

## HOUSE BILL NO. 137

INTRODUCED BY SMITH, BECK

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING FROM MANDATORY TO DISCRETIONARY AN INQUEST FOR A CONVICTED PRISONER WHOSE DEATH IS CAUSED BY A TERMINAL ILLNESS OR THE DEATH SENTENCE; AND AMENDING SECTION 46-4-201, MCA."

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

**Section 1.** Section 46-4-201, MCA, is amended to read:

**"46-4-201. Inquest -- definition, -- when held, -- how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of ~~any~~ a person and is conducted by the coroner before a coroner's jury.

(2) The coroner ~~shall~~ may hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of ~~any~~ a person occurs;

(a) in a prison, jail, or other penal correctional institution and is not caused by the terminal illness of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional institution because of conviction of a criminal offense; or

(b) while a person is being taken into custody or is in the custody of a peace officer, or if the death is caused by a peace officer, except where when criminal charges have been or will be filed, ~~the county attorney shall order the coroner to hold an inquest.~~

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest ~~is to~~ must be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

1 (ii) died while in the custody of a peace officer; or

2 (iii) was killed by a peace officer.

3 (b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified  
4 coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request,  
5 including salary, must be paid by the requesting county."

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0137, as revised

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act changing from mandatory to discretionary an inquest for a convicted prisoner whose death is caused by a terminal illness or the death sentence.

ASSUMPTIONS:

1. In fiscal year 1995, there were 9 deaths in institutional populations due to natural causes or terminal illness, 1 death due to execution, and 1 homicide.
2. The Department of Corrections (DOC) assumes there will be 9 deaths due to terminal illness in fiscal years 1998 and 1999. For these cases the coroner will not order an inquest.
3. Autopsies on deceased inmates are ordered by the county attorney, county coroner, or the attorney general, but are not mandatory.
4. Of the 9 deaths, assume only one autopsy will be performed at a cost of \$650 per autopsy.
5. Transportation cost of the deceased to the State Medical Examiner in Missoula is \$122.50.
6. Assume witnesses from the public (such as a doctor from Powell County clinic) are paid \$10 per inquest.
7. The county attorney in Powell County is paid \$190 per inquest through a contract with DOC.
8. Overtime for two staff from Montana State Prison (MSP) to testify at 4 of the 9 inquests at a cost of \$172.50 per inquest would be affected.
9. Cost for a court reporter to transcribe proceedings is \$55 per inquest.
10. Currently, in Powell County, MSP pays \$150 for each coroner's inquest jury.

FISCAL IMPACT:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>Expenditures:</u>		
Inquest savings	(10,475)	(10,475)
<u>Net Impact on Fund Balance:</u>		
General Fund (01) Savings	10,475	10,475

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Reduced workload for county staff.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Continued annual savings to DOC as long as this bill allows for discretionary inquests.

*Dave Lewis 1-14-97*  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*Liz Smith 1-14-97*  
 LIZ SMITH, PRIMARY SPONSOR      DATE

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**HB 137**

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13 coroner before a coroner's jury.

14 (2) The coroner ~~shall~~ may hold an inquest only if requested to do so by the county attorney of the  
15 county in which death occurred or by the county attorney of the county in which the acts or events causing  
16 death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of any  
17 a person occurs:

18 (a) in a prison, jail, or other penal correctional institution and is not caused by the terminal illness  
19 of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail,  
20 or other correctional institution because of conviction of a criminal offense; ~~or.~~ THIS SUBSECTION (2)(A)  
21 APPLIES TO A DEATH CAUSED BY TERMINAL ILLNESS ONLY IF THE PERSON WAS UNDER MEDICAL  
22 CARE AT THE TIME OF DEATH.

23 (b) while a person is being taken into custody or is in the custody of a peace officer, or if the death  
24 is caused by a peace officer, except where when criminal charges have been or will be filed, the county  
25 attorney shall order the coroner to hold an inquest.

26 (3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the  
27 aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each  
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29 accordance with this part.

30 (4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of

1 a person who:

2 (i) died in a jail or penal institution;

3 (ii) died while in the custody of a peace officer; or

4 (iii) was killed by a peace officer.

5 (b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified  
6 coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request,  
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(2) The coroner ~~shall~~ may hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of any a person occurs:

(a) in a prison, jail, or other penal correctional institution and is not caused by the terminal illness of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional institution because of conviction of a criminal offense, or. THIS SUBSECTION (2)(A) APPLIES TO A DEATH CAUSED BY TERMINAL ILLNESS ONLY IF THE PERSON WAS UNDER MEDICAL CARE AT THE TIME OF DEATH.

(b) while a person is being taken into custody or is in the custody of a peace officer, or if the death is caused by a peace officer, except where when criminal charges have been or will be filed, the county attorney shall order the coroner to hold an inquest.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest ~~is to~~ must be held in accordance with this part.

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1 a person who:

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3 (ii) died while in the custody of a peace officer; or

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(a) in a prison, jail, or other penal correctional institution FACILITY and is not caused by the terminal illness of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional institution FACILITY because of conviction of a criminal offense;  
or. THIS SUBSECTION (2)(A) APPLIES TO A DEATH CAUSED BY TERMINAL ILLNESS ONLY IF THE PERSON WAS UNDER MEDICAL CARE AT THE TIME OF DEATH.

(b) while a person is being taken into custody or is in the custody of a peace officer, or if the death is caused by a peace officer, except where when criminal charges have been or will be filed, the county attorney shall order the coroner to hold an inquest.

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(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of



1 a person who:

2 (i) died in a ~~PRISON, jail, or penal institution~~ OTHER CORRECTIONAL FACILITY;

3 (ii) died while in the custody of a peace officer; or

4 (iii) was killed by a peace officer.

5 (b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified  
6 coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request,  
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(a) in a prison, jail, or other penal correctional institution FACILITY and is not caused by the terminal illness CONDITION, AS DEFINED IN 50-9-102, of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional institution FACILITY because of conviction of a criminal offense; or. THIS SUBSECTION (2)(A) APPLIES TO A DEATH CAUSED BY TERMINAL ILLNESS CONDITION ONLY IF THE PERSON WAS UNDER MEDICAL CARE AT THE TIME OF DEATH.

(b) while a person is being taken into custody or is in the custody of a peace officer, or if the death is caused by a peace officer, except where when criminal charges have been or will be filed, the county attorney shall order the coroner to hold an inquest.

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