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 concurred 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.

LC 2204/01

BILL ND. 1 INTRODUCED_BY 2 3 A BILL FOR AN ACT ENT 4 "AN ACT ALLOWING 5 SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON 6 7 SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE 8 9 EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING 10 11 SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA. 12

13

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:

19 (a) the gratuitous rendering of services in cases of
 20 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 ne 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.

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 without17 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;

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

-2- INTRODUCED BILL

LC 2204/01

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 (1) 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;

(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<u>: and</u>

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

respective licenses and, with the exception of those 7 licensees who hold a medical degree, may not use the title 2 "M.D." or any word or abbreviation to indicate or to induce 3 others to believe that they are engaged in the diagnosis or 4 treatment of persons afflicted with disease+ injury+ or 5 defect of body or mind except to the extent and under the 6 conditions expressly provided by the law under which they 7 я are licensed." Section 2. Section 37-8-103, MCA, is amended to read: 9 "37-8-103. Exemptions -- limitations on authority 10 conferred. (1) No provisions of this law may be construed as 11 prohibiting: 12

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

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| 3 | another state who is employed by the United States |
|----|--|
| 4 | government or any bureau, division, or agency thereof while |
| 5 | in the discharge of that nurse's official duties; |
| 6 | (g) nursing or care of the sick, with or without |
| 7 | compensation; when done in connection with the practice of |
| 8 | the religious tenets of any well-established religion or |
| 9 | denomination by adherents thereof; |
| 10 | (h) nursing or care of a minor who is in the care of a |
| 11 | licensed foster parent, to the same extent such care may be |
| 12 | provided by a parent or guardian <u>#i_and</u> |
| 13 | (i)tbeexecutlopofadeatbsectence_pursuant_to |
| 14 | 46-19-103. |
| 15 | (2) This chapter may not be construed as conferring |
| 16 | any authority to practice medicine, surgery, or any |
| 17 | combination thereof; to confer any authority to practice any |
| 18 | of the healing arts prescribed by law to be practiced in the |
| 19 | state of Hontana; or to permit any person to undertake the |
| 20 | treatment of disease by any of the methods employed in those |
| 21 | arts unless the licensee has been qualified under the |
| 22 | applicable law or laws licensing the practice of those |
| 23 | professions or healing arts in the state of Montana." |
| 26 | Section 3. Section 45-3-109. MfA, is amonded to read: |

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

(f) the practice of any legally qualified nurse of

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24Section 3+ Section 45-3-109+ MCA+ is amended to read:25#45-3-109+ Execution of death sentence+ A public

Servent--whe-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.**

6 Section 4. Section 46-19+103, MCA; is amended to read: 7 #46-19-103. Execution of death sentence. (1) In 8 pronouncing the sentence of death, the court shall set the 9 date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. 10 11 If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, 12 13 the court in which the defendant was previously sentenced 14 shall, upon dissolution of the stay, set a new date of 15 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 16 17 in court on the day the new date of execution is set.

13 (2) The punishment of death must be inflicted by 19 hanging the defendant by the neck until he is dead or ... at 20 the__election_of_the_defendants_by_administration_of_a 21 continuous.intravenous injection_of_a_letbal_quantity_of_an 22 ultra-fast-acting_barbiturate_in_combination_with_a_chemical 23 <u>paralytic_agent_until_a_licensed_obysiclan_pronounces_that</u> defendant is dead according to accepted standards of medical 24 25 practice.

| - | | | |
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| 1 | (3) Asentenceofdeath-must-be-executed-within-the | 1 | <u>administeringtbe_injection_need_not_be_a_physician.</u> |
| 2 | wa lls-ar-yard-of-a-jail- or-some-convenient-private-placein | 2 | <u>registered_ourses_or_licensed_practical_ourse_licensed_or</u> |
| 3 | thecountywherethetrial-took-place Ing_warden_of_the | 3 | <u>registered_under_the_laws_of_this_or_any_other_statesIbe</u> |
| 4 | Montana_state_prison_sball_provide_a_suitable_and_efficient | 4 | warden must_allow_the_execution_to_be_observed_by_12 |
| 5 | room_or_place_in_which_executions_will_be_carried_out* | 5 | witnesses |
| 6 | enclosed_from_public_viewwithin_thewallsofthestate | 6 | executed- |
| 7 | prisonandshall_provide_all_implements_necessary_to_the | 7 | (5) After the execution, the sheriff-must warden shall |
| 8 | executionThe_warden_sballsubjecttosubsection{1* | 8 | make a return upon the death warrant showing time, mode, and |
| 9 | select_the_person_to_perform_the_execution_and_the_warden_or | 9 | manner in which it was executed. |
| 10 | bls_designee_spall_supervise_the_execution. | 10 | <u>[5]_A_pharmacist_max_dispense_tothewarden_orbis</u> |
| 11 | (4) Thesheriffofthecountymust-be-present-and | 11 | <u>designeewithout_prescriptions_such_drugs_as_are_needed_to</u> |
| 12 | shall-supervise-such-execution-which-shall-beconductedin | 12 | carry_out_an_execution_by_letbal_injection." |
| 13 | thepresenceofaphysicianythe-county-attorney-of-the | 13 | Section 5. Section 46-19-202, MCA, is amended to read: |
| 14 | countyy-and-at-least-l2-reputable-citizens-to-be-selected-by | 14 | *46-19-202. Proceedings following determination |
| 15 | the-sheriffr-Thesheriffsheitr-attherequestofthe | 15 | regarding fitness. (1) If it is found that defendant is |
| 16 | defendantypermitsuch-priests-or-ministersy-not-exceeding | 16 | mentally fit as provided in 46-19-201, the sheriff-must |
| 17 | twoy-ss-the-defendant-moy-name-and-only-personsyrelativesy | 17 | warden_of_tbe_Montana_state_prison_shall execute the |
| 18 | orfriendsynottoexceedfiveytobepresent-at-the | 18 | judgment. |
| 19 | execution-together-with-such-peace-officers-as-he-maythink | 19 | (2) If it is found that he lacks fitness, the |
| 20 | expedienttowitnessthe-executionw-No-other-persons-then | 20 | execution of judgment must be suspended and the court shall |
| 21 | those-mentioned-in-this-subsection-can-bepresentatthe | 21 | commit him to the custody of the superintendent of warm |
| 22 | executionynorcananypersonunderagebe-allowed-to | 22 | Springs state hospital to be placed in an appropriate |
| 23 | witnessthesame An <u>_execution_carried_out_bylethal</u> | 23 | institution of the department of institutions for so long as |
| 24 | injection_must_be_performed_by_a_person_selected_by_the | 24 | the lack of fitness endures. |
| 25 | warden and trained to administer the injection. The person | 25 | (3) When the court, on its own motion or upon |
| | -7- | | -6- |

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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 a hearing is requested, that the defendant has regained 4 5 fitness to proceed, the sheriff--shell 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 inquisition to the governor. When the governor is satisfied 19 20 that the woman is no longer pregnant, he may issue his 21 warrant appointing a day for the execution of the judgment." -End-

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STATE OF MONTANA

FISCAL NOTE

Form BD-15

| In | compliance with a written request | received Fe | ebruary 14, | _ , 19 <u>83</u> | , there is hereby | submitted a Fiscal Note |
|----|-----------------------------------|-----------------|---------------------|------------------|-------------------|-------------------------|
| × | Senate Bill 394 | | | . | | |
| TO | | — pursuant to T | Title 5, Chapter 4, | , Part 2 of the | Montana Code Ar | nnotated (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

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BUDGET DIRECTOR Office of Budget and Program Planning Date: _______

58 0394/02

Approved by Committee on Judiciary

| 1 | SENATE BILL NO. 394 |
|---|---|
| 2 | INTRODUCED BY B. BROWN, HALLIGAN, FULLER, |
| 3 | CHRISTIAENS, BERG, TURNAGE, CRIPPEN, |
| 4 | MAZUREK, CURTISS, KEMMIS, KEYSER, |
| 5 | RAMIREZ, D. BROWN |
| 6 | |

7 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT 9 SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL 9 INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT 10 11 THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE 12 EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE 13 EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING 14 SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, 15 AND 46-19-204, MCA: <u>PROVIDING_FOR_APPLICATION_TO_DEATH</u> 16 SEMIENCES_IMPOSED_BEEORE_AND_AETER__THE__EFFECTIVE__DATE__DE 17 IHIS_ACT: AND_PROVIDING_AN_IMMEDIATE_EFECTIVE_DATE."

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19 dE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20 Section 1. Section 37-3-103, MCA, is amenued to read:
21 "37-3-103. Exemptions from licensing requirements. (1)
22 This chapter does not prohibit or require a license with
23 respect to any of the following acts:

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

1 (b) the rendering of services in this state by a 2 physician lawfully practicing medicine in another state or 3 territory. However, if the physician does not limit the 4 services to an occasional case or if he has any established 5 or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an 6 7 office or other place for rendering the services, he must 8 possess a license to practice medicine in this state. 9 (c) the practice of dentistry under the conditions and 10 limitations defined by the laws of this state; 11 (d) the practice of podiatry under the conditions and limitations defined by the laws of this state; 12 13 (e) the practice of optometry under the conditions and 14 limitations defined by the laws of this state; (f) the practice of osteopathy under the conditions 15 15 and limitations defined in chapter 5 of this title for those 17 doctors of osteopathy who do not receive a physician's 18 certificate under this chapter; 19 (g) the practice of chiropractic under the conditions and limitations defined by the laws of this state; 20 (h) the practice of Christian Science, with or without 21 compensation, and ritual circumcisions by rabbis; 22 23 (i) the performance by commissioned medical officers of the armed forces of the United States, of the United 24

25 - States public nealth service, or of the United States

-?- SECOND READING

5B 394

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veterans' administration of their lawful duties in this
 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 chanter. 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.

(1) 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;

19 (m) the rendering of services by a physician's 20 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<u>. and</u>

(o) the execution of a death sentence pursuant to

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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 they are licensed or registered and to the scope of their 5 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 0 others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or 10 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." Section 2. Section 37-8-103, MCA, is amended to read: 14 "37-8-103. Exemptions -- limitations on authority 15 16 conferred. (1) No provisions of this law may be construed as prohibiting: 17 (a) anatuitous nursing by friends or members of the 18 19 familv: 20 (b) incidental care of the sick by domestic servants 21 or persons primarily employed as housekeepers; 22 (c) sursing 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

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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;

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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 (y) 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;

(a) 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 guardiantiand

18 (i)_tbe_execution_of_a_death_sentence_pursuant_to
19 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

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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."

11 Section 4. Section 46-19-103, MCA, is amended to read: "46-19-103. Execution of death sentence. (1) In 12 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. If execution has been stayed by any court and the date set 16 for execution has passed prior to dissolution of the stay. 17 the court in which the defendant was previously sentenced 18 shall, upon dissolution of the stay, set a new date of 19 20 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 21 in court on the day the new date of execution is set. 22

(c) The punishment of death must be inflicted by
 hanging the defendant by the neck until he is dead <u>ore_at</u>
 the election of the defendant. by administration of a

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megical practice. 6 (3) A-sentence-of-death-must-be--executed--within--the 7 walls--or-yard-of-a-jail-or-some-convenient-private-place-in 8 the-county-where-the-trial-took-place <u>Ihe_warden_of_the</u> 9 Montana__state_prison_shall_provide_a_suitable_and_efficient 10 room or place in which executions will be carried out. 11 enclosed_from_public_view, within the walls of the state 12 prisons and shall provide all implements necessary to the 13 execution.___Ibe__warden__shall*__subject_to_subsection_(4)* 14 select the person to perform the execution and the warden or 15 nis_designee_shall_supervise_the_execution. (4) The-sheriff-of-the--county--must--be--present--and 16 17 shall--supervise--such-execution-which-shall-be-conducted-in 18 the-presence-of-a-physiciany--the--county--attorney--of--the 19 countyy-and-at-least-l2-reputable-citizens-to-be-selected-by 20 the--sheriffr--The--sheriff--shally--at--the--request-of-the 21 defendanty-permit-such-priests-or-ministersy--not--exceeding 22 twov--as-the-defendant-may-name-and-only-personsy-relativesy 23 or-friendsy-not--to--exceed--fivey--to--be--present--at--the 24 execution--together-with-such-peace-officers-ss-he-may-think 25 expedient-to-witness-the-executions-No--other--persons--than

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

IHE defendant_is_dead_according_to_accepted_standards_of

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| 1 | thosementionedinthissubsection-con-be-present-at-the |
|----|--|
| 2 | executiony-nor-conanypersonunderagebeallowedto |
| 3 | witnessthesome <u>An_execution_carried_out_by_lethal</u> |
| 4 | injection_must_be_performed_bya_person_selected_by_tbe |
| 5 | wardenand_trained_to_administer_the_injectionIhe_person |
| 6 | administering_the_injection_need_not_be_aphysician. |
| 7 | registered_nurse+_or_licensed_practical_nurse_licensed_or |
| 8 | registered under the laws of this or any other states. The |
| 9 | warden_must_allow_the_execution_to_be_observed_by_12 |
| 10 | witnesses, <u>3 of whom may be designated by the person to be</u> |
| 11 | executed. |
| 12 | (5) After the execution, the sheriff-must warden_shall |
| 13 | make a return upon the death warrant showing time, mode, and |
| 14 | manner in which it was executed. |
| 15 | <u>(6) A pharmacist may dispense to the warden or his</u> |
| 16 | <u>designee.without prescription.such drugs as are needed to</u> |
| 17 | carry_out_an_execution_by_lethal_injection.** |
| 18 | Section 5. Section 46-19-202, MCA, is amended to read: |
| 19 | "45-19-202. Proceedings following determination |
| 20 | regarding fitness. (1) If it is found that defendent is |
| 21 | mentally fit as provided in 46-19-201, the sheriff-must |
| 22 | warden of the Montana state prison shall execute the |
| 23 | judgment. |
| 24 | {2} If it is found that he lacks fitness, the |
| 25 | execution of judgment must be suspended and the court shall |

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

Section 6. Section 46-19-204, MCA, is amended to read: 17 "46-19-204, Proceedings following determination 18 reparding pregnancy. If it is found by the inquiry that the 13 woman is not pregnant, the sheriff--must warden of the 20 Montana_state_prison_shall execute the judgment. If it is 21 22 found that the woman is pregnant, the sheriff--must warden sigll suspend the execution of judyment and transmit the 23 inquisition to the governor, When the governor is satisfied 24 that the woman is no longer pregnant, he may issue his 25

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

- 2 SECTION 7. APPLICABILITY. THIS ACT APPLIES. TO DEATH
- 3 SENIENCES__WHEIHER__EIRST__PRONOUNCED__BEFORE__QR__AFTER_IIS
- 4 EFEECTIVE DATE, THE LEGISLATURE INTENDS THIS ACT TO APPLY
- 5 RETRUACTIVELY_UNDER_1=2=109.
- 5 SECTION 8*_EFFECTIVE_DATE:___THIS_ACT_IS_EFFECTIVE_ON
- 7 PASSAGE_AND_APPROVAL.

-End-

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SB 0394/02

| l | SENATE BILL NO. 394 |
|---|--|
| 2 | INTRODUCED BY B. BROWN, HALLIGAN, FULLER, |
| 3 | CHRISTIAENS, BERG, TURNAGE, CRIPPEN, |
| 4 | MAZUREK, CURTISS, KEMMIS, KEYSER, |
| 5 | RAMIREZ, D. BROWN |
| 6 | |
| 7 | A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT |
| 9 | SENTENCED TO DEATH TO CHOOSE BETHEEN HANGING AND A LETHAL |
| 9 | INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON |
| 0 | SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT |

9 10 THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE 11 12 EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE 13 EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING 14 SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, 15 AND 46-19-204, MCA: PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER. THE EFFECTIVE DATE OF 16 17 IHIS ACT: AND PROVIDING AN IMMEDIATE EEEECTIVE DATE.*

14.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 19 Section 1. Section 37-3-103, MCA, is amenued to read: 20 21 "37-3-103. Exemptions from licensing requirements. (1) 22 This chapter does not prohibit or require a license with 23 respect to any of the following acts:

24 (a) the gratuitous rendering of services in cases of 25 emergency or catastrophe;

| L | (b) the rendering of services in this state by a |
|----|--|
| 2 | physician lawfully practicing medicine in another state or |
| 3 | territory. However, if the physician does not limit the |
| 4 | services to an occasional case or if he has any established |
| 5 | or regularly used hospital connections in this state or |
| 6 | maintains or is provided with, for his regular use, an |
| 7 | office or other place for rendering the services, he must |
| 8 | possess a license to practice medicine in this state. |
| 9 | (c) the practice of dentistry under the conditions and |
| 10 | limitations defined by the laws of this state; |
| 11 | (d) the practice of podiatry under the conditions and |
| 12 | limitations defined by the laws of this state; |
| 13 | (e) the practice of optometry under the conditions and |
| 14 | limitations defined by the laws of this state; |
| 15 | (f) the practice of osteopathy under the conditions |
| 16 | and limitations defined in chapter 5 of this title for those |
| 17 | doctors of osteopathy who do not receive a physician's |
| 18 | certificate under this chapter; |
| 19 | (g) the practice of chiropractic under the conditions |
| 20 | and limitations defined by the laws of this state; |
| 21 | (h) the practice of Christian Science; with or without |
| 22 | compensation, and ritual circumcisions by rabbis; |
| 23 | (i) the performance by commissioned medical officers |
| 24 | of the armed forces of the United States, of the United |

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States public health service, or of the United States

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veterans' administration of their lawful duties in this
 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.

(1) 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,
put this exemption does not extend the scope of a
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<u>s: and</u>

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25

(o) the execution of a death sentence pursuant to

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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." Section 2. Section 37-8-103, MCA, is amended to read: 14 #37-8-103. Exemptions -- limitations on authority 15 16 conferred. (1) No provisions of this law may be construed as 17 prohibiting: (a) gratuitous nursing by friends or members of the 18 19 family: (b) incidental care of the sick by domestic servants 20 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

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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;

(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

18 <u>(i)_tbe_execution_of_a_death_sentence_pursuant_to</u> 19 <u>46-19-103.</u>

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

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.^M

. .

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."

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. If execution has been stayed by any court and the date set 16 for execution has passed prior to dissolution of the stay, 17 18 the court in which the defendant was previously sentenced 19 shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the 20 day the date is set. The defendant is entitled to be present 21 in court on the day the new date of execution is set. 22

23 (2) The punishment of death must be inflicted by
24 hanging the defendant by the neck until he is dead <u>or1_at</u>
25 <u>the election_of_the_defendant._by_administration_of_a</u>

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1 continuous: intravenous injection of a letbal quantity of an 2 ultra-fast-acting_barbiturate_in_combination_with_a_chemical 3 paralytic_agent_until_a_licensed_physician_pronounces_that 4 IVE defendant_is_dead_according_to_accepted_standards_of 5 medical_practice.

6 (3) A-sentence-of-death-must-be--executed--within--the 7 walls--or-yard-of-o-jail-or-some-convenient-private-place-in 8 the-county-where-the-trisl-took-place Ine warden of the 9 Montana state prison shall provide a suitable and efficient 10 room or place in which executions will be carried out. 11 enclosed from public views within the walls of the state 12 prison, and shall provide all implements necessary to the 13 execution.____Ibe__warden__shalls__subject_to_subsection_(4). 14 select the person to perform the execution and the warden or 15 his designee shall supervise the execution. 16 (4) The-sheriff-of-the--county--must--be--present--and

shall--supervise--such-execution-which-shall-be-conducted-in 17 the-presence-of-a-physiciany--the--county--attorney--of--the 18 19 countyy-and-at-least-l2-reputable-citizens-to-be-selected-by 20 the--sheriffy--The--sheriff--shally--at--the--request-of-the 21 defendanty-permit-such-priests-or-ministersy--not--exceeding 22 twoy--as-the-defendant-may-name-and-only-personsy-relativesy 23 or-friendsy-not--to--exceed--fivey--to--be--present--at--the 24 execution--together-with-such-peace-officers-as-he-may-think 25 expedient-to-witness-the-executions-No--other--persons--then

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| 1 | thosementionedinthissubsection-can-be-present-at-the |
|----|--|
| 2 | executions-nor-cananypersonunderagebeallowedto |
| 3 | witnessthesome <u>An_execution_carried_out_by_lethal</u> |
| 4 | injection_must_be_performed_by_a_person_selected_by_the |
| 5 | warden_and_trained_to_administer_the_injectionsIhe_person |
| 6 | administering_the_injection_need_not_be_aphysician. |
| 7 | registered_nurseor_licensed_practical_nurse_licensed_or |
| 8 | registered under the laws of this or any other state. The |
| 9 | warden_must_allow_the_execution_to_be_observed_by_12 |
| 10 | witnesses.3_of_whom_may_be_designated_by_the_persontobe |
| 11 | executed. |
| 12 | (5) After the execution, the sheriff-must warden shall |
| 13 | make a return upon the death warrant showing time, mode, and |
| 14 | manner in which it was executed. |
| 15 | <u>(6) A pharmacist may dispense to the warden or his</u> |
| 16 | <u>designee. without prescription. such drugs as are needed to</u> |
| 17 | <u>carry out an execution by lethal injections"</u> |
| 18 | Section 5. Section 46-19-202, NCA, is amended to read: |
| 19 | #46-19-202。 Proceedings following determination |
| 20 | regarding fitness. (1) If it is found that defendant is |
| 21 | mentally fit as provided in 46-19-201, the sheriff-must |
| 22 | warden_of_the_Montana_state_prison_shall_execute the |
| 23 | judgment |
| 24 | (2) If it is found that he lacks fitness, the |
| 25 | execution of judgment must be suspended and the court shall |

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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 5 application of the superintendent of Warm Springs state 6 hospital, the county prosecuting officer, or the defendant 7 or his legal representative, determines after a hearing, if B 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, however, the court is of the view that so much time has 12 elaosed since the commitment of the defendant that it would 13 be unjust to proceed with execution of the sentence, the 14 court may suspend the execution of the sentence and may 15 order the defendant to be discharged." 16

Section 6. Section 46-19-204, MCA, is amended to read: 17 #46-19-204. Proceedings following determination 18 regarding pregnancy. If it is found by the inquiry that the 19 woman is not pregnant, the sheriff--must warden_of__the 20 Montana state prison shall execute the judgment. If it is 21 found that the woman is pregnant, the sheriff--must warden 22 shall suspend the execution of judyment and transmit the 23 Z4 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_DATEs______ IHIS_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:

Page 8, following line 14.
 Strike: Subsection (6) in its entirety.

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AND AS AMENDED BE CONCURRED IN F

| ı | SENATE BILL NO. 394 | 1 | (b) the rendering of services in this state by a |
|----|---|----|--|
| 2 | INTRODUCED BY B. BROWN, HALLIGAN, FULLER, | 2 | physician lawfully practicing medicine in another state or |
| 3 | CHRISTIAENS, BERG, TURNAGE, CRIPPEN, | 3 | territory. However, if the physician does not limit the |
| 4 | MAZUREK, CURTISS, KEMMIS, KEYSER, | 4 | services to an occasional case or if he has any established |
| 5 | RAMIREZ, D. BROWN | 5 | or regularly used hospital connections in this state or |
| 6 | | 6 | maintains or is provided with, for his regular use, an |
| 7 | A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT | 7 | office or other place for rendering the services, he must |
| 8 | SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL | 8 | possess a license to practice medicine in this state. |
| 9 | INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON | 9 | (c) the practice of dentistry under the conditions and |
| 10 | SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT | 10 | limitations defined by the laws of this state; |
| 11 | THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE | 11 | (d) the practice of podiatry under the conditions and |
| 12 | EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE | 12 | limitations defined by the laws of this state; |
| 13 | EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING | 13 | (e) the practice of optometry under the conditions and |
| 14 | SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, | 14 | limitations defined by the laws of this state; |
| 15 | AND 46-19-204, MCA <u>:_PROVIDING_EOR_APPLICATION_IQ_</u> PEAIH | 15 | (f) the practice of osteopathy under the conditions |
| 16 | SENTENCES_IMPOSED_BEEORE_AND_AETERIHEEEFECIIVEDATEOF | 16 | and limitations defined in chapter 5 of this title for those |
| 17 | THIS_ACT:_AND_PROVIDING_AN_IMMEDIATE_EEEECIIVE_DATE." | 17 | doctors of osteopathy who do not receive a physician*s |
| 18 | | 18 | certificate under this chapter; |
| 19 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: | 19 | (g) the practice of chiropractic under the conditions |
| 20 | Section 1. Section 37-3-103, MCA, is amended to read: | 20 | and limitations defined by the laws of this state; |
| 21 | "37-3-103. Exemptions from licensing requirements. (1) | 21 | (h) the practice of Christian Science, with or without |
| 22 | This cnapter does not prohibit or require a license with | 22 | compensation, and ritual circumcisions by rabbis; |
| 23 | respect to any of the following acts: | 23 | (i) the performance by commissioned medical officers |
| 24 | (a) the gratuitous rendering of services in cases of | 24 | of the armed forces of the United States, of the United |
| 25 | emergency or catastrophe: | 25 | States public health service, or of the United States |
| | | | |

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

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

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

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

(o)__tbe_execution_of__a_death__sentence__pursuant__to

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SB 394

1 46=19=103*

(2) Licensees referred to in subsection (1) of this 2 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 licensees who hold a medical degree, may not use the title 7 "M.D." or any word or abbreviation to indicate or to induce 8 others to believe that they are engaged in the diagnosis or 9 treatment of persons afflicted with disease, injury, or 10 defect of body or mind except to the extent and under the 11 conditions expressly provided by the law under which they 12 13 are licensed." Section 2. Section 37-8-103, MCA, is amended to read: 14 #37-8-103. Exemptions -- limitations on authority 15 16 conferred. (1) No provisions of this law may be construed as 17 prohibiting: (a) gratuitous nursing by friends or members of the 18 19 familyt (b) incidental care of the sick by domestic servants 20 or persons primarily employed as housekeepers; 21 (c) nursing assistance in the case of an emergency; 22 (d) the practice of nursing by students enrolled in 23 approved nursing education programs; 24 (e) the practice of nursing in this state by any 25 -4-SB 394

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;

(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 quardian<u>e: and</u>

18 (i)_the_execution_of_a_death_sentence_pursuant_to
19 \$65-19-103.

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 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."

4 Section 3. Section 45-3-109, MCA, is amended to read: 5 "45-3-109. Execution of death sentence. A public 6 servent--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."

Section 4. Section 46-19-103, MCA, is amended to read: 11 12 #46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the 13 date of execution which must not be less than 30 days or 14 more than 60 days from the date the sentence is pronounced. 15 If execution has been stayed by any court and the date set 16 for execution has passed prior to dissolution of the stay, 17 18 the court in which the defendant was previously sentenced 19 shall. upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the 20 day the date is set. The defendant is entitled to be present 21 in court on the day the new date of execution is set. 22 (2) The punishment of death must be inflicted by 23 hanging the defendant by the neck until he is dead ors_at 24

25 the election of the defendants by administration of a

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1 continuous.intrarenous.injection_of_a_lethal_quantity_of_an
2 ultra_fast_acting_barbiturate_in_combination_with_a_chemical
3 paralytic_agent_until_a_licensed_physician_pronounces__that
4 IHE defendant_is_dead_according_to_accepted_standards_of
5 medical_practice.
6 (3) A-sentence-of-death-must-be--executed--within--the

walls--or-vard-of-a-iail-or-some-convenient-private-place-in 7 the-county-where-the-trisi-took-glace Ihe_warden_of_the В .9 Montana_state_prison_shall_provide_a_suitable_and_efficient 10 room or place in which executions will be carried out. enclosed_from_oublic_views_within_the_walls_of_the_state 11 prison, and shall provide all implements necessary to the 12 13 select the person to perform the execution and the warden or 14 15 his designee shall supervise the execution.

(4) The-sheriff-of-the--county--must--be--present--ond 16 17 shall--supervise--such-execution-which-shall-be-conducted-in 18 the-oresence-of-a-physiciany--the--county--attorney--of--the 19 countyy-and-at-least-l2-reputable-citizens-to-be-selected-by 20 the--sheriffu--The--sheriff--shally--at--the--request-of-the 21 defendanty-permit-such-priests-or-ministersy--not--exceeding 22 twoy--os-the-defendent-may-name-and-only-personsy-relativesy or-friendsy-not--to--exceed--fivey--to--be--present--at--the 23 execution--together-with-such-peace-officers-as-he-may-think 24 25 expedient-to-witness-the-executions-No--other--persons--than

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| 1 | thosementioned-tinthissubsection-can-be-present-at-the |
|----|--|
| 2 | executions-nor-conanypersonunderagebeallowedto |
| 3 | witnessthesame An execution carried out by lethal |
| 4 | injection_must_be_performed_byapersonselectedbythe |
| 5 | warden_and_trained_to_administer_tbe_injectionThe_person |
| 6 | administering_the_injection_need_oot_be_aobysician. |
| 7 | registered_oursex_or_licensed_practical_ourse_licensed_or |
| 8 | registered_under_the_laws_of_this_or_any_otherstateslbe |
| 9 | warden_must_allow_the_execution_to_be_observed_by_12 |
| 10 | witcesses. <u>3_of_whom_may_be_designated_by_tbe_persontobe</u> |
| 11 | executed. |
| 12 | (5) After the execution, the sheriff-must warden shall |
| 13 | make a return upon the death warrant showing time, mode, and |
| 14 | manner in which it was executed. |
| 15 | <u>tétfphermesistDexdispenseto_the_wordep_pribis</u> |
| 16 | designeexcuithoutcoreseriotiooxcaushcdrugscatoresatedsdccto |
| 17 | corry_quian_execution_by_lethal_injections" |
| 18 | Section 5. Section 46-19-202, MCA, is amended to read: |
| 19 | *46-19-202. Proceedings following determination |
| 20 | regarding fitness. (1) If it is found that defendant is |
| 21 | mentally fit as provided in 46~19-201, the sheriff-must |
| 22 | warden_of_the_Montana_state_prison_shall execute the |
| 23 | judgment. |
| 24 | (2) If it is found that he lacks fitness, the |
| 25 | execution of judgment must be suspended and the court shall |
| | |

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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 5 application of the superintendent of Warm Springs state 6 hospital, the county prosecuting officer, or the defendant 7 or his legal representative, determines after a hearing, if 8 a hearing is requested, that the defendant has regained 9 10 fitness to proceed, the sheriff--shell warden must be directed by the court to carry out the execution. If, 11 however, the court is of the view that so much time has 12 elapsed since the commitment of the defendant that it would 13 be unjust to proceed with execution of the sentence, the 14 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, ACA, is amended to read: #46-19-204. Proceedings following determination 18 regarding pregnancy. If it is found by the inquiry that the 19 20 woman is not pregnant, the sheriff-must warden of the 21 Montana__state__prison__shall execute the judgment. If it is found that the woman is pregnant, the sheriff--must warden 22 shall suspend the execution of judgment and transmit the 23 inquisition to the governor. When the governor is satisfied 24 25 that the woman is no longer pregnant, ne may issue his

| Warrant appointing a day for the execution of the judgment." SECTION_TAPPLICABILITYTHIS_ACT_APPLIESTODEATH SENTENCESWHETHERFIRSTPRONQUACEDBEFOREORAFTER_TIS EEFECTIVE_DATETHE_LEGISLATURE_INTENDS_THIS_ACTTOAPPLY REIRDACTIVELY_UNDER_1=2=109. SECTION_8EFFECTIVEDATETHIS_ACTIS_EFFECTIVE_DN | | |
|---|---|--|
| 3 SENIENCES_WHEIHER_EIRSI_PRONOUNCED_BEFORE_OR_AFIER_IIS 4 EEEECIIVE_DATEIHE_LEGISLATURE_INTENDS_IHIS_ACTTO_APPLY 5 REIROACIIVELY_UNDER_1=2=109. | 1 | warrant appointing a day for the execution of the judgment." |
| 4 EEEECIIVE_DATEIHE_LEGISLATURE_INTENDS_IHISACTTOAPPLY 5 REIROACTIVELY_UNDER_1=2=109. | 2 | SECTION_TAPPLICABILITYIHIS_ACT_APPLIESTODEATH |
| 5 REIROACIIVELY_UNDER_1=2=109. | 3 | SENIENCESWHEIHEREIRSIPRONOUNCEDBEEDREORAFIER_LIS |
| | 4 | EEFECIIVE_DATEIHE_LEGISLATURE_INTENDS_IHIS_ACTTOAPPLY |
| 6 SECTION_BAEFFECTIVE_DATEATHIS_ACT_IS_EFFECTIVE_DN | 5 | REIROACIIVELY_UNDER_1-2-109. |
| | 6 | SECTION_8EFECTIVE_DATETHIS_ACT_IS_EFECTIVE_DN |

7 PASSAGE_AND_APPROVALA

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