



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB464
Sponsored by Senator Hester**

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

Impact Summary¹ Minimal, affecting fewer than ten offenders per year.

Change from current law² Amends Arkansas Code Annotated § 5-4-617 to prohibit disclosure of certain documents, records, or information regarding the execution process and to create two Class D felonies.

Under the proposed bill, a person commits a Class D felony if he or she recklessly discloses, in response to a request under the Freedom of Information Act, in response to discovery under the Arkansas Rules of Civil Procedure, or otherwise:

- (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, drugs, medical supplies, or medical equipment used for the execution process; or
- (C) Documents, records, or information that concern the procedures necessary to carry out the sentence of death.

Under the proposed bill, a person who recklessly discloses documents, records, or information in violation of an order under this subsection, is upon conviction guilty of a Class D felony. The bill contemplates permitted disclosures if any part of this subsection is invalidated and the procedures by which disclosure can be made.

The proposed bill also allows for disclosure to certain subordinates, contractors, or vendors, the Governor, or the Attorney General and provides for other administrative guidance.

Impact Information

Because this proposed bill creates a penalty for a new course of conduct, the exact impact cannot be determined. However, according to the Arkansas Department of Correction, since January 1, 2000, ten (10) inmates have been executed, which is an average of less than one (1) per year. Because of the low number of opportunities to commit this offense, the projected impact is minimal.

¹ This impact assessment was prepared (3/5/2019, 1:05 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

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|---------|----------------------------|--------------|----------------------------|---------|------------------------------|
| Class Y | 10-40 years or life | Class C | 3-10 years; up to \$10,000 | Class A | Up to 1 year; up to \$2,500 |
| Class A | 6-30 years; up to \$15,000 | Class D | 0-6 years; up to \$10,000 | Class B | Up to 90 days; up to \$1,000 |
| Class B | 5-20 years; up to \$15,000 | Unclassified | As specified in statute | Class C | Up to 30 days; up to \$500 |

A.C.A. § 5-4-617. Method of execution.

- (a) The Department of Correction shall carry out the sentence of death by intravenous lethal injection of 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.
- (e) The drugs set forth in subsection (c) of this section shall be administered along with any additional substances, such as saline solution, called for in the instructions.
- (f) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drug or drugs set forth in 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.
- (g) 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 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) 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) 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) 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.
- (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.
- (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.
- (l)** 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.

History: Acts 1983, No. 774, §§ 1, 5, 6; A.S.A. 1947, §§ 41-1352, 41-1356, 41-1357; Acts 2009, No. 1296, § 2; 2013, No. 139, § 2; 2015, No. 1096, § 2.