

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Senator Lasee:

The U.S. Supreme Court has held that a death penalty statute must narrow the class of people who may be executed so that only the worst of the worst are sentenced to death. Courts may determine that the narrowing factor in this bill, that the first-degree homicide is vicious, is unconstitutionally vague because it could apply to almost any first-degree homicide and therefore does not adequately narrow the class of persons eligible for the death penalty. Some state death penalty statutes do use a description of the offense as a narrowing factor, for example that the crime was heinous, atrocious, or cruel, but these statutes generally provide further direction as to why the crime is heinous, atrocious, or cruel, for example because it involved torture or more force than necessary to cause death. You may wish to add a further description of what makes a homicide vicious.

This bill does not specify a protocol for lethal injections or require that DOC promulgate the protocol by rule. I used the lethal injection language from the death penalty bill you introduced in the 2003-04 session (Senate Substitute Amendment 1 to Senate Bill 2) in this bill. It specifies that DOC may not require a physician to be present at executions or to pronounce death. Courts have stayed executions in some states over the last several years in response to arguments that the lethal injection protocols used by those states result in cruel and unusual punishment. People challenging the executions argue that the protocols for lethal injection do not ensure that the person being executed is adequately anesthetized before the drug to stop the person's heart is administered, so the person may feel searing pain but can not alert the executioners because he or she has been paralyzed by a drug used to stop breathing. You may wish to require DOC to promulgate rules for lethal injections so that the protocol may be reviewed before an execution is scheduled.

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