

1 **DEATH PENALTY PROCEDURE AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: David P. Hinkins

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **76-2-404**, as last amended by Laws of Utah 2004, Chapter 51

23 **77-18-5.5**, as last amended by Laws of Utah 2004, Chapter 51

24 **77-19-10**, as last amended by Laws of Utah 2004, Chapter 51

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

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

28 **76-2-404. Peace officer's use of deadly force.**

29 (1) A peace officer, or any person acting by [**his**] the officer's command in [**his**]

30 providing aid and assistance, is justified in using deadly force when:

31 (a) the officer is acting in obedience to and in accordance with the judgment of a
32 competent court in executing a penalty of death under Subsection ~~77-18-5.5[(3) or (4)]~~(2), (3),
33 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 -- Method is lethal injection -- Exceptions for use of**
47 **firing squad.**

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

50 ~~[(2)]~~ (b) Subsection (1)(a) applies to any defendant sentenced to death on or after May
51 3, 2004, except under Subsections (2), (3), and (4).

52 ~~[(3)]~~ (2) If a court holds that a defendant has a right to be executed by a firing squad,
53 the method of execution for that defendant shall be a firing squad. This Subsection ~~[(3)]~~ (2)
54 applies to any defendant whose right to be executed by a firing squad is preserved by that
55 judgment.

56 ~~[(4)]~~ (3) (a) If a court holds that execution by lethal injection is unconstitutional on its
57 face, the method of execution shall be a firing squad.

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

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

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

65 **77-19-10. Judgment of death -- Location and procedures for execution.**

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

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

75 (a) sodium thiopental; or

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

77 (3) If the judgment of death is to be carried out by firing squad under Subsection
78 77-18-5.5[(3) or (4)](2), (3), or (4) the executive director of the department or [his] a designee
79 shall select a five-person firing squad of peace officers.

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

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

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

