

1 SB128  
2 188379-1  
3 By Senator Pittman  
4 RFD: Judiciary  
5 First Read: 09-JAN-18

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

11 This bill would allow executions by means of  
12 nitrogen hypoxia if lethal injection is  
13 unavailable.

14 This bill would allow a capital defendant to  
15 elect to be executed by means of nitrogen hypoxia.

16 This bill would allow a capital defendant  
17 who has been sentenced to death to elect to serve a  
18 sentence of life without the possibility of parole.

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

24 To amend Sections 15-18-82 and 15-18-82.1, Code of  
25 Alabama 1975; to allow executions by means of nitrogen hypoxia  
26 if lethal injection is unavailable, to allow for capital  
27 defendants to elect to be executed by nitrogen hypoxia, and to

1 allow for a capital defendant who has been sentenced to death,  
2 to elect to serve a sentence of life without the possibility  
3 of parole in lieu of the sentence of death.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§15-18-82.

8 "(a) Where the sentence of death is pronounced  
9 against a convict, the sentence shall be executed at any hour  
10 on the day set for the execution, not less than 30 nor more  
11 than 100 days from the date of sentence, as the court may  
12 adjudge, by lethal injection unless the convict elects  
13 execution by electrocution or nitrogen hypoxia as provided by  
14 law. If electrocution or nitrogen hypoxia are held  
15 unconstitutional, the method of execution shall be lethal  
16 injection. If lethal injection is held unconstitutional or  
17 otherwise becomes unavailable, the method of execution shall  
18 be by nitrogen hypoxia.

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

25 "(c) The warden of the William C. Holman unit of the  
26 prison system at Atmore or, in case of his or her death,  
27 disability, or absence, his or her deputy, shall be the

1 executioner. In the case of execution by lethal injection, the  
2 warden, or in the case of his or her death, disability, or  
3 absence, his or her deputy, may designate an employee of the  
4 unit to administer the lethal injection. In the event of the  
5 death or disability or absence of both the warden and deputy,  
6 the executioner shall be that person appointed by the  
7 Commissioner of the Department of Corrections.

8 "§15-18-82.1.

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

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

17 "(1) The election for death by electrocution is  
18 waived unless it is personally made by the person in writing  
19 and delivered to the warden of the correctional facility  
20 within 30 days after the certificate of judgment pursuant to a  
21 decision by the Alabama Supreme Court affirming the sentence  
22 of death or, if a certificate of judgment is issued before  
23 July 1, 2002, the election must be made and delivered to the  
24 warden within 30 days after July 1, 2002. If a warrant of  
25 execution is pending on July 1, 2002, or if a warrant is  
26 issued within 30 days after July 1, 2002, the person sentenced  
27 to death who is the subject of the warrant shall waive

1 election of electrocution as the method of execution unless a  
2 written election signed by the person is submitted to the  
3 warden of the correctional facility no later than 48 hours  
4 after a new date for execution of the death sentence is set.

5 "(2) The election for death by nitrogen hypoxia is  
6 waived unless it is personally made by the person in writing  
7 and delivered to the warden of the correctional facility  
8 within 30 days after the certificate of judgment pursuant to a  
9 decision by the Alabama Supreme Court affirming the sentence  
10 of death. If a certificate of judgment is issued before the  
11 effective date of the act adding this language, the election  
12 must be made and delivered to the warden within 30 days of  
13 that date. If a warrant of execution is pending on the  
14 effective date of the act adding this language, or if a  
15 warrant is issued within 30 days of that date, the person who  
16 is the subject of the warrant shall waive election of nitrogen  
17 hypoxia as the method of execution unless a written election  
18 signed by the person is submitted to the warden of the  
19 correctional facility not later than 48 hours after the  
20 effective date of the act adding this language, or after the  
21 warrant is issued, whichever is later.

22 "(c) If electrocution, nitrogen hypoxia, or and  
23 lethal injection ~~is~~ are all held to be unconstitutional by the  
24 Alabama Supreme Court under the Constitution of Alabama of  
25 1901, or held to be unconstitutional by the United States  
26 Supreme Court under the United States Constitution, or if the  
27 United States Supreme Court declines to review any judgment

1 holding a method of execution to be unconstitutional under the  
2 United States Constitution made by the Alabama Supreme Court  
3 or the United States Court of Appeals that has jurisdiction  
4 over Alabama, then all persons sentenced to death ~~for a~~  
5 ~~capital crime~~ shall be executed by any constitutional method  
6 of execution based on the sole discretion of the Commissioner  
7 of the Department of Corrections.

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

16 "(e) A change in the method of execution shall not  
17 increase the punishment or modify the penalty of death for  
18 capital murder. Any legislative change to the method of  
19 execution for the crime of capital murder shall not violate  
20 Section 22 of Article I of the Constitution of Alabama of  
21 1901.

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

1 designated by the Department of Corrections may prepare,  
2 compound, or dispense a lethal injection. For purposes of this  
3 section, prescription, preparation, compounding, dispensing,  
4 and administration of a lethal injection shall not constitute  
5 the practice of medicine, nursing, or pharmacy.

6 Notwithstanding any law to the contrary, a person designated  
7 by the Department of Corrections to participate in an  
8 execution in any capacity shall be exempt from criminal  
9 liability for necessary actions taken to carry out the  
10 execution.

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

15 "(h) No sentence of death shall be reduced as a  
16 result of a determination that a method of execution is  
17 declared unconstitutional under the Constitution of Alabama of  
18 1901, or the Constitution of the United States. In any case in  
19 which an execution method is declared unconstitutional, the  
20 death sentence shall remain in force until the sentence can be  
21 lawfully executed by any valid method of execution.

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

25 "~~(i)~~ (j) Nothing contained in this section is  
26 intended to require any physician, nurse, pharmacist, or  
27 employee of the Department of Corrections or any other person

1 to assist in any aspect of an execution which is contrary to  
2 the person's moral or ethical beliefs."

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