

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 237

5 By: Senators Hester, J. Hutchinson, D. Sanders
6 By: Representatives Steel, Dotson
7

For An Act To Be Entitled

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

15 REGARDING THE ADMINISTRATION OF A LETHAL
16 INJECTION AT THE DEPARTMENT OF
17 CORRECTION; AND TO DECLARE AN EMERGENCY.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. DO NOT CODIFY. Legislative findings.

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

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

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

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



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

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

5 5-4-617. Method of execution.

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

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

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

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

13 ~~(C) Potassium chloride; or~~

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

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

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

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

23 ~~(B) Security;~~

24 ~~(C) Injection preparations;~~

25 ~~(D) Injection implementation; or~~

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

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

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

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

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

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

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

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

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

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

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

28 (1) The following matters:

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

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

35 (C) Logistics of the viewing;

36 (D) Coordinating with other governmental agencies involved

1 with security and law enforcement;

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

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

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

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

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

12 (A) Chaplaincy services;

13 (B) Visitation privileges;

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

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

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

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

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

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

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

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

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

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

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

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

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22 **APPROVED: 02/20/2013**
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