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### **State Historical Society researches capital punishment in South Dakota**

PIERRE, SD -- South Dakota is facing the possibility of an execution in the very near future.

Circuit Judge Warren Johnson has ordered the execution of Elijah Page, a death row inmate who gave up his appeals and wants to face execution. The execution date has been set for the week of Aug. 28. Page, 24, of Athens, Texas, received the death sentence after pleading guilty to first-degree murder for the brutal torture and beating of Chester Poage of Spearfish in March 2000.

Page's case prompted Carol A. Jennings, government archivist for the South Dakota State Historical Society-Archives at the South Dakota Cultural Heritage Center, to research the history of capital punishment in the state.

South Dakota's last execution was in 1947; George Sitts went to the electric chair for killing State Special Agent Thomas Matthews and Butte County Sheriff Dave Malcolm near Spearfish. Sitts escaped from a Minnesota jail where he was to begin a life sentence for killing a liquor store clerk. Sitts is the only convicted murderer to be electrocuted in South Dakota.

South Dakota's corrections history began in the territorial period. The Territorial Legislative Assembly of 1862 passed a law stating, "the manner of inflicting punishment shall be by hanging." In 1881, the Territorial Legislative Assembly passed a bill for the construction of a penitentiary to be located in Sioux Falls, Dakota Territory.

The original penitentiary consisted of the central administration unit and two cell block wings on either side with housing for 125 to 150 inmates. The original prison yard was enclosed by a wooden fence but was later replaced by a stone wall. As of this Jan. 31, the Men's State Penitentiary in Sioux Falls housed 737 inmates, and the two Jameson Annexes there housed another 680, according to the state Department of Corrections.

Prior to the construction of the penitentiary, South Dakota's prisoners were sent to Detroit. The first inmates to occupy the new building were approximately 30 prisoners transferred from Detroit to Sioux Falls on December 13, 1882.

South Dakota entered the Union with capital punishment in 1889. From 1889 to 1915, the method of execution was by hanging. The practice was abolished in 1915 but reinstated by the South Dakota State Legislature in 1939 with the punishment to be carried out by electrocution. The State abolished the death penalty from 1977 to 1979 when the United States Supreme Court temporarily declared the application of the death penalty unconstitutional "on the grounds of cruel and unusual punishment" in violation of the 8<sup>th</sup> Amendment of the U.S. Constitution. The current death penalty statute has been in effect

since 1979. State law was changed in 1984 to provide for death by lethal injection instead of electrocution.

South Dakota has executed 14 people by hanging and one by electrocution. Robert Leroy Anderson, who was on death row after being convicted of killing Laurisa Dumansky in 1994 and Piper Stryle in 1966, committed suicide 2003. Currently, three inmates, besides Page, are on death row. It will be years before any of them faces execution, due to the complexity of the appeals process allowing cases to go to the U. S. Supreme Court. Following is the status of each death-row inmate:

- Charles Rhines, convicted in the 1991 killing of Donnivan Schaeffer, is the most advanced in the appeals process, with his case pending in the U.S. Supreme Court.
- Donald Moeller, convicted in the 1990 murder of Becky O’Connell, has an appellate action pending in state circuit court. If the appeal is denied, his next appeal would be the South Dakota Supreme Court.
- Brily Piper, also convicted in the murder of Chester Poage in 2000, has many years of appeals ahead of him. His first appeal, filed in April, asks the state Supreme Court to order a new sentence.

South Dakota law requires an inmate sentenced to death “shall be kept in solitary confinement at the penitentiary and no person shall be allowed access to him without an order of the trial judge except the officers of the prison, his counsel, his physician, a priest or minister if he shall desire one.”

The execution of an inmate takes place within a week designated. The warden sets the exact time. He will make a public announcement of the day and hour, 48 hours prior to the actual time of the execution. Prior to the announcement, the inmate will be moved to a holding-room cell, adjacent to the execution room, which is in the South Dakota State Penitentiary in Sioux Falls.

Those in attendance for the execution will be the Attorney General, the trial judge, the States Attorney, the sheriff of the county where the crime was committed, and not more than 10 adults, including at least one of the news media. Also in attendance are the prison physician, and two other physicians and any prison guards and peace officers as the warden deems proper. The inmate may request two clergy of any denomination and five relatives and friends.

To receive capital punishment in South Dakota today, a person must commit first-degree murder, with one of 10 aggregating circumstances.

*The South Dakota State Historical Society, an office of the Department of Tourism and State Development, is headquartered at the South Dakota Cultural Heritage Center in Pierre. The center houses the society's world-class museum, an archives and research room, and the historic preservation, publishing and administrative/development offices. Call (605) 773-3458 or visit [www.sdhistory.org](http://www.sdhistory.org) for more information. The society also has an archaeology office in Rapid City; call (605) 394-1936 for more information.*