

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

State of Arkansas
95th General Assembly
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A Bill

HOUSE BILL 1489

By: Representatives Wardlaw, Andrews, Barker, Beaty Jr., Beck, S. Berry, Breaux, K. Brown, M. Brown, Joey Carr, John Carr, Cavanaugh, Childress, Cozart, Duffield, Eubanks, Furman, Gonzales, Hall, Hawk, Hollowell, Jean, L. Johnson, Ladyman, Long, Lundstrum, Lynch, McClure, McCollum, M. McElroy, McGrew, McNair, Milligan, J. Moore, Nazarenko, Painter, Pilkington, Puryear, Ray, R. Scott Richardson, Richmond, Rye, Torres, Underwood, Vaught, Walker

By: Senators B. Johnson, Caldwell, Crowell, Dees, J. Dotson, J. English, Flippo, Gilmore, K. Hammer, Hester, Hill, Irvin, M. Johnson, M. McKee, J. Payton, Rice, Stone, G. Stubblefield, D. Sullivan, D. Wallace

For An Act To Be Entitled

AN ACT TO AMEND THE METHOD OF EXECUTION TO INCLUDE
NITROGEN GAS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE METHOD OF EXECUTION TO
INCLUDE NITROGEN GAS.

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

SECTION 1. Arkansas Code § 5-4-615 is amended to read as follows:
5-4-615. Conviction – Punishments.

A person convicted of a capital offense shall be punished by death ~~by~~ ~~lethal injection~~ or by life imprisonment without parole pursuant to this subchapter.

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

(a) The Division of Correction shall carry out ~~the~~ a sentence of death either by intravenous lethal injection of the drug or drugs described in subsection ~~(e)~~ (d) of this section in an amount sufficient to cause death or by nitrogen gas.



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(b)(1) Upon receipt of a warrant of execution from the Governor, the Director of the Division of Correction shall provide written notice within seven (7) days to the condemned prisoner of the method of execution.

(2) If lethal injection is selected as the method of execution, the written notice shall include the name or names of the drug or drugs to be used in the execution.

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

~~(e)~~(d) The ~~division~~ director 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)~~(e) The drug or drugs described in subsection ~~(e)~~ (d) 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.

~~(e)~~(f) The drugs set forth in subsection ~~(e)~~ (d) of this section shall be administered along with any additional substances, such as saline solution, called for in the instructions.

~~(f)~~(g) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drug or drugs set forth in subsection ~~(e)~~ (d) 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.

~~(g)~~(h) The 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 this section and other necessary supplies for the ~~lethal injection~~ execution are available for use on the scheduled date of the execution;

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

(C) 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) 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 shall be pronounced according to accepted medical standards; and

(D) Establishing a protocol for any necessary mixing or reconstitution of the drugs and substances set forth in this section in accordance with the instructions.

~~(h)~~(i) 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.

~~(i)(1)~~(j)(1) Except as provided for under subdivision ~~(i)(2)~~ (j)(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 or

nitrogen gas;

(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 ~~(e)~~ (d) of this section, or that provides the medical supplies, ~~or~~ medical equipment, nitrogen, chemicals, or other equipment for the execution process; or

(C) Documents, records, or information that concern the procedures under subdivision ~~(g)(1)~~ (h)(1) of this section and the implementation of the procedures under subdivision ~~(g)(1)~~ (h)(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)~~ (j)(3) upon conviction is guilty of a Class D felony.

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

of subsection ~~(d)~~ (e) of this section.

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

~~(k)~~(1) The division shall make available to the public any of the following information upon request, so long as the information that may be used to identify an entity or person listed in subsection ~~(i)~~ (j) of this section is redacted and maintained as confidential:

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

(2) The division's procedure for administering the drug or drugs described in subsection ~~(e)~~ (d) of this section; and

(3) The division's procedure for administering nitrogen gas for a nitrogen-hypoxia execution.

~~(l)~~(m) The division shall carry out the sentence of death by electrocution if execution by lethal injection and nitrogen hypoxia under this section ~~is~~ are invalidated by a final and unappealable court order.

(n)(1) A sentence of death shall not be reduced as a result of a method of execution being declared unconstitutional.

(2) The death sentence shall remain in force until the sentence can be lawfully executed by a valid method of execution.

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

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

SECTION 3. Arkansas Code § 5-10-106(a)(2), concerning the criminal offense and definition of "physician-assisted suicide", is amended to read as follows:

(2) However, "physician-assisted suicide" does not apply to a person participating in the execution of a person sentenced by a court to death ~~by lethal injection.~~