

**DEATH PENALTY PROCEDURE AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: David P. Hinkins

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**LONG TITLE**

**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

**General Description:**

This bill modifies the Utah Code of Criminal Procedure regarding the execution of the death penalty.

**Highlighted Provisions:**

This bill:

► provides that if substances are not available to carry out the death penalty by lethal injection on the date specified by warrant, the death penalty shall be carried out by firing squad.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-2-404**, as last amended by Laws of Utah 2004, Chapter 51

**77-18-5.5**, as last amended by Laws of Utah 2004, Chapter 51

**77-19-10**, as last amended by Laws of Utah 2004, Chapter 51

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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **76-2-404** is amended to read:

30 **76-2-404. Peace officer's use of deadly force.**

31 (1) A peace officer, or any person acting by [~~his~~] the officer's command in [~~his~~]  
32 providing aid and assistance, is justified in using deadly force when:

33 (a) the officer is acting in obedience to and in accordance with the judgment of a  
34 competent court in executing a penalty of death under Subsection ~~77-18-5.5[(3) or (4)]~~(2), (3),  
35 or (4);

36 (b) effecting an arrest or preventing an escape from custody following an arrest, where  
37 the officer reasonably believes that deadly force is necessary to prevent the arrest from being  
38 defeated by escape; and

39 (i) the officer has probable cause to believe that the suspect has committed a felony  
40 offense involving the infliction or threatened infliction of death or serious bodily injury; or

41 (ii) the officer has probable cause to believe the suspect poses a threat of death or  
42 serious bodily injury to the officer or to others if apprehension is delayed; or

43 (c) the officer reasonably believes that the use of deadly force is necessary to prevent  
44 death or serious bodily injury to the officer or another person.

45 (2) If feasible, a verbal warning should be given by the officer prior to any use of  
46 deadly force under Subsection (1)(b) or (1)(c).

47 Section 2. Section **77-18-5.5** is amended to read:

48 **77-18-5.5. Judgment of death -- Method is lethal injection -- Exceptions for use of**  
49 **firing squad.**

50 (1) (a) When a defendant is convicted of a capital felony and the judgment of death has  
51 been imposed, lethal intravenous injection is the method of execution.

52 [~~(2)~~] (b) Subsection (1)(a) applies to any defendant sentenced to death on or after May  
53 3, 2004, except under Subsections (2), (3), and (4).

54 [~~(3)~~] (2) If a court holds that a defendant has a right to be executed by a firing squad,  
55 the method of execution for that defendant shall be a firing squad. This Subsection [~~(3)~~] (2)  
56 applies to any defendant whose right to be executed by a firing squad is preserved by that  
57 judgment.

58 [~~(4)~~] (3) (a) If a court holds that execution by lethal injection is unconstitutional on its

59 face, the method of execution shall be a firing squad.

60 (b) If a court holds that execution by lethal injection is unconstitutional as applied, the  
61 method of execution for that defendant shall be a firing squad.

62 (4) The method of execution for the defendant is the firing squad if the sentencing  
63 court determines the state is unable to lawfully obtain the substance or substances necessary to  
64 conduct an execution by lethal intravenous injection 30 or more days prior to the date specified  
65 in the warrant issued upon a judgment of death under Section 77-19-6.

66 Section 3. Section 77-19-10 is amended to read:

67 **77-19-10. Judgment of death -- Location and procedures for execution.**

68 (1) The executive director of the Department of Corrections or [his] a designee shall  
69 ensure that the method of judgment of death specified in the warrant or as required under  
70 Section 77-18-5.5 is carried out at a secure correctional facility operated by the department and  
71 at an hour determined by the department on the date specified in the warrant.

72 (2) When the judgment of death is to be carried out by lethal intravenous injection, the  
73 executive director of the department or [his] a designee shall select two or more persons trained  
74 in accordance with accepted medical practices to administer intravenous injections, who shall  
75 each administer a continuous intravenous injection, one of which shall be of a lethal quantity  
76 of:

77 (a) sodium thiopental; or

78 (b) other equally or more effective substance sufficient to cause death.

79 (3) If the judgment of death is to be carried out by firing squad under Subsection  
80 77-18-5.5[(3) or (4)](2), (3), or (4), the executive director of the department or [his] a designee  
81 shall select a five-person firing squad of peace officers.

82 (4) Compensation for persons administering intravenous injections and for members of  
83 a firing squad under Subsection 77-18-5.5[(3) or (4)](2), (3), or (4), shall be in an amount  
84 determined by the director of the Division of Finance.

85 (5) Death under this section shall be certified by a physician.

86 (6) The department shall adopt and enforce rules governing procedures for the  
87 execution of judgments of death.

**Legislative Review Note**  
**as of 11-14-14 3:34 PM**

**Office of Legislative Research and General Counsel**