

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 464

By: Senator Hester
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO ENSURE THE CONFIDENTIALITY OF CERTAIN
PROCEDURES INVOLVED IN THE EXECUTION OF A PERSON FOR
A CAPITAL OFFENSE; AND FOR OTHER PURPOSES.

Subtitle

TO ENSURE THE CONFIDENTIALITY OF CERTAIN
PROCEDURES INVOLVED IN THE EXECUTION OF A
PERSON FOR A CAPITAL OFFENSE.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) As United States Supreme Court Justice Samuel Alito has explained, there is a well-documented guerilla war being waged against the death penalty;

(2) Anti-death-penalty advocates have pressured pharmaceutical companies to refuse to supply the drugs used by states to carry out death sentences;

(3) The Department of Correction is unable to acquire the necessary drugs used to carry out lethal injections due to the lack of effective confidentiality regarding the manufacturers, suppliers, and others involved in the provision of lethal injection drugs; and

(4) Any disclosure of the information described under this act, beyond disclosure to the government officials required to carry out their duties under law, is detrimental to the carrying out of lawful sentences of



executions.

SECTION 2. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly:

(1) To ensure absolute confidentiality of any documents, records, or information that could lead to the identification of a person or entity involved in any way in the Department of Correction's provisioning of drugs used for lethal injections; and

(2) That the confidentiality provisions of this act be construed as broadly as possible to ensure that the Department of Correction is able to acquire the drugs necessary for lethal injections.

SECTION 3. Arkansas Code § 5-4-617(i)-(1), concerning the method of execution for the sentence of capital punishment, are amended to read as follows:

~~(i)(1) The procedures under subdivision (g)(1) of this section, the implementation of the procedures under subdivision (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.~~

(i)(1) Except as provided for under subdivision (i)(2) of this section, a person shall not disclose in response to a request under the Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of the following:

(A) Documents, records, or information that may identify

or reasonably lead to the identification of entities or persons who participate in the execution process or administer lethal injections;

(B) Documents, records, or information that may identify or reasonably lead directly or indirectly to the identification of an entity or person who compounds, synthesizes, tests, sells, supplies, manufactures, transports, procures, dispenses, or prescribes the drug or drugs described in subsection (c) of this section, or that provides the medical supplies or medical equipment for the execution process; or

(C) Documents, records, or information that concern the procedures under subdivision (g)(1) of this section and the implementation of the procedures under subdivision (g)(1) of this section.

(2) The following documents, records, and information may be disclosed:

(A) The director may disclose or authorize disclosure of documents, records, and information to his or her subordinates, contractors, or vendors to the extent necessary to carry out his or her duties under this section;

(B) The director may disclose or authorize disclosure of documents, records, and information to the Governor or the Attorney General, or both; and

(C) The Governor or the Attorney General, or both, may disclose or authorize the disclosure of documents, records, and information to their subordinates to the extent necessary to carry out their duties under law.

(3)(A) If any part of this subsection is invalidated by a final and unappealable court order, any unauthorized disclosure of information under this section shall be permitted only after the entry and service of an order prohibiting public disclosure or use of the documents, records, or information and requiring that a public filing of the documents, records, or information be done under seal.

(B) A person who recklessly discloses documents, records, or information in violation of an order under this subdivision (i)(3) upon conviction is guilty of a Class D felony.

(j)(1) The director shall certify under oath that the drug or drugs described in subsection (c) of this section meet the requirements of subsection (d) of this section.

(2) After the certification required under this subsection, a challenge to the conformity of the drug or drugs described under subsection (c) of this section with the requirements of subsection (d) of this section shall be brought only as an original action in the Supreme Court.

~~(j)~~(k) 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~~ an entity or person listed in subsection (i) of this section 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~~

(1) The certification provided for under subsection (j) of this section; and

~~(3)(2) 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.~~

~~(k)~~(l) 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.

~~(l)~~(m) 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.

(n) A person who recklessly discloses documents, records, or information in violation of subdivision (i)(1) of this section upon conviction is guilty of a Class D felony.