

1 SB11  
2 162643-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 03-MAR-15  
6 PFD: 01/27/2015

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8 SYNOPSIS: Under existing law, a death sentence is  
9 executed by lethal injection, unless a person  
10 sentenced to death affirmatively elects to be  
11 executed by electrocution.

12 This bill would require a person sentenced  
13 to death after the effective date of the act to be  
14 executed by electrocution if lethal injection is  
15 deemed unconstitutional by the courts or if an  
16 ingredient essential to carrying out a lethal  
17 injection is unavailable to the Department of  
18 Corrections.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT  
23

24 To amend Section 15-18-82.1, Code of Alabama 1975,  
25 to require a person sentenced to death to be executed by  
26 electrocution under certain conditions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Section 15-18-82.1, Code of Alabama 1975,  
2 is amended to read as follows:

3                   "§15-18-82.1.

4                   "(a) ~~A~~ Except as provided in subsections (c) and  
5 (d), a death sentence shall be executed by lethal injection,  
6 unless the person sentenced to death affirmatively elects to  
7 be executed by electrocution pursuant to subsection (b). The  
8 sentence shall be executed pursuant to Section 15-18-82.

9                   "(b) A person convicted and sentenced to death for a  
10 capital crime at any time shall have one opportunity to elect  
11 that his or her death sentence be executed by electrocution.  
12 The election for death by electrocution is waived unless it is  
13 personally made by the person in writing and delivered to the  
14 warden of the correctional facility within 30 days after the  
15 certificate of judgment pursuant to a decision by the Alabama  
16 Supreme Court affirming the sentence of death or, if a  
17 certificate of judgment is issued before July 1, 2002, the  
18 election must be made and delivered to the warden within 30  
19 days after July 1, 2002. If a warrant of execution is pending  
20 on July 1, 2002, or if a warrant is issued within 30 days  
21 after July 1, 2002, the person sentenced to death who is the  
22 subject of the warrant shall waive election of electrocution  
23 as the method of execution unless a written election signed by  
24 the person is submitted to the warden of the correctional  
25 facility no later than 48 hours after a new date for execution  
26 of the death sentence is set.

1           "(c) A person sentenced to death on or after the  
2 effective date of the act adding this amendatory language  
3 shall be executed by electrocution if either of the following  
4 occur:

5           "1. Execution by lethal injection is held to be  
6 unconstitutional by a court of competent jurisdiction.

7           "2. The Commissioner of the Department of  
8 Corrections certifies to the Governor that one or more of the  
9 ingredients essential to carrying out execution by lethal  
10 injection is unavailable through no fault of the department.

11           "~~(c)~~ (d) If electrocution or lethal injection is held  
12 to be unconstitutional by the Alabama Supreme Court under the  
13 Constitution of Alabama of 1901, or held to be  
14 unconstitutional by the United States Supreme Court under the  
15 United States Constitution, or if the United States Supreme  
16 Court declines to review any judgment holding a method of  
17 execution to be unconstitutional under the United States  
18 Constitution made by the Alabama Supreme Court or the United  
19 States Court of Appeals that has jurisdiction over Alabama,  
20 all persons sentenced to death for a capital crime shall be  
21 executed by any constitutional method of execution.

22           "~~(d)~~ (e) The provisions of the opinion and all points  
23 of law decided by the United States Supreme Court in *Malloy v.*  
24 *South Carolina*, 237 U.S. 180 (1915), finding that the Ex Post  
25 Facto Clause of the United States Constitution is not violated  
26 by a legislatively enacted change in the method of execution  
27 for a sentence of death validly imposed for previously

1 committed capital murders, are adopted by the Legislature as  
2 the law of this state.

3 "~~(e)~~ (f) A change in the method of execution ~~shall~~  
4 does not increase the punishment or modify the penalty of  
5 death for capital murder. Any legislative change to the method  
6 of execution for the crime of capital murder ~~shall~~ does not  
7 violate Section 22 of Article I of the Constitution of Alabama  
8 of 1901.

9 "~~(f)~~ (g) Notwithstanding any law to the contrary, a  
10 person authorized by state law to prescribe medication and  
11 designated by the Department of Corrections may prescribe the  
12 drug or drugs necessary to compound a lethal injection.  
13 Notwithstanding any law to the contrary, a person authorized  
14 by state law to prepare, compound, or dispense medication and  
15 designated by the Department of Corrections may prepare,  
16 compound, or dispense a lethal injection. For purposes of this  
17 section, prescription, preparation, compounding, dispensing,  
18 and administration of a lethal injection ~~shall~~ does not  
19 constitute the practice of medicine, nursing, or pharmacy.

20 "~~(g)~~ (h) The policies and procedures of the  
21 Department of Corrections for execution of persons sentenced  
22 to death shall be exempt from the Alabama Administrative  
23 Procedure Act, Chapter 22 of Title 41.

24 "~~(h)~~ (i) No sentence of death shall be reduced as a  
25 result of a determination that a method of execution is  
26 declared unconstitutional under the Constitution of Alabama of  
27 1901, or the Constitution of the United States. In any case in

1       which an execution method is declared unconstitutional, the  
2       death sentence shall remain in force until the sentence can be  
3       lawfully executed by any valid method of execution.

4               "~~(i)~~(j) Nothing contained in this section is  
5       intended to require any physician, nurse, pharmacist, or  
6       employee of the Department of Corrections or any other person  
7       to assist in any aspect of an execution which is contrary to  
8       the person's moral or ethical beliefs."

9               Section 2. This act shall become effective on the  
10       first day of the third month following its passage and  
11       approval by the Governor, or its otherwise becoming law.