

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/17/15 H3/25/15

A Bill

HOUSE BILL 1751

By: Representative House

For An Act To Be Entitled

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

Subtitle

CONCERNING 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 and to address the problem of drug shortages, the General Assembly finds that it should adopt alternative methods of lethal injection to bring about the death of the condemned prisoner.

(c) The General Assembly finds that this act 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.

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

5-4-617. Method of execution.

(a) The Department of Correction shall carry out the sentence of death



by intravenous lethal injection of ~~a barbiturate~~ the drug or drugs described in subsection (c) of this section in an amount sufficient to cause death.

(b) The Director of the Department of Correction or his or her designee may order the dispensation and administration of the drug or drugs described in subsection (c) of this section for the purpose of carrying out the lethal-injection procedure, and a prescription is not required.

(c) The department shall select one (1) of the following options for a lethal-injection protocol, depending on the availability of the drugs:

(1) A barbiturate; or

(2) Midazolam, followed by vecuronium bromide, followed by potassium chloride.

(d) The drug or drugs described in subsection (c) of this section used to carry out the lethal injection shall be:

(1) Approved by the United States Food and Drug Administration and made by a manufacturer approved by the United States Food and Drug Administration;

(2) Obtained from a facility registered with the United States Food and Drug Administration; or

(3) Obtained from a compounding pharmacy that has been accredited by a national organization that accredits compounding pharmacies.

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

~~(e)~~ (e) The drugs set forth in subsections (a) and (b) subsection (c) 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)~~ (f) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drug or drugs set forth in subsections (a) and (b) subsection (c) 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)~~ (g) The Director of the Department of Correction director 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)–(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 Determining the 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~~ Determining 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~~ shall be pronounced according to accepted medical standards; and

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

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

~~(f)~~(h) 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)~~(i)(1) The procedures under subdivision ~~(e)~~(1)(g)(1) of this section, ~~and~~ the implementation of the procedures under subdivision ~~(e)~~(1)(g)(1) of this section, and the identities of the entities and persons who participate in the execution process or administer the lethal injection are not subject to disclosure under the Freedom of Information Act of 1967, §

25-19-101 et seq.

(2) The department shall keep confidential all information that may identify or lead to the identification of:

(A) The entities and persons who participate in the execution process or administer the lethal injection; and

(B) The entities and persons who compound, test, sell, or supply the drug or drugs described in subsection (c) of this section, medical supplies, or medical equipment for the execution process.

(3) The department shall not disclose the information covered under this subsection in litigation without first applying to the court for a protective order regarding the information under this subsection.

(j) The department shall make available to the public any of the following information upon request, so long as the information that may be used to identify the compounding pharmacy, testing laboratory, seller, or supplier is redacted and maintained as confidential:

(1) Package inserts and labels, if the drug or drugs described in subsection (c) of this section have been made by a manufacturer approved by the United States Food and Drug Administration;

(2) Reports obtained from an independent testing laboratory; and

(3) The department's procedure for administering the drug or drugs described in subsection (c) of this section, including the contents of the lethal-injection drug box.

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

(1) Every person that procures, prepares, administers, monitors, or supervises the injection of a drug or drugs under this section has immunity under § 19-10-305.

SECTION 3. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid 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 courts now require heightened legislative oversight and control over the procedures used in carrying out capital punishment. In addition, victims' families need assurance that capital sentences will be carried out in compliance with prevailing case law. 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.

/s/House