

1 State of Arkansas  
2 95th General Assembly  
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4

# A Bill

HOUSE BILL 1489

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

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

## For An Act To Be Entitled

13  
14 AN ACT TO AMEND THE METHOD OF EXECUTION TO INCLUDE  
15 NITROGEN GAS; AND FOR OTHER PURPOSES.  
16

## Subtitle

17  
18  
19 TO AMEND THE METHOD OF EXECUTION TO  
20 INCLUDE NITROGEN GAS.  
21

22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 5-4-615 is amended to read as follows:  
26 5-4-615. Conviction – Punishments.

27 A person convicted of a capital offense shall be punished by death ~~by~~  
28 ~~lethal injection~~ or by life imprisonment without parole pursuant to this  
29 subchapter.  
30

31 SECTION 2. Arkansas Code § 5-4-617 is amended to read as follows:  
32 5-4-617. Method of execution.

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



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

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

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

11           ~~(e)~~**(d)** The ~~division~~ **director** shall select one (1) of the following  
12 options for a lethal-injection protocol, depending on the availability of the  
13 drugs:

14                   (1) A barbiturate; or

15                   (2) Midazolam, followed by vecuronium bromide, followed by  
16 potassium chloride.

17           ~~(d)~~**(e)** The drug or drugs described in subsection ~~(e)~~ **(d)** of this  
18 section used to carry out the lethal injection shall be:

19                   (1) Approved by the United States Food and Drug Administration  
20 and made by a manufacturer approved by the United States Food and Drug  
21 Administration;

22                   (2) Obtained from a facility registered with the United States  
23 Food and Drug Administration; or

24                   (3) Obtained from a compounding pharmacy that has been  
25 accredited by a national organization that accredits compounding pharmacies.

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

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

34           ~~(g)~~**(h)** The director shall develop logistical procedures necessary to  
35 carry out the sentence of death, including:

36                   (1) The following matters:

1 (A) Ensuring that the drugs and substances set forth in  
2 this section and other necessary supplies for the ~~lethal injection~~ execution  
3 are available for use on the scheduled date of the execution;

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

6 (C) 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) Determining the identity, arrival, and departure of  
14 the persons involved with carrying out the sentence of death at the facility  
15 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  
22 shall be pronounced according to accepted medical standards; and

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

26 ~~(h)~~(i) The procedures for carrying out the sentence of death and  
27 related matters are not subject to the Arkansas Administrative Procedure Act,  
28 § 25-15-201 et seq.

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

34 (A) Documents, records, or information that may identify  
35 or reasonably lead to the identification of entities or persons who  
36 participate in the execution process or administer lethal injections or

1 nitrogen gas;

2 (B) Documents, records, or information that may identify  
3 or reasonably lead directly or indirectly to the identification of an entity  
4 or person who compounds, synthesizes, tests, sells, supplies, manufactures,  
5 transports, procures, dispenses, or prescribes the drug or drugs described in  
6 subsection ~~(e)~~ (d) of this section, or that provides the medical supplies, ~~or~~  
7 medical equipment, nitrogen, chemicals, or other equipment for the execution  
8 process; or

9 (C) Documents, records, or information that concern the  
10 procedures under subdivision ~~(g)(1)~~ (h)(1) of this section and the  
11 implementation of the procedures under subdivision ~~(g)(1)~~ (h)(1) of this  
12 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30

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

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