

HB248 INTRODUCED



1 HB248

2 EGDL99C-1

3 By Representatives Rafferty, England, Clarke, Lawrence,
4 Drummond, Hassell, Ensler, Jackson, Jones, Tillman, Hendrix

5 RFD: State Government

6 First Read: 27-Feb-24



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SYNOPSIS:

Under existing law, an individual sentenced to death shall be executed by lethal injection unless the individual elected to be executed by electrocution or nitrogen hypoxia.

Under existing law, if lethal injection is held to be an unconstitutional method of execution, an individual shall be executed by means of nitrogen hypoxia.

This bill would prohibit the state from executing an individual by means of nitrogen hypoxia.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT

Relating to the death penalty; to amend Sections 15-18-82 and 15-18-82.1, Code of Alabama 1975, to prohibit the state from executing an individual convicted of a capital offense by means of nitrogen hypoxia.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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29 Section 1. Sections 15-18-82 and 15-18-82.1, Code of
30 Alabama 1975, are amended to read as follows:

31 "§15-18-82

32 (a) Where the sentence of death is pronounced against a
33 convict, the sentence shall be executed ~~at any hour on the day~~
34 ~~set for the execution~~ within the time frame set by the
35 Governor, as provided on the execution warrant issued by the
36 Supreme Court, but not less than 30 ~~nor more than 100~~ days
37 from the date of ~~sentence~~ the execution warrant, as the court
38 may adjudge, by lethal injection unless the convict elects
39 execution by electrocution ~~or nitrogen hypoxia~~ as provided by
40 law. If electrocution ~~or nitrogen hypoxia are~~ is held
41 unconstitutional, the method of execution shall be lethal
42 injection. ~~If lethal injection is held unconstitutional or~~
43 ~~otherwise becomes unavailable, the method of execution shall~~
44 ~~be by nitrogen hypoxia.~~

45 (b) Executions shall take place at the William C.
46 Holman ~~unit of the prison system at Atmore~~ Correctional
47 Facility in a room or area arranged for that purpose. ~~It shall~~
48 ~~be the duty of the~~ The Department of Corrections ~~of this state~~
49 ~~to~~ shall provide the necessary facilities, instruments, and
50 accommodations to carry out the execution.

51 (c) The warden of the William C. Holman ~~unit of the~~
52 ~~prison system at Atmore or~~ Correctional Facility, or in case
53 of his or her death, disability, or absence, his or her
54 deputy, shall be the executioner. ~~In the case of~~ If the
55 execution is by lethal injection, the warden, or in the case
56 of his or her death, disability, or absence, his or her



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57 deputy, may designate an employee of the unit to administer
58 the lethal injection. In the event of the death or disability
59 or absence of both the warden and deputy, the executioner
60 shall be ~~that person~~ an individual appointed by the
61 Commissioner of the Department of Corrections."

62 "§15-18-82.1

63 (a) A death sentence shall be executed by lethal
64 injection, unless the person sentenced to death affirmatively
65 elects to be executed by electrocution ~~or nitrogen hypoxia~~.
66 The sentence shall be executed pursuant to Section 15-18-82.

67 (b) A person convicted and sentenced to death for a
68 capital crime ~~at any time~~ shall have one opportunity to elect
69 that his or her death sentence be executed by electrocution ~~or~~
70 ~~nitrogen hypoxia~~.

71 ~~(1)~~ The election for death by electrocution is waived
72 unless it is personally made by the person in writing and
73 delivered to the warden of the correctional facility within 30
74 days after the certificate of judgment pursuant to a decision
75 by the Alabama Supreme Court affirming the sentence of death
76 is issued ~~or, if a certificate of judgment is issued before~~
77 ~~July 1, 2002, the election must be made and delivered to the~~
78 ~~warden within 30 days after July 1, 2002. If a warrant of~~
79 ~~execution is pending on July 1, 2002, or if a warrant is~~
80 ~~issued within 30 days after July 1, 2002, the person sentenced~~
81 ~~to death who is the subject of the warrant shall waive~~
82 ~~election of electrocution as the method of execution unless a~~
83 ~~written election signed by the person is submitted to the~~
84 ~~warden of the correctional facility no later than 48 hours~~



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85 ~~after a new date for execution of the death sentence is set.~~

86 ~~(2) The election for death by nitrogen hypoxia is~~
87 ~~waived unless it is personally made by the person in writing~~
88 ~~and delivered to the warden of the correctional facility~~
89 ~~within 30 days after the certificate of judgment pursuant to a~~
90 ~~decision by the Alabama Supreme Court affirming the sentence~~
91 ~~of death. If a certificate of judgment is issued before June~~
92 ~~1, 2018, the election must be made and delivered to the warden~~
93 ~~within 30 days of that date. If a warrant of execution is~~
94 ~~pending on June 1, 2018, or if a warrant is issued within 30~~
95 ~~days of that date, the person who is the subject of the~~
96 ~~warrant shall waive election of nitrogen hypoxia as the method~~
97 ~~of execution unless a written election signed by the person is~~
98 ~~submitted to the warden of the correctional facility not later~~
99 ~~than 48 hours after June 1, 2018, or after the warrant is~~
100 ~~issued, whichever is later.~~

101 (c) If electrocution, ~~nitrogen hypoxia,~~ and or lethal
102 injection are ~~all~~ both held to be unconstitutional by the
103 Alabama Supreme Court under the Constitution of Alabama of
104 ~~1901~~ 2022, ~~or~~ held to be unconstitutional by the United States
105 Supreme Court under the United States Constitution, or ~~if~~ the
106 United States Supreme Court declines to review any judgment
107 holding a method of execution to be unconstitutional under the
108 United States Constitution made by the Alabama Supreme Court
109 or the United States Court of Appeals that has jurisdiction
110 over Alabama, then all persons sentenced to death shall be
111 executed by any constitutional method of execution based on
112 the sole discretion of the Commissioner of the Department of



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113 Corrections.

114 (d) The provisions of the opinion and all points of law
115 decided by the United States Supreme Court in *Malloy v. South*
116 *Carolina*, 237 U.S. 180 (1915), finding that the Ex Post Facto
117 Clause of the United States Constitution is not violated by a
118 legislatively enacted change in the method of execution for a
119 sentence of death validly imposed for previously committed
120 capital murders, are adopted by the Legislature as the law of
121 this state.

122 (e) A change in the method of execution shall not
123 increase the punishment or modify the penalty of death for
124 capital murder. Any legislative change to the method of
125 execution for the crime of capital murder shall not violate
126 Section 22 of Article I of the Constitution of Alabama of
127 ~~1901~~2022.

128 (f) Notwithstanding any law to the contrary, a person
129 authorized by state law to prescribe medication and designated
130 by the Department of Corrections may prescribe the drug or
131 drugs necessary to compound a lethal injection.

132 Notwithstanding any law to the contrary, a person authorized
133 by state law to prepare, compound, or dispense medication and
134 designated by the Department of Corrections may prepare,
135 compound, or dispense a lethal injection. For purposes of this
136 section, prescription, preparation, compounding, dispensing,
137 and administration of a lethal injection shall not constitute
138 the practice of medicine, nursing, or pharmacy.

139 Notwithstanding any law to the contrary, a person designated
140 by the Department of Corrections to participate in an



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141 execution in any capacity shall be exempt from criminal
142 liability for necessary actions taken to carry out the
143 execution.

144 (g) The policies and procedures of the Department of
145 Corrections for execution of persons sentenced to death shall
146 be exempt from the Alabama Administrative Procedure Act,
147 Chapter 22 of Title 41.

148 (h) No sentence of death shall be reduced as a result
149 of a determination that a method of execution is declared
150 unconstitutional under the Constitution of Alabama of
151 ~~1901~~2022, or the Constitution of the United States. In any
152 case in which an execution method is declared
153 unconstitutional, the death sentence shall remain in force
154 until the sentence can be lawfully executed by any valid
155 method of execution.

156 (i) An election for a choice of a method of execution
157 made by a convict shall at no time supersede the means of
158 execution available to the Department of Corrections.

159 (j) Nothing contained in this section is intended to
160 require any physician, nurse, pharmacist, or employee of the
161 Department of Corrections or any other person to assist in any
162 aspect of an execution which is contrary to the person's moral
163 or ethical beliefs."

164 Section 2. This act shall become effective on June 1,
165 2024.