

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 237

By: Senators Hester, J. Hutchinson, D. Sanders

By: Representatives Steel, Dotson

For An Act To Be Entitled

AN ACT REGARDING THE ADMINISTRATION OF A LETHAL
INJECTION AT THE DEPARTMENT OF CORRECTION; TO DECLARE
AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

REGARDING THE ADMINISTRATION OF A LETHAL
INJECTION AT THE DEPARTMENT OF
CORRECTION; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

(a) The laws of Arkansas impose the sentence of death for its most serious offenses. The General Assembly finds it necessary to provide a means of carrying out the sentence of death while also complying with the constitutional prohibition on cruel and unusual punishment.

(b) To address objections to the method of lethal injection previously provided by law, the General Assembly finds that it should adopt a method of lethal injection that uses a barbiturate to bring about the death of the condemned prisoner.

(c) The General Assembly finds that this measure meets those goals and satisfies the separation-of-powers doctrine by setting forth the state's policy and the procedural guidelines for carrying out the sentence of death.

(d) The General Assembly acknowledges that the manufacturers of the drugs set forth in this act may use preservatives or additives and recommend mixing or administering the drugs with sterile solutions such as saline. The



General Assembly finds that these uses and recommendations are appropriate and would not conflict with the procedures set forth in this act.

SECTION 2. Arkansas Code § 5-4-617 is amended to read as follows:

5-4-617. Method of execution.

~~(a)(1) The sentence of death is to be carried out by intravenous lethal injection of one (1) or more chemicals, as determined in kind and amount in the discretion of the Director of the Department of Correction.~~

~~(2) The chemical or chemicals injected may include one (1) or more of the following substances:~~

~~(A) One (1) or more ultra-short-acting barbiturates;~~

~~(B) One (1) or more chemical paralytic agents;~~

~~(C) Potassium chloride; or~~

~~(D) Any other chemical or chemicals, including but not limited to saline solution.~~

~~(3) The condemned convict's death will be pronounced according to accepted standards of medical practice.~~

~~(4) The director shall determine in his or her discretion any and all policies and procedures to be applied in connection with carrying out the sentence of death, including but not limited to:~~

~~(A) Matters concerning logistics and personal correspondence concerning witnesses;~~

~~(B) Security;~~

~~(C) Injection preparations;~~

~~(D) Injection implementation; or~~

~~(E) Arrangements for disposition of the executed convict's body and personal property.~~

~~(5)(A) The policies and procedures for carrying out the sentence of death and any and all matters related to the policies and procedures for the sentence of death including but not limited to the director's determinations under this subsection are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(B) The policies and procedures for carrying out the sentence of death and any and all matters related to the policies and procedures for the sentence of death are not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., except for the choice of~~

~~chemical or chemicals that may be injected, including the quantity, method, and order of the administration of the chemical or chemicals.~~

~~(b)(1) If this section is held unconstitutional by an appellate court of competent jurisdiction, the sentence of death shall be carried out by electrocution in a manner determined by the director in his or her discretion.~~

~~(2) However, if the holding of the appellate court described in subdivision (b)(1) of this section is subsequently vacated, overturned, overruled, or reversed, the sentence of death shall be carried out by lethal injection as described in this section.~~

(a) The Department of Correction shall carry out the sentence of death by intravenous lethal injection of a barbiturate in an amount sufficient to cause death.

(b) Before the intravenous lethal injection is administered, the condemned prisoner shall be intravenously administered a benzodiazepine.

(c) The drugs set forth in subsections (a) and (b) of this section shall be administered along with any substances that the manufacturer has mixed with the drugs and any additional substances, such as saline solution, called for in the manufacturer's instructions.

(d) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drugs set forth in subsections (a) and (b) of this section shall be sterilized and prepared in a manner that is safe and commonly performed in connection with the intravenous administration of drugs of that type.

(e) The Director of the Department of Correction shall develop logistical procedures necessary to carry out the sentence of death, including:

(1) The following matters:

(A) Ensuring that the drugs and substances set forth in subsections (a) through (d) of this section and other necessary supplies for the lethal injection are available for use on the scheduled date of the execution;

(B) Conducting employee orientation of the lethal injection procedure before the day of the execution;

(C) Logistics of the viewing;

(D) Coordinating with other governmental agencies involved

with security and law enforcement;

(E) Transferring the condemned prisoner to the facility where the sentence of death will be carried out;

(F) Escorting the condemned prisoner from the holding cell to the execution chamber;

(G) The identity, arrival, and departure of the persons involved with carrying out the sentence of death at the facility where the sentence of death will be carried out; and

(H) Making arrangements for the disposition of the condemned prisoner's body and personal property; and

(2) The following matters pertaining to other logistical issues:

(A) Chaplaincy services;

(B) Visitation privileges;

(C) Determining the condemned prisoner's death, which must be pronounced according to accepted medical standards;

(D) Confirming the type and concentration of the drugs and substances set forth in subsections (a) through (d) of this section when they have been received by the department; and

(E) Establishing a protocol for any necessary mixing or reconstitution of the drugs and substances set forth in subsections (a) through (d) of this section in accordance with the manufacturer's instructions.

(f) The procedures for carrying out the sentence of death and related matters are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) The procedures under subdivisions (e)(1) of this section and the implementation of the procedures under subdivisions (e)(1) of this section are not subject to disclosure under the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq.

(h) The department shall carry out the sentence of death by electrocution if this section is invalidated by a final and unappealable court order.

SECTION 3. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of this act or the application of this act to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality does not

affect other provisions or applications of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the current procedures for the administration of the sentence of lethal injection have been declared unconstitutional by the Supreme Court; and that this act is immediately necessary because the constitutional administration of a lethal injection to the state's most dangerous convicted persons furthers the health, safety, and welfare of the people of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.