

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 73

By: Senator Hester

For An Act To Be Entitled

AN ACT REGARDING THE ADMINISTRATION AND METHOD OF
CAPITAL PUNISHMENT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT REGARDING THE ADMINISTRATION AND
METHOD OF CAPITAL PUNISHMENT.

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

SECTION 1. Arkansas Code § 5-4-617 is amended to read as follows:

5-4-617. ~~Method~~ Preparation, method, and administration 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~~ shall include one (1) or more of the following substances:

(A) ~~One (1) or more ultra short-acting barbiturates~~ Sodium Pentothal or sodium thiopental;

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

(C) Potassium chloride; or

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

(3) The condemned ~~convict's~~ inmate'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.~~

(4) The director or his or her designee shall perform the following duties before the execution of a condemned inmate:

- (A) Procure the chemicals and other necessary supplies for the lethal injection and have the chemicals and other necessary supplies available for use on the scheduled date of execution;
- (B) Confirm the type and concentration of the chemicals when they have been received by the department;
- (C) Supervise any necessary mixing or reconstitution of the chemicals in accordance with the manufacturer's instructions;
- (D) Transfer the chemicals to an appropriate syringe and place the syringe in a designated lethal injection drug box;
- (E) Maintain personal, physical custody of the lethal injection drug box and physically convey it to the Department of Correction's Cummins Unit for secure storage in an institutional vault until it is delivered to the execution chamber for use;
- (F) Conduct orientation of the executioner or executioners of the department's lethal injection procedure, if needed, before the day of the execution;
- (G) Supervise the executioner or executioners when they enter the execution chamber on the evening of the execution but before the scheduled time of the execution to inventory the lethal injection drug box to ensure that all the chemicals are accounted for and that the injection devices are considered ready;
- (H) Order the Deputy Director for Health and Correctional Programs or his or her designee to affix cardiac monitor leads to the condemned inmate as determined by lethal injection protocol before personnel are summoned to initiate the intravenous injection devices;
- (I) Order the deputy director or his or her designee to

arrange the execution chamber so that he or she and the executioner or executioners can directly observe the condemned inmate's face and intravenous injection site or sites when the condemned inmate is on the execution gurney; and

(J) Oversee all matters regarding:

(1) Security;

(2) Logistics and personal correspondence concerning witnesses; and

(3) Arrangements for disposition of the condemned inmate's body and personal property.

(5) The set-up and administration procedure and protocol for the lethal injection shall be determined by the director and shall have the following features:

(A) An intravenous injection system, consisting of a number of syringes, tubing, and other machinery and medical devices that is designed to intravenously inject the chemicals described in subdivision (a)(2) in certain doses into each arm of the condemned inmate at certain intervals to the point that the condemned inmate dies;

(B) A cardiac monitor to display the heart function of the condemned inmate, which shall be used to determine at what point the condemned inmate dies; and

(C) An ability to reduce, redirect, or cease the injection of the chemicals.

~~(5)(A)~~(6)(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,~~ including without limitation 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.