

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

1 State of Arkansas *As Engrossed: H3/17/15 H3/25/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1751

4

5 By: Representative House

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## For An Act To Be Entitled

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AN ACT CONCERNING THE ADMINISTRATION OF A LETHAL

9

INJECTION AT THE DEPARTMENT OF CORRECTION; TO DECLARE

10

AN EMERGENCY; AND FOR OTHER PURPOSES.

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## Subtitle

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CONCERNING THE ADMINISTRATION OF A LETHAL

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INJECTION AT THE DEPARTMENT OF

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CORRECTION; AND TO DECLARE AN EMERGENCY.

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

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21 *SECTION 1. DO NOT CODIFY. Legislative findings.*

22 *(a) The laws of Arkansas impose the sentence of death for its most*

23 *serious offenses. The General Assembly finds it necessary to provide a means*

24 *of carrying out the sentence of death while also complying with the*

25 *constitutional prohibition on cruel and unusual punishment.*

26 *(b) To address objections to the method of lethal injection previously*

27 *provided by law and to address the problem of drug shortages, the General*

28 *Assembly finds that it should adopt alternative methods of lethal injection*

29 *to bring about the death of the condemned prisoner.*

30 *(c) The General Assembly finds that this act meets those goals and*

31 *satisfies the separation-of-powers doctrine by setting forth the state's*

32 *policy and the procedural guidelines for carrying out the sentence of death.*

33

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

35 *5-4-617. Method of execution.*

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



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

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

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

9 *(1) A barbiturate; or*

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

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

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

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

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

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

23 ~~*(e)*~~ *(e) The drugs set forth in ~~subsections (a) and (b)~~ subsection (c)*  
24 *of this section shall be administered along with ~~any substances that the~~*  
25 *~~manufacturer has mixed with the drugs~~ and any additional substances, such as*  
26 *saline solution, called for in the ~~manufacturer's~~ instructions.*

27 ~~*(d)*~~ *(f) Catheters, sterile intravenous solution, and other equipment*  
28 *used for the intravenous injection of the drug or drugs set forth in*  
29 *~~subsections (a) and (b)~~ subsection (c) of this section shall be sterilized*  
30 *and prepared in a manner that is safe and commonly performed in connection*  
31 *with the intravenous administration of drugs of that type.*

32 ~~*(e)*~~ *(g) The ~~Director of the Department of Correction~~ director shall*  
33 *develop logistical procedures necessary to carry out the sentence of death,*  
34 *including:*

35 *(1) The following matters:*

36 *(A) Ensuring that the drugs and substances set forth in*

1 ~~subsections (a)–(d) of this section and other necessary supplies for the~~  
2 ~~lethal injection are available for use on the scheduled date of the~~  
3 ~~execution;~~

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

6 (C) Logistics Determining the logistics of the viewing;

7 (D) Coordinating with other governmental agencies involved  
8 with security and law enforcement;

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

11 (F) Escorting the condemned prisoner from the holding cell  
12 to the execution chamber;

13 (G) ~~The~~ Determining the identity, arrival, and departure  
14 of the persons involved with carrying out the sentence of death at the  
15 facility where the sentence of death will be carried out; and

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

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

19 (A) Chaplaincy services;

20 (B) Visitation privileges;

21 (C) Determining the condemned prisoner's death, which ~~must~~  
22 shall be pronounced according to accepted medical standards; and

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

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

29 ~~(F)(h)~~ The procedures for carrying out the sentence of death and  
30 related matters are not subject to the Arkansas Administrative Procedure Act,  
31 § 25-15-201 et seq.

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

1 25-19-101 et seq.

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

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

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

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

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

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

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

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

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

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

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30 SECTION 3. SEVERABILITY CLAUSE. If any provision of this act or its  
31 application to any person or circumstance is held invalid, the invalidity  
32 does not affect other provisions or applications of this act which can be  
33 given effect without the invalid provision or application, and to this end  
34 the provisions of this act are severable.

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36 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that the courts now require  
2 heightened legislative oversight and control over the procedures used in  
3 carrying out capital punishment. In addition, victims' families need  
4 assurance that capital sentences will be carried out in compliance with  
5 prevailing case law. Therefore, an emergency is declared to exist, and this  
6 act being immediately necessary for the preservation of the public peace,  
7 health, and safety shall become effective on:

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

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

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

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15 /s/House  
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