



PRESS RELEASE

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August 17, 2011

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State's New Execution Protocol Fails to Resolve Issues

Policy does not require sufficient training or ensure prisoner won't suffer

HELENA, MT — A lethal injection protocol revised by the Montana Department of Corrections and reissued on Aug. 12, 2011 remains insufficient in terms of training, qualifications and procedures, and fails to meet the legal requirements that it ensure the execution of prisoners is free from cruel and unusual punishment.

"The state's new protocol touches on many things, including how the prisoner is to be transported, where the witnesses will sit and how the prisoner will get his or her last meal, but it never once even mentions that the inmate has a right to not suffer cruelly during the execution," said ACLU Cooperating Attorney Ron Waterman.

Procedures and training are covered in vague terms that leave too much up to chance and the discretion of a single person – the prison warden.

In 2008, Waterman and Julie Johnson of Gough, Shanahan, Johnson and Waterman, in cooperation with the American Civil Liberties Union of Montana, filed the lawsuit *Smith v. Ferriter* on behalf of death row inmate Ronald Allen Smith, challenging the lethal injection procedure in Montana. The petition asserts that the lethal injection procedure used to execute people in Montana is unconstitutional as a violation of cruel and unusual punishment, the right of human dignity. Smith's execution has been stayed pending the outcome of this lawsuit.

Under state law and in the updated protocol the prison warden has sole discretion to choose who executes prisoners. Executioners need not even be trained physicians or nurses. The new protocol does mandate familiarity with intravenous drug administration, but contains no details about where or how the "set-up" officer administering the complicated three-drug lethal injection protocol is to be trained.

The consequences if that protocol is improperly administered are grave. Should the fast-acting barbiturate be improperly prepared or administered, a prisoner could be fully conscious and in excruciating pain when the paralytic agent is injected. Such a situation clearly violates the Constitutional right to be free from cruel or unusual punishment. In Ohio last year, a prisoner suffered for hours as the executioners attempted to find a usable vein and were unable to find one.

The state's revised protocol substitutes pentobarbital as the fast-acting barbiturate. This is due in large part because of the unavailability of the previous drug used. Manufacturers of that and other drugs used for lethal injections have been stopping the manufacture of those drugs or prohibiting their sale to prisons because of the drug makers' opposition to their use in executions.

"Past rulings show that courts have approved the death penalty and protocol only when the procedure is detailed and explicit and is performed by people with the necessary qualifications, training and experience to carry out an execution without inflicting pain and suffering," Waterman said. "Montana's new protocol contains none of these safeguards. We intend to continue our challenge."

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