_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE DEATH PENALTY; ESTABLISHING THE FIRING SQUAD AS THE DEFAULT METHOD OF EXECUTION; REVISING CRITERIA FOR LETHAL INJECTION; ESTABLISHING CRITERIA FOR A FIRING SQUAD AND ITS MEMBERS; PROVIDING A DEFINITION; AMENDING SECTION 46-19-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Methods of execution.** (1) The default method of execution in the state is by firing squad.

(2) The punishment of death may only be inflicted by one of the following methods:

(a) firing squad; or

(b) if a firing squad is unavailable, the administration of a continuous, intravenous injection of a lethal quantity of a substance or substances sufficient to cause death until a coroner or deputy coroner pronounces that the condemned person is dead.

(3) No later than 5 days after the issuance of the death warrant as provided in 46-19-103, the director of the department of corrections shall determine and certify by affidavit to the court that issued the death warrant whether execution by firing squad is available.

(4) (a) If the director certifies by affidavit that execution by firing squad is available, the method of execution must be firing squad.

(b) (i) If the director does not certify by affidavit that execution by firing squad is available or fails to file a certification as required by subsection (3), the method of execution remains firing squad as described in subsection (2)(a).

(ii) If the director certifies by affidavit that a firing squad is unavailable and provides a thorough description of the reasons a firing squad is unavailable, the execution may proceed by lethal injection.

(5) As used in 46-19-103 and this section, "unavailable" means following diligent effort, documented by a certified affidavit, at recruitment of volunteer public safety officers to serve on a firing squad, the director of the department of corrections is unable to recruit enough qualified members for a firing squad composed of five members.

NEW SECTION. **Section 2. Composition of firing squad.** (1) A firing squad must consist of no fewer than five volunteers who hold a current public safety officer certification issued by the Montana public safety officer standards and training council pursuant to Title 44, chapter 4, part 4, and who have held that certification for at least 3 years.

(2) Volunteers shall demonstrate firearm proficiency. Proficiency must be tested under conditions substantially similar to those present in the execution chamber. Proficiency must be exhibited before initial selection as follows:

(a) the ability to fire the firearm provided by the department of corrections at a minimum of 21 feet with 100% accuracy;

(b) the ability to hit a target of the same size, shape, and dimension that will be used during an execution; and

(c) the ability to hit a target at a substantially similar height to the height at which the target will be attached to the condemned person during an execution.

(3) A volunteer is disqualified if the volunteer:

(a) fails to accurately hit the specific target with one round from each firearm provided by the department of corrections during the proficiency test;

(b) has been subject to a personnel disciplinary action related to the use of a firearm or the use of force within 12 months of the scheduled execution; or

(c) is related by consanguinity within the fourth degree or by affinity within the third degree to the victim or to the condemned person.

(4) At least one member of the firing squad must be randomly assigned a blank cartridge so that no member knows with certainty whether they discharged a lethal round.

(5) The identity of each member of the firing squad must remain anonymous, and facts about the

selection, identity, and training of the firing squad must remain confidential and are not subject to public disclosure.

Section 3. 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, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a coroner or deputy coroner pronounces that the defendant is dead.~~ The punishment of death must be inflicted by firing squad. If a firing squad is unavailable as provided in [section 1], the punishment of death must be inflicted by the administration of a continuous, intravenous injection of a lethal quantity of a substance or substances 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~~ location 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 (6),~~ select the members of the firing squad from a list of volunteers qualified under [section 2] or the person to perform the execution subject to subsection (6)(b) of this section, and the warden or the warden's designee shall supervise

the execution. The identity of the members of the firing squad or the executioner must remain anonymous. Facts pertaining to the selection and training of the ~~executioner~~ firing squad or executioner must remain confidential.

(6) (a) An execution by firing squad must be performed by a firing squad selected by the warden from volunteers qualified under [section 2].

(b) An execution by lethal injection must be performed by a person selected by the warden and trained to administer a lethal 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.

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

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

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

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

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

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

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 19, part 1, and the provisions of Title 46, chapter 19, part 1, apply to [sections 1 and 2].

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are

severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Applicability.** [This act] applies to executions carried out on or after [the effective date of this act].

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