

DEATH PENALTY PROVISIONS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

LONG TITLE

General Description:

This bill repeals use of a firing squad as a means of carrying out the death penalty § , **EXCEPT IN**

SPECIFIED SITUATIONS § .

Highlighted Provisions:

This bill:

- ▶ repeals references to the use of a firing squad, § [~~and makes the repeal retroactive; h~~ ~~and~~ h

~~————▶ makes provision for the possibility that the retroactive provision is ruled unconstitutional, in which case the defendant who has selected the firing squad may be so executed h ; AND~~

~~————▶ PROVIDES FOR EXECUTION BY FIRING SQUAD IF] UNLESS § EXECUTION BY LETHAL INJECTION IS FOUND TO BE UNCONSTITUTIONAL h .~~

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

76-2-404, as last amended by Chapter 92, Laws of Utah 1987

77-18-5.5, as last amended by Chapter 209, Laws of Utah 2001

77-19-6, as last amended by Chapter 190, Laws of Utah 1988

77-19-10, as last amended by Chapter 113, Laws of Utah 1996

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



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

29 **76-2-404. Peace officer's use of deadly force.**

30 (1) A peace officer, or any person acting by his command in his aid and assistance, is
31 justified in using deadly force when:

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

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

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

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

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

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

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

46 **77-18-5.5. Judgment of death --** ~~§ [Defendant to select method -- Time of selection]~~

46a **METHOD IS LETHAL INJECTION -- EXCEPTIONS FOR USE OF FIRING SQUAD** § .

47 (1) When a [person] defendant is convicted of a capital felony and the judgment of
48 death has been imposed, ~~[the defendant is entitled to select, at the time of sentencing, either a~~
49 ~~firing squad or a] lethal intravenous injection [as] is the method of execution. ~~[If the defendant~~
50 ~~does not indicate a preference at that time to the court, the judgment of death shall be executed~~
51 ~~by lethal intravenous injection.]~~~~

52 (2) Subsection (1) applies to § [:

53 ~~—(a)] § any defendant sentenced to death on or after the effective date of this act § [~~; and~~~~

54 ~~—(b) any defendant sentenced to death prior to the effective date of this act, whether or~~
55 ~~not that defendant previously chose a different method of execution.~~

56 ~~—(3) (a) If on the effective date of this act any death warrant issued under Section~~
57 ~~77-19-6 specifying the method of execution as a firing squad is pending, the court shall issue~~
58 ~~another warrant specifying that the method is lethal intravenous injection] § .~~

59 § [(b) If a defendant has previously selected a firing squad as the method of execution and
 60 no death warrant is pending, the court, upon issuing a death warrant, shall specify that the
 61 method is lethal intravenous injection.

62 ~~—— (4) Notwithstanding Subsection (3), if~~ (3) IF § a ~~h~~ [final judgment] COURT ~~h~~ holds that a
 62a1 defendant
 62a has a
 63 right to be executed by a firing squad, the ~~h~~ [court shall issue another death warrant under Section
 64 77-19-6 specifying the method of execution as] METHOD OF EXECUTION FOR THAT DEFENDANT
 64a SHALL BE ~~h~~ a firing squad. This Subsection § [(4) (3)] § applies to
 65 any defendant whose right to be executed by a firing squad is preserved by that ~~h~~ [final] ~~h~~ judgment.

65a ~~h~~ § [(5)] (4) § (a) IF A COURT HOLDS THAT EXECUTION BY LETHAL INJECTION IS
 65b UNCONSTITUTIONAL ON ITS FACE, THE METHOD OF EXECUTION SHALL BE A FIRING SQUAD.
 65c (b) IF A COURT HOLDS THAT EXECUTION BY LETHAL INJECTION IS UNCONSTITUTIONAL
 65d AS APPLIED, THE METHOD OF EXECUTION FOR THAT DEFENDANT SHALL BE A FIRING SQUAD. ~~h~~

66 Section 3. Section 77-19-6 is amended to read:

67 **77-19-6. Judgment of death -- Warrant -- Delivery of warrant -- Determination of**
 68 **execution time.**

69 (1) (a) When judgment of death is rendered, a warrant, signed by the judge and attested
 70 by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of the county
 71 where the conviction is had.

72 (b) The sheriff shall deliver the warrant and a certified copy of the judgment to the
 73 executive director of the Department of Corrections or his designee at the time of delivering the
 74 defendant to the custody of the Department of Corrections.

75 (2) The warrant shall state the conviction, the judgment, the method of execution,
 76 ~~§ [which is lethal injection except under Subsection 77-18-5.5(4)] §~~ , and the appointed day the
 77 judgment is to be executed, which may not be fewer than 30 days nor more than 60 days from
 78 the date of issuance of the warrant.

79 (3) The Department of Corrections shall determine the hour, within the appointed day,
 80 at which the judgment is to be executed.

81 Section 4. Section 77-19-10 is amended to read:

82 **77-19-10. Judgment of death -- Location and procedures for execution.**

83 (1) The executive director of the Department of Corrections or his designee shall
 84 ensure that the method of judgment of death specified in the warrant is carried out at a secure
 85 correctional facility operated by the department and at an hour determined by the department
 86 on the date specified in the warrant.

87 ~~[(2) If the judgment of death is to be carried out by shooting, the executive director of~~
 88 ~~the department or his designee shall select a five-person firing squad of peace officers.]~~

89 ~~[(3) If]~~ (2) When the judgment of death is to be carried out by lethal intravenous

90 injection, the executive director of the department or his designee shall select two or more
 91 persons trained in accordance with accepted medical practices to administer intravenous
 92 injections, who shall each administer a continuous intravenous injection, one of which shall be
 93 of a lethal quantity of sodium thiopental or other equally or more effective substance sufficient
 94 to cause death. ~~[Death shall be certified by a physician.]~~

95 (3) If the judgment of death is to be carried out by firing squad under Subsection
 96 § ~~[77-18-5.5(4)]~~ 77-18-5.5(3) OR(4) § , the executive director of the department or his designee shall
 96a select a five-person
 97 firing squad of peace officers.

98 (4) Compensation for ~~[members of a firing squad or]~~ persons administering
 99 intravenous injections and for members of a firing squad under Subsection § ~~[77-18-5.5(4)]~~
 99a 77-18-5.5(3) OR(4) § shall

100 be in an amount determined by the director of the Division of Finance.

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

102 ~~[(5)]~~ (6) The department shall adopt and enforce rules governing procedures for the
 103 execution of judgments of death.

104 Section 5. **Effective date.**

105 If approved by two-thirds of all the members elected to each house, this bill takes effect
 106 upon approval by the governor, or the day following the constitutional time limit of Utah
 107 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
 108 the date of veto override.

109 Section 6. **Revisor instructions.**

110 It is the intent of the Legislature that the Office of Legislature Research and General
 111 Counsel, in preparing the Utah Code for publication, shall replace the words "the effective date
 112 of this act" in Section 77-18-5.5 with the actual date on which Section 77-18-5.5 takes effect.

Legislative Review Note
 as of 10-17-03 3:15 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel