

EXECUTIONS.

CHAPTER 99.

[S. B. No. 39—Johnson.]

PROVIDING FOR ALL EXECUTIONS AT STATE PENITENTIARY.

AN ACT Defining the Mode of Inflicting the Death Penalty; Designating the Warden of the North Dakota Penitentiary Executioner; Prescribing that the Death Penalty Shall Only be Inflicted Within the Walls of the North Dakota Penitentiary; How Execution May be Suspended and Amending Sections 8305 and 8308, of the Revised Codes of North Dakota of 1899.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. DEATH PENALTY. HOW INFLICTED. WHERE.] The mode of inflicting the punishment of death shall be by hanging by the neck until the person is dead; and the warden of the North Dakota penitentiary, or in case of his death, inability or absence, the deputy warden shall be the executioner; and when any person shall be sentenced, by any court of the state having competent jurisdiction, to be hanged by the neck until dead, such punishment shall only be inflicted within the walls of the North Dakota penitentiary at Bismarck, North Dakota, within an enclosure to be prepared for that purpose under the direction of the warden of the penitentiary and the board of trustees thereof, which enclosure shall be higher than the gallows, and so constructed as to exclude public view.

§ 2. TRIAL JUDGE TO FIX DATE OF EXECUTION. COMPENSATION OF EXECUTIONER.] All executions of the death penalty by hanging shall take place according to the provisions of this act, and on the day designated by the judge passing sentence, but before the hour of sunrise of the designated day, and the warden or deputy warden executing the sentence shall receive for his services twenty-five dollars, which amount shall be in addition to other compensation allowed said warden or deputy warden by law.

§ 3. DUTY OF SHERIFF. FEES.] When a person is sentenced to death, all writs for the execution of the death penalty shall be directed to the sheriff by the court issuing the same, and the sheriff of the county wherein the prisoner has been convicted and sentenced, shall, within the next ten days thereafter, in as private and secure a manner as possible to be done, convey the prisoner to the North Dakota penitentiary, where the said prisoner shall be received by the warden, superintendent or keeper thereof, and securely kept in close confine-

ment until the day designated for the execution, and the sheriff must also deliver to the warden or other proper officer a certified copy of the judgment and warrant to execute, as described in section 8305, and take from the warden or other proper officer a receipt for the defendant and make due return thereof to the court; and the sheriff shall receive for conducting the prisoner sentenced to death to the North Dakota penitentiary, the same fees and mileage from the county where the conviction was had, that is provided by law for the conducting of other prisoners sentenced to the state penitentiary, when duly approved by the board of county commissioners of said county.

§ 4. WHOM ALLOWED AT EXECUTION.] Besides the warden and such number of guards as he thinks necessary, or his deputy, the following persons may be present at the execution, but none others: The sheriff of any county in the state, the board of trustees and physician of the North Dakota penitentiary, the clergyman in attendance upon the prisoner, and such other persons as the prisoner may designate, not exceeding five in number, representatives of the newspapers in the county in which the crime was committed, and one reporter from each newspaper published in the city of Bismarck, North Dakota.

§ 5. DUTY OF WARDEN OR DEPUTY.] Unless a suspension of the execution be ordered by the governor, the warden or deputy warden shall proceed at the time and place named in the warrant, to cause the prisoner sentenced to be hanged by the neck until he be dead; and of the manner of his execution of the warrant and his doings thereon, he shall forthwith make returns to the clerk of the district court of the county from whence the prisoner was sentenced, who shall record the warrant and returns in the record of the case.

§ 6. DISPOSITION OF BODY.] The body of the executed person shall be returned to the friends in any county in the state for burial, that they may request in writing, if made on the warden the day before the day set for execution; providing, that all expenses for the transportation and burial shall be borne by the person or persons making such request. If no such request is made, burial is to be made under the supervision of the warden or other proper officer of the penitentiary.

§ 7. PROCEEDING IN CASE OF ESCAPE.] If the accused escapes after sentence, and be not retaken before the time fixed for execution, he may be re-arrested and committed to the jail of the proper county, and the sheriff shall make return thereof to the court in which the sentence was passed; and thereupon the court shall again fix the time for execution, which shall be carried into effect as provided in this chapter.

§ 8. WHEN CONVICT APPEARS INSANE.] If a convict sentenced to death appears to be insane the sheriff of the county wherein conviction was had, upon notice thereof from the warden of the penitentiary, or his deputy, shall forthwith give notice thereof to the judge of the district court wherein the convict was sentenced, and to the

state's attorney, and shall summon a jury of six impartial men to inquire into such insanity at the time and place to be fixed by the judge.

§ 9. WHO SHALL ATTEND INQUIRY.] The judge, clerk of court and state's attorney shall attend the inquiry; witnesses may be produced and examined before the jury; if it be found that the convict is sane, the sheriff must forthwith return the prisoner to the penitentiary together with a certified copy of the findings at the examination and the warden or his deputy must execute the judgment; if the convict is found insane, the judge shall suspend the execution until the sheriff receives a warrant from the governor directing the same; and the finding of the jury and order of the judge, certified by the judge, shall be entered on the journal of the court by the clerk.

§ 10. DUTY OF SHERIFF.] The sheriff shall immediately transmit a certified copy of such finding to the governor, who may, as soon as he is convinced that the convict has become of sound mind, issue a warrant appointing a time for his execution. The sheriff must thereupon in the same manner deliver the prisoner to the warden, or other proper officer, of the penitentiary, in like manner as described in section 3 hereof, except that the sheriff shall deliver to the said warden or other proper officer of the penitentiary, a certified copy of the warrant of the governor only.

§ 11. WHEN CONVICTED FEMALE IS PREGNANT.] When there is good reason to suppose that a female against whom judgment of death is rendered is pregnant, the warden, or other proper officer of the penitentiary, must summon a jury of three regularly practicing physicians of this state to inquire into the supposed pregnancy.

§ 12. SENTENCE SUSPENDED. WHEN.] If by such finding it appears that such female convict is with child, the warden or other proper officer shall in like manner suspend the execution of her sentence, and shall transmit the findings to the governor, who, on being satisfied that such woman is no longer pregnant, shall issue a warrant directed to the warden or other proper officer, appointing a day for her execution.

§ 13. FEES AND MILEAGE.] All fees and mileage incurred under this act shall, when duly approved by the warden of the penitentiary, be paid out of any fund on hand appropriated for the maintenance and support of the North Dakota penitentiary.

§ 14. AMENDMENT.] That section 8305 of the revised codes of 1899, relating to judgment of death, warrant to execute, be amended so as to read as follows:

§ 8305. JUDGMENT OF DEATH. WARRANT TO EXECUTE.] When the judgment of death is rendered the judge must sign and deliver to the sheriff of the county a warrant duly attested by the clerk under the seal of the court, stating the conviction and judgment and appointing a day upon which the judgment is to be executed, which must not be less than six months after the day in which the judgment is entered, and not longer than nine months thereafter.

§ 15. AMENDMENT.] That section 8308 of the revised codes of

1899, relating to "governor only can reprieve," be amended to read as follows:

§ 8308. GOVERNOR ONLY CAN REPRIEVE.] No judge, court or other officer [other than the governor] can reprieve or suspend the execution of the judgment of death, except the warden or his duly acting deputy, as provided in this act, unless an appeal is taken.

§ 16. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 17. EMERGENCY.] Whereas, an emergency exists in this, that there are now several persons in the state under sentence of death before the first of July, 1903, and if the said persons are executed according to the existing laws the erection of several scaffolds will be necessary, which will entail considerable cost, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1903.

FENCES.

CHAPTER 100.

[H. B. 118—Richmond.]

LEGAL FENCES.

AN ACT Defining Legal Fences, Providing for the Construction and Maintenance of Partition Fences, How Controversies Over Construction of Legal Fences May be Settled and Providing Penalties for Violating the Provisions of this Act.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. LEGAL FENCES DEFINED.] All fences four and a half feet high and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks ditches and hedges, or other things which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, or any such fences as the parties interested may agree upon, shall be deemed legal and sufficient fences.

§ 2. WIRE FENCE LEGAL.] In all cases where any law of this state requires to be erected or maintained any fence or fences for any purpose whatever, it shall be sufficient and a compliance with such law, if there shall be erected and maintained a barbed wire fence, consisting of two barbed wires and one smooth wire, with at least forty barbs to the rod, the wire to be firmly fastened to the posts not more than two rods apart, with one stay between the posts, the top wire to be not more than fifty-two inches high or less than forty-eight, and the