

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER, CHRISTIAENS,
BERG, TURNAGE, CRIPPEN, MAZUREK, CURTISS, KEMMIS,
KEYSER, RAMIREZ, D. BROWN

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Judiciary.
February 14, 1983	Fiscal note requested.
February 16, 1983	Fiscal note returned.
	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Ayes, 39; Noes, 9. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Judiciary.
March 21, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 23, 1983	Third reading, concurred in.

IN THE SENATE

March 24, 1983

Returned to Senate with
amendments.

March 30, 1983

Second reading, amendments
concurred in.

March 31, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *394*
 2 INTRODUCED BY *Bob Brown, Billings, Julie Kristiansen*
 3 *Berg, Linn, Dan McHenry, Curtis*
 4 *Rommie, Deyler, Ramon, Dan Brown*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT
 6 SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL
 7 INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON
 8 SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT
 9 THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE
 10 EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE
 11 EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING
 12 SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202,
 13 AND 46-19-204, MCA."

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

15 Section 1. Section 37-3-103, MCA, is amended to read:

16 "37-3-103. Exemptions from licensing requirements. (1)

17 This chapter does not prohibit or require a license with
 18 respect to any of the following acts:

19 (a) the gratuitous rendering of services in cases of
 20 emergency or catastrophe;

21 (b) the rendering of services in this state by a
 22 physician lawfully practicing medicine in another state or
 23 territory. However, if the physician does not limit the
 24 services to an occasional case or if he has any established
 25 or regularly used hospital connections in this state or

1 maintains or is provided with, for his regular use, an
 2 office or other place for rendering the services, he must
 3 possess a license to practice medicine in this state.

4 (c) the practice of dentistry under the conditions and
 5 limitations defined by the laws of this state;

6 (d) the practice of podiatry under the conditions and
 7 limitations defined by the laws of this state;

8 (e) the practice of optometry under the conditions and
 9 limitations defined by the laws of this state;

10 (f) the practice of osteopathy under the conditions
 11 and limitations defined in chapter 5 of this title for those
 12 doctors of osteopathy who do not receive a physician's
 13 certificate under this chapter;

14 (g) the practice of chiropractic under the conditions
 15 and limitations defined by the laws of this state;

16 (h) the practice of Christian Science, with or without
 17 compensation, and ritual circumcisions by rabbis;

18 (i) the performance by commissioned medical officers
 19 of the armed forces of the United States, of the United
 20 States public health service, or of the United States
 21 veterans' administration of their lawful duties in this
 22 state as officers;

23 (j) the rendering of nursing services by registered or
 24 other nurses in the lawful discharge of their duties as
 25 nurses or of midwife services by registered nurse-midwives

1 under the supervision of a licensed physician;

2 (k) the rendering of services by interns or resident
3 physicians in a hospital or clinic in which they are
4 training, subject to the conditions and limitations of this
5 chapter. The board may require a resident physician to be
6 licensed if he otherwise engages in the practice of medicine
7 in the state of Montana.

8 (l) the rendering of services by a physical therapist,
9 technician, or other paramedical specialist under the
10 appropriate amount and type of supervision of a person
11 licensed under the laws of this state to practice medicine,
12 but this exemption does not extend the scope of a
13 paramedical specialist;

14 (m) the rendering of services by a physician's
15 assistant in accordance with Title 37, chapter 20; and

16 (n) the practice by persons licensed under the laws of
17 this state to practice a limited field of the healing arts,
18 and not specifically designated, under the conditions and
19 limitations defined by law; and

20 ~~(2) the execution of a death sentence pursuant to~~
21 ~~46-19-103.~~

22 (2) Licensees referred to in subsection (1) of this
23 section who are licensed to practice a limited field of
24 healing arts shall confine themselves to the field for which
25 they are licensed or registered and to the scope of their

1 respective licenses and, with the exception of those
2 licensees who hold a medical degree, may not use the title
3 "M.D." or any word or abbreviation to indicate or to induce
4 others to believe that they are engaged in the diagnosis or
5 treatment of persons afflicted with disease, injury, or
6 defect of body or mind except to the extent and under the
7 conditions expressly provided by the law under which they
8 are licensed."

9 Section 2. Section 37-8-103, MCA, is amended to read:

10 "37-8-103. Exemptions -- limitations on authority
11 conferred. (1) No provisions of this law may be construed as
12 prohibiting:

13 (a) gratuitous nursing by friends or members of the
14 family;

15 (b) incidental care of the sick by domestic servants
16 or persons primarily employed as housekeepers;

17 (c) nursing assistance in the case of an emergency;

18 (d) the practice of nursing by students enrolled in
19 approved nursing education programs;

20 (e) the practice of nursing in this state by any
21 legally qualified nurse of another state whose engagement
22 requires the nurse to accompany and care for a patient
23 temporarily residing in this state during the period of one
24 such engagement not to exceed 6 months in length, provided
25 that person does not represent or hold herself or himself

out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; and

~~(i) the execution of a death sentence pursuant to 46-19-103.~~

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Section 3. Section 45-3-109, MCA, is amended to read:

"45-3-109. Execution of death sentence. A public

~~servant--who-in-the-exercise-of-his-official-duty~~ person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence."

Section 4. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead ~~or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that defendant is dead according to accepted standards of medical practice.~~

(3) ~~A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place. The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.~~

(4) ~~The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same. An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person~~

administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(5) After the execution, the sheriff must warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

(5) A pharmacist may dispense to the warden or his designee, without prescription, such drugs as are needed to carry out an execution by lethal injection."

Section 5. Section 46-19-202, MCA, is amended to read:

"46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon

1 application of the superintendent of Warm Springs state
 2 hospital, the county prosecuting officer, or the defendant
 3 or his legal representative, determines after a hearing, if
 4 a hearing is requested, that the defendant has regained
 5 fitness to proceed, the ~~sheriff--shall~~ warden ~~must~~ be
 6 directed by the court to carry out the execution. If,
 7 however, the court is of the view that so much time has
 8 elapsed since the commitment of the defendant that it would
 9 be unjust to proceed with execution of the sentence, the
 10 court may suspend the execution of the sentence and may
 11 order the defendant to be discharged."

12 Section 6. Section 46-19-204, MCA, is amended to read:
 13 "46-19-204. Proceedings following determination
 14 regarding pregnancy. If it is found by the inquiry that the
 15 woman is not pregnant, the ~~sheriff--must~~ warden of the
 16 Montana state prison shall execute the judgment. If it is
 17 found that the woman is pregnant, the ~~sheriff--must~~ warden
 18 shall suspend the execution of judgment and transmit the
 19 inquisition to the governor. When the governor is satisfied
 20 that the woman is no longer pregnant, he may issue his
 21 warrant appointing a day for the execution of the judgment."

-End-

STATE OF MONTANA

REQUEST NO. 382-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 394 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 394 allows a defendant sentenced to death to choose between hanging and a lethal injection; provides that the warden of the State Prison shall provide the place, person and implements to carry out the execution; changes the list of persons viewing the execution; and exempts persons actually performing the execution from professional licensing requirements.

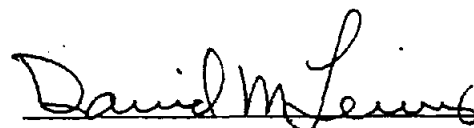
ASSUMPTIONS:

- 1) There have been no executions in the state since mid 1940's and the assumption is there will be none in the 1984-1985 biennium. There are currently three inmates on death row.

FISCAL IMPACT:

There will be no fiscal impact until an inmate on death row has exhausted all legal possibilities of staying his execution. When this does occur, there will be the cost of equipment, providing the room set aside for the execution, cost of witnesses, physician to certify death, and the burial.

FISCAL NOTE 13:S/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-83

Approved by Committee
on Judiciary

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER,

CHRISTIAENS, BERG, TURNAGE, CRIPPEN,

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RAMIREZ, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1)

This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States

veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20; and

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

~~(o) the execution of a death sentence pursuant to~~

~~46-19-103.~~

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions -- limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any

1 legally qualified nurse of another state whose engagement
 2 requires the nurse to accompany and care for a patient
 3 temporarily residing in this state during the period of one
 4 such engagement not to exceed 6 months in length, provided
 5 that person does not represent or hold herself or himself
 6 out to be a nurse licensed to practice in this state;

7 (f) the practice of any legally qualified nurse of
 8 another state who is employed by the United States
 9 government or any bureau, division, or agency thereof while
 10 in the discharge of that nurse's official duties;

11 (g) nursing or care of the sick, with or without
 12 compensation, when done in connection with the practice of
 13 the religious tenets of any well-established religion or
 14 denomination by adherents thereof;

15 (h) nursing or care of a minor who is in the care of a
 16 licensed foster parent, to the same extent such care may be
 17 provided by a parent or guardian; and

18 ~~(i) the execution of a death sentence pursuant to~~
 19 ~~46-19-103.~~

20 (2) This chapter may not be construed as conferring
 21 any authority to practice medicine, surgery, or any
 22 combination thereof; to confer any authority to practice any
 23 of the healing arts prescribed by law to be practiced in the
 24 state of Montana; or to permit any person to undertake the
 25 treatment of disease by any of the methods employed in those

1 arts unless the licensee has been qualified under the
 2 applicable law or laws licensing the practice of those
 3 professions or healing arts in the state of Montana."

4 Section 3. Section 45-3-109, MCA, is amended to read:

5 "45-3-109. Execution of death sentence. A public
 6 ~~servant--who-in-the-exercise-of-his-official-duty~~ person who
 7 puts a person to death pursuant to a sentence of a court of
 8 competent jurisdiction is justified if he acts in accordance
 9 with the sentence pronounced and the law prescribing the
 10 procedure for execution of a death sentence."

11 Section 4. Section 46-19-103, MCA, is amended to read:

12 "46-19-103. Execution of death sentence. (1) In
 13 pronouncing the sentence of death, the court shall set the
 14 date of execution which must not be less than 30 days or
 15 more than 60 days from the date the sentence is pronounced.
 16 If execution has been stayed by any court and the date set
 17 for execution has passed prior to dissolution of the stay,
 18 the court in which the defendant was previously sentenced
 19 shall, upon dissolution of the stay, set a new date of
 20 execution for not less than 5 or more than 90 days from the
 21 day the date is set. The defendant is entitled to be present
 22 in court on the day the new date of execution is set.

23 (c) The punishment of death must be inflicted by
 24 hanging the defendant by the neck until he is dead ~~or~~ at
 25 ~~the election of the defendant, by administration of a~~

continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(3) A sentence of death must be executed within the walls of a jail or some convenient private place in the county where the trial took place. The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than

those mentioned in this subsection can be present at the execution nor can any person under age be allowed to witness the same. An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(5) After the execution, the sheriff must warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

(6) A pharmacist may dispense to the warden or his designee, without prescription, such drugs as are needed to carry out an execution by lethal injection."

Section 5. Section 46-19-202, MCA, is amended to read: "46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall

1 commit him to the custody of the superintendent of Warm
2 Springs state hospital to be placed in an appropriate
3 institution of the department of institutions for so long as
4 the lack of fitness endures.

5 (3) When the court, on its own motion or upon
6 application of the superintendent of Warm Springs state
7 hospital, the county prosecuting officer, or the defendant
8 or his legal representative, determines after a hearing, if
9 a hearing is requested, that the defendant has regained
10 fitness to proceed, the ~~sheriff--shall~~ warden ~~must~~ be
11 directed by the court to carry out the execution. If,
12 however, the court is of the view that so much time has
13 elapsed since the commitment of the defendant that it would
14 be unjust to proceed with execution of the sentence, the
15 court may suspend the execution of the sentence and may
16 order the defendant to be discharged."

17 Section 6. Section 46-19-204, MCA, is amended to read:

18 "46-19-204. Proceedings following determination
19 regarding pregnancy. If it is found by the inquiry that the
20 woman is not pregnant, the ~~sheriff--must~~ warden ~~of the~~
21 ~~Montana state prison~~ shall execute the judgment. If it is
22 found that the woman is pregnant, the ~~sheriff--must~~ warden
23 shall suspend the execution of judgment and transmit the
24 inquisition to the governor. When the governor is satisfied
25 that the woman is no longer pregnant, he may issue his

1 warrant appointing a day for the execution of the judgment."

2 ~~SECTION 7. APPLICABILITY. THIS ACT APPLIES TO DEATH~~
3 ~~SENTENCES WHETHER FIRST PRONOUNCED BEFORE OR AFTER ITS~~
4 ~~EFFECTIVE DATE. THE LEGISLATURE INTENDS THIS ACT TO APPLY~~
5 ~~RETROACTIVELY UNDER 1-2-109.~~

6 ~~SECTION 8. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
7 ~~PASSAGE AND APPROVAL.~~

-End-

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER,

CHRISTIAENS, BERG, TURNAGE, CRIPPEN,

MAZUREK, CURTISS, KEMMIS, KEYSER,

RAMIREZ, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States

1 veterans' administration of their lawful duties in this
2 state as officers;

3 (j) the rendering of nursing services by registered or
4 other nurses in the lawful discharge of their duties as
5 nurses or of midwife services by registered nurse-midwives
6 under the supervision of a licensed physician;

7 (k) the rendering of services by interns or resident
8 physicians in a hospital or clinic in which they are
9 training, subject to the conditions and limitations of this
10 chapter. The board may require a resident physician to be
11 licensed if he otherwise engages in the practice of medicine
12 in the state of Montana.

13 (l) the rendering of services by a physical therapist,
14 technician, or other paramedical specialist under the
15 appropriate amount and type of supervision of a person
16 licensed under the laws of this state to practice medicine,
17 but this exemption does not extend the scope of a
18 paramedical specialist;

19 (m) the rendering of services by a physician's
20 assistant in accordance with Title 37, chapter 20; and

21 (n) the practice by persons licensed under the laws of
22 this state to practice a limited field of the healing arts,
23 and not specifically designated, under the conditions and
24 limitations defined by law; and

25 ~~(o) the execution of a death sentence pursuant to~~

1 ~~46-19-103.~~

2 (2) Licensees referred to in subsection (1) of this
3 section who are licensed to practice a limited field of
4 healing arts shall confine themselves to the field for which
5 they are licensed or registered and to the scope of their
6 respective licenses and, with the exception of those
7 licensees who hold a medical degree, may not use the title
8 "M.D." or any word or abbreviation to indicate or to induce
9 others to believe that they are engaged in the diagnosis or
10 treatment of persons afflicted with disease, injury, or
11 defect of body or mind except to the extent and under the
12 conditions expressly provided by the law under which they
13 are licensed."

14 Section 2. Section 37-8-103, MCA, is amended to read:

15 "37-8-103. Exemptions -- limitations on authority
16 conferred. (1) No provisions of this law may be construed as
17 prohibiting:

18 (a) gratuitous nursing by friends or members of the
19 family;

20 (b) incidental care of the sick by domestic servants
21 or persons primarily employed as housekeepers;

22 (c) nursing assistance in the case of an emergency;

23 (d) the practice of nursing by students enrolled in
24 approved nursing education programs;

25 (e) the practice of nursing in this state by any

1 legally qualified nurse of another state whose engagement
2 requires the nurse to accompany and care for a patient
3 temporarily residing in this state during the period of one
4 such engagement not to exceed 6 months in length, provided
5 that person does not represent or hold herself or himself
6 out to be a nurse licensed to practice in this state;

7 (f) the practice of any legally qualified nurse of
8 another state who is employed by the United States
9 government or any bureau, division, or agency thereof while
10 in the discharge of that nurse's official duties;

11 (g) nursing or care of the sick, with or without
12 compensation, when done in connection with the practice of
13 the religious tenets of any well-established religion or
14 denomination by adherents thereof;

15 (h) nursing or care of a minor who is in the care of a
16 licensed foster parent, to the same extent such care may be
17 provided by a parent or guardian; and

18 (i) the execution of a death sentence pursuant to
19 46-19-103.

20 (2) This chapter may not be construed as conferring
21 any authority to practice medicine, surgery, or any
22 combination thereof; to confer any authority to practice any
23 of the healing arts prescribed by law to be practiced in the
24 state of Montana; or to permit any person to undertake the
25 treatment of disease by any of the methods employed in those

1 arts unless the licensee has been qualified under the
2 applicable law or laws licensing the practice of those
3 professions or healing arts in the state of Montana."

4 Section 3. Section 45-3-109, MCA, is amended to read:

5 "45-3-109. Execution of death sentence. A public
6 ~~servant--who-in-the-exercise-of-his-official-duty~~ person who
7 puts a person to death pursuant to a sentence of a court of
8 competent jurisdiction is justified if he acts in accordance
9 with the sentence pronounced and the law prescribing the
10 procedure for execution of a death sentence."

11 Section 4. Section 46-19-103, MCA, is amended to read:

12 "46-19-103. Execution of death ~~sentence~~. (1) In
13 pronouncing the sentence of death, the court shall set the
14 date of execution which must not be less than 30 days or
15 more than 60 days from the date the sentence is pronounced.
16 If execution has been stayed by any court and the date set
17 for execution has passed prior to dissolution of the stay,
18 the court in which the defendant was previously sentenced
19 shall, upon dissolution of the stay, set a new date of
20 execution for not less than 5 or more than 90 days from the
21 day the date is set. The defendant is entitled to be present
22 in court on the day the new date of execution is set.

23 (2) The punishment of death must be inflicted by
24 hanging the defendant by the neck until he is dead ~~or, at~~
25 ~~the election of the defendant, by administration of a~~

continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place. The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriffs. The sheriff shall at the request of the defendant permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than

those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same. An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(5) After the execution, the sheriff must warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

(6) A pharmacist may dispense to the warden or his designee, without prescription, such drugs as are needed to carry out an execution by lethal injection."

Section 5. Section 46-19-202, MCA, is amended to read: "46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall

1 commit him to the custody of the superintendent of Warm
2 Springs state hospital to be placed in an appropriate
3 institution of the department of institutions for so long as
4 the lack of fitness endures.

5 (3) When the court, on its own motion or upon
6 application of the superintendent of Warm Springs state
7 hospital, the county prosecuting officer, or the defendant
8 or his legal representative, determines after a hearing, if
9 a hearing is requested, that the defendant has regained
10 fitness to proceed, the ~~sheriff--shall~~ warden must be
11 directed by the court to carry out the execution. If,
12 however, the court is of the view that so much time has
13 elapsed since the commitment of the defendant that it would
14 be unjust to proceed with execution of the sentence, the
15 court may suspend the execution of the sentence and may
16 order the defendant to be discharged."

17 Section 6. Section 46-19-204, MCA, is amended to read:

18 "46-19-204. Proceedings following determination
19 regarding pregnancy. If it is found by the inquiry that the
20 woman is not pregnant, the ~~sheriff--must~~ warden of the
21 Montana state prison shall execute the judgment. If it is
22 found that the woman is pregnant, the ~~sheriff--must~~ warden
23 shall suspend the execution of judgment and transmit the
24 inquisition to the governor. When the governor is satisfied
25 that the woman is no longer pregnant, he may issue his

1 warrant appointing a day for the execution of the judgment."

2 SECTION 7. APPLICABILITY. THIS ACT APPLIES TO DEATH
3 SENTENCES WHETHER FIRST PRONOUNCED BEFORE OR AFTER ITS
4 EFFECTIVE DATE. THE LEGISLATURE INTENDS THIS ACT TO APPLY
5 RETROACTIVELY UNDER 1-2-102.

6 SECTION 8. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
7 PASSAGE AND APPROVAL.

-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENATE BILL 394

March 21, 1983

Third Reading Copy (blue)

BE AMENDED AS FOLLOWS:

1. Page 8, following line 14.

Strike: Subsection (6) in its entirety.

AND AS AMENDED
BE CONCURRED IN

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER,

CHRISTIAENS, BERG, TURNAGE, CRIPPEN,

MAZUREK, CURTISS, KEMMIS, KEYSER,

RAMIREZ, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; ~~PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1)

This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States

1 veterans' administration of their lawful duties in this
2 state as officers;

3 (j) the rendering of nursing services by registered or
4 other nurses in the lawful discharge of their duties as
5 nurses or of midwife services by registered nurse-midwives
6 under the supervision of a licensed physician;

7 (k) the rendering of services by interns or resident
8 physicians in a hospital or clinic in which they are
9 training, subject to the conditions and limitations of this
10 chapter. The board may require a resident physician to be
11 licensed if he otherwise engages in the practice of medicine
12 in the state of Montana.

13 (l) the rendering of services by a physical therapist,
14 technician, or other paramedical specialist under the
15 appropriate amount and type of supervision of a person
16 licensed under the laws of this state to practice medicine,
17 but this exemption does not extend the scope of a
18 paramedical specialist;

19 (m) the rendering of services by a physician's
20 assistant in accordance with Title 37, chapter 20; and

21 (n) the practice by persons licensed under the laws of
22 this state to practice a limited field of the healing arts,
23 and not specifically designated, under the conditions and
24 limitations defined by law; and

25 ~~(o) the execution of a death sentence pursuant to~~

1 ~~46-12-103a~~

2 (2) Licensees referred to in subsection (1) of this
3 section who are licensed to practice a limited field of
4 healing arts shall confine themselves to the field for which
5 they are licensed or registered and to the scope of their
6 respective licenses and, with the exception of those
7 licensees who hold a medical degree, may not use the title
8 "M.D." or any word or abbreviation to indicate or to induce
9 others to believe that they are engaged in the diagnosis or
10 treatment of persons afflicted with disease, injury, or
11 defect of body or mind except to the extent and under the
12 conditions expressly provided by the law under which they
13 are licensed."

14 Section 2. Section 37-8-103, MCA, is amended to read:

15 "37-8-103. Exemptions -- limitations on authority
16 conferred. (1) No provisions of this law may be construed as
17 prohibiting:

18 (a) gratuitous nursing by friends or members of the
19 family;

20 (b) incidental care of the sick by domestic servants
21 or persons primarily employed as housekeepers;

22 (c) nursing assistance in the case of an emergency;

23 (d) the practice of nursing by students enrolled in
24 approved nursing education programs;

25 (e) the practice of nursing in this state by any

1 legally qualified nurse of another state whose engagement
2 requires the nurse to accompany and care for a patient
3 temporarily residing in this state during the period of one
4 such engagement not to exceed 6 months in length, provided
5 that person does not represent or hold herself or himself
6 out to be a nurse licensed to practice in this state;

7 (f) the practice of any legally qualified nurse of
8 another state who is employed by the United States
9 government or any bureau, division, or agency thereof while
10 in the discharge of that nurse's official duties;

11 (g) nursing or care of the sick, with or without
12 compensation, when done in connection with the practice of
13 the religious tenets of any well-established religion or
14 denomination by adherents thereof;

15 (h) nursing or care of a minor who is in the care of a
16 licensed foster parent, to the same extent such care may be
17 provided by a parent or guardian; and

18 ~~(i) the execution of a death sentence pursuant to~~
19 ~~46-19-103.~~

20 (2) This chapter may not be construed as conferring
21 any authority to practice medicine, surgery, or any
22 combination thereof; to confer any authority to practice any
23 of the healing arts prescribed by law to be practiced in the
24 state of Montana; or to permit any person to undertake the
25 treatment of disease by any of the methods employed in those

1 arts unless the licensee has been qualified under the
2 applicable law or laws licensing the practice of those
3 professions or healing arts in the state of Montana."

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5 "45-3-109. Execution of death sentence. A public
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7 puts a person to death pursuant to a sentence of a court of
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16 If execution has been stayed by any court and the date set
17 for execution has passed prior to dissolution of the stay,
18 the court in which the defendant was previously sentenced
19 shall, upon dissolution of the stay, set a new date of
20 execution for not less than 5 or more than 90 days from the
21 day the date is set. The defendant is entitled to be present
22 in court on the day the new date of execution is set.

23 (2) The punishment of death must be inflicted by
24 hanging the defendant by the neck until he is dead or, at
25 the election of the defendant, by administration of a

continuous intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place. The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than

those mentioned in this subsection can be present at the execution nor can any person under age be allowed to witness the same. An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(5) After the execution, the sheriff must warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

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1 commit him to the custody of the superintendent of Warm
2 Springs state hospital to be placed in an appropriate
3 institution of the department of institutions for so long as
4 the lack of fitness endures.

5 (3) When the court, on its own motion or upon
6 application of the superintendent of Warm Springs state
7 hospital, the county prosecuting officer, or the defendant
8 or his legal representative, determines after a hearing, if
9 a hearing is requested, that the defendant has regained
10 fitness to proceed, the sheriff--shall warden--must be
11 directed by the court to carry out the execution. If,
12 however, the court is of the view that so much time has
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