HB248

EGDL99C-1

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

RFD: State Government

First Read: 27-Feb-24

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:

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

"§15-18-82

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

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

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

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

"§15-18-82.1

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

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

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

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

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

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

Corrections.

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

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

(f) Notwithstanding any law to the contrary, a person authorized by state law to prescribe medication and designated by the Department of Corrections may prescribe the drug or drugs necessary to compound a lethal injection. Notwithstanding any law to the contrary, a person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. For purposes of this section, prescription, preparation, compounding, dispensing, and administration of a lethal injection shall not constitute the practice of medicine, nursing, or pharmacy. Notwithstanding any law to the contrary, a person designated by the Department of Corrections to participate in an

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

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

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

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

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

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