

1 SB12
2 180262-1
3 By Senator Pittman
4 RFD: Judiciary
5 First Read: 07-FEB-17
6 PFD: 11/04/2016

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8 SYNOPSIS: Under existing law, a capital defendant may
9 be executed by lethal injection or electrocution,
10 upon the election of the defendant.

11 This bill would allow a capital defendant to
12 elect to be executed by firing squad.

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14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Sections 15-18-82 and 15-18-82.1, Code of
19 Alabama 1975, to allow capital defendants to elect to be
20 executed by firing squad.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§15-18-82.

25 "(a) Where the sentence of death is pronounced
26 against a convict, the sentence shall be executed at any hour
27 on the day set for the execution, not less than 30 nor more

1 than 100 days from the date of sentence, as the court may
2 adjudge, by lethal injection unless the convict elects
3 execution by electrocution or firing squad as provided by law.
4 If electrocution or firing squad are held unconstitutional,
5 the method of execution shall be lethal injection.

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

12 "(c) The warden of the William C. Holman unit of the
13 prison system at Atmore or, in case of his or her death,
14 disability, or absence, his or her deputy, shall be the
15 executioner. In the case of execution by lethal injection, the
16 warden, or in the case of his or her death, disability, or
17 absence, his or her deputy, may designate an employee of the
18 unit to administer the lethal injection. In the event of
19 execution by firing squad, the execution shall occur by a
20 five-person firing squad of law enforcement officers pursuant
21 to policies and procedures adopted by the department. In the
22 event of the death or disability or absence of both the warden
23 and deputy, the executioner shall be that person appointed by
24 the Commissioner of the Department of Corrections.

25 "§15-18-82.1.

26 "(a) A death sentence shall be executed by lethal
27 injection, unless the person sentenced to death affirmatively

1 elects to be executed by electrocution or firing squad. The
2 sentence shall be executed pursuant to Section 15-18-82.

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

22 "(c) If electrocution, firing squad, or lethal
23 injection is held to be unconstitutional by the Alabama
24 Supreme Court under the Constitution of Alabama of 1901, or
25 held to be unconstitutional by the United States Supreme Court
26 under the United States Constitution, or if the United States
27 Supreme Court declines to review any judgment holding a method

1 of execution to be unconstitutional under the United States
2 Constitution made by the Alabama Supreme Court or the United
3 States Court of Appeals that has jurisdiction over Alabama,
4 all persons sentenced to death for a capital crime shall be
5 executed by any constitutional method of execution.

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

14 "(e) A change in the method of execution shall not
15 increase the punishment or modify the penalty of death for
16 capital murder. Any legislative change to the method of
17 execution for the crime of capital murder shall not violate
18 Section 22 of Article I of the Constitution of Alabama of
19 1901.

20 "(f) Notwithstanding any law to the contrary, a
21 person authorized by state law to prescribe medication and
22 designated by the Department of Corrections may prescribe the
23 drug or drugs necessary to compound a lethal injection.
24 Notwithstanding any law to the contrary, a person authorized
25 by state law to prepare, compound, or dispense medication and
26 designated by the Department of Corrections may prepare,
27 compound, or dispense a lethal injection. For purposes of this

1 section, prescription, preparation, compounding, dispensing,
2 and administration of a lethal injection shall not constitute
3 the practice of medicine, nursing, or pharmacy.

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

8 "(h) No sentence of death shall be reduced as a
9 result of a determination that a method of execution is
10 declared unconstitutional under the Constitution of Alabama of
11 1901, or the Constitution of the United States. In any case in
12 which an execution method is declared unconstitutional, the
13 death sentence shall remain in force until the sentence can be
14 lawfully executed by any valid method of execution.

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

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