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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

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| **STATE OF IDAHO,** | ) | |
| | ) | |
| Plaintiff, | ) | Case No. **CR-1985-4110** |
| | ) | |
| vs. | ) | |
| | ) | **MEMORANDUM IN SUPPORT OF** |
| **RICHARD ALBERT LEAVITT,** | ) | **OBJECTION TO MOTION TO** |
| | ) | **QUASH WARRANT** |
| Defendant. | ) | |
| | ) | |

COMES NOW the State of Idaho, by and through J. Scott Andrew, Bingham County Prosecuting Attorney, submits the following memorandum is support of its objection to the Motion To Quash Warrant filed by Defendant Richard Albert Leavitt (hereinafter "Leavitt").

## I. STATEMENT OF FACTS

In September 1985, a jury found Leavitt guilty of first degree murder in relation to the death of Danette Elg. He was sentenced to death. Leavitt filed an appeal from his conviction and sentence. The Idaho Supreme Court affirmed the conviction, but vacated the sentence. *State v. Leavitt*, 116 Idaho 285, 775 P.2d 599 (1989). The Supreme Court remanded the matter to the trial court for further proceedings pertaining to sentencing. Following additional proceedings in the trial court, the sentencing judge again sentenced Leavitt to the punishment of death. Leavitt

appealed the sentence to the Idaho Supreme Court, which upheld the imposition of the death penalty. *State v. Leavitt*, 121 Idaho 4, 822 P.2d 523 (1991) (rehearing denied 1992). Leavitt filed applications for writ of certiorari to the United States Supreme Court from this conviction and imposition of the death penalty, both of which were denied. *Idaho v. Leavitt*, 493 U.S. 923 (1989); *Leavitt v. Idaho*, 506 U.S. 972 (1992).

Leavitt requested post-conviction relief concurrently with the pendency of his first appeal before the Idaho Supreme Court. Leavitt's request for post-conviction relief was denied by the trial court. The denial of post-conviction relief was affirmed by the Idaho Supreme Court. *Leavitt*, 116 Idaho 285, 775 P.2d 599 (1989).

Leavitt sought habeas corpus relief from his conviction and sentence in federal court. In 2000 District Judge Lynn Winmill issued a decision vacating Leavitt's conviction. This decision was subsequently reversed by the United States Court of Appeals for the Ninth Circuit. *Leavitt v. Arave*, 383 F.3d 809 (9th Cir. 2004).

In August 2002, during the pendency of the federal habeas corpus proceeding, Leavitt filed a motion under Idaho Criminal Rule 35 to correct an illegal sentence, alleging that he was entitled to relief from his death sentence pursuant to the ruling of the United States Supreme Court in *Ring v. Arizona*, 538 U.S. 584 (2002). Leavitt also filed a new post-conviction relief petition requesting relief on the same premise as the Rule 35 motion. The post-conviction proceeding was Bingham County Case CV-2002-2856. The trial court denied a grant relief under both the Rule 35 motion and the post-conviction relief petition. Leavitt appealed the decisions. The Idaho Supreme Court dismissed the appeals seeking relief under I.C.R. 35 and the Uniform Post Conviction Procedure Act. *State v. Leavitt*, 141 Idaho 895, 120 P.3d 283 (2005).

In 2007, following remand of Leavitt's federal habeas corpus case back to the federal district court, Judge Winmill issued a decision vacating Leavitt's sentence of death. This decision was appealed and, subsequently, reversed by the United States Court of Appeals for the Ninth Circuit. *Leavitt v. Arave*, 646 F.3d 605 (9th Cir. 2011). The United States Supreme Court denied an application for a writ of certiorari on May 14, 2012. *Leavitt v. Arave*, 2012 WL 509134 (May 14, 2012). On May 16, 2012, the United States Court of Appeals for the Ninth Circuit issued its

mandate.

On May 16, 2012, Leavitt submitted a written request entitled Notice Of Demand For Opportunity To Be Heard Regarding Issuance Of Death Warrant. On May 17, 2012, L. LaMont Anderson of the Idaho Attorney General's Office travelled to Bonneville County to obtain a death warrant. Bonneville County was the location of the chambers of the district judge assigned to the case. The court issued the death warrant on May 17, 2012. The court also issued a written order denying Leavitt's request to be heard regarding the issuance of the death warrant. Leavitt submitted a Motion to Reconsider, requesting that the court reconsider denial of his request to be heard regarding the issuance of the death warrant. This motion to reconsider was also denied by written order of the court.

Leavitt has now filed a motion requesting that the court quash the death warrant. The State of Idaho has objected to the motion on the grounds that: (1) the trial court has no authority to grant the motion and (2) the motion is without merit.

## II. PROCEDURES INVOLVING DEATH WARRANTS

The Idaho legislature has adopted specific procedures to address cases in which the death penalty has been imposed. Those procedures address the time frame for issuance of a death warrant, require an automatic review of the sentence by the Idaho Supreme Court, provide specific appellate and post-conviction procedures, address stays of execution during the pendency of an appeal, post-conviction proceeding, or order of the federal court, and address the issuance of a new death warrant being issued if a previously issued death warrant has not been executed on the date and time set forth in the death warrant. The statutes that are implicated when a sentence of death is pronounced are I.C. §§19-2705, 19-2708, 19-2715, and 19-2719. Idaho Criminal Rule 38(a) addresses stays of execution.

Idaho Code §19-2705(1) and I.C. §19-2719(2) address the issuance of a death warrant. "Whenever a person is sentenced to death, the judge passing sentence shall, in accordance with section 19-2719, Idaho Code, sign and file a death warrant fixing a date of execution not more than thirty (30) days thereafter." I.C. §19-2705(1). "The death warrant shall not be filed until forty-two (42) days after the judgment imposing the death sentence has been filed, or, in the event a

post-conviction challenge to the conviction or sentence is filed, until the order deciding such post-conviction challenge is filed." I.C. §19-2719(2).

Idaho Code §§19-2708, 19-2715, 19-2719, and Idaho Criminal Rule 38(a) address the ability of the courts of this state to stay the execution of a death warrant. Idaho Code §19-2708 specifically reads: "No judge, court or officer, can suspend the execution of a judgment of death, except as provided in sections 19-2715 and 19-2719, Idaho Code." Idaho Code §19-2715(1) states:

> Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

In accordance with that portion of I.C. §19-2715(1) which requires a stay of execution during an appeal or during the automatic review of death sentences required by I.C. §19-2826, Idaho Criminal Rule 38(a) states: "A sentence of death shall be stayed pending any appeal or review." Idaho Code §19-2719 addresses what is to occur once the appeal and automatic review are completed. Subsection 12 of I.C. §19-2719 states:

> A stay of execution while the special appellate procedures specified herein are followed and during the pendency of automatic review of death sentences shall be automatically entered by the clerk of the supreme court at the time the district court transmits to the supreme court the report required by section 19-2827, Idaho Code. If the sentence is upheld, the clerk shall dissolve such stay when the remittitur is filed. Thereafter the district court shall set a new execution date.

I.C. §19-2719(12).

Idaho Code §19-2715 addresses situations in which a sentence of death has been delayed because of an appeal, post-conviction proceeding, a federal habeas corpus proceeding, or some other reason. The statute was amended during the 2012 Idaho legislative session, prior to May 17, 2012, and made retroactively effective to January 1, 2012. [1] The statute as it currently exists,

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[1] The text of Idaho Code §19-2715 prior to the 2012 amendment is as follows:

reads:

> 19-2715. Ministerial actions relating to stays of execution, resetting execution dates, and order for execution of judgment of death.
>
> (1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.
>
> (2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant form the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.
>
> (3) If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.
>
> (4) If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.
>
> (5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire

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19-2715. Ministerial actions relating to stays of execution, resetting execution dates, and order for execution of judgment of death.

(1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, and during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code.

(2) Upon remittitur after a sentence of death has been affirmed, the district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the prosecuting attorney, must order the defendant to be brought before it, or if he is at large a warrant for his apprehension may be issued. Upon the defendant being brought before the court, the court must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(4) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

## II. ARGUMENT

Leavitt's motion to quash the death warrant is based on the filing of a motion in the federal proceeding, that LaMont Anderson of the Idaho Attorney General's Office met with the presiding state judge to obtain a death warrant without the Bingham County Prosecuting Attorney being present, and that Leavitt was not allowed to argue against issuance of the death warrant prior to it being issued, and that there was no record made of the meeting between Mr. Anderson and the presiding judge. All of these arguments are without merit.

1. Idaho Criminal Rule 38(a)

Leavitt argues that Idaho Criminal Rule 38(a) requires that the warrant in this matter be quashed. Leavitt's argument is without merit. Idaho Criminal Rule 38(a) does not operate to allow quashing of a death warrant. Furthermore, Idaho Criminal Rule 38(a) only operates to impose an automatic stay when an appeal to the Idaho Supreme Court has been filed or while the Idaho Supreme Court undertakes the mandatory sentence review set forth in I.C. §19-2827.

Idaho Criminal Rule 38(a) states: "A sentence of death shall be stayed pending any appeal or review." The rule, but its own terms, does not allow a court to "quash" a warrant. Quashing of the warrant is what Leavitt's pending motion seeks. As such, I.C.R. 38(a) does not provide a basis for the district court to grant the motion.

Leavitt attempts to "boot strap" his claim that the death warrant should be quashed by arguing that the death warrant should not have been issued because the motion he filed in federal court operates to impose an automatic stay under I.C.R. 38(a). He argues that such a pending matter in federal court qualifies as a "review" contemplated by I.C.R. 38(a). Leavitt's reliance on I.C.R. 38(a) as a basis for a stay being imposed is misplaced. Idaho Code §19-2708 restricts the ability for a stay to be entered to those circumstances listed in I.C. §§19-2715 and 19-2719. Specifically, I.C. §19-2708 states: "No judge, court or officer, can suspend the execution of a

judgment of death, except as provided in sections 19-2715 and 19-2719, Idaho Code." Idaho Code §19-2715(1) reads:

> Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

The term "review" in I.C.R. 38(a) is a reference to the review procedures set forth in I.C. §19-2827, not to a review of motions or petitions pending in state district court or federal court. The provisions of I.C.R. 38(a) are entirely consistent with the provisions of I.C. §§19-2708 and 19-2715(1). Idaho Code §19-2715(1) allows stays in only two circumstances which implicate the functions of the Idaho courts – when an appeal is taken from the conviction or sentence and/or the post-conviction proceeding and during the automatic review of the sentence required by I.C. §19-2827. There is no basis for believing that the Idaho Supreme Court intended to grant stays of execution in contradiction to I.C. §§19-2708 and/or 19-2715(1). More specifically, there is no basis for believing that the Idaho Supreme Court meant the word "review" in I.C.R. 38(a), to refer to anything other than the automatic review provisions of I.C. §19-2827. For the foregoing reasons, I.C.R. 38(a) did not impose an automatic stay in this matter and the district court was not prohibited from issuing a new death warrant.

2. Idaho Code §19-2715

Leavitt argues that the death warrant should be quashed because a deputy attorney general met with the district judge to have the death warrant issued, that the district court was required to have a hearing or otherwise allow the defendant to present arguments as to why the death warrant should not issue, and that any discussions between the deputy attorney general and the court were not recorded. These arguments are without merit. The state of Idaho and the court complied with the requirements of I.C. §19-2715. The tasks performed were ministerial, not discretionary. Leavitt has not demonstrated any violation of a constitutional right with respect to the manner in which the death warrant was applied for or issued.

Idaho Code §19-2715 required the district court to issue a new death warrant. Pursuant to

subsection 2 of I.C. §19-2715, "Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court." I.C. §19-2715(2). "Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter." The Idaho Supreme Court has affirmed the sentence of death and issued its remittitur. A mandate has been issued by the United States Court of Appeals for the Ninth Circuit. Thus, under I.C. §19-2715(2), the state was required to apply for a death warrant from the district court and, upon the state making the request, the presiding judge was required to issue the death warrant. The statute provides no judicial discretion in issuing the death warrant. The statute does not require a hearing. As stated in subsection 5 of I.C. §19-2715, "Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution." There is an existing death sentence. There is no valid stay of execution in place. Thus, the district court was required to issue the death warrant.

The district court was required to issue the warrant even under the provisions of I.C. §19-2715(3). Pursuant to subsection 3 of I.C. §19-2715, "If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant." I.C. §19-2715(3). "[U]pon such application, the district court shall set a new execution date not more than thirty (30) days thereafter." I.C. §19-2715(3). The death warrant issued following the second sentencing proceeding in this matter was not executed on the date and time set because of the filling of an appeal in state court. Leavitt's sentence was affirmed by the Idaho Supreme Court and a remittitur has issued. No stay of execution was issued by any state court after the remittitur was issued. The sentence of death has not been carried out because of decisions and orders issued by Judge Winmill in the federal habeas corpus action. All actions of Judge Winmill which affected the ability of the state of Idaho to carry out the sentence of death have been vacated by decisions of the United States Court of Appeals for the Ninth Circuit and, therefore, no longer function to vacate, postpone or stay the ability of Idaho to carry out the sentence of death entered in this case. Therefore, at present, no stay of execution exists. The State has applied for a death warrant, as

required by I.C. §19-2715(3). Because application for a death warrant was made, the district court was required to issue the death warrant. The court was required by I.C. §19-2715(5) to "inquire only into the fact of an existing death sentence and the absence of a valid stay of execution." Because there is an existing death sentence and no valid stay of execution in place, the district court was required to issue the death warrant.

Leavitt attempts to use subsection 4 of I.C. §19-2715 as a basis for claiming that the district court is required to look into facts and have a hearing. Pursuant to subsection 4 of I.C. §19-2715, "If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. I.C. §19-2715(4). "Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly." I.C. §19-2715(4). Subsection 4 applies to circumstances where the penalty of death has not been carried out because of circumstances other than those set forth in subsection 1. Subsection 4 is intended to address unforeseen circumstances in carrying out the execution, which could include, but are certainly not limited to, an equipment failure, unexpected circumstances resulting in a lack of qualified personnel to carry out the sentence at the date and time set, or a natural disaster which interferes with or prohibits the ability of the State of Idaho to carry out the sentence. There are no such unforeseen circumstances that resulted in the previous death warrant not being carried out. A reading of I.C. §19-2715(1), (2) and (3), make clear that subsection 4 of I.C. §19-2715 does not apply to Leavitt's situation. Subsection 1 of I.C. §19-2715 addresses stays of execution pending an appeal and review procedures of the Idaho Supreme Court, an order by a federal court, or an order issued as part of commutation proceedings. Subsection 2 and 3 of I.C. §19-2715 apply when the procedures identified in subsection 1 caused a failure of the death sentence to have been carried out. All of the circumstances identified in subsection 1 of I.C. §19-2715 previously existed to bar execution of the sentence. In Leavitt's case, the death sentence was not carried out because he filed a direct appeal and an appeal from the denial of his post-conviction proceeding and, following vacation of the sentence by the Idaho Supreme Court, filed a second appeal from the subsequently

imposed sentence of death. Following, the remittitur from the Idaho Supreme Court, no new death warrant was issued because of the decisions and/or orders of Judge Winmill in the federal habeas corpus proceeding. Because the death warrant was not executed due to the procedures set forth in I.C. §19-2715(1), the provisions of I.C. §19-2715(4) are inapplicable to the latest application or issuance of a death warrant.

Even if subsection 4 of I.C. §19-2715 were applicable, the statute states that: "Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. " (emphasis added). Thus, inquiry by the court is permissive, not mandatory. If the court does make the inquiry, the scope of the inquiry is limited to the facts surrounding the reason why the sentence was not carried out on the date and time set in the death warrant. Thereafter, if no legal reason exists against the carrying out the sentence, the court must order the warden to carry out the sentence at a "special specified time." I.C. §19-2715(4). In present case, the court was not required to make an inquiry into the facts surrounding the failure to carry out the prior execution. Those facts were likely well known to the court already. There was no legal excuse for not moving forward with carrying out the sentence of death. Specifically, no valid order of any state or federal court prohibits the execution and no stay of execution exists. Therefore, the district court had no basis for failing to designate a specified time for the sentence to be carried out.

3. Involvement of the Idaho Attorney General's Office

Leavitt's argument that the death warrant should be quashed because LaMont Anderson of the Idaho Attorney General's office applied for the death warrant is frivolous. Idaho Code §19-2715 was amended in 2012 (and prior to the issuance of the new death warrant) to address the procedures for having a new death warrant issued when the original death warrant had not been executed. One of the significant changes made was removal of the requirement that the "prosecuting attorney" make application for issuance of the warrant (which term was in former subsection 4 of I.C. §19-2715), and the addition of language that "the state shall apply" for the death warrant. See I.C. §19-2715(2), (3), and (4). Mr. Anderson is a deputy attorney general for the State of Idaho and represents the state of Idaho. He had the same ability and authority as the

county prosecuting attorney to make application to the district court for the issuance of the death warrant. It is completely appropriate for Mr. Anderson to have made the application for the death warrant where he represented the State of Idaho in the federal proceedings, is familiar with the federal procedures and history, has more direct access to information about any mandate issued by the federal Ninth Circuit Court of Appeals, and is in a better position than the county prosecuting attorney to inform the district court of whether there is a pending order in the federal court which prohibits the issuance of the death warrant. Mr. Anderson, as well as other deputy attorney generals in the Attorney General's criminal division, are based in Boise. Following issuance of the warrant, Mr. Anderson is available to "forthwith" deliver the death warrant to the director of the Idaho Department of Correction, as required by I.C. §19-2705(2). All of these realities explain why the legislature would have changed the requirement that the prosecuting attorney apply for the search warrant to the language that "the state" make application. I.C. §19-2715(2), (3) and (4). In any event, where the act is ministerial, Leavitt was not prejudiced in any way by having the Attorney General's office make application instead of the prosecuting attorney from the county where the conviction was obtained.

4. Alleged Violations Of Constitutional Rights

Leavitt argues that his constitutional rights were violated because he was not allowed to appear at the time the death warrant was issued and contest its issuance and because no verbatim transcript is available regarding any meeting between LaMont Anderson the court. Leavitt's arguments are without merit.

All of Leavitt's arguments regarding being allowed to challenge the issuance of the death warrant ignore the fact that the issuance of the death warrant is a ministerial act. Idaho Code §19-2715 does not provide a procedure for challenging the issuance of the death warrant. The statute requires the state to apply for the death warrant when certain conditions apply. The statute requires the district court to issue the death warrant upon application by the state, when there is a valid death sentence in existence, and no stay of execution is in place. Because the issuance of the death warrant is a ministerial act, due process protections are not implicated.

Leavitt has not provided any authority or advanced any argument as to how the failure to

be present or the lack of an audio recording regarding the issuance of the new death warrant violated any of his constitutional rights.

## III. CONCLUSION

The arguments made by Leavitt in favor of the court quashing the death warrant issued in this matter are without merit. As such, the motion must be denied.

DATED this 25th day of May 2012.

J. SCOTT ANDREW
Bingham County Prosecuting Attorney

## CERTIFICATE OF SERVICE

I certify that on the 25th day of May, 2012, I served a true and correct copy of the foregoing upon the following person(s) in the manner(s) indicated:

| | |
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| ( ) hand delivery<br>( ) first class mail<br>(X) facsimile<br>(X) e-mail | David Z. Nevin, Esq.<br>P.O. Box 2772<br>Boise, ID 83701<br>Fax (208) 345-8274<br>e-mail dnevin@nbmlaw.com |
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| ( ) hand delivery<br>( ) first class mail<br>(X) facsimile<br>(X) e-mail | Idaho Attorney General's Office<br>attn: L. LaMont Anderson<br>P.O. Box 83720<br>Boise, ID 83720-0010<br>Fax (208) 345-8274<br>e-mail lamont.anderson@ag.idaho.gov |
| ( ) hand delivery<br>( ) first class mail<br>( ) facsimile<br>(X) e-mail | Idaho Supreme Court<br>451 West State Street<br>Boise, ID 83702<br>Fax (208) 334-2616<br>e-mail deathwarrant@idcourts.net |

J. SCOTT ANDREW

LEGISLATURE OF THE STATE OF IDAHO

Sixty-first Legislature Second Regular Session - 2012

IN THE SENATE

SENATE BILL NO. 1266

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO EXECUTION; AMENDING SECTION 19-2715, IDAHO CODE, TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO A STAY OF EXECUTION, TO REVISE PROVISIONS AND TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO CERTAIN WARRANTS, TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO RESETTING EXECUTION DATES AND TO DEFINE A PHRASE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2715, Idaho Code, be, and the same is hereby amended to read as follows:

19-2715. MINISTERIAL ACTIONS RELATING TO STAYS OF EXECUTION, RESETTING EXECUTION DATES, AND ORDER FOR EXECUTION OF JUDGMENT OF DEATH. (1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, ~~and~~ during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

(2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(4) If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court ~~in which the conviction was had, on the application of the prosecuting attorney, must order the defendant to be brought before it, or if he is at large a warrant for his apprehension may be issued. Upon the defendant being brought before the court, the court must~~ may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(~~4~~5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2012.

# SENATE BILL 1266

Printer Friendly Version

Full Bill Information

**Individual Links:**
Bill Text
Statement of Purpose / Fiscal Note

S1266.....by JUDICIARY AND RULES COMMITTEE

EXECUTION - Amends existing law relating to execution to establish additional provisions relating to a stay of execution, to revise provisions and to establish additional provisions relating to certain warrants, to establish additional provisions relating to resetting execution dates and to define a phrase.

01/26Senate intro - 1st rdg - to printing
01/27Rpt prt - to Jud
02/07Rpt out - rec d/p - to 2nd rdg
02/082nd rdg - to 3rd rdg
02/133rd rdg - **PASSED - 32-3-0**
**AYES** -- Andreason, Bair, Bilyeu, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, Lodge, McGee, Malloy (McKague), McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
**NAYS** -- Bock, LeFavour, Malepeai
**Absent and excused** -- None
**Floor Sponsor - Davis**
Title apvd - to House
02/14House intro - 1st rdg - to Jud
02/16Rpt out - rec d/p - to 2nd rdg
02/172nd rdg - to 3rd rdg

03/123rd rdg - **PASSED - 61-1-8**
**AYES** -- Anderson, Andrus, Barbieri, Barrett, Bateman, Batt, Bayer, Bedke, Bell, Black, Block (Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hartgen, Harwood, Henderson, Jaquet, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan(McMillan), Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Roberts, Rusche, Shepherd, Shirley, Sims, Smith(30), Smith(24), Stevenson, Thayn, Thompson, Trail, Vander Woude, Wills, Wood (27), Wood(35), Mr. Speaker
**NAYS** -- Ringo
**Absent and excused** -- Bilbao, Cronin, Hart, Higgins, Killen, McGeachin, Schaefer, Simpson
**Floor Sponsor - Nielsen**
Title apvd - to Senate

03/13To enrol

03/14Rpt enrol - Pres signed

03/15Sp signed

To Governor

03/16Rpt delivered to Governor on 03/15

03/20Governor signed

Session Law Chapter 84
Effective: 01/01/12

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## STATEMENT OF PURPOSE

## RS21016

This amendment seeks to clarify the process of obtaining a death warrant, including specifying a time during which the warrant must be obtained, sets forth a process for obtaining successive warrants if necessary, and clarifies responsibilities if an execution does not proceed. Some language was changed to reflect federal practices.

## FISCAL NOTE

There is no fiscal impact.

**Contact:**
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