to, any of the following:

15 (a) The defendant has no significant history of prior criminal activity.

16 (b) The Class AA felony was committed while the defendant was under the
17 influence of extreme mental or emotional disturbance.

18 (c) The defendant was an accomplice in the Class AA felony committed by
19 another person and the defendant's participation was relatively minor.

20 (d) The defendant acted under extreme duress or under the substantial
21 domination of another person.

22 (e) The capacity of the defendant to appreciate the criminality of his or her
23 conduct or to conform his or her conduct to the requirements of law was substantially
24 impaired.

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1 (f) The age of the defendant impaired his or her judgment at the time of the
2 crime.

3 (g) The defendant cooperated with authorities in apprehending or prosecuting
4 other participants in the Class AA felony.

5 (h) The attitude or behavior of the defendant shows remorse.

6 **(7)** The court that imposes a sentence of death shall set the date for execution.
7 The defendant shall be committed to the Wisconsin state prisons pending the
8 execution of the death sentence.

9 **(8)** The execution of a death sentence shall be by lethal injection.

10 **SECTION 36.** 973.016 of the statutes is created to read:

11 **973.016 Stay of execution of death sentence.** The execution of a death
12 sentence may be stayed only by the governor or incident to an appeal.

13 **SECTION 37.** 973.017 of the statutes is created to read:

14 **973.017 Execution of death sentence.** The secretary of corrections shall
15 designate the executioner who shall provide a person subject to a death sentence with
16 an intravenous injection of one or more substances in a lethal quantity. The
17 executioner must be a physician or acting under the direction of a physician. A
18 person is immune from civil or criminal liability for his or her acts or omissions, in
19 good faith, in regard to a lawful execution under this section. The secretary shall
20 designate 12 citizens to witness the execution. The secretary shall direct a physician
21 to be present and to announce when death has occurred. The convicted person may
22 request that certain additional people be allowed to witness the execution. The
23 secretary shall grant any such reasonable request. The secretary may allow
24 representatives of the news media to witness the execution under rules of the
25 department. No other persons may be allowed to witness the execution.

