

SENATE BILL NO. 439

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE DEATH PENALTY; PROVIDING THAT DEATH MUST BE CAUSED BY A SUBSTANCE OR SUBSTANCES IN A LETHAL QUANTITY SUFFICIENT TO CAUSE DEATH; AND AMENDING SECTION 46-19-103, MCA."

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

Section 1. 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 may 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 20 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) Pending execution of a sentence of death, the sheriff may deliver the defendant to the Montana state prison or the Montana women's prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by administration of ~~a continuous, an~~ intravenous injection of a substance or substances in a lethal quantity ~~of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent sufficient to cause death~~ until a coroner or deputy coroner pronounces that the defendant is dead.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in

1 which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall
2 provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the
3 person to perform the execution, and the warden or the warden's designee shall supervise the execution. The
4 identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the
5 executioner must remain confidential.

6 (6) (a) An execution must be performed by a person selected by the warden and trained to
7 administer a lethal injection. The person administering the injection need not be a physician, registered nurse,
8 or licensed practical nurse licensed or registered under the laws of this or any other state.

9 (b) The warden shall allow the execution to be observed by no more than 12 witnesses, excluding
10 department of corrections staff necessary to carry out the execution. The witnesses must, to the extent
11 possible, include three persons from the news media, three persons designated by the family of the victim of
12 the crime, three persons designated by the person to be executed, and three persons chosen by the
13 department of corrections.

14 (c) A proposed witness is subject to rejection by the department of corrections if the department
15 has reason to believe that the witness:

16 (i) poses a risk to the safety or security of department of corrections personnel, the other
17 witnesses, or other persons; or

18 (ii) is likely to disrupt proceedings due to the witness's emotional or mental state.

19 (7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the
20 court from which it was issued, noting on the warrant the time it was executed.

21 (8) The rejection of a witness under subsection (6)(c) is not grounds for stay of the execution."

22 - END -