

## 1 HOUSE BILL NO. 98

2 INTRODUCED BY CLARK

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING HANGING AS A MEANS OF EXECUTION;  
6 REVISING THE REQUIREMENTS FOR APPLICATIONS FOR EXECUTIVE CLEMENCY; REQUIRING  
7 APPLICATION FOR EXECUTIVE CLEMENCY IN CAPITAL CASES TO BE MADE WITHIN 10 DAYS AFTER  
8 THE DATE OF EXECUTION IS SET; CLARIFYING THAT THERE IS NO APPEAL FROM THE GOVERNOR'S  
9 GRANT OR DENIAL OF CLEMENCY; AMENDING SECTIONS 46-19-103 AND 46-23-301, MCA; AND  
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1314 **Section 1.** Section 46-19-103, MCA, is amended to read:

15 **"46-19-103. Execution of death sentence.** (1) In pronouncing the sentence of death, the court  
16 shall set the date of execution, which ~~must~~ may not be less than 30 days or more than 60 days from the  
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19 shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days  
20 from the day the date is set. The defendant is entitled to be present in court on the day the new date of  
21 execution is set.

22 (2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~the~~ a state  
23 prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of  
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29 ~~defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an~~  
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1 (4) When an execution date is set, a death warrant signed by the judge and attested by the clerk  
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 3 the judgment must be delivered to the ~~warden of the state prison~~ director of the department of corrections.  
 4 The warrant must be directed to the ~~warden~~ director and recite the conviction, judgment, ~~method of~~  
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6 (5) The warden of the Montana state prison shall provide a suitable and efficient room or place in  
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 8 shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select  
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17 (7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of  
 18 the court from which it was issued, noting on the warrant the time, ~~mode, and manner in which~~ it was  
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21 **Section 2.** Section 46-23-301, MCA, is amended to read:

22 **"46-23-301. Cases of executive clemency -- application for clemency -- definitions.** (1) (a)  
 23 "Clemency" means kindness, mercy, or leniency that may be exercised by the governor ~~towards~~ toward  
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(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~the~~ a state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

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1           (2) A person convicted of a crime need not exhaust judicial or administrative remedies before ~~he~~  
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 3 RESPECT TO A SENTENCE OF DEATH WHILE AN AUTOMATIC REVIEW PROCEEDING IS PENDING BEFORE  
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25           NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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27           NEW SECTION. Section 4. Applicability. [This act] applies to death warrants issued by a court  
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 8 shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select  
 9 the person to perform the execution, and the warden or ~~his~~ the warden's designee shall supervise the  
 10 execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and  
 11 training of the executioner must remain confidential.

12 (6) An execution ~~carried out by lethal injection~~ must be performed by a person selected by the  
 13 warden and trained to administer ~~the~~ a lethal injection. The person administering the injection need not be  
 14 a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any  
 15 other state. The warden ~~must~~ shall allow the execution to be observed by 12 witnesses, 3 of whom may  
 16 be designated by the person to be executed.

17 (7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of  
 18 the court from which it was issued, noting on the warrant the time, ~~mode, and manner in which~~ it was  
 19 executed."  
 20

21 **Section 2.** Section 46-23-301, MCA, is amended to read:

22 **"46-23-301. Cases of executive clemency -- application for clemency -- definitions.** (1) (a)  
 23 "Clemency" means kindness, mercy, or leniency that may be exercised by the governor ~~towards~~ toward  
 24 a convicted person. The governor may grant clemency in the form of:

- 25 (i) the remission of fines or forfeitures;  
 26 (ii) the commutation of a sentence to one ~~which~~ that is less severe;  
 27 (iii) respite; or  
 28 (iv) pardon.

29 (b) "Pardon" means a declaration of record that an individual is to be relieved of all legal  
 30 consequences of a prior conviction.

1 (2) A person convicted of a crime need not exhaust judicial or administrative remedies before ~~he~~  
2 ~~files filing~~ an application for clemency, EXCEPT THAT AN APPLICATION MAY NOT BE FILED WITH  
3 RESPECT TO A SENTENCE OF DEATH WHILE AN AUTOMATIC REVIEW PROCEEDING IS PENDING BEFORE  
4 THE MONTANA SUPREME COURT UNDER 46-18-307 THROUGH 46-18-310. The board shall consider  
5 cases of executive clemency only upon application. All applications for executive clemency must be made  
6 to the board. An application for executive clemency in capital cases ~~must~~ MAY be filed with the board no  
7 later than 10 days after the district court sets ~~the~~ A date of execution. Applications may be filed only by  
8 the person convicted of the crime, by ~~his~~ the person's attorney acting on ~~his~~ the person's behalf and with  
9 ~~his~~ the person's consent, or by a court-appointed next friend, guardian, or conservator acting on ~~his~~ the  
10 person's behalf. The board shall cause an investigation to be made of and base any recommendation it  
11 makes on:

- 12 (a) all the circumstances surrounding the crime for which the applicant was convicted; and
- 13 (b) the individual circumstances relating to social conditions of the applicant prior to commission
- 14 of the crime, at the time the offense was committed, and at the time of the application for clemency.

15 (3) The board shall advise the governor and recommend action to be taken. The board may  
16 recommend that clemency be granted or denied. In noncapital cases, if the board recommends that  
17 clemency be denied, the application ~~must~~ may not be forwarded to the governor and the governor may not  
18 take action on the case. In capital cases, the board shall transmit the application and either a  
19 recommendation that clemency be granted or a recommendation that clemency be denied to the governor.  
20 The governor is not bound by any recommendation of the board, but ~~he~~ the governor shall review the  
21 record of the hearing and the board's recommendation before ~~he~~ grants granting or ~~denies~~ denying  
22 clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to ~~him~~  
23 the governor. An appeal may not be taken from the governor's decision to grant or deny clemency."

24  
25 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

26  
27 NEW SECTION. Section 4. Applicability. [This act] applies to death warrants issued by a court  
28 on or after [the effective date of this act].

29 -END-