IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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| ROBERT GLEN COE<br><br>Plaintiff<br><br>v.<br><br>RICKY BELL, in his Official Capacity as Warden of Riverbend Maximum Security Institution<br><br>Defendant. | Case No. 3:00-0246<br>Judge Trauger |

MEMORANDUM OF AUTHORITY
SUPPORTING ROBERT GLEN COE'S EMERGENCY COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF DUE TO
VIOLATION OF CONSTITUTIONAL RIGHTS

COMES NOW your plaintiff, Robert Glen Coe, through his undersigned counsel of record and submits this memorandum in support of his complaint for injunctive relief due to violation of constitutional rights and application for expedited preliminary injunction.

I Introduction

Robert Glen Coe filed this Section 1983 suit due to Warden Ricky Bell's refusal to allow counsel to have contact with Robert Coe from one hour prior to the execution up to the point at which Mr. Coe is killed. Warden Bell asserted in a letter to Robert Hutton, counsel for Robert Coe, that counsel was not allowed to observe Mr. Coe at the execution according to T.C.A. § 40-23-116. Though state law does not allow counsel to be present at an execution, it allows numerous other people to be present including: a minister; seven members of the media; the victim's mother, father, grandparents, children, and siblings; the prisoner's mother, father,

grandparents, children, and siblings. Thus, having defense counsel present at the execution could not possibly interfere with a lawful execution since there are already numerous other people allowed to be present. The only possible reason for state law's refusal to allow counsel to be present immediately prior to and during an execution would be to deny Mr. Coe access to the courts.

II. Access to the Courts

In its order, the Court directed Mr. Coe to provide "any additional authority supporting his position that he has the right to have counsel present up until the moment of execution for the purpose of raising a Ford claim." Mr. Coe cannot provide such authority as it does not exist. As the Court has recognized, every jurisdiction with capital punishment permits a prisoner's counsel to be present, but Tennessee. Thus, no jurisdictions outside Tennessee have litigated a claim such as this. Furthermore, because the state of Tennessee has not executed any persons since the decision in Ford v. Wainwright, Tennessee also has no authority which supports the specific proposition that Mr. Coe has the right to have counsel present for the purpose of raising a Ford claim.

A plethora of authority exists to support Mr. Coe's assertion that it is a violation of his constitutional right of access to the courts to prohibit the availability of counsel to him. The Supreme Court, in Bounds v. Smith, 430 U.S. 8817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), recognized the constitutional guarantee to prisoners of "adequate, effective and meaningful" access to the courts. Id. at 822. "To that end, access to counsel assured by the Sixth Amendment is essential." Mann v. Reynolds, 46 F.3d 1055, 1058 (10th Cir. 1995).

"Both society and affected individuals have a compelling interest in insuring that death sentences have been constitutionally imposed." Giarratano v. Murray, 847 F.2d 1118, 1122 (4th

Cir. 1988). The only method of insuring that Mr. Coe's rights are not violated prior to and in the moments before his execution is to permit the presence of counsel. As the Supreme Court stated in Ford v. Wainwright, 477 U.S. 399, 411-12, 106 S.Ct. 2595, 2602, 91 L.Ed.2d 335 (1986), matters affecting an already condemned prisoner call for "no less stringent standards than those demanded in any other aspect of a capital proceeding." Id. Thus to prohibit the presence of counsel at what is possibly the final relevant legal proceeding in Mr. Coe's history would be a clear denial of his right of meaningful access to the courts. See Peterkin v. Jeffes, 855 F.2d 1021, 1042 (3d. Cir. 1988) (" if a state relies exclusively on some degree of assistance from lawyers to provide prisoners with access to the courts, that assistance must be available for all relevant legal proceedings."). "It is fundamental that a prisoner who claims to be confined unconstitutionally must be allowed to state his case to a court." Knop v. Johnson, 977 F.2d 966, 1006 (6th Cir. 1992).

In evaluating a claim of denial of the right to meaningful access to the courts, it is necessary to apply the balancing test set forth by the Supreme Court in Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974). In Procunier, the Court stated that, "[t]he extent to which that right is burdened by a particular regulation or practice must be weighed against the legitimate interests of penal administration . . ." Id. at 419. "In balancing the interests of the state versus that of the inmate, "[t]he fundamental concern is whether an inmate is denied meaningful access to the court." Williams v. Wyrick, 747 F.2d 1231, 1232 (8th Cir. 1984); Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72 (1977).

In applying the balancing test, most courts of appeals have imposed an "injury" requirement on prisoners raising access to courts claims. See, e.g., Strickler v. Waters, 989 F.2d 1375, 1382 (4th Cir. 1993); Shango v. Jurich, 965 F.2d 289, 292 (7th Cir. 1992) ("some quantum

of detriment caused by the challenged conduct of state officials resulting in the interruption and/or delay of plaintiff's pending or contemplated litigation"); Sowell v. Vose, 941 F.2d 32, 35 (1st Cir. 1991) ("actual meaningful impediment to [plaintiff's] participation in the [legal] process"); Chandler v. Baird, 925 F.2d 1057, 1062 (11th Cir. 1991) (no denial where plaintiff demonstrated no relation between what was refused and any legal proceeding which could have been affected by the results); Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989) ("specific instance in which [plaintiff] was actually denied access to the courts"); Crowder v. Sinyard, 884 F.2d 804, 812 n.8 (5th Cir. 1989) (reading Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 1983), as requiring a show of prejudice), cert. denied, 496 U.S. 924 (1990)); Walker v. Mintzes, 771 F.2d 920, 932 (6th Cir. 1985) (actual impediment in access to courts); Holloway v. Dobbs, 715 F.2d 390, 392 (9th Cir. 1983) ("interference with or infringement of the prisoner's constitutional right of access to the courts"); Hudson v. Robinson, 678 F.2d 462, 466 (3d Cir. 1982) ("instance in which an inmate was actually denied access to the courts"). The potential injury in Mr. Coe's case is undisputed - Mr. Coe's very life is at stake. His interest is that the execution comport in every way with the Constitution of the United States and that he have the availability of counsel to challenge any violations that might arise in the course of such execution. The interests of the State are not contradictory to those of Mr. Coe. The State has a duty to uphold the Constitution and to proceed with the execution in a manner which does not violate the rights of Mr. Coe or others. Furthermore, the interest of the State in the safety and well-being of its employees and those participating and viewing the execution are not placed at risk by permitting the presence of Mr. Coe's attorney. After all, the State allows all of the victim's relatives and defendant's relatives to view the execution. Thus, this Court's ordering counsel to be present could not possibly be a tremendous burden on the State or an interference with a lawful execution

Mr. Coe has a right not to be execution if he is mentally incompetent. The Tennessee Supreme Court has recognized that if there is a substantial change in Mr. Coe's mental capacity, he has the right through counsel to petition the Court for a stay of execution. See Coe v. State, slip opinion p. 49, TN 2000 (not yet published), 2000 Westlaw 246425. Mr. Coe presented medical proof at his state court competency hearing that demonstrates within a reasonable degree of medical certainty that he will decompensate under the stress of an imminent execution and be incompetent to be executed under Ford v. Wainwright and the Eighth Amendment to the United States Constitution. (The entire state court record is on file with this court in the case of Coe v. Bell, 3:00-0239). Clearly, Mr. Coe is not concerned about a hypothetical injury. There is medical proof he will be incompetent to be executed at the time of the execution. Not allowing counsel to be present with access to a telephone would totally foreclose Mr. Coe's access to the courts and right to present a meritorious claim.

Balancing the burden on the state in having one extra witness present versus the clear infringement on Mr. Coe's right to access to the courts, this Court should order the Warden to be enjoined from preventing counsel to be present at the execution and to have contact with his client up until immediately prior to the execution with access to a telephone to seek redress to the courts.

Respectfully Submitted,

GLANKER BROWN, PLLC
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By: Robert L. Hutton by [illegible]
Robert L. Hutton
BPR # 15496

## CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing Memorandum of Authority has been delivered via facsimile at (615) 532-2541 and United States mail to Stephanie Reevers, Assistant Attorney General, 2nd Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243-0488, on this the 24th day of March 2000.

ROBERT HUTTON by [illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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| ROBERT GLEN COE, | ) | |
| | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| | ) | |
| RICKY BELL, | ) | No. 3:00-0246 |
| | ) | JUDGE TRAUGER |
| Defendant. | ) | |

**DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

The defendant, Ricky Bell, through counsel, submits this memorandum of law in opposition to plaintiff's motion for preliminary injunctive relief.

Preliminary Statement

Plaintiff, Robert Glen Coe, has filed this action pursuant to 42 U.S.C. § 1983, for deprivation of his right of access to the courts in violation of the First Amendment. Plaintiff seeks a preliminary injunction to permit his attorney to be present at his execution with access to a telephone. Inasmuch as the plaintiff has failed to demonstrate that he has suffered an actual injury to his ability to pursue a nonfrivolous legal claim, he is not entitled to preliminary injunctive relief and his complaint should be dismissed.

Argument

I. PLAINTIFF CANNOT SATISFY THE THRESHOLD ACCESS TO COURTS REQUIREMENT OF ACTUAL INJURY.

The complaint alleges that Mr. Coe's attorney must be present and

observe his execution with access to a telephone so that his attorney can raise a claim with a court that he has become mentally incompetent to be executed under *Ford v. Wainright*, 477 U.S. 399 (1986). The claim that Coe is likely to become incompetent is based on the testimony of one of the psychiatrists who examined him in connection with previous competency proceedings and opined that Coe is likely to decompensate or lose competency as his execution draws near. (Complaint, ¶ 19).

The First Amendment right of prisoners to access the courts is well established. *Lewis v. Casey*, 518 U.S. 343, 346, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996); *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). That right ensures that prisoners have the opportunity to right to file for redress of legal grievances. *Thaddeus X et al., v. Blatter, et al.*, 175 F.3d 378, 390 (6th Cir. 1999).

In *Lewis v. Casey*, *supra*, the Supreme Court delineated the contours of the right of access to the courts, holding that an inmate must show actual injury to existing or contemplated litigation of nonfrivolous claims which challenge his sentence or conditions of confinement. *Lewis v. Casey*, 518 U.S. 343, , 116 S.Ct. 2174, 2179-82, 135 L.Ed.2d 606 (1996). As the Court noted:

> The requirement that an inmate alleging a violation of Bounds must show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches. (citations omitted). It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the

Constitution

518 U.S. 343, 349, 116 S.Ct. 2174, 2179.

Plaintiff has not satisfied the "actual injury" requirement articulated in *Lewis* by showing that he has been prejudiced in any pending or contemplated litigation by the exclusion of his attorney as a witness to his execution. Mr. Coe's claim of denial of access to the courts is based upon facts that have not yet occurred. Although he argues that there is psychiatric testimony that he is likely become incompetent as his execution approaches, his claim is predicated upon conjecture that this event will occur in the future. Indeed, plaintiff himself candidly characterizes the "injury" for which he seeks redress as merely "potential." (*See* Memorandum at p. 4).

Under Article III of the Constitution, a federal court lacks jurisdiction unless the plaintiff presents an actual "case or controversy." *Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct. 3315, 83 L.Ed.2d 56 (1984). In order to satisfy this requirement, plaintiff must have standing. Defining the standing requirement, the Supreme Court has stated:

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized, *see id.*, at 756, 104 S.Ct., at 3327; *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740-741, n. 16, 92 S.Ct. 1361, 1368-1369, n. 16, 31 L.Ed.2d 636 (1972); [FN1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' "

> *Whitmore, supra*, 495 U.S., at 155, 110 S.Ct., at 1723 (*quoting Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare *561 Rights Organization*, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926.

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, ___ 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). Standing to sue requires that a plaintiff have suffered a distinct and palpable injury that is likely to be redressed if the requested relief is granted. *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976). Plaintiff may not establish standing on the basis of hypothetical facts that may occur after the filing of his complaint.

Plaintiff's claim that he will become incompetent is theoretical. While, as the Tennessee Supreme Court acknowledged, there was testimony predicting that as the execution date approaches, the stress resulting from the impending execution may cause him to dissociate so as to render him incompetent (*see Coe v. State*, 2000 WL 246425, *10 (Tenn.), there was disagreement among the experts examining Mr. Coe, and the Court also acknowledged countervailing testimony that the approach of the execution date was not likely to produce a psychotic deterioration. *Id.* at 19.

Given the disagreement by the mental health experts who examined

plaintiff and rendered an opinion as to the likelihood that he would become incompetent, the defendant submits that plaintiff has failed to demonstrate that he will suffered an actual, concrete injury should relief not be granted.[1] Thus, the Court may not properly retain jurisdiction over claim for injunctive relief and it should be denied.

Moreover, the plaintiff has failed to establish the second requirement of standing: that the presumed injury is likely to be redressed by the relief requested. *See Simon, supra*. Even if this Court were to find that Mr. Coe's hypothetical injury is sufficiently concrete, his claim must fail due to the inability of counsel's presence at the execution to avert the injury. If an attorney's allegation were sufficient to establish that an inmate is incompetent to be executed, the efforts of plaintiff's counsel would already have abolished his death sentence. *See Robert Coe v. State*, 200 WL 246425. Because counsel's presence at the actual moment of execution cannot produce the substantial threshold showing of mental incapacity required to give rise to a competency proceeding, (*see Ford v. Wainright*, 477 U.S. 399, 425 (1986) (concurring opinion); *Van Tran v. State*, 6 S.W.3d 257, 272 (1999)) such presence simply would not redress the injury alleged in this action. The relief should therefore not be granted.

In order to obtain preliminary injunctive relief, the moving party must

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[1] The defendant would point out that Mr. Coe has recently come within fifteen hours of execution. The likelihood that he will become incompetent as his execution approaches would appear to be increasingly speculative in light of the absence of any recent claim that his condition has deteriorated.

establish:

> (1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.

Mr. Coe's claim that he will become incompetent is speculative and cannot satisfy the threshold requirement for an access to courts claim of actual injury. As Coe has not shown that his right to file or maintain a nonfrivolous lawsuit is impaired, he has not demonstrated that he has a strong likelihood of success on the merits of his claim nor proven that he will suffer irreparable injury should an injunction requiring that counsel be present at his execution with access to a telephone not be issued.

## II. THERE IS NO NATIONALLY RECOGNIZED REQUIREMENT THAT COUNSEL BE PRESENT AT AN EXECUTION.

Contrary to the plaintiff's assertion in his Memorandum of Authority, several other death penalty states exclude the attorney of the condemned inmate from the list of possible witnesses to the execution. In Louisiana, for example, which has executed at least 18 people since the Supreme Court's decision in *Ford*, there is no provision for the convict's attorney to attend, and the only witness who can attend upon the request of the convict is a priest or minister of the gospel. L.S.A.-R.S. 15:570(A) (copy attached). Likewise, neither Pennsylvania nor Illinois, both of

which have carried out several executions since *Ford*, including executions of individuals alleged to have suffered from mental illness, permits the presence of the inmate's counsel at executions. 61 P.S. § 3005, 725 I.L.C.S. 5/119-5 (copies attached); *see In re Zettlemoyer v. Horn*, 53 F.3d 24 (3rd Cir. 1995) (affirming dismissal of action brought by individuals other than inmate alleged to be incompetent)[2], *Eddmonds v. Peters*, 93 F.3d 1307 (7th Cir. 1996) (affirming dismissal of action regarding, *inter alia*, defendant's mental fitness).[3] Additional states not permitting the attorney or friends of the inmate to be present for the execution include Nevada and Colorado, each of which has performed executions since *Ford*, and New Jersey and Mississippi. N.R.S. Ann. 176.355, C.R.S.A. § 16-11-404, N.J.S.A. 2C:49-7, Miss. Code Ann. § 99-19-55.

Even aside from Tennessee and the states with statutes similar to its own, as addressed above, the overwhelming majority of the remaining death penalty states do not specifically provide for the inmate's counsel to be present. These states merely give the inmate the option of selecting a certain number of individuals to attend, requiring him to forgo the presence of a family member or friend in order to have counsel present. Typical "option" states include Ohio and Kentucky, the only other death penalty states within the Sixth Circuit. O.R.C.A. § 2949.25(5) ("clergyman in attendance upon the prisoner, and not more than three other persons,

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[2]Mr. Zettlemoyer was executed on May 2, 1995.

[3]Mr. Eddmonds was executed on November 19, 1997.

to be designated by the prisoner, who are not confined in any state institution"); K.R.S. §431.250 ("a clergyman and three (3) other persons selected by the condemned"). *See also* Vernon's Ann. Texas C.C.P. Art. 43.20; K.S.A. § 22-4003; West's Ann. Cal. Penal Code § 3605; Ala. Code 1975 § 15-18-83; A.R.S. § 13-705; 22 Okl.St.Ann. § 1015; C.G.S.A. § 54-100; I.C. 35-38-6-6; V.A.M.S. 546.740; M.C.A. 46-19-103; Neb.Rev.St. § 29-2534; N.M.S.A. 1978 § 31-14-15; O.R.S. § 137.473; S.D.C.L. § 23A-27A-35; U.C.A. 1953 § 77-19-11; W.S. 1977 § 7-13-908; N.Y. Corr. Law § 660 (McKinney 1999) (copies attached).

By comparison, the number of states explicitly authorizing the presence of the inmate's attorney at an execution are very few, which presumably explains the plaintiff's failure to cite or rely upon a single statute. In light of this fact, the lack of any federal caselaw requiring presence of counsel at an execution in the fourteen years since *Ford* clearly would mitigate against plaintiff's likelihood of success on the merits of his claim.

## Conclusion

For the reasons set forth above, the defendant submits that plaintiff's request for preliminary injunctive relief should be denied.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been forwarded via facsimile to Robert L. Hutton, Esq. on this the 27th day of March, 2000.

STEPHANIE R. REEVERS

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 15. CRIMINAL PROCEDURE
CHAPTER 4. EXECUTION OF SENTENCE
PART II. CAPITAL CASES



Current through all 1999 Regular Session Acts

§ 570. Execution; officials and witnesses; minors excluded; time; notice to victim's relatives

A. Every execution of the death sentence shall take place in the presence of:

(1) The warden of the Louisiana State Penitentiary at Angola, or a competent person selected by him.

(2) The coroner of the parish of West Feliciana, or his deputy.

(3) A physician summoned by the warden of the Louisiana State Penitentiary at Angola.

(4) The operator of the electric chair, who shall be a competent electrician, who shall have not been previously convicted of a felony, or a competent person selected by the warden of the Louisiana State Penitentiary to administer the lethal injection.

(5) A priest or minister of the gospel, if the convict so requests it.

(6) Not less than five nor more than seven other witnesses, all citizens of the state of Louisiana.

B. No person under the age of eighteen years shall be allowed within the execution room during the time of execution.

C. Notwithstanding any other provision of law to the contrary, every execution of the death sentence shall take place between the hours of 6:00 p.m. and 11:59 p.m.

D. (1) The secretary of the Department of Public Safety and Corrections shall, at least ten days prior to the execution, either give written notice or verbal notice, followed by written notice placed in the United States mail within five days thereafter, of the date and time of execution to the victim's parents, or guardian, spouse, and any adult children who have indicated to the secretary that they desire such notice. The secretary, in such notice, shall give the named parties the option of attending the execution.

(2) The victim's parents, or guardian, spouse, and any adult children who desire to attend the execution shall, within three days of their receipt of the secretary's notification, notify, either verbally or in writing, the secretary's office of their intention to attend. The number of victim relationship witnesses may be limited to two. If more than two of the aforementioned parties desire to attend the execution, then the secretary is authorized to select, from the interested parties, the two victim relationship witnesses who will be authorized to attend.

(3) In no event shall failure to give notice to the victim's parents, or guardian, spouse, or any adult children have any effect as to execution of sentence.

CREDIT(S)

1992 Main Volume

Amended by Acts 1936, Ex.Sess., No. 18, § 1; Acts 1972, No. 768, § 6; Acts 1990, No. 717, § 1.

2005 Electronic Pocket Part Update

Amended by Acts 1997, No. 1260, § 1; Acts 1999, No. 1149, § 1

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2005 Electronic Pocket Part Update

Acts 1997, No. 1260 designated the existing text as subsec. A and added subsec. B, relating to notice of the execution to the victim's relatives.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1997, the section heading was rewritten, which had read, "Officials and witnesses present at execution; minors excluded"; in subsec. A, pars. (1) to (6) were designated and attendant punctuation and capitalization changes were made; the existing second sentence of subsec. A was designated as subsec. B; subsec. B as added in 1997 was designated as subsec. C; and in the sixth sentence of newly designated subsec. D, "give notice to the victim's parents" was substituted for "notice victim's parents".

Acts 1999, No. 1149, § 1, in the first sentence of subsec. D, inserted "either" following "prior to the execution,", inserted "notice or verbal" following "either give written", and inserted ", followed by written notice placed in the United States mail within five days thereafter," following "or verbal notice".

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1999, subsection D was redesignated as pars. D(1) through (5).

1992 Main Volume

Source:
Acts 1928, No. 2, § 1, art. 570.
Acts 1940, No. 17, § 1.
Acts 1946, No. 149, § 1.

The 1956 amendment substituted the warden of the penitentiary or a competent person selected by him for the sheriff of the parish, or one of his duly designated deputies.

The 1972 amendment lowered the age restriction from twenty-one years to eighteen years.

The 1990 amendment inserted commas following "chair" and "electrician", respectively, and inserted "or a competent person selected by the warden of the Louisiana State Penitentiary to administer the lethal injection;" following "felony"; changed "state" to "State"; merged the former first and second sentences of the paragraph into a single sentence (the former second sentence having begun with "No person"), including requisite punctuation and capitalization changes; and inserted "the" preceding "execution room".

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in the first sentence of this section as amended in 1990, punctuation and format were changed as follows: a colon was inserted between "of" and "the warden"; semicolons were substituted for commas following "him", "deputy", "Angola", and "it"; and "and" was deleted preceding "a physician".

Prior Laws:
Acts 1918, No. 133, § 4.

NOTES OF DECISIONS

Construction and application 2
Validity of prior law 1
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1 Validity of prior law

The fact that Act No. 14 of 1940 (see, now, R.S. 15:569 and this section), providing that persons receiving death sentences should be electrocuted, provided that it should become effective on specified date more than 10 months after adjournment of Legislature did not render Acts 1940, No. 14 violative of LSA-Const.1921, Art. 3, § 27 (see, now, LSA-Const. Art. 3, § 19) stating that laws should become effective on the twentieth day after adjournment of Legislature. Iles v. Flournoy, 1943, 202 La. 20, 11 So.2d 16; Henry v. Reid, 1943, 201 La. 857, 10 So.2d 681.

Act No. 14 of 1940 (see, now, R.S. 15:569 and this section) providing that persons receiving death sentences should be electrocuted was not invalid as an "ex post facto law". Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

Act No. 14 of 1940 (see, now, R.S. 15:569 and this section) providing that every sentence of death imposed shall be by electrocution merely substituted electrocution for hanging in capital cases and did not change the punishment, and because death by electrocution was more humane than by hanging, retrospective effect of act did not affect any "substantial right" of a person sentenced to death by hanging and did not make it an "ex post facto law" within the state and federal constitutions. State ex rel. Pierre v. Jones, Sup.1942, 200 La. 808, 9 So.2d 47, certiorari denied 63 S.Ct. 64, 317 U.S. 633, 87 L.Ed. 510.

2 Construction and application

The law [Acts 1940, No. 14 (see, now, R.S. 15:569 and this section)] providing for manner of execution of death sentences committed the executive department in carrying out death sentence imposed by court. Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

Only officers and selected witnesses referred to in this section should be allowed within execution room during execution. Op.Atty.Gen.1956-58, p. 127.

Act No. 153 of 1918, § 4 (see, now, this section) did not inhibit execution of two prisoners at same time. Op.Atty.Gen.1920-22, p. 1084.

3 Witnesses

If the executions of three persons were to take place at one and same time under § 4 of Act No. 113 of 1918 (see, now, this section), no more than seven witnesses could be present. Op.Atty.Gen.1924-26, p. 509.

LSA R.S. 15:570

LA R.S. 15:570

END OF DOCUMENT

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 15. CRIMINAL PROCEDURE
CHAPTER 4. EXECUTION OF SENTENCE
PART II. CAPITAL CASES



Current through all 1999 Regular Session Acts

§ 569. Place for execution of death sentence; manner of execution

A. Every sentence of death executed in this state prior to September 15, 1991, shall be by electrocution, that is, causing to pass through the body of the person convicted a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of the person convicted until such person is dead. Every sentence of death imposed in this state shall be executed at the Louisiana State Penitentiary at Angola. Every execution shall be made in a room entirely cut off from view of all except those permitted by law to be in said room.

B. Every sentence of death executed on or after September 15, 1991, shall be by lethal injection; that is, by the intravenous injection of a substance or substances in a lethal quantity into the body of a person convicted until such person is dead. Every sentence of death imposed in this state shall be executed at the Louisiana State Penitentiary at Angola. Every execution shall be made in a room entirely cut off from view of all except those permitted by law to be in said room.

C. No licensed health care professional shall be compelled to administer a lethal injection.

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1992 Main Volume

Amended by Acts 1956, No. 143; Acts 1956, Ex.Sess., No. 18, § 1; Acts 1990, No. 717, § 1; Acts 1991, No. 159, § 1.

<General Materials (GM) - References, Annotations, or Tables>

REPORTER'S NOTES

1992 Main Volume

R.S.1870, § 983, which prescribed hanging as the method of imposing the death penalty, has been omitted from the 1950 Revised Statutes because superseded by this section.

R.S.1870, § 975; Acts 1884, No. 79; Acts 1910, No. 61; Acts 1917, No. 43; Acts 1918, No. 133, which regulated the execution of criminals, have been omitted from the 1950 Revised Statutes.

R.S.1870, § 975 was superseded by Acts 1884, No. 79, which in turn was superseded by Acts 1910, No. 61. The 1910 Act was amended by Acts 1917, No. 43, which was superseded by Acts 1918, No. 133, which in turn was superseded by R.S. 15:569 to 15:571.

HISTORICAL AND STATUTORY NOTES

1992 Main Volume

Source:
Acts 1928, No. 2, § 1, art. 569.

Acts 1940, No. 14, § 1

The original article provided for mandatory execution by hanging. The 1940 Act changed the method to electrocution.

The 1956 amendments provided that death sentences be executed at the State Penitentiary rather than at parish prisons.

The title of Acts 1956, No. 142 recites that it is an act "To amend and re-enact Section 569 of Title 15", but the body of the act contains no similar recitation.

The 1990 amendment designated the existing paragraph as subsec. A; inserted, in the first sentence of subsec. A, "prior to January 1, 1991" following "in this state", and inserted in the same sentence, a comma following "electrocution"; and added subsecs. B and C.

The 1991 amendment substituted, in the first sentence of subsec. A, "executed in this state prior to September 15, 1991," for "imposed in this state prior to January 1, 1991"; and substituted, in the first sentence of subsec. B, "executed on or after September 15, 1991," for "imposed on or after January 1, 1991".

Prior Laws
Acts 1855, No. 120, § 119.
Acts 1855, No. 121, § 7.
R.S.1856, p. 159, § 120.
R.S.1856, p. 162, § 8.
R.S.1870, §§ 975, 983.
Acts 1884, No. 79.
Acts 1910, No. 61.
Acts 1917, No. 43.
Acts 1918, No. 133.

NOTES OF DECISIONS

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Const.1921, Art. 3, § 27 (see, now, LSA-Const. Art. 3, § 19) stating that laws should become effective on the twentieth day after adjournment of Legislature. Bes v. Flournoy, 1943, 202 La. 20, 11 So.2d 16; Henry v. Reid, 1943, 201 La. 857, 10 So.2d 681.

Acts 1940, No. 14 (sec., now, this section) substituting electrocution for hanging as method of inflicting death penalty did not change the punishment for a crime of murder. State v. Burks, Sup.1942, 202 La. 167, 11 So.2d 518.

1. Validity of prior law

The fact that Act No. 14 of 1940 (see, now, this section), providing that persons receiving death sentences should be electrocuted, provided that it should become effective on specified date more than 10 months after adjournment of Legislature did not render the 1940 Act violative of provision of LSA-Const.1921, Art. 3, § 27 (see, now, LSA-Const. Art. 3, § 19) stating that laws should become effective on the twentieth day after adjournment of Legislature. Bes v. Flournoy, 1943, 202 La. 20, 11 So.2d 16; Henry v. Reid, 1943, 201 La. 857, 10 So.2d 681.

Act No. 14 of 1940 (see, now, this section), providing that persons receivingdeath sentences should be electrocuted, was not invalid as an "ex post facto law". Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

Act No. 14 of 1940, § 1 (see, now, this section), providing that every sentence of death imposed shall be by electrocution merely substituted electrocution for hanging in capital cases and did not change the punishment, and because death by electrocution was more humane than by hanging, retrospective effect of act did not effect any "substantial right" of a person sentenced to death by hanging and did not make it an "ex post facto law" within the state and federal constitutions. State ex rel. Pierre v. Jones, Sup.1942, 200 La. 808, 9 So.2d 42, certiorari denied 63 S.Ct. 64, 317 U.S. 633, 87 L.Ed. 510.

Act No. 14 of 1940 (see, now, this section), providing that every sentence of death imposed shall be by electrocution, was purely a "procedural act" substituting the method of inflicting death by electrocution in lieu of death by hanging in capital cases, and even though act contained no saving clause, it was not an "ex post facto law" because of its retrospective effect. State ex rel. Pierre v. Jones, Sup.1942, 200 La. 808, 9 So.2d 42, certiorari denied 63 S.Ct. 64, 317 U.S. 633, 87 L.Ed. 510.

Act No. 133 of 1918 (see, now, this section), providing that death sentences shall be executed in parish in which crime was committed, did not repeal Act No. 61 of 1910, construing method of execution provided by Rev.St. § 983, and providing for hanging in state penitentiary at Baton Rouge, as it did not conflict with act of 1910, so as to abolish hanging and require district court to direct manner of execution. State v. Johnson, Sup.1919, 144 La. 984, 81 So. 528.

2. Construction and application

The law providing for manner of execution of death sentences controls the executive department in carrying out death sentence imposed by court. Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

3. Retroactive application

Acts 1940, No. 14 (see, now, this section), prescribing electrocution as the method of execution where death penalty was imposed, and repealing articles 569 and 570 of the former Code of Criminal Procedure prescribing hanging as the method of execution, were "retroactive" and applied to crime committed prior to the effective date of the 1940 act. State v. Guillon, Sup.1943, 202 La. 869, 13 So.2d 249.

The legislature in amending and reenacting, through Acts 1940, No. 14, §§ 569 and 570 of the former Louisiana Code of Criminal Procedure (see, now, this section and R.S. 15:570) relative to method of inflicting sentence of death, providing that every sentence of death imposed shall be by electrocution, intended that from date new act became effective mode of inflicting death penalty by hanging should be superseded by death by electrocution even with respect to persons then under death sentence for prior offenses. State ex rel. Pierre v. Jones, Sup.1942, 200 La. 808, 9 So.2d 42, certiorari denied 63 S.Ct. 64, 317 U.S. 633, 87 L.Ed. 510.

4. Mode of execution

The execution of death sentence is an executive function and accused is not entitled to complain unless mode of execution provided in Governor's warrant is contrary to statute. Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

5. Sentence or judgment of death

Where defendant was convicted of murder, was sentenced to suffer death by being hanged by the neck until dead and conviction was affirmed but while case was pending on appeal, former Code of Criminal Procedure article 569 (see, now, this section) was amended by Acts 1940, No. 14 so as to substitute electrocution for hanging as a method of inflicting punishment for crime of murder, district court was vested with jurisdiction after affirmance of conviction to amend its original sentence to extent of making it conform with then existing law relating to method of inflicting death penalty. State v. Burks, Sup.1942, 202 La. 167, 11 So.2d 518.

Where sentence imposed was judgment ordering that defendant suffer penalty of death as punishment for crime of murder which he had committed, reference in the judgment to method of executing the penalty was not a part of the "judgment" since the method of executing a death sentence is prescribed by law. State v. Burks, Sup.1942, 202 La. 167, 11 So.2d 518.

In judgment ordering that defendant suffer penalty of death as punishment for crime of murder, it was not necessary to refer to the method of executing the sentence imposed. State v. Burks, Sup.1942, 202 La. 167, 11 So.2d 518.

Where Act No. 14 of 1940, amending former Code of Criminal Procedure art. 569 (see, now, this section) by providing for execution of death sentence by electrocution, had become effective at time of commission of crime of murder, sentence of defendant convicted of murder to "death in the manner and form provided by law" was not null or

void on ground that judicial department left to discretion of executive department the judicial function of interpreting the doubtful and indefinite sentence of the court. Iles v. Flournoy, Sup.1942, 202 La. 20, 11 So.2d 16.

The fact that judgment of conviction stated only that defendant was sentenced to death and should be executed in manner provided by law, without setting forth specific mode of execution of defendant, did not entitle defendant to enjoin sheriff and his deputies from executing her by electrocution under death warrant issued by Governor, where defendant did not object to form of judgment on appeal and Governor's warrant was in exact conformity with Acts 1940, No. 14 (see, now, this section) directing that death sentence should be executed by electrocution. Henry v. Reid, Sup.1942, 201 La. 857, 10 So.2d 681.

Where accused was sentenced to death by hanging in accordance with existing law, while case was pending retrospective Act (Act No. 14 of 1940) substituting electrocution for method of execution became effective, and unqualified verdict of guilty and sentence imposing death penalty were held valid on appeal, sentence was directed to be amended to conform to new act. State ex rel. Pierre v. Jones, Sup.1942, 200 La. 808, 9 So.2d 47, certiorari denied 63 S.Ct. 64, 317 U.S. 633, 87 L.Ed. 510.

Where one convicted of murder was sentenced to be hanged in state penitentiary at Baton Rouge, as provided by Act No. 61 of 1910 (see, now, this section), its subsequent repeal by Act No. 133 of 1918 (see, now, this section) requiring death sentences to be executed in parish where crime was committed, did not affect sentence, as the place and time of execution were no part of sentence, but were fixed by law and by the Governor. State v. Johnson, Sup.1915, 144 La. 735, 81 So. 293, rehearing denied 144 La. 984, 81 So. 528.

Where one convicted of murder was sentenced to be hanged in state penitentiary at Baton Rouge, as provided by Act No. 61 of 1910, subsequently repealed by Act No. 133 of 1918, providing that death sentence should be executed in parish in which crime was committed, any change in judgment, after affirmance, might be left to district court, which could modify sentence to comply with repealing act. State v. Johnson, Sup.1919, 144 La. 735, 81 So. 293, rehearing denied 144 La. 984, 81 So. 528.

6. Date of execution

There was nothing in law that specified that legal execution should take place on Friday, for day of execution was left entirely to discretion of Governor. Op.Atty.Gen.1924-26, p. 106.

7. Attempted execution

Supreme Court had no authority, on petitions for certiorari, prohibition, mandamus, and habeas corpus, to set aside death sentence and release prisoner from sheriff's custody because attempt to electrocute prisoner was unsuccessful when electric chair failed to function, on ground that to subject prisoner to further electrocution would constitute cruel and unusual punishment and double jeopardy in violation of state constitution where proceedings had in district court up to and including pronouncement of sentence were entirely regular. State ex rel. Francis v. Resweber, Sup.1947, 212 La. 143, 31 So.2d 697.

8. Electric chair

The state penitentiary is the custodian of the electric chair, and sheriff desiring use of chair for purposes of execution was required to pay the cost of transporting the chair to his parish. Op.Atty.Gen.1944-46, p. 904.

The electric chair provided for by Act No. 14 of 1940 (see, now, this section) was to be purchased by the general manager of the state penitentiary out of the general appropriation to the penitentiary. Op.Atty.Gen.1940-42, p. 2790.

Operator of the electric chair provided by Act No. 14 of 1940 was to be employed by the Manager of the Louisiana State Penitentiary and placed on the penitentiary payroll, and general manager was to have charge of the chair. Op.Atty.Gen.1940-42, p. 2788.

LSA-R.S. 15:569

LA R.S. 15:569

END OF DOCUMENT

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES ANNOTATED
PURDON'S PENNSYLVANIA STATUTES ANNOTATED
TITLE 61. PENAL AND CORRECTIONAL INSTITUTIONS
CHAPTER 25. MISCELLANEOUS PROVISIONS
PROCEDURE AND METHOD OF EXECUTION

Current with amendments received through January 8, 2009.

Current through Act 1999-47

§ 3005. Witnesses to execution

(a) List of witnesses.--No person except the following shall witness any execution under the provisions of this act:

(1) The superintendent or his designee of the institution where the execution takes place.

(2) Six reputable adult citizens selected by the secretary.

(3) One spiritual adviser, when requested and selected by the inmate.

(4) Not more than six duly accredited representatives of the news media.

(5) Such staff of the department as may be selected by the secretary.

(6) Not more than four victims registered with and selected by the victim advocate.

(b) Witnesses.--The Secretary of Corrections may refuse participation by a witness for safety or security reasons. The department shall make reasonable efforts to provide victims a viewing area separate and apart from the area to which other witnesses are admitted.

(c) Confidentiality.--The identity of department employees, department contractors or victims who participate in the administration of an execution pursuant to this section shall be confidential.

CREDIT(S)

1999 Main Volume

1998, June 18, P.L. 622, No. 80, § 5, effective in 60 days.

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

1999 Main Volume

Criminal Law ⚭1219
Homicide ⚭355.
WESTLAW Topic Nos. 110, 203.
C.J.S. Criminal Law §§ 1591 to 1597
C.J.S. Homicide § 367

61 P.S. § 3005

PA ST 61 P.S. § 3005

PA ST 61 P.S. § 5905

END OF DOCUMENT

Formerly cited as IL ST CH 38 ¶ 119-5

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 725. CRIMINAL PROCEDURE
ACT 5. CODE OF CRIMINAL PROCEDURE OF 1963
TITLE VII. PROCEEDINGS AFTER TRIAL
ARTICLE 119. EXECUTION OF SENTENCE



Current through P.A. 91-111, apv. 7/14/1999

5/119-5. Execution of Death Sentence

§ 119-5. Execution of Death Sentence.

(a)(1) A defendant sentenced to death shall be executed by an intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent and potassium chloride or other equally effective substances sufficient to cause death until death is pronounced by a licensed physician according to accepted standards of medical practice.

(2) If the execution of the sentence of death as provided in paragraph (1) is held illegal or unconstitutional by a reviewing court of competent jurisdiction, the sentence of death shall be carried out by electrocution.

(b) In pronouncing the sentence of death the court shall set the date of the execution, which shall be not less than 60 nor more than 90 days from the date sentence is pronounced.

(c) A sentence of death shall be executed at a Department of Corrections facility.

(d) The warden of the penitentiary shall supervise such execution, which shall be conducted in the presence of 6 witnesses who shall certify the execution of the sentence. The certification shall be filed with the clerk of the court that imposed the sentence.

(e) The identity of executioners and other persons who participate or perform ancillary functions in an execution and information contained in records that would identify those persons shall remain confidential, shall not be subject to disclosure, and shall not be admissible as evidence or be discoverable in any action of any kind in any court or before any tribunal, board, agency, or person. In order to protect the confidentiality of persons participating in an execution, the Director of Corrections may direct that the Department make payments in cash for such services.

(f) The amendatory changes to this Section made by this amendatory Act of 1991 are severable under Section 1.31 of the Statute on Statutes. [FN1]

(g) Notwithstanding any other provision of law, assistance, participation in, or the performance of ancillary or other functions pursuant to this Section, including but not limited to the administration of the lethal substance or substances required by this Section, shall not be construed to constitute the practice of medicine.

(h) Notwithstanding any other provision of law, any pharmacist or pharmaceutical supplier is authorized to dispense drugs to the Director of Corrections or his or her designee, without prescription, in order to carry out the provisions of this Section.

CREDIT(S)

1992 Main Volume

Laws 1963, p. 2826, § 119-5, eff. Jan. 1, 1964. Amended by P.A. 76-474, § 1, eff. July 18, 1969; P.A. 83-253, § 1, eff. Sept. 8, 1983; P.A. 87-353, § 2, eff. Sept. 9, 1991.

1999 Electronic Update

Amended by P.A. 87-1198, § 3, eff. Sept. 25, 1992; P.A. 89-8, Art. 5, § 5-10, eff. March 21, 1995.

FORMER REVISED STATUTES CITATION

1992 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 119-5.

[FN1] 5 ILCS 70/1 et.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

P.A. 76-474 eliminated executions at the Cook County jail.

P.A. 83-253 rewrote subd. (a) which prior thereto read:

"(a) A sentence of death shall be executed by the electrocution of the defendant."

and in subd. (c), following "death", deleted "pronounced before, on or after the effective date of this amendatory Act".

P.A. 87-253 inserted a reference to potassium chloride or other equally effective substances in subd. (a)(1), and added subds. (e) and (f).

P.A. 87-1198, which incorporated the amendment by P.A. 87-353, in the subsection covering the supervision of an execution, provided that said execution shall be conducted in the presence of 6 witnesses instead of 2 physicians and 6 witnesses.

P.A. 89-8 added the subsections stating that participation in any functions pursuant to this section shall not be construed as the practice of medicine, and authorizing the dispensation of drugs without prescription respectively.

Prior Laws:
R.L.1827, c. 156, § 155.
R.L.1833, p. 208, § 157.
R.S.1845, p. 182, § 167.
Laws 1859, p. 17, § 3.
R.S.1874, p. 348, div. 14, §§ 1 to 5.
Laws 1927, p. 400, § 1.
Laws 1929, p. 346, § 1.
Laws 1941, vol. 1, p. 554, § 1.
Laws 1945, p. 687, § 1.
Ill.Rev.Stat.1963, ch. 38, ¶¶ 749 to 753.

CROSS REFERENCES

Medical Practice Act, application of act, exemptions, see 225 ILCS 60/4.

Sentence to death, see 730 ILCS 5/5-5-3.

LAW REVIEW AND JOURNAL COMMENTARIES

Concept of punishment. Ugo Conti, 1918, 13 Ill.L.Rev. 234.

The constitutionality of the death penalty. The Illinois Supreme Court's decision in People v. Ball. 11 DCBA Brief 20 (1998).

Death penalty. 1972, 68 Nw.U.L.Rev. 835.

Relish. 1973, 68 Nw.U.L.Rev. 893.

Early corporal punishments. Joseph J. Thompson, 1923, 6 Ill.L.Q. 37.

Fit to die: Drug-induced competency for the purpose of execution. Comment, 20 S.Ill.U.L.J. 149 (Fall 1995).

Methodology of death: Reexamining deterrence rationale. Jonathan S. Abernethy, 27 Colum.Hum.Rts.L.Rev. 379 (1996).

Punishment v. treatment in cure of criminal. 1937, 2 J.Marshall L.Q. 560.

Towards a new understanding of capital clemency and procedural due process. 75 B.U.L.Rev. 1507 (1995).

LIBRARY REFERENCES

Criminal Law ⚖1219
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1591, 1592.

UNITED STATES SUPREME COURT

Stay of execution, petition for writ of certiorari to state court, see Rodriguez v. Texas, 1995, 116 S.Ct. 4, 515 U.S. 1307, 132 L.Ed.2d 890.

Stay of execution pending certiorari petition in federal habeas corpus action, see Netherland v. Tuggle, 1995, 116 S.Ct. 4, 515 U.S. 951, 132 L.Ed.2d 879.

NOTES OF DECISIONS

Extension of time, insanity proceedings 4
Insanity proceeding 3, 4
Time of execution 2
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1. Validity

Illinois death penalty statute was not facially invalid on ground that prosecutor enjoyed benefit of making both opening and rebuttal arguments at conclusion of second stage of sentencing hearing. People v. Page, 1993, 189 Ill.Dec. 271, 156 Ill.2d 258, 620 N.E.2d 339, certiorari denied 114 S.Ct. 2781, 512 U.S. 1253, 129 L.Ed.2d 892.

Insanity proceeding - In general 3

Illinois death penalty statute was not facially invalid on ground that it barred sentencing body from giving meaningful consideration to defendant's evidence in mitigation. People v. Page, 1993, 189 Ill.Dec. 271, 156 Ill.2d 258, 620 N.E.2d 339, certiorari denied 114 S.Ct. 2781, 512 U.S. 1253, 129 L.Ed.2d 892.

Execution by lethal injection did not constitute cruel and unusual punishment, absent evidence that execution by that method resulted in protracted death or unnecessary pain. People v. Stewart, 1988, 117 Ill.Dec. 187, 121 Ill.2d 93, 520 N.E.2d 348, certiorari denied 109 S.Ct. 246, 488 U.S. 900, 102 L.Ed.2d224, rehearing denied 109 S.Ct. 544, 488 U.S. 987, 102 L.Ed.2d 574.

2. Time of execution

Time of execution of sentence was correctly imposed on date of argument on motion for new trial, five days after convening of next succeeding term of Supreme Court. People v. Wilson, 1948, 81 N.E.2d 211, 400 Ill. 461.

Error in setting date for execution of death sentence less than 30 days from time judgment was pronounced necessitates only reversal and remandment of case for proper sentence. People v. Jameson, 1944, 56 N.E.2d 790, 387 Ill. 367.

Under former ¶ 749 of former chapter 38, death sentence pronounced October 2, 1942, properly provided for execution thereof on January 16, 1943, where fifth day of first Supreme Court term following expiration of 90-day period was January 15. People v. Williams, 1943, 50 N.E.2d 450, 384 Ill. 348, certiorari denied 64 S.Ct. 483, 321 U.S. 762, 88 L.Ed. 1059.

3. Insanity proceeding—In general

An appeal to the United States Supreme Court from a conviction for murder subsequent to filing of petition in criminal court alleging insanity did not deprive the criminal court of jurisdiction to try the issue of insanity in such ancillary proceeding. People v. Chrisopulos, 1937, 10 N.E.2d 382, 367 Ill. 85.

4. ---- Extension of time, insanity proceedings

Where the question whether accused, under sentence of death, has become insane since his conviction, is properly raised, the court should enter an order staying the execution until the conclusion of the proceeding to determine that issue under the authority given it to prolong the time for the execution for good cause shown. People v. Geary, 1921, 131 N.E. 652, 298 Ill. 236.

Where the Supreme Court had extended the time of the execution of a capital sentence to permit impaneling of a jury to determine the question whether defendant had become insane since he was sentenced, the trial court has authority, if the time is insufficient, to make a further extension of the time. People v. Geary, 1921, 131 N.E. 652, 298 Ill. 236.

725 I.L.C.S. 5/119-5

IL ST CH 725 § 5/119-5

END OF DOCUMENT

Citation
NV ST 176.355
N.R.S. 176.355

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TEXT

NEVADA REVISED STATUTES ANNOTATED
TITLE 14. PROCEDURE IN CRIMINAL CASES.
CHAPTER 176. JUDGMENT AND EXECUTION.
Execution


Current through 1999 Regular Session of the 70th Legislature

176.355 Execution or death penalty: Method; time and place; witnesses.

1. The judgment of death must be inflicted by an injection of a lethal drug.
2. The director of the department of prisons shall:

(a) Execute a sentence of death within the week, the first day being Monday and the last day being Sunday, that the judgment is to be executed, as designated by the district court. The director may execute the judgment at any time during that week if a stay of execution is not ordered by a court of appropriate jurisdiction.

(b) Select the drug or combination of drugs to be used for the execution after consulting with the state health officer.

(c) Be present at the execution.

(d) Notify those members of the immediate family of the victim who have, pursuant to NRS 176.357, requested to be informed of the time, date and place scheduled for the execution.

(e) Invite a competent physician, the county coroner, a psychiatrist and not less than six reputable citizens over the age of 21 years to be present at the execution. The director shall determine the maximum number of persons who may be present for the execution. The director shall give preference to those eligible members or representatives of the immediate family of the victim who requested, pursuant to NRS 176.357, to attend the execution.

3. The execution must take place at the state prison.

4. A person who has not been invited by the director may not witness the execution.

CREDIT

[1967, p. 1439; 1977, p. 860; 1985, p. 1937; 1989, ch. 176, § 2, p. 300, 1995, ch. 233, § 2, p. 391.]

NOTES, REFERENCES, AND ANNOTATIONS

Effect of Amendment. The 1995 amendment redesignated former subdivision 2(e) as present subdivision 2(e); added present subdivision 2(d); in present subdivision 2(e), in the first sentence, inserted "the county coroner, a psychiatrist," deleted "not more than nine" preceding "reputable citizens," added the second and third sentences; and substituted "A person" for "No person" in subsection 4.

NV ST 176.355

N. R. S. 176.355
NV ST 176.355
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Citation
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NEVADA REVISED STATUTES
TITLE 14. PROCEDURE IN CRIMINAL CASES
CHAPTER 176. JUDGMENT AND EXECUTION
EXECUTION



NRS 176.355 Execution of death penalty: Method; time and place; witnesses.

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CREDIT

(Added to NRS by 1967, 1439; A 1977, 860; 1983, 1937; 1989, 390; 1995, 381)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

NRS CROSS REFERENCES.
"Physician" defined, NRS 0.030

WEST PUBLISHING CO.
Criminal Law ⚖1219.
WESTLAW Topic No. 110.
C.J.S. Criminal Law § 1591, 1599
NEVADA CASES.
Statute providing method for execution of death penalty was not indefinite or uncertain. Sec. 43, ch. 216, Stats. 1921 (cf. NRS 176.355), providing that judgment of death shall be inflicted by lethal gas, and that efficient enclosure and proper means for administration of such gas shall be provided, does not infringe upon constitution by being indefinite or uncertain, and is more certain than act which it amended, which provided for hanging defendant or shooting him at his election. State v. Gee Jon, 46 Nev. 418, 211 Pac. 676, 217 Pac. 587 (192
Use of lethal gas is neither cruel nor inhuman if properly administered. Sec. 43, ch. 216, Stats. 1921 (cf. NRS 176.355), which authorized execution of perso convicted of murder by lethal gas, does not violate provisions of federal and state constitutions which prohibit cruel and inhuman punishment, because lethal gas may be administered painlessly, and use of lethal gas is neither cruel nor inhuman if properly administered. State v. Gee Jon, 46 Nev. 418, 211 Pac. 676, 217 Pac. 587 (1923)
ATTORNEY GENERAL'S OPINIONS.
Warden of state prison may place deathwatch over prisoner. Warden of state prison has discretion to place deathwatch over prisoner awaiting capital punishment. AGO 92 (1-27-1922)

N. R. S. 176.355
NV ST 176.355
END OF DOCUMENT

WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 16. CRIMINAL PROCEDURE
CODE OF CRIMINAL PROCEDURE
ARTICLE 11. IMPOSITION OF SENTENCE
PART 4. DEATH PENALTY--EXECUTION



Current through End of 1999 1st Reg. Sess.

§ 16-11-404. Execution--witnesses

The particular day and hour of the execution of said sentence within the week specified in said warrant shall be fixed by the executive director of the department of corrections or the executive director's designee, and the executive director shall be present thereat or shall appoint some other representative among the officials or officers of the correctional facilities at Canon City to be present in his or her place and stead. There shall also be present a physician and such guards, attendants, and other persons as the executive director or the executive director's designee in his or her discretion deems necessary to conduct the execution. In addition, there may be present such witnesses as the executive director or the executive director's designee in his or her discretion deems desirable, not to exceed eighteen persons. The executive director or the executive director's designee shall notify the governor of the day and hour for the execution as soon as it has been fixed.

CREDIT(S)

1998 Main Volume

Amended by Laws 1976, H.B.1010, § 5. Laws 1979, H.B.1499, § 13.

2000 Electronic Pocket Part Update

Amended by Laws 1998, Ch. 163, § 1, eff. Aug. 5, 1998.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES
2000 Electronic Pocket Part Update

Laws 1998, Ch. 163, § 1, rewrote this section, which prior thereto read:

"The particular day and hour of the execution of said sentence within the week specified in said warrant shall be fixed by the executive director of the department of corrections or his designee but shall not be made public by him, and he shall be present thereat or shall appoint some other representative among the officials or officers of the correctional facilities at Canon City to be present in his place and stead. There shall also be present a physician and such guards, attendants, and other persons as the executive director or his designee in his discretion deems desirable, not to exceed fifteen persons. The executive director or his designee shall notify the governor of the day and hour for the execution as soon as it has been fixed."

1998 Main Volume

The 1976 amendment substituted references to the superintendent of the maximum security unit for references to the warden throughout the section.

The 1979 amendment, in the first sentence, substituted "executive director of the department of corrections or his designee" for "superintendent" and "some other representative among the officials or officers of the correctional

facilities at Canon City" for "the deputy superintendent of the maximum security unit or some other representative among the officials or officers of the state penitentiary", and in the second and third sentences, substituted "executive director or his designee" for "superintendent".

Derivation:
C.R.S. 1963, §§ 39-11-1 et seq., 39-11-404.
Laws 1972, S.B.44, § 1.

LIBRARY REFERENCES

1998 Main Volume

Criminal Law ⚖1208.1(6), 1219.
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1571 to 1583, 1591, 1592, 1608.

C. R. S. A. § 16-11-404

CO ST § 16-11-404

END OF DOCUMENT

WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 16. CRIMINAL PROCEEDINGS
CODE OF CRIMINAL PROCEDURE
ARTICLE 11. IMPOSITION OF SENTENCE
PART 4. DEATH PENALTY--EXECUTION



Current through End of 1999 1st Reg. Sess.

§ 16-11-403. Week of execution--warrant

When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the panel of judges passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not less than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall convey to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until infliction of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

CREDIT(S)

1998 Main Volume

Amended by Laws 1976, H.B.1010, § 4; Laws 1979, H.B.1492, § 12. Laws 1994, H.B.94-1288, § 1, eff. July 1, 1994; Laws 1995, S.B.95-24, § 2, eff. July 1, 1995.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

The 1976 amendment substituted references to the superintendent of the state penitentiary maximum security unit for references to the warden of the state penitentiary throughout the section.

The 1979 amendment, in the second sentence, substituted "executive director of the department of corrections or his designee commanding said executive director or his designee" for "superintendent of the state penitentiary maximum security unit commanding said superintendent", and "correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or his designee" for "state penitentiary and deliver the convicted person, together with the warrant, to said superintendent".

The 1994 amendment, in the second sentence, substituted "the executive director's" for "his" following "department of corrections or", and deleted "his" following "executive director or" in two places, deleted the former third sentence, which read: "No person shall be allowed access to said convict, except his attendants, counsel, and physician, a spiritual adviser of his own selection, and members of his family, and then only in accordance with prison regulations.", and added the last two sentences.

The 1995 amendment, in the first sentence, substituted "panel of judges" for "judge".

For effective date and applicability provisions of Laws 1995, S.B.95-54, see the Historical and Statutory Notes following § 16-11-103.

Derivation:
C.R.S.1963, §§ 39-11-1 to 39-11-403.
Laws 1972, S.B.44, § 1.

CROSS REFERENCES

Unitary review, stay of execution, see § 16-12-204.

LIBRARY REFERENCES

1998 Main Volume

Criminal Law ⟹1208.1(6), 1218.
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1521 to 1543, 1591, 1592, 1608.

NOTES OF DECISIONS

Construction and application 1
Delivery of prisoner to penitentiary 3
Execution following stay 4
Week of execution 2

1. Construction and application

Act Colo. approved April 19, 1889, repeals all former acts in conflict with it, and provides that a person convicted of a capital crime, and under sentence of death, shall be placed in the penitentiary, and there kept in solitary confinement until he is hung, and that only certain persons shall be permitted to see him, and these only in accordance with the prison regulations; whereas, the acts repealed permitted such convict to be kept in the prison of the county where his friends resided, and where the sheriff and his attendants, and his clergyman adviser and legal counsel, might visit him without hindrance of law. The act further provides that the warden of the penitentiary shall fix the particular day and hour for execution of the sentence, and the prisoner be kept in ignorance of it; whereas, before the passage of the act, the court fixed the day of execution, and if was made known to the prisoner. Held, that the act imposes greater punishment than the acts repealed, and is ex post facto as to crimes committed before it went into effect. In re Medley, 1890, 10 S.Ct. 384, 134 U.S. 160, 33 L.Ed. 835.

2. Week of execution

The week of time which is required by statute to be appointed and designated in capital cases within which the sentence must be executed, is a period of time extending from 12 midnight Saturday until 12 midnight the following Saturday, but an error in the designation of the week is rendered immaterial when the execution is stayed by this court pending review. Mora v. People, 1893, 35 P. 179, 19 Colo. 255.

3. Delivery of prisoner to penitentiary

One convicted of first degree murder and sentenced to death was properly taken to state penitentiary by sheriff pending writ of error in Supreme Court though he was not present during proceedings subsequent to conviction. Agnes v. People, 1939, 92 P.2d 891, 104 Colo. 527.

The statute requiring that one convicted of crime remain in sheriff's custody pending application for supersedeas or writ of error in Supreme Court did not impliedly repeal statute requiring sheriff to deliver one convicted of murder and sentenced to death to penitentiary warden for solitary confinement until infliction of death penalty. Agnes v. People, 1939, 92 P.2d 891, 104 Colo. 527.

The statute requiring that one convicted of crime remain in sheriff's custody pending application for supersedeas or writ of error in Supreme Court does not apply to one convicted of murder and sentenced to death. Agnes v. People, 1939,

4. Execution following stay

Fact that state Supreme Court set definite execution date in order granting stay of execution pending determination of post conviction relief was not "suggestion of predetermination" in violation of due process. Bell v. Patterson, 1968, 279 F.Supp. 760, affirmed 402 F.2d 394, certiorari denied 91 S.Ct. 2279, 403 U.S. 955, 29 L.Ed.2d 862.

Where the execution of a murderer is stayed on writ of error till after the date of execution as fixed by the trial court, the supreme court has statutory authority, in case of affirmance, to fix the date of execution. Mims v. People, 1893, 35 P. 179, 19 Colo. 255.

C. R. S. A. § 16-11-403

CO ST § 16-11-403

END OF DOCUMENT

WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 16. CRIMINAL PROCEDINGS
CODE OF CRIMINAL PROCEDURE
ARTICLE 8. INSANITY--INCOMPETENCY--RELEASE



Current through End of 1999 1st Reg. Sess.

§ 16-8-112. Procedure after determination of competency or incompetency

(1) If the final determination made pursuant to section 16-8-111 is that the defendant is competent to proceed, the judge shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) If the final determination is that the defendant is incompetent to proceed, the court shall commit the defendant to the custody of the department of human services, in which case the executive director has the same powers with respect to such commitment as he has following a commitment under section 16-8-105(4). However, in the case of a defendant who is charged with an offense which does not involve violent behavior and who is subject to treatment on an outpatient basis as determined by the examination conducted pursuant to section 16-8-111(2) or on the basis of adequate psychiatric information already available, the court may order the defendant to undergo treatment at or under the supervision of a facility, as defined in section 27-10-102(4.5), C.R.S., if a facility exists in the judicial district which is able to provide treatment appropriate to the defendant. Such commitment or treatment shall continue until the defendant is found competent to proceed or until otherwise terminated under the provisions of section 16-8-114.5.

(3) A determination under subsection (2) of this section that a defendant is incompetent to proceed shall not preclude the court from considering the release of the defendant on bail upon compliance with the standards and procedures for such release prescribed by statute and by the Colorado rules of criminal procedure. At any hearing to determine eligibility for release on bail, the court may consider any effect the defendant's incompetency may have on his ability to insure his presence for trial. In the case of an incompetent defendant who is not subject to treatment on an outpatient basis as determined by the examination conducted pursuant to section 16-8-111(2) or on the basis of adequate psychiatric information already available, there shall be a presumption that the incompetency of the defendant will inhibit the ability of the defendant to insure his presence for trial.

(4) A determination under subsection (2) of this section that a defendant is incompetent to proceed shall not preclude a continuation of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, which are susceptible of fair determination prior to trial and without the personal participation of the defendant. Proceedings thus continued may be later reopened if, at the discretion of the court, substantial new evidence is discovered after and as a result of the restoration to competency of the defendant.

CREDIT(S)

1998 Main Volume:

Amended by Laws 1981, H.B.1281, §§ 1, 2; Laws 1994, H.B.94-1029, § 119, eff. July 1, 1994.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

The 1981 amendment added subsecs. (3) and (4); and rewrote subsec. (2), which prior thereto read:

"If the final determination is that the defendant is incompetent to proceed, the court shall commit the defendant to the custody of the department of institutions until such time as he is found to be competent to proceed. The executive director of the department of institutions shall have the same powers with respect to a commitment under this section as he has following a commitment under section 29-8-105(4)."

The 1994 amendment, in subsec. (2), in the first sentence, substituted reference to the department of human services for reference to the department of institutions.

Derivation:
C.R.S.1963, §§ 39-8-1 et seq., 39-8-112.
Laws 1972, S.B.44, § 1.

CROSS REFERENCES

Bail, see § 16-4-101 et seq.

Involuntary commitment, hearing procedures for refusal to accept medication, jurisdiction, costs, see § 27-10-111.

LAW REVIEW AND JOURNAL COMMENTARIES

Felony Preliminary Hearings in Colorado. Philip Chemet, 17 Colo.Law. 1085 (1988).

LIBRARY REFERENCES

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Criminal Law ⇐625.30.
Mental Health ⇐432, 435.
WESTLAW Topic Nos. 110, 257A.
C.J.S. Criminal Law §§ 345 to 354.
C.J.S. Insane Persons § 236.
Colorado Criminal Practice and Procedure, Vol. 14 (1996), Duree, § 5.8 et seq.

UNITED STATES SUPREME COURT

Acquittal by reason of insanity, confinement of defendant, see Jones v. U.S., U.S.Dist.Col.1983, 103 S.Ct. 3043, 463 U.S. 354, 77 L.Ed.2d 694.

NOTES OF DECISIONS

Constitutional rights 2
Habeas corpus 10
Incompetency, generally 5
Incompetency after conviction and before sentence 4
Incompetency after sentence 6
Jurisdiction 8
Release on bail 9
Treatment 6
Trial upon restoration of sanity 7
Validity 1
1 Validity

Commitment, without a precommitment hearing, of defendant found not guilty of a crime by reason of insanity did not violate due process of law. People v. Chavez, 1981, 629 P.2d 1040.

Differences in commitment procedures and standards of release for person found not guilty of crime by reason of insanity and civil commitment do not violate equal protections of the laws. People v. Chavez, 1981, 629 P.2d 1040.

Differences in procedures for civil commitment and commitment of those adjudicated criminally insane, though

significant, are justified by the public safety interest involved. People v. Chavez, 1981, 629 P.2d 1040.

Statutory procedure whereby an incompetent accused is to be treated and confined only to extent necessary for protection of society, under which the criterion for a normal civil commitment proceeding is identical to that which is used in competency commitment proceedings in a criminal case and which authorizes a reasonable period of observation and testing to determine whether accused should ever become competent, strikes a fair balance between the interest of both society and the individual accused and is not unconstitutional. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

7. Constitutional rights

Even if involuntary commitment of criminal defendant for mental evaluation implicated Fourth Amendment, statutory commitment procedure implemented preference for oversight of neutral arbiter exemplified in Fourth Amendment cases. Cappelli v. Denlow, App.1996, 935 P.2d 57, rehearing denied, certiorari denied.

Failure of statutory competency procedure to impose specific time limit on how long accused could be held in custody when placed there for competency evaluation did not violate accused's due process rights, where accused was released the day after his commitment and judge ordering commitment scheduled hearing ten days after commitment and required report to be complete by that date. Cappelli v. Denlow, App.1996, 935 P.2d 57, rehearing denied, certiorari denied.

Involuntary commitment and mental evaluation of criminal defendant by order of court did not implicate Fourth Amendment; commitment was neither search nor seizure and did not involve significant restraint upon defendant's liberty. Cappelli v. Denlow, App.1996, 935 P.2d 57, rehearing denied, certiorari denied.

That accused was committed for period of time prior to hearing to determine competency did not violate his due process rights, while accused's liberty interest in avoiding confinement demanded that he be given opportunity to controvert any presumed need for his commitment, that was not to say that hearing had to precede commitment. Cappelli v. Denlow, App.1996, 935 P.2d 57, rehearing denied, certiorari denied.

Fact that following sanity proceedings, defendant could be committed to an institution for an indefinite period of time pending the regaining of his sanity did not deny defendant due process. Schwadel v. District Court In and For Tenth Judicial Dist., 1970, 474 P.2d 607, 172 Colo. 474.

8. Incompetency, generally

Finding of incompetency results in abatement of any proceedings requiring presence and participation of defendant. People v. Davis, App.1995, 914 P.2d 425, rehearing denied, certiorari denied.

Meaning of word "insane" within statute, which provided in effect that a defendant found to have become insane subsequent to commission of the charged offense and also insane at the time of crime, was to be committed until such time as he was restored to reason and then brought to trial, was equivalent to meaning of word "incompetent" within statute setting forth procedure to be utilized after a determination of incompetency to proceed. People v. Gillings, App.1977, 568 P.2d 92, 39 Colo.App. 187.

A finding of incompetency to stand trial only results in an abatement of the criminal proceedings. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

9. Incompetency after conviction and before sentence

The manner of determining the sanity of a defendant after conviction and before execution of sentence is purely a matter of legislative regulation, and subject to such restrictions as the Legislature, in the exercise of its wisdom may see fit to impose. Leick v. People, 1959, 345 P.2d 1054, 140 Colo. 566.

Procedural safeguards appropriate to a criminal trial did not apply to a proceeding to determine a defendant's sanity

after conviction. Leick v. People, 1959, 345 P.2d 1054, 140 Colo. 564.

At common law an inquisition to determine mental condition of person under sentence of death, and alleged to have become insane since conviction, was under the exclusive control of the trial court. People ex rel. Best v. Eldred, 1938, 86 P.2d 248, 103 Colo. 334.

One awaiting execution of death sentence for murder and claiming to have become insane after conviction does not have an absolute right to a trial to determine present mental condition unless expressly conferred by statute. People ex rel. Best v. Eldred, 1938, 86 P.2d 248, 103 Colo. 334.

5. Incompetence after sentence

A suggestion of insanity after sentence is an appeal to the conscience and sound wisdom of the tribunal which is asked to postpone sentence. Leick v. People, 1959, 345 P.2d 1054, 140 Colo. 564.

6. Treatment

Defendant committed as incompetent to stand trial had right to therapeutic treatment. Kost v. Carlson, 1986, 723 P.2d 145.

An accused who is found to be incompetent to stand trial is to be treated and confined only to the extent necessary for the protection of society. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

7. Trial upon restoration of sanity

If a defendant who is incompetent to stand trial later regains his sanity, he must face trial on the merits. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

8. Jurisdiction

A criminal proceeding that brings into issue competency to stand trial is merely abated during confinement pending return to competency and, thus, the court which commits the accused retains jurisdiction to oversee his commitment and to protect his constitutional rights and should do so. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

9. Release on bail

Statute outlining procedures for trial court to follow after competency hearing did not preclude release on bail of defendant who was charged with violent crime and found incompetent to proceed. People v. White, App.1991, 819 P.2d 1061.

10. Habeas corpus

Custody of an accused, who has been committed on finding that he is not competent to stand trial, may be reviewed at the accused's insistence by way of writ of habeas corpus. Parks v. Denver Dist. Court, Second Judicial Dist., 1972, 503 P.2d 1029, 180 Colo. 202.

C. R. S. A. § 16-8-112

CO ST § 16-8-112

END OF DOCUMENT

This document has been amended. Use UPDATE.
See SCOPE for more information.

NEW JERSEY STATUTES ANNOTATED
TITLE 2C. THE NEW JERSEY CODE OF CRIMINAL JUSTICE
SUBTITLE 3. SENTENCING
CHAPTER 49. CAPITAL PUNISHMENT



Current through L.1999, c. 198

2C:49-7. Persons authorized to be present at execution

a. The commissioner, the persons designated by the commissioner to act as execution technicians, and two licensed physicians shall be present at the execution. The commissioner shall also select and invite the presence of, by at least three days' prior notice, six adult citizens. The names of the execution technicians shall not be disclosed, and the names of the six adult citizens who witnessed the execution shall not be disclosed until after the execution.

b. The commissioner shall, at the request of the person sentenced to death, authorize and permit no more than two clergymen, who are not related to the inmate, to be present at the execution.

c. The commissioner shall permit eight representatives of the news media to be present at the execution, for the purpose of giving their respective newspapers and associations accounts of the execution. The eight representatives shall be composed of two representatives of the major wire services, two representatives of television news services, two representatives of newspapers, and two representatives of radio news services. Immediately following the execution, the eight representatives of the news media may hold a press conference for the purpose of giving other news representatives an account of the execution.

d. The commissioner shall not authorize or permit any person who is related by either blood or marriage to the sentenced person or to the victim to be present at the execution, nor shall the commissioner authorize or permit any other person to be present, except those authorized by this section.

CREDIT(S)

1995 Main Volume

L.1983, c. 245, § 7, eff. July 5, 1983.

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

1999 Electronic Update

Practice Comments
Execution and disposition of the body, see Miller, 33 New Jersey Practice, § 793 (2nd ed.)

1995 Main Volume

American Digest System
Execution of sentence of death, see Criminal Law ⚖1219.

Encyclopedias





Execution of sentence of death, see C.J.S. Criminal Law §§ 1591, 1592.

N.J.S.A. 2C:49-7

NJ ST 2C:49-7

END OF DOCUMENT

NEW JERSEY 1999 SESSION LAW SERVICE
Two Hundred Eighth Legislature, Second Annual Session



Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>.
Changes in tables are made but not highlighted.

# CHAPTER 302
## ASSEMBLY No. 2439
## CODE OF CRIMINAL JUSTICE CAPITAL PUNISHMENT

AN ACT concerning executions and amending P.L.1982, c. 245.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. [ENT] Section 7 of P.L.1982, c. 245 (2C:49-7) is amended to read as follows.

<< NJ ST 2C:49-7 >>

7. a. The commissioner, the persons designated by the commissioner to act as execution technicians, and <<-two->> <<+one+>> licensed <<- physicians ->> <<+ physician +>> shall be present at the execution. The commissioner shall also select and invite the presence of, by at least three days' prior notice, six adult citizens. The names of the execution technicians shall not be disclosed, and the names of the six adult citizens who witnessed the execution shall not be disclosed until after the execution.

b. The commissioner shall, at the request of the person sentenced to death, authorize and permit no more than two clergymen, who are not related to the inmate, to be present at the execution. <<+The commissioner may, at the request of the person sentenced to death, authorize and permit no more than two adult members of the person's immediate family to be present at the execution.+>>

c. The commissioner shall permit <<-eight->> <<+four+>> representatives of the news media to be present at the execution, for the purpose of giving their respective newspapers and associations accounts of the execution. The <<-eight->> <<+four+>> representatives shall be composed of <<-two representatives->> <<+one representative+>> of the major wire services, <<-two representatives->> <<+one representative+>> of television news services, <<-two representatives->> <<+one representative+>> of newspapers, and <<-two representatives->> <<+one representative+>> of radio news services. Immediately following the execution, the <<-eight->> <<+four+>> representatives of the news media may hold a press conference for the purpose of giving other news representatives an account of the execution.

d. The commissioner shall not authorize or permit any person <<-who is related by either blood or marriage to the sentenced person or to the victim+>> to be present at the execution, nor shall the commissioner authorize or permit any other person<<+s+>> to be present, except those authorized by this section.

<<+e. The commissioner shall authorize and permit no more than four adult members of the victim's immediate family to be present at the execution. The names of the members of the victim's immediate family who witnessed the execution shall not be disclosed.+>>

<<+f. For purposes of this section, "immediate family" means a spouse, parent, stepparent, legal guardian, grandparent, child, or sibling.+>>

<<+g. Nothing in this section shall be construed to give a right to any person to delay or prevent the execution of a sentence of death on the date announced in the warrant pursuant to N.J.S.2C:49-3.+>>

2. This act shall take effect immediately.

Approved December 23, 1999.

Effective December 23, 1999

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This bill would amend the law concerning executions to allow the murder victim's family as well as the condemned person's family to attend the execution.

Under the provisions of the bill, two adult members of the condemned person's immediate family may attend the execution at the discretion of the Commissioner of the Department of Corrections. The bill would require the commissioner to allow four adult members of the victim's immediate family to be present. The names of the victim's family who witnessed the execution are not to be disclosed. The bill defines "immediate family" as "a spouse, parent, stepparent, legal guardian, grandparent, child or sibling."

In addition, the bill would reduce the number of other persons who are authorized to attend an execution. The number of licensed physicians would be reduced from two to one. The number of news media representatives would be reduced from eight to four: one representative of the major wire services, one representative of television news services, one representative of newspapers and one representative of radio news services.

This bill embodies Proposal #6 of the "Governor's Study Commission on the Implementation of the Death Penalty," issued August 6, 1998.

Allows family members of the murder victim to attend the condemned person's execution.

[FN1 N.J.S.A. 2C:49-7

NJ LEGIS 302 (1999)

END OF DOCUMENT

WEST'S ANNOTATED MISSISSIPPI CODE
TITLE 99. CRIMINAL PROCEDURE
CHAPTER 19. JUDGMENT, SENTENCE, AND EXECUTION
IN GENERAL



Current through End of 1999 Reg. Sess.

§ 99-19-55. Execution procedures; disposition of body

(1) Whenever any person shall be condemned to suffer death for any crime for which such person shall have been convicted in any court of any county of this state, such punishment shall be inflicted at 6:00 p.m. or as soon as possible thereafter within the next twenty-four (24) hours at an appropriate place designated by the Commissioner of Corrections on the premises of the Mississippi State Penitentiary at Parchman, Mississippi. All male persons convicted of a capital offense wherein the death sentence has been imposed shall be immediately committed to the Department of Corrections and transported to the maximum security cell block at the Mississippi State Penitentiary at Parchman, Mississippi. When the maximum inmate capacity of such maximum security cell block has been reached, the Commissioner of Corrections shall place such male convicts in an appropriate facility on the grounds of the Mississippi State Penitentiary at Parchman, Mississippi. All female persons convicted of a capital offense wherein the death sentence has been imposed shall be immediately committed to the Department of Corrections and housed in an appropriate facility designated by the Commissioner of Corrections. Upon final affirmance of the conviction, the punishment shall be inflicted in the manner provided by law. The State Executioner or his duly authorized deputy shall supervise and perform such execution.

(2) When a person is sentenced to suffer death in the manner provided by law, it shall be the duty of the clerk of the court to deliver forthwith to the Commissioner of Corrections a warrant for the execution of the condemned person. It shall be the duty of the Commissioner forthwith to notify the State Executioner of the date of the execution and it shall be the duty of the said State Executioner, or any person deputized by him in writing, in the event of his physical disability, as hereinafter provided, to be present at such execution, to perform the same, and have general supervision over said execution. In addition to the above designated persons, the Commissioner of Corrections shall secure the presence at such execution of the sheriff, or his deputy, of the county of conviction, at least one (1) but not more than two (2) physicians of the county coroner where the execution takes place, and bona fide members of the press, not to exceed eight (8) in number, and at the request of the condemned, such ministers of the gospel, not exceeding two (2), as said condemned person shall name. The Commissioner of Corrections shall also name to be present at the execution such officers or guards as may be deemed by him to be necessary to insure proper security. No other persons shall be permitted to witness the execution except the commissioner may permit two (2) members of the condemned person's immediate family as witnesses, if they so request and two (2) members of the victim's immediate family as witnesses, if they so request. Provided further, that the Governor may, for good cause shown, permit two (2) additional persons of good and reputable character to witness an execution. No person shall be allowed to take photographs or other recordings of any type during the execution. The absence of the sheriff, or deputy, after due notice to attend, shall not delay the execution.

(3) The State Executioner, or his duly authorized representative, the Commissioner of Corrections, or his duly authorized representative, and the physician or physicians or county coroner who witnessed such execution shall prepare and sign officially a certificate setting forth the time and place thereof and that such criminal was then and there executed in conformity to the sentence of the court and the provisions of Sections 99-19-51 through 99-19-55, and shall procure the signatures of the other public officers and persons who witnessed such execution, which certificate shall be filed with the clerk of the court where the conviction of the criminal was had, and the clerk shall sub join the certificate to the record of the conviction and sentence.

(4) The body of the person so executed shall be released immediately by the State Executioner, or his duly authorized representative, to the relatives of the dead person, or to such friends as may claim the body. The Commissioner of Corrections shall have sole charge of burial in the event the body is not claimed as aforesaid, and his discretion in the

premises shall be final. The Commissioner may donate the unclaimed body of an executed person to the University of Mississippi Medical Center for scientific purposes. The county of conviction shall bear the reasonable expense of burial in the event the body is not claimed by relatives or friends or donated to the University of Mississippi Medical Center.

CREDIT(S)

1999 Main Volume

Laws 1940, Ch. 242, §§ 2, 3; Laws 1954, Ch. 220, § 2; Laws 1954, 1st Ex. Sess., Ch. 34, § 1; Laws 1955, 1st Ex. Sess., Ch. 41, § 1; Laws 1984, Ch. 448, § 4; Laws 1994, Ch. 479, § 2; Laws 1998, Ch. 361, § 1, eff. July 1, 1998.

HISTORICAL AND STATUTORY NOTES

The 1998 amendment provided in the first sentence of subsec. (1) for the time of infliction of punishment and provided for two members of the victim's immediate family as witnesses in subsec. (2).

Derivation.
Code 1930, § 1308; Code 1942, § 2551.

CROSS REFERENCES

Anatomical gift law, see § 41-39-51 et seq.

Autopsies on prisoners' bodies, see § 47-5-151.

Stay of execution, Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-29.

Unclaimed bodies, see § 41-39-5.

RESEARCH AND PRACTICE REFERENCES ANNOTATIONS

Key Numbers
Criminal Law ⇔1191.
WESTLAW Topic No. 110.

Encyclopedias
21A Am Jur 2d, Criminal Law §§ 956 et seq.
C.J.S. Criminal Law §§ 1591 to 1592.

JUDICIAL DECISIONS

In general

1. In general

A Justice Court Clerk is required to accept any affidavit charging a crime which a person wishes to file with the Court, including affidavits charging allegations of the bad check statutes, Section 97-19-55 et seq. Op.Atty.Gen. No. 95-0284, Ammons, June 28, 1995.

The participation of the District Attorney's office is not necessary for a person to be prosecuted under Section 97-19-55 and 99-19-67. Op.Atty.Gen. No. 95-0284, Ammons, June 28, 1995.

Miss. Code Ann. § 99-19-55

MS ST § 99-19-55

END OF DOCUMENT

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE
CHAPTER 2949. EXECUTION OF SENTENCE
DEATH SENTENCE



Current through 1999 portion of 123rd G.A., Files 1 to 123 (apv. 12/31/1999), 125 and 128 (apv. 2/9/2000), 127 and 130 (apv. 2/15/2000), and 134 (apv. 3/8/2000)

2949.25 ATTENDANCE AT EXECUTION

(A) At the execution of a death sentence, only the following persons may be present:

(1) The warden of the state correctional institution in which the sentence is executed or a deputy warden, any other person selected by the director of rehabilitation and correction to ensure that the death sentence is executed, any persons necessary to execute the death sentence by electrocution or lethal injection, and the number of correction officers that the warden thinks necessary;

(2) The sheriff of the county in which the prisoner was tried and convicted;

(3) The director of rehabilitation and correction, or his agent;

(4) Physicians of the state correctional institution in which the sentence is executed;

(5) The clergyman in attendance upon the prisoner, and not more than three other persons, to be designated by the prisoner, who are not confined in any state institution;

(6) Not more than three persons to be designated by the immediate family of the victim;

(7) Representatives of the news media as authorized by the director of rehabilitation and correction.

(B) The director shall authorize at least one representative of a newspaper, at least one representative of a television station, and at least one representative of a radio station to be present at the execution of the sentence under division (A)(7) of this section.

CREDIT(S)

(1994 H 571, eff. 10-6-94; 1993 H 11, eff. 10-1-93, 1992 S 359; 1972 H 494; 129 v 824; 1953 H 1; GC 13456-5)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v 208, Ch 35, § 5

Amendment Note: 1994 H 571 substituted "state correctional" for "penal" throughout.

Amendment Note: 1993 H 11 designated division (A), redesignated former divisions (A) through (E) as divisions (A)(1) through (5), respectively, inserted "of the penal institution in which the sentence is executed" and "or lethal injection" in division (A)(1), added "in which the sentence is executed" in division (A)(4); added division (A)(6); redesignated former division (F) as division (A)(7); rewrote division (A)(7); and added division (B). Prior to amendment, division (A)(7) read:

"(J) Representatives of not exceeding three newspapers in the county where the crime was committed, one reporter for each of the daily newspapers published in the city of Columbus, and such other representatives of the news media as the director of rehabilitation and correction authorizes."

OHIO ADMINISTRATIVE CODE REFERENCES

Department of rehabilitation and correction, attendance at execution, OAC 5120-9-56

LIBRARY REFERENCES

Criminal Law ⇨1219.
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1591, 1593.

OJur 3d: 28, Criminal Law § 2961
Am Jur 2d: 21, Criminal Law § 122 to 128, 609 to 612

NOTES OF DECISIONS AND OPINIONS

Broadcasting of event 1
1. Broadcasting of event

Allegedly improper statement of trial court judge, authorizing authorities in charge of executing death sentence to permit media representatives to broadcast execution, was of no force, where it was not incorporated into trial court's journal entries, State v. Keenan (Ohio 1998) 81 Ohio St. 3d 133, 689 N.E.2d 929, reconsideration denied 81 Ohio St. 3d 1507, 691 N.E.2d 1062, certiorari denied 119 S.Ct. 146, 142 L.Ed.2d 119, rehearing denied 119 S.Ct. 581, 142 L.Ed.2d 487

R.C. § 2949.25

OH ST § 2949.25

END OF DOCUMENT

HALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED
TITLE XL. CRIMES AND PUNISHMENTS
CHAPTER 431. GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS



Current through End of 1998 Reg. Sess.

**431.250 PERSONS WHO MAY ATTEND EXECUTIONS**

The following persons, and no others, may attend an execution: The executioner and the warden of the institution and his deputy or deputies and guards; the sheriff of the county in which the condemned was convicted; the commissioner of the Department of Corrections and representatives of the Department of Corrections designated by him; the physician and chaplain of the institution; a clergyman and three (3) other persons selected by the condemned; three (3) members of the victim's family designated by the commissioner from among the victim's spouse, adult children, parents, siblings, and grandparents; and nine (9) representatives of the news media as follows: one (1) representative from the daily newspaper with the largest circulation in the county where the execution will be conducted, one (1) representative from Associated Press Wire Service, one (1) representative from Kentucky Network, Inc., three (3) representatives for radio and television media within the state, and three (3) representatives for newspapers within the state. Use of audio-visual equipment by the representatives is prohibited during the execution. The Department of Corrections shall issue administrative regulations which govern media representation during the execution.

CREDIT(S)

HISTORY: 1998 c. 220, § 3, eff. 3-31-98.

1992 c. 21., § 80, eff. 7-14-92; 1986 c. 156, § 1; 1942 c. 208, § 1; KS 1137-1

«General Materials (GM) - References, Annotations, or Tables»

LIBRARY REFERENCES

Death penalty, 21 Am Jur 2d, Criminal Law § 609 to 612, 628

NOTES OF DECISIONS AND OPINIONS

In general 1

1. In general

272 Ky 83, 113 S.W.(2d) 580 (Ky. 1938), Venters v. Commonwealth. A judgment that is otherwise valid and complete is not open to complaint because it limits the number and class of persons to be present at the execution.

KRS § 431.250

KY ST § 431.250

END OF DOCUMENT

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CODE OF CRIMINAL PROCEDURE
PART 1. CODE OF CRIMINAL PROCEDURE OF 1965
PROCEEDINGS AFTER VERDICT
CHAPTER 43. CORPUS DELICTI—EXECUTION OF JUDGMENT



Current through End of 1999 Reg. Sess.

Art. 43.20. [504] Present at execution

The following persons may be present at the execution: the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Directors of the Department of Corrections, two physicians, including the prison physician, the spiritual advisor of the condemned, the chaplains of the Department of Corrections, the county judge and sheriff of the county in which the Department of Corrections is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution.

CREDIT(S)

1979 Main Volume

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1979 Main Volume

Prior Laws:
Vernon's Ann.C.C.P.1925, art. 804.
Acts 1923, 2nd C.S., p. 111.

LIBRARY REFERENCES

1979 Main Volume

Criminal Law ⟹1219.
C.J.S. Criminal Law § 2001 et seq.

Texts and Treatises
25 Texas Jur. 3d, Crim. L. §§3693, 3701

NOTES OF DECISIONS

In general 2
Validity 1

1. Validity

Texas' rule barring use of motion picture cameras to gather news at executions did not deny news cameraman equal protection of the law. Garrett v. Estelle, C.A.5 (Tex.)1977, 556 F.2d 1274, rehearing denied 560 F.2d 1022, certiorari denied 98 S.Ct. 3147, 438 U.S. 914, 57 L.Ed.2d 1159.

2. In general

The First Amendment did not require Texas to allow a news cameraman to film executions in state prison for showing

on televisions. Garrett v. Estelle, C.A.5 (Tex.)1977, 556 F.2d 1274, rehearing denied 560 F.2d 1025, certiorari denied 98 S.Ct. 3142, 438 U.S. 914, 57 L.Ed.2d 1159.

Vernon's Ann. Texas C. C. P. Art. 43.20

TX CRIM PRO Art. 43.20

END OF DOCUMENT



This document has been amended. Use UPDATE.
See SCOPE for more information.

KANSAS STATUTES ANNOTATED
CHAPTER 22.—CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
ARTICLE 40.—EXECUTION OF DEATH SENTENCES



Current through End of 1998 Reg. Sess.

22-4003. Witnesses of executions.

Besides the secretary of corrections or the warden designated by the secretary, the executioner and persons designated pursuant to K.S.A. 22-4001 and amendments thereto to assist in the execution, the following persons, and no others, may be present at the execution: The member of the clergy attending the prisoner, not more than three persons designated by the prisoner and not more than six persons designated by the secretary of corrections.

History: L. 1970, ch. 129, § 22-4003; L. 1994, ch. 252, § 13; July 1.

<General Materials (GM) - References, Annotations, or Tables>

SOURCE OR PRIOR LAWS

1995 Main Volume SOURCE OR PRIOR LAWS

62-2403.

K. S. A. § 22-4003

KS ST § 22-4003

END OF DOCUMENT

22 4003. <<-Besides->> <<(a) In addition to>> the secretary of corrections or the warde designated by the secretary, the executioner and persons designated pursuant to K.S.A. 22 4001<<+,+>> and amendments thereto<<+,+>> to assist in the execution, the following persons, and no others, may be present at the execution: <<-The->> <<(1) A+>> member of the clergy attending the prisoner<<+;+>> (2) >> not more than three persons designate by the prisoner<<+;+>> and <<+(3)->> not more than <<-six->> <<+10+>> persons designated by the secretary of corrections<<+.+>> <<+as official witnesses. The secretary shall consider the inclusion of members of the immediate family of any deceased victim of the prisoner as witnesses when designating official witnesses. The identity of persons presen at the execution, other than the secretary or the warden designated by the secretary, shal be confidential. A witness may elect to reveal such witness' own identity, but in no ever shall a witness reveal the identity of any other person present at the execution.+>>
<<+(b) All witnesses shall be 18 years of age or older.->>
<<+(c) The secretary may deny the attendance of any person selected or designated as a witness when the secretary determines it is necessary for reasons of security and order of the institution.+>>
<<+(d) As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, stepchild, parent, grandparent, grandchild, sibling or the spouse of any member of the immediate family specified in this subsection.+>>

WEST'S ANNOTATED CALIFORNIA CODES
PENAL CODE
PART 3. OF IMPRISONMENT AND THE DEATH PENALTY
TITLE 1. EXECUTION OF DEATH PENALTY
CHAPTER 1. EXECUTING DEATH PENALTY



Current through 1999 portion of 1999-2000 Reg. Sess. and 1st Ex. Sess.

§ 3605. Witnesses to execution; selection; exclusion of minors

(a) The warden of the state prison where the execution is to take place shall be present at the execution and shall, subject to any applicable requirement or definition set forth in subdivision (b), invite the presence of two physicians, the Attorney General, the members of the immediate family of the victim or victims of the defendant, and at least 12 reputable citizens, to be selected by the warden. The warden shall, at the request of the defendant, permit those ministers of the Gospel, not exceeding two, as the defendant may name, and any persons relatives or friends, not to exceed five, to be present at the execution, together with those peace officers as he or she may think expedient, to witness the execution. But no other persons than those specified in this section may be present at the execution, nor may any person under 18 years of age be allowed to witness the execution.

(b)(1) For purposes of an invitation required by subdivision (a) to members of the immediate family of the victim or victims of the defendant, the warden of the state prison where the execution is to take place shall make the invitation only if a member of the immediate family of the victim or victims of the defendant so requests in writing. In the event that a written request is made, the warden of the state prison where the execution is to take place shall automatically make the invitation 30 days prior to the date of an imminent execution or as close to this date as practicable.

(2) For purposes of this section, "immediate family" means those persons who are related by blood, adoption, or marriage, within the second degree of consanguinity or affinity.

CREDIT(S)

1987 Main Volume

(Added by Stats.1941, c. 106, p. 1117, § 15.)
2000 Electronic Pocket Part Update

(Amended by Stats.1980, c. 249, § 167; Stats.1987, c. 100 (A.B.566), § 2.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Electronic Pocket Part Update

1986 Legislation

The 1986 amendment made nonsubstantive changes to maintain this code.

1987 Legislation

Stats.1987, c. 100, rewrote the section which, prior to amendment, read:

"The warden of the State prison where the execution is to take place shall be present at the execution and must invite

the presence of two physicians, the Attorney General of the State, and at least 12 reputable citizens, to be selected by him; and he or she shall at the request of the defendant, permit those ministers of the Gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under 18 years of age be allowed to witness the execution."

1987 Main Volume

Derivation: Pen.C. § 1229, amended Stats.1891, c. 191, p. 274, § 9

CROSS REFERENCES

Attorney general, see Const. Art. 5, § 13.

Clergyman, see Evidence Code § 1030.

Commitment, under judgment of death, see Penal Code § 1217.

Right to request and receive notice of scheduled execution, see Penal Code § 679.02.

Wardens, see Penal Code § 2076 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Televising California's death penalty: Is there a constitutional right to broadcast executions? 43 Hastings L.J. 1489 (1992).

Televising executions: The First Amendment issues. William Bennett Turner and Beth S. Brinkmann. 32 Santa Clara L.Rev. 1135 (1992).

LIBRARY REFERENCES

1982 Main Volume

Criminal Law ⇔1219.
C.J.S. Criminal Law § 2011 et seq.

Legal Jurisprudence
Cal Jur 3d Crim L § 3507; Paym § 206

Treatises and Practice Aids
Witkin & Epstein, Criminal Law (2d ed) §§ 1093, 1116

NOTES OF DECISIONS

In general 1
Lethal injection procedure 2

1. In general

Person designated by warden of state prison and approved by director of department of corrections to act as deputy warden during temporary absence of person so designated by director would, as authorized acting head of state prison, be vested with powers granted to the warden; may officiate at executions in temporary absence of warden or in event of his incapacity. 32 Ops.Atty.Gen. 254.

Pending appointment by governor to fill vacancy caused by death or incapacity of warden of state prison, director of department of corrections may appoint or designate acting head of state prison, and

warden and would be authorized to exercise duties imposed upon warden, including duty of attendance at executions. 32 Ops Atty Gen 254.

7. Lethal injection procedures

Organizations had standing to bring First Amendment challenge to prison's exclusion of witnesses from certain phases of lethal injection execution procedure. California First Amendment Coalition v. Calderon, N.D.Cal.1997, 956 F.Supp. 883, reversed 138 F.3d 1298, withdrawn and superseded 150 F.3d 976.

First Amendment guarantees that witnesses attending executions be able to view procedure from point in time prior to immobilization of condemned by confinement to apparatus of death, in case of lethal injection, on the gurney, until shortly after his or her death. California First Amendment Coalition v. Calderon, N.D.Cal.1997, 956 F.Supp. 883, reversed 138 F.3d 1298, withdrawn and superseded 150 F.3d 976.

Prison's refusal to permit witnesses to view execution by lethal injection until after condemned person was strapped to gurney and intravenous tubes had been inserted into his arms was not narrowly tailored to serve compelling state interest in protecting safety of prison personnel, for purpose of determining whether witnesses' First Amendment rights were violated, since faces of prison personnel performing execution could be protected by use of surgical masks and gowns or through some other method of disguising their distinguishing features. California First Amendment Coalition v. Calderon, N.D.Cal.1997, 956 F.Supp. 883, reversed 138 F.3d 1298, withdrawn and superseded 150 F.3d 976.

Prison officials were required to allow witnesses of executions by lethal injection to view procedure at least from point just prior to prisoner being immobilized by being strapped to gurney or other apparatus of death until point prisoner died. California First Amendment Coalition v. Calderon, N.D.Cal.1997, 956 F.Supp. 883, reversed 138 F.3d 1298, withdrawn and superseded 150 F.3d 976.

West's Ann. Cal. Penal Code § 3605

CA PENAL § 3605

END OF DOCUMENT

Citation
AL ST s 15-18-83
Ala.Code 1975 § [illegible]

Search Result

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Database
AL-ST-A

TEXT

CODE OF ALABAMA
TITLE 15. CRIMINAL PROCEDURE.
CHAPTER 18. SENTENCE AND PUNISHMENT.
ARTICLE 5. DEATH PENALTY.

Current through End of 1999 Regular Session.

§ 15-18-83. Persons who may be present at execution.

(a) The following persons may be present at an execution and none other:
(1) The executioner and any persons necessary to assist in conducting the execution.
(2) The Commissioner of Corrections or his or her representative
(3) Two physicians, including the prison physician
(4) The spiritual advisor of the condemned.
(5) The chaplain of Holman Prison.
(6) Such newspaper reporters as may be admitted by the warden.
(7) Any of the relatives or friends of the condemned person that he or she may request, not exceeding two in number.
(8) Any of the immediate family of the victim, not to exceed two in number; provided that if there was more than one victim, the number and manner of selection of victims' representatives shall be as determined by the Commissioner of Corrections.
(b) No convict shall be permitted by the prison authorities to witness the execution.

CREDIT

(Acts 1923, No. 507, p. 769; Code 1923, § 5315; Code 1940, T. 15, § 345; Acts 1977, No. 2360, p. 3792; Acts 1996, No. 96-670, p. 1134, § 1.)

<General Materials (GM) References, Annotations, or Tables>

HISTORY

The 1996 amendment, effective May 20, 1996, in subsection (a), in subdivision (1), substituted "any persons necessary" for "such persons as may be necessary" and deleted "him" following "assist", in subdivision (2), inserted "or her", in subdivision (7), inserted "or she" and substituted "two" for "five", and added subdivision (8), and made nonsubstantive changes.

COLLATERAL REFERENCES

24B C.J.S. Criminal Law, § 2031.

ARIZONA REVISED STATUTES ANNOTATED
TITLE 13. CRIMINAL CODE
CHAPTER 7. IMPRISONMENT



Current through End of 1999 1st Regular Session and the 2nd Special Session.

## § 13-705. Persons present at execution of sentence of death; limitation

The director of the state department of corrections or the director's designee shall be present at the execution of all death sentences and shall invite the attorney general and at least twelve reputable citizens of the director's selection to be present at the execution. The director shall, at the request of the defendant, permit clergymen, not exceeding two, whom the defendant names and any persons, relatives or friends, not exceeding five, to be present at the execution. The director may invite peace officers as the director deems expedient to witness the execution. No persons other than those set forth in this section shall be present at the execution nor shall any minor be allowed to witness the execution.

CREDIT(S)

1989 Main Volume

Formerly § 13-1555. Renumbered as § 13-4035 by Laws 1977, Ch. 142, § 157, eff. Oct. 1, 1978. Renumbered as § 13-705 by Laws 1978, Ch. 201, § 109, eff. Oct. 1, 1978.

2000 Electronic Update

Amended by Laws 1993, Ch. 2, § 2, eff. Feb. 11, 1993; Laws 1996, Ch. 74, § 1.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

The 1993 amendment substituted "director" for "superintendent" in three places, and substituted "state department of corrections or his designee" for "state prison".

The 1996 amendment by Ch. 74 deleted "a physician" following "shall invite"; and made nonsubstantive changes.

Source:
Pen.Code 1901, § 1036.
Laws 1909, Ch. 28, § 1.
Pen.Code 1913, § 1149.
Rev.Code 1928, § 5130.
Code 1939, § 44-2317.
A.R.S. former §§ 13-1655, 13-4005.

Adopted from California, see West's Pen.Code §§ 3603, 3605.

Former § 13-705 was renumbered as § 13-605.

Editor's Note

This section was a initiative measure amending P.C.1913, § 1149. The effective date of the measure was December 5, 1918. See Laws 1919, Initiative and Referendum Measures, p. 20.

CROSS REFERENCES

Constitutional provisions relating to capital punishment, see Const. Art. 22, § 22.

Definitions of murder, see § 13-1105.

LAW REVIEW AND JOURNAL COMMENTARIES

Capital punishment in Arizona. Grace McCarren, 29 Ariz.Att'y 17 (Oct. 1992).

Death penalty for minors: Who should decide? Comment, 20 S.Ill.U.L.J. 621 (Spring 1996).

Fit to die: Drug-induced competency for the purpose of execution. Comment, 20 S.Ill.U.L.J. 149 (Fall 1995).

Protecting the mentally retarded from capital punishment: State efforts since Penry and recommendations for the future. Jonathan L. Bing, 22 N.Y.U.Rev.L. & Soc.Change 59 (1996).

LIBRARY REFERENCES

Criminal Law ⚖1208.1(4), 1219.
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1980, 2001 et seq.

A.R.S. § 13-703.

AZ ST § 13-703

END OF DOCUMENT

OKLAHOMA STATUTES ANNOTATED
TITLE 22. CRIMINAL PROCEDURE
CHAPTER 17. DEATH SENTENCE



Current through Chapter 6 of 1999 1st Ex. Sess.

§ 1015. Place of execution of judgment—Persons who may witness

A. A judgment of death must be executed within the walls of the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered.

B. The judgment of execution shall take place under the authority of the Director of the Oklahoma Department of Corrections and the warden must be present along with other necessary prison and corrections officials to carry out the execution. The warden must invite the presence of a physician and the district attorney of the county in which the crime occurred, the judge, who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and the sheriff of the county wherein the conviction was had, to witness the execution; in addition, the cabinet secretary of public safety must be invited and the warden shall, at the request of the defendant, permit the presence of such ministers of the defendant's choice, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name, provided, reporters from recognized members of the news media will be admitted upon proper identification, application and approval of the warden.

C. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the warden must invite the pro-secuting attorney, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued. The above mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.

D. A place shall be provided within the walls of the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area in which other nonfamily member witnesses are admitted, provided, however, if there are multiple deceased victims, the Department shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department of Corrections may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden in consultation with the Director shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this subsection.

E. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of the capital murder may have an accompanying support person as provided for members

of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction

CREDIT(S)

1986 Main Volume

R.L.1910, § 5983. Laws 1913, c. 113, p. 209, § 9; Laws 1951, p. 64, § 1.

2005 Electronic Pocket Part Update

Amended by Laws 1992, c. 106, § 2, eff. Sept. 1, 1992; Laws 1996, c. 76, § 1, emerg. eff. April 8, 1996; Laws 1997, c. 173, § 5, emerg. eff. May 7, 1997; Laws 1997, c. 357, § 8, emerg. eff. June 9, 1997.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1986 Main Volume

The 1951 amendment rewrote the section which prior thereto provided:

"A judgment of death must be executed within the walls or yards of a jail of the county in which the conviction was had, or some convenient, private place in the county. If there is no such jail or ground in the county in which the conviction was had, or if it becomes unfit or unsafe for the confinement of prisoners, or is destroyed by fire or otherwise, and the jail of another county has been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed in manner as above."

The 1951 amendment, in the second sentence, inserted "along with other necessary prison officials" following "must be present", substituted "and" for a comma following "physician", deleted "of Pittsburg County" following "County attorney", and substituted "and sheriff of the county wherein the conviction was had, to witness the execution, and he shall, at the request of the defendant, permit the presence of such ministers of the Gospel, not exceeding two (2), and any persons, relatives or friends, not to exceed five (5), as the defendant may name; provided, newspapermen from recognized newspapers, press, and wire services, and radio reporters will be admitted upon proper identification, application and approval of the warden. No other person than those mentioned in this Section can be present at the execution." for "and at least two reputable citizens to be selected by him, and he shall, at the request of the defendant permit such ministers of the Gospel not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient to witness the execution, but no other person than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness same."

Source:
St.1890, § 5749.
St.1893, § 5314.
St.1903, § 5602.
Comp.Laws 1909, § 6961.
Comp.St.1921, § 2099.
St.1931, § 2185.

Origin: Comp.Laws Dak.1887, § 7495.

R.L.1910, § 5983, which covered the same subject matter as this section was repealed by Laws 1941, p. 462, § 1, eff. June 7, 1941. Said section read as follows:

"The sheriff or deputy sheriff of the county must be present at the execution and may invite the presence by at least three days' notice of the county attorney, together with one physician and twelve reputable citizens, to be selected by him. He must, also, at the request of the defendant, permit any minister or ministers of the gospel whom the defendant may name, and any of his relatives or friends, not to exceed five, to attend the execution, and also such peace officers as the sheriff or under sheriff may deem proper. But no person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same."

NOTES OF DECISIONS

Construction and application 1

1 Construction and application

Accused, inadvertently not electrocuted pursuant to death sentence, may be returned under §§ 1012 and 1013 of this title, as modified by this section, for resentence to court originally sentencing him. In re Opinion of the Judges, Okla.Crim.App., 31 Okla.Crim. 22 Okl. St. Ann. § 1015

OK ST T. 22 § 1015

END OF DOCUMENT

442, 239 P. 676 (1925).

The Secretary of Security and Safety, by virtue of such position, is not included within the meaning of term "other necessary prison officials" who may be present at execution, nor is he permitted to be present at execution of convicted defendant unless specifically requested by defendant. Op.Atty.Gen. No. 96-86 (Aug. 8, 1996).

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 54. CRIMINAL PROCEDURE
CHAPTER 961. TRIAL AND PROCEEDINGS AFTER CONVICTION
PART II. SENTENCING AND APPEAL



Current through Gen.St., Rev. to 1-1-00

§ 54-100. Method of inflicting death penalty. Attendance at execution

(a) The method of inflicting the punishment of death shall be by continuous intravenous injection of a substance or substances in a quantity sufficient to cause death, in accordance with procedures prescribed by the Commissioner of Correction in consultation with the Commissioner of Public Health. The Commissioner of Correction shall direct a warden of an appropriate correctional institution to appoint a suitable person or persons to perform the duty of executing sentences of the court requiring the infliction of the death penalty. Such person or persons shall receive, for such duty, such compensation as is determined by the Commissioner of Correction. When any person is sentenced to death by any court of this state having competent jurisdiction, he shall, within twenty days after final sentence, be conveyed to an appropriate correctional institution and such punishment shall be inflicted only within the walls of said institution, within an enclosure to be prepared for that purpose under direction of the warden of said institution. Such enclosure shall be so constructed as to exclude public view.

(b) Besides the warden or deputy warden and such number of correctional staff as he thinks necessary, the following persons may be present at the execution: the Commissioner of Correction, a physician, a clergyman in attendance upon the prisoner and such other adults, as the prisoner may designate, not exceeding three in number, news media representatives and such other persons as the commissioner deems appropriate. The total number of witnesses permitted at an execution shall be governed by space and security requirements and the Commissioner of Correction shall make the final determination of such number. News media representatives present at an execution shall include representatives of newspapers, broadcasters and news services, who shall report on behalf of all news media. The number of news media representatives present at an execution shall be nine, except that the commissioner, in his discretion, may authorize a greater number of such representatives or, for specified reasons of space or security, may reduce such number of representatives. The commissioner may exclude a witness for specified reasons of security.

CREDIT(S)

1994 Main Volume

(1949 Rev., § 8816; 1963, P.A. 28, § 6; 1974, P.A. 74-84.)

2000 Electronic Pocket Part Update

(1995, P.A. 95-16, § 1; 1995, P.A. 95-257, §§ 12, 21, eff. July 1, 1995; 1996, P.A. 96-180, § 130, eff. June 3, 1996; 1997, P.A. 97-184, § 1.)

HISTORICAL AND STATUTORY NOTES

2000 Electronic Pocket Part Update

Codification

On and after July 1, 1995, the term "commissioner of public health and addiction services" has been changed to "commissioner of public health" and the term "department of public health and addiction services" has been changed to "department of public health", pursuant to 1995, P.A. 95-257, §§ 12, 21.

Gen.St., Rev. to 1997, changed the section heading from "Electrocution" to "Method of inflicting death penalty. Attendance at execution".

Amendments

1995 Amendment. 1995, P.A. 95-16, § 1, among other changes, changed the method of carrying out a death sentence from electrocution to continuous intravenous injection in accordance with prescribed procedures, deleted specific references to the Connecticut Corrections Institution, Somers, required the commissioner to direct a warden of an appropriate correctional institution to appoint someone to execute a death sentence, required the commissioner to determine the compensation to be received by the person so appointed, required person sentenced to death to be conveyed to an appropriate correctional institution, required that such punishment be inflicted only within said institution within an enclosure to be prepared under direction of said institution's warden, and substituted "correction officers" for "guards" and "Commissioner" for "board of directors" in language directing who may be present at the execution.

1996 Amendment. 1996, P.A. 96-180, § 130, substituted "Commissioner of Correction" for "Commissioner", wherever it appeared.

1997 Amendment. 1997, P.A. 97-154, § 1, designated subsec. (a) and inserted "or persons" twice therein, and designated and inserted subsec. (b), which prior thereto read:

"Besides the warden or deputy warden and such number of correction officers as he thinks necessary the following persons may be present at the execution, but no others. The sheriff of the county, in which the prisoner was tried and convicted, the Commissioner of Correction, a physician of a correctional institution, a clergyman in attendance upon the prisoner and such other adults, as the prisoner may designate, not exceeding three in number, representatives of not more than five newspapers in the county where the crime was committed, and one reporter for each of the daily newspapers published in the city of Hartford."

Effective Dates

1995 Act. 1995, P.A. 95-16, § 5, provided:

"This act shall take effect from its passage [April 12, 1995], except that sections 1, 2 and 4 shall take effect October 1, 1995, and section 1 shall be applicable to executions carried out on or after said date."

1994 Main Volume

Amendments

1963 Amendment. 1963, P.A. 28, § 6, substituted "Somers" for "Wethersfield".

1974 Amendment. 1974, P.A. 74-84, substituted, in the fifth sentence, "adults" for "persons, adult males" following "and such other".

Effective Dates

1963 Act. 1963, P.A. 28, § 8, provided:

"This act [amending §§ 18-1, 18-7, 18-14, 18-15, 51-185, 54-100, 54-101] shall take effect on such date as the governor shall certify that the land of the state, and its appurtenances, at Wethersfield are no longer used for prison purposes."

Derivation

1902 Rev., § 1526, 1918 Rev., § 6651; 1930 Rev., § 6408; 1935, Supp. § 1727c; 1939, Supp. § 1466.

LAW REVIEW AND JOURNAL COMMENTARIES

Death penalty in the twenty-first century. Conference, 45 Am.U.L.Rev. 239 (1995)

Judges and the politics of death: Deciding between the bill of rights and the next election in capital cases. Stephen B. Bright and Patrick J. Keenan. 75 B.U.L.Rev. 759 (1995).

Jury override: Blend of politics and death. 45 Am.U.L.Rev. 1403 (1996).

The punishment of capital offenders. William R. Ginsberg, 27 Conn.B.J. 273 (1953)

LIBRARY REFERENCES

1994 Main Volume

American Digest System
Execution of sentence of death, see Criminal Law ⟸ 1219

Encyclopedias
Execution of sentence of death, see C.J.S. Criminal Law §§ 1591, 1592.

UNITED STATES SUPREME COURT

Capital punishment, execution by lethal gas, cruel and unusual punishment, waiver of claim by choice of method, see Stewart v. LaGrand, U.S.Ariz.1999, 119 S.Ct. 1018, 526 U.S. 115, 143 L.Ed.2d 196, rehearing denied 119 S.Ct. 1513, 143 L.Ed.2d 665

NOTES OF DECISIONS

Constitutionality 1

Constitutionality

1

Defendant's failure to create factual record to support his challenge to constitutionality of electrocution as means of execution did not bar him from challenging constitutionality of execution by lethal injection on appeal from capital murder conviction. State v. Webb (1996) 680 A.2d 147, 238 Conn. 389, on remand.

C. G. S. A. § 54-100

CI ST § 54-100

END OF DOCUMENT

WEST'S ANNOTATED INDIANA CODE
TITLE 35. CRIMINAL LAW AND PROCEDURE
ARTICLE 38. PROCEEDINGS FOLLOWING DISMISSAL, VERDICT, OR FINDING
CHAPTER 6. EXECUTION OF DEATH SENTENCE



Current through End of 1998 1st Reg. Sess.

35-38-6-6 Persons permitted to be present at execution of death sentence

Sec. 6. Only the following persons may be present at the execution:

(1) The warden and any of his assistants who are necessary to assist him in the execution.

(2) The prison physician.

(3) One (1) other physician.

(4) The spiritual advisor of the convicted person.

(5) The prison chaplain.

(6) Not more than ten (10) friends or relatives of the convicted person who are invited by the convicted person to attend.

CREDIT(S)

1998 Main Volume

As added by P.L. 311-1983, SEC.3.

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

Formerly:
IC 35-1-46-14.
Acts 1905, c. 169, s. 315.

LIBRARY REFERENCES

1998 Main Volume

Criminal Law ⚖1219.
WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1591, 1592

I.C. 35-38-6-6

IN ST 35-38-6-6

END OF DOCUMENT

VERNON'S ANNOTATED MISSOURI STATUTES
TITLE XXXVII. CRIMINAL PROCEDURE
CHAPTER 546. TRIALS, JUDGMENTS AND EXECUTIONS IN CRIMINAL CASES
VERDICTS, JUDGMENTS AND EXECUTIONS



Current through End of 1999 1st Extra. Sess.

546.740. Execution, witnesses

The chief administrative officer of the correctional center, or his duly appointed representative shall be present at the execution and the director of the department of corrections shall invite the presence of the attorney general of the state, and at least eight reputable citizens, to be selected by him; and he shall at the request of the defendant, permit such clergy or religious leaders, not exceeding two, as the defendant may name, and any person, other than another incarcerated offender, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution; but no person under twenty-one years of age shall be allowed to witness the execution.

CREDIT(S)

1987 Main Volume

(R.S.1939, § 4114.)

2000 Electronic Pocket Part Update

(Amended by L.1988, H.B. Nos. 1340 & 1348, § A; L.1990, H.B. No. 974, § A; L.1995, H.B. No. 424, § A.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Electronic Pocket Part Update

1988 Legislation

The 1988 amendment substituted "chief administrative officer of the correctional institution, or his duly appointed representative shall be present at the execution and the chief administrative officer of the correctional institution" for "warden, deputy warden, or some other duly appointed representative of the warden of the state penitentiary must be present at the execution and the warden" and substituted "clergy or religious leaders" for "ministers of the gospel".

1990 Legislation

The 1990 amendment substituted "facility" for "institution", and substituted "director of the department of corrections" for "administrative officer of the correctional institution."

1995 Legislation

The 1995 amendment substituted "correctional center" for "correctional facility", deleted "a physician" following "presence of", substituted "eight reputable citizens" for "twelve reputable citizens", and inserted "other than another incarcerated offender."

1987 Main Volume

Prior Laws and Revisions:
L.1937, p. 221.
R.S.1929, § 3724.
R.S.1919, § 4068.
L. 1919, p. 781.
R.S.1909, § 5274.
R.S.1899, § 2678.
R.S.1889, § 4259.
L. 1857, p. 169.

This section was repealed and reenacted without change by L.1919, p. 781. Prior to the changes made by L.1937, p. 221, this section read as follows:

"At the execution there may be present, besides the officers of the court wherein the conviction was had, such other officers and such guards and assistants as the officer executing the sentence may see proper to admit. He shall request the presence of the prosecuting attorney of the county, the clerk of the court and twelve reputable citizens of the county, to be selected by him, two of whom shall be physicians or surgeons, and he shall also permit the presence of the counsel of the convict, and such minister of the gospel as the convict may desire, and such of the convict's relations as the officer may deem prudent; but no person under twenty-one years of age, not related to the convict, shall be allowed to witness the execution."

LIBRARY REFERENCES

2000 Electronic Pocket Part Update

Criminal Law ⚖1219.
C.J.S. Criminal Law § 2001 et seq.

V. A. M. S. 546.740

MO S.T. 546.740

END OF DOCUMENT

Citation
MT ST 46-19-103
MCA 46-19-103

Coord Document

Rank 1 of 1

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MT ST A

TEXT

MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 19. EXECUTION OF JUDGMENT
PART 1. METHOD OF EXECUTION

Current through 1999 Reg. Sess.

46-19-103. Execution of death sentence

(1) In pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the dat the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court i which the defendant was previously sentenced shall, upon dissolution of the sta set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the da the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the Montana state prison or the Montana women's prison for confinement, and the state shall bear the costs of imprisoning the defendant fr the date of delivery.

(3) The punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a coroner or deputy coroner pronounces that the defendant is dead.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or the warden's designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) (a) An execution must be performed by a person selected by the warden and trained to administer a lethal injection. The person administering the injecti need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state.

(b) The warden shall allow the execution to be observed by no more than 12 witnesses, excluding department of corrections staff necessary to carry out th

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execution. The witnesses must, to the extent possible, include three persons fr the news media, three persons designated by the family of the victim of the crime, three persons designated by the person to be executed, and three persons chosen by the department of corrections.

(c) A proposed witness is subject to rejection by the department of correctio if the department has reason to believe that the witness:

(i) poses a risk to the safety or security of department of corrections personnel, the other witnesses, or other persons; or

(ii) is likely to disrupt proceedings due to the witness's emotional or menta state.

(7) Within 30 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warra the time it was executed.

(8) The rejection of a witness under subsection (6)(c) is not grounds for sta of the execution.

CREDIT

History: En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Se 1, Ch. 191, L. 1981; amd. Sec. 1, Ch. 292, L. 1983; amd. Sec. 4, Ch. 411, L. 1983; amd. Sec. 107, Ch. 370, L. 1987; amd. Sec. 1, Ch. 552, L. 1989; amd. Sec. 1, Ch. 92, L. 1997; amd. Sec. 1, Ch. 387, L. 1999; amd. Sec. 6, Ch. 491, L. 199

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Commission Comments

Source: (R.C.M. 1947, sections 94-8007, 94-8010 through 94-8018.)

This section does not change the law in any way but merely combines into one provision separate statutes dealing with execution of the death sentence. It should be noted that the commission has not considered the propriety of capital punishment, but has recratted a law in conformity with what appears to be the present public policy of this state.

Compiler's Comments

1999 Amendments -- Composite Section: Chapter 387 in (3) near end before "pronounces" substituted "coroner or deputy coroner" for "licensed physician" . at end after "dead" deleted "according to accepted standards of medical practice"; in (6)(b) substituted present language designating the makeup of witnesses for an execution for former language that read: "The warden shall al. the execution to be observed by 12 witnesses, 3 of whom may be designated by t person to be executed"; inserted (6)(c) providing grounds for rejection of a witness by the department of corrections; inserted (8) providing that rejectio of a witness is not grounds for staying an execution; and made minor changes i style. Amendment effective October 1, 1999.

Chapter 491 in (2) substituted "the Montana state prison or the Montana wome prison" for "a state prison". Amendment effective April 27, 1999.

1997 Amendment: Chapter 92 in (3), after "inflicted by", deleted "hanging r

defendant by the neck until he is dead or, at the election of the defendant, by and deleted second sentence that read: "A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived"; in (4), in second sentence, substituted "director of the department of corrections" for "warden of the state prison" and in third sentence substituted "director" for "warden" and after "judgment" deleted "method of execution"; in first sentence in (6), after "execution", deleted "carried out b lethal injection"; in (7), after "time", deleted "mode, and manner in which"; a made minor changes in style. Amendment effective March 19, 1997.

Applicability: Section 4, Ch. 92, L. 1997, provided: "[This act] [46-19-103 and 46 23 301] applies to death warrants issued by a court on or after [the effective date of this act]." Effective March 19, 1997.

1989 Amendment: In second sentence of (1) substituted "20" for "5"; inserted last sentence of (3) relating to time for choosing execution by lethal injectic inserted (4) relating to preparation, delivery, and contents of death warrant; (5) substituted reference to subsection (6) for reference to subsection (5) and inserted last two sentences relating to anonymity of executioner and confidentiality of facts pertaining to his selection and training; and at beginning of (7) inserted "Within 20 days" and after "the warden shall" substituted "return the death warrant to the clerk of the court from which it w issued, noting on the warrant the time, mode, and manner" for "make a return up the death warrant showing time, mode, and manner". Amendment effective April 1 1989.

1987 Amendment: In (4), in second sentence, changed "subsection (4)" to "subsection (5)".

1983 Amendments -- Applicability: Chapter 292 inserted (2) authorizing the Sheriff to deliver defendant to the State Prison and placing confinement costs the state.

Chapter 411, in (3), after "by the neck until he is dead" inserted optional provision for death by lethal injection; in (4), substituted language requiring the prison warden to provide a suitable room for executions and all implements necessary, to select the person to perform the execution, and to supervise the execution for "A sentence of death must be executed within the walls or yard of jail or some convenient private place in the county where the trial took place. in (5), substituted language concerning an execution carried out by lethal injection and requiring witnesses for "The sheriff of the county must be preser and shall supervise such execution which shall be conducted in the presence of physician, the county attorney of the county, and at least 12 reputable citizen to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendar may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in t subsection can be present at the execution, nor can any person under age be allowed to witness the same."; and in (6), changed "sheriff" to "warden".

Section 7, Ch. 411, L. 1983, provided: "This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109." Effective on passage a

approval, April 7, 1983.
1991 Amendment: Added the last sentence of (1) relating to setting the execution date after a stay.
Cross References
Execution of death sentence justified, 45-5-103.
Definition of dead, 50-22-101.
Case Notes
Abolition of Hanging -- No Denial of Right to Attack Hanging as Unconstitutional: Execution by hanging does not violate the eighth amendment. Even if it did, the petitioner's execution would not thus be prevented because the alternative method, lethal injection, could be used, and he is not attacking that method. When the 1997 Montana Legislature abolished hanging, the eighth amendment claim became moot. Petitioner has no constitutionally protected interest in a choice of death penalty punishment. His claim that hanging, which he had selected, violated the eighth amendment and that the Legislature's abolishment of hanging denies him a vested right in that claim, a claim he asserts would have prevailed, resulting in the fact that he could not be executed by lethal injection, is denied. Abolition of hanging was not a bill of attainder intended to render the petitioner's claim moot. Langford v. Day, 134 F3d 1381 (9th Cir. 1998).
Criteria Met for Supreme Court Jurisdiction of Death Row Petition for Injunctive Relief: Pursuant to the version of this section that was in effect at the time that Langford was sentenced for execution, he affirmatively elected that death be imposed by hanging rather than lethal injection. Langford appealed to the District Court for a declaration that execution by hanging was cruel and unusual punishment that violated the eighth amendment to the U.S. Constitution. The District Court denied the motion, holding that Langford's choice of hanging rendered the cruel and unusual punishment argument moot. Langford appealed to the appropriate federal courts for a writ of habeas corpus, applying the same argument. During the pendency of Langford's federal habeas corpus proceedings, the Montana Legislature met and amended this section by removing the hanging option, rendering the federal proceedings moot and nonjusticiable. Langford then filed an original proceeding with the Montana Supreme Court, asserting that the state impermissibly truncated his ability to fully appeal his death sentence by removing hanging as a means of execution and that the state should be permanently enjoined from executing him under the current version of this section. After examining the applicable statutory criteria, the Supreme Court accepted jurisdiction of the petition for writ of injunction because: (1) the state was clearly a party to the action; (2) the public had an interest in establishing and maintaining the validity of state actions in a proceeding that attempted to curtail the state's ability to enact, amend, and enforce state legislation; and (3) Langford's imminent execution constituted sufficient emergency circumstance to render due consideration in the trial court and appeal to the Supreme Court inadequate remedy. Langford v. St., ___ M. ___, 954 P2d 1357, 54 St. Rep. 1522 (1997).
Deletion of Hanging as Form of Capital Punishment Not Bill of Attainder: Pursuant to the version of this section that was in effect at the time that Langford was sentenced for execution, he affirmatively elected that death be imposed by hanging rather than lethal injection. Langford appealed to the District Court for a declaration that execution by hanging was cruel and unusu

punishment that violated the eighth amendment to the U.S. Constitution. The District Court denied the motion, holding that Langford's choice of hanging rendered the cruel and unusual punishment argument moot. Langford appealed to t appropriate federal courts for a writ of habeas corpus, applying the same argument. During the pendency of Langford's federal habeas corpus proceedings, the Montana Legislature met and amended this section by removing the hanging option, rendering the federal proceedings moot and nonjusticiable. Langford asserted that the amendment to this section constituted a bill of attainder in violation of Art. II, sec. 30, Mont. Const., inflicting punishment without a judicial trial. However, this section does not inflict punishment, but simply delineates the procedure by which a previously imposed sentence is carried out. Thus, the amendment to this section was not a bill of attainder. Langford v. St M , 951 P2d 1357, 54 St. Rep. 1522 (1997).

Deletion of Hanging as Form of Capital Punishment Not Denial of Ability to Present Argument Regarding Cruel and Unusual Punishment: Pursuant to the versi of this section that was in effect at the time that Langford was sentenced for execution, he affirmatively elected that death be imposed by hanging rather tha lethal injection. Langford appealed to the District Court for a declaration tha execution by hanging was cruel and unusual punishment that violated the eighth amendment to the U.S. Constitution. The District Court denied the motion, holdi that Langford's choice of hanging rendered the cruel and unusual punishment argument moot. Langford appealed to the appropriate federal courts for a writ o habeas corpus, applying the same argument. During the pendency of Langford's federal habeas corpus proceedings, the Montana Legislature met and amended this section by removing the hanging option, rendering the federal proceedings moot and nonjusticiable. Langford asserted that the amendment to this section violat numerous constitutional provisions by denying him the ability to present the cruel and unusual punishment argument to the federal courts. The Supreme Court found no merit in Langford's argument that the state Attorney General advised t Legislature to amend this section in order to deny Langford the grounds for appeal, because the Attorney General supported but did not initiate the legislation. Further, the court did not agree with Langford's assertion that th amendment rendered the time that Langford spent in pursuing the cruel and unusu punishment argument retroactively useless and chargeable to the state as a form of cruel and unusual punishment in itself, because the eighth amendment argumen was not the only claim that Langford pursued. Therfore, the entire time could n be charged to the state as being related to the amendment to this section. Havi concluded that Langford failed to establish any constitutional violations, his petition for writ of injunction denying his execution was denied. Langford v. St., M , 951 P2d 1357, 54 St. Rep. 1522 (1997).

Deletion of Hanging as Form of Capital Punishment Not Ex Post Facto Application: Pursuant to the version of this section that was in effect at the time that Langford was sentenced for execution, he affirmatively elected that death be imposed by hanging rather than lethal injection. Langford appealed to the District Court for a declaration that execution by hanging was cruel and unusual punishment that violated the eighth amendment to the U.S. Constitution. The District Court denied the motion, holding that Langford's choice of hangin rendered the cruel and unusual punishment argument moot. Langford appealed to t appropriate federal courts for a writ of habeas corpus, applying the same

argument. During the pendency of Langford's federal habeas corpus proceedings, the Montana Legislature met and amended this section by removing the hanging option, rendering the federal proceedings moot and nonjusticiable. Langford asserted that the amendment to this section constituted an ex post facto law in violation of Art. II, sec. 31, Mont. Const., because it effectively removed his defense of arguing that hanging was cruel and unusual punishment. However, Langford was not asserting a defense to a crime with which he was charged; he h already pleaded guilty and been sentenced, and the validity of the convictions was not at issue. The Supreme Court found no ex post facto violation because Langford's purely conjectural assertions that he potentially would have a due process-type right to avoid execution under the earlier version of the statute did not create a current substantive right that would be infringed by an Amendment altering only the procedure by which his sentence would be carried ou Langford v. St., __M__, 951 P2d 1357, 54 St. Rep. 1522 (1997). See also McKenzi v. Day, 57 F3d 1461 (9th Cir. 1995).

State Not Required to Wait Five Years to Execute Convict: Upon the dissoluti of Gollehon's stay of execution, the District Court set a new execution date within 59 days of the hearing dissolving the stay, as required by this section. Gollehon argued that the state could not execute him prior to the expiration of the 5-year period provided in 46-21-102 for petitioning for postconviction relief. The Supreme Court held that the provisions concerning postconviction relief do not override the statutory language requiring the setting of a new execution date upon the dissolution of a stay of execution. Gollehon v. District Court, 271 M 363, 897 P2d 1058, 52 St. Rep. 447 (1995), followed in State ex re Turner v. District Court, 271 M 392, 897 P2d 1060, 52 St. Rep. 498 (1995).

Authority of Replacement Judge to Reset Execution Date: McKenzie argued that the judge presiding over the resetting of McKenzie's execution date had no jurisdiction to do so because the original presiding judge or that judge's successor did not enter an order conferring jurisdiction. However, this section rather than 3-1-804 controls in this situation. This section reposes the act of setting the execution date and signing the death warrant in the court in which the defendant was sentenced. Because both judges preside in the same district resetting of the execution by the subsequent judge was proper and the requirem in 3-1-804, which relates to the substitution of District Court Judges, did not apply. St. v. McKenzie, 271 M 33, 894 P2d 289, 52 St. Rep. 312 (1995).

No Discharge of Prisoner Sentenced to Die Based on Failure to Execute Death Warrant on Date Fixed: McKenzie contended that under the law in effect at the time that he was sentenced to death in 1975 (section 95-2503(b), R.C.M. 1947, predecessor to this section), the execution had to be conducted within 60 days sentencing and the sentencing court had no jurisdiction to reset the execution date if the 60 days elapsed. However, the section was amended in 1981 to req the court to set a new execution date upon dissolution of a stay of execution. Because the order resetting the execution date was merely a procedural, ministerial act that did not affect McKenzie's substantial rights, the controlling law was the law in effect at the time of the court's resetting the execution date. The Supreme Court also cited several out-of-state court precedents for the proposition that failure to execute a death warrant on the date fixed does not result in immunity to or discharge of a person sentenced t die but requires the fixing of a new execution date. Thus, the resentencing

court did not err in resetting the execution date according to this section. S. v. McKenzie, 271 M 32, 894 P2d 965, 52 St. Rep. 312 (1995).

No Violation of Ex Post Facto Prohibitions: This section, imposing an obligation to set a date of execution at the time that sentence is pronounced, does not confer upon a state trial court any authority to reconsider a death sentence once it has been pronounced and therefore does not violate ex post fac prohibitions. McKenzie v. Day, 57 F 3d 1461 (1995).

Failure to Choose Method of Execution as Waiver of Right to Election of Methods: Defendant chose not to speak in answer to the sentencing court's question concerning method of execution. Defendant's silence constituted a waiv of the right to election of methods, rendering moot any later arguments regardi whether execution by hanging can be considered cruel and unusual punishment. [S 1997 amendment.] St. v. Gollehon, 202 M 1, 864 P2d 249, 50 St. Rep. 1250 (1993) See also St. v. Langford, 254 M 44, 833 P2d 1127 (1992).

Election of Hanging as Precluding Contention That Hanging a Cruel and Unusual Punishment: Langford sought a declaration that punishment by hanging was a cru and unusual punishment in violation of the eighth amendment to the U.S. Constitution (similar to Art. II, sec. 22, Mont. Const.). However, he had been afforded an ample opportunity under this section to elect lethal injection over hanging as the form of execution but chose not to do so. Accordingly, he render moot any claim concerning the constitutionality of hanging as a method of execution. (See 1997 amendment.) St. v. Langford, 254 M 44, 833 P2d 1127, 49 St Rep. 615 (1992).

1983 Amendments Not Bill of Attainder: Chapter 41 , L. 1983, amended 46-19-103 to allow the defendant to choose death by lethal injection as an alternativ to hanging. Section 7 makes the act applicable to death sentences whether first pronounced before or after its effective date, making the act specifically retroactive. The act is not a bill of attainder as argued by the defendant who was convicted before the effective date of the act and sentenced to death after its effective date. (See 1997 amendment.) St. v. Fitzpatrick, 211 M 341, 684 P2 1112, 41 St. Rep. 1400 (1984).

Hanging Not Cruel and Unusual Punishment: There is no evidence that shows th death from hanging, when properly carried out, is anything other than swift and immediate or that hanging results in any more suffering than that associated w other modes of execution. The Supreme Court has no power to change the legislatively settled provisions of the sentence in the absence of constitution violation. (See 1997 amendment.) St. v. Coleman, 185 M 299, 605 P2d 1000 (1979)

Collateral References

Criminal Law 1208.

24 C.J.S. Criminal Law §§ 1547, 1548, 1591, 1592.

21 Am. Jur. 2d Criminal Law § 595, et seq.

Manner of inflicting death sentence as cruel or unusual punishment. 40 ALR 1118; 30 ALR 1462.

Effect of permitting day fixed for execution to pass without carrying out sentence. 34 ALR 314.

MCA 46-19-103
MT ST 46 19-103
END OF DOCUMENT

NEBRASKA REVISED STATUTES OF 1943
CHAPTER 29. CRIMINAL PROCEDURE
ARTICLE 25. SPECIAL PROCEDURE IN CASES OF HOMICIDE.



§ 29-2534. Execution; persons permitted

Besides the warden, the deputy warden, the executioner, in case one shall have been appointed by the warden, and his assistants, the following persons, and no others, except as provided in section 29-2535, may be present at the execution. The clergyman in attendance upon the prisoner, such other persons, not exceeding three in number as the prisoner may designate, and such other persons, not exceeding six in number, as the warden may designate.

Source: Laws 1973, LB 268, § 19.

<General Materials (GM) - References, Annotations, or Tables>

Neb. Rev. St. § 29-2534

NE ST § 29-2534

END OF DOCUMENT

Citation
NM ST § 31-14-15
NMSA 1978, § 31-14-15

Search Result

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TEXT

NEW MEXICO STATUTES 1978, ANNOTATED
CHAPTER 31. Criminal Procedure
ARTICLE 14. Execution of Death Sentence



Current through the First Regular Session and First Special Session of the 44th Legislature (1999)

31-14-15 Where judgment must be executed; who may be present.

A judgment of death must be executed within the walls of the state penitentia at Santa Fe, and such execution shall be under the supervision and direction of the warden of said institution. The warden of the state penitentiary must be present at the execution and must invite the presence of a physician, the attorney general of the state and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any person, relatives or friends, not to exceed five, to be present at the executio together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness th same.

CREDIT

History: Laws 1929, ch. 69, § 13; C.S. 1929, § 35-332; 1941 Comp., § 42-1412; 1953 Comp., § 41-14-12.

N. M. S. A. 1978, § 31-14-15
NM ST § 31 14 15
END OF DOCUMENT

TEXT

1998 OREGON REVISED STATUTES
TITLE 14. PROCEDURE IN CRIMINAL MATTERS GENERALLY
CHAPTER 137. JUDGMENT AND EXECUTION; PAROLE AND PROBATION BY THE COURT
EXECUTION OF JUDGMENT
(DEATH SENTENCE)



137.473. Means of inflicting death; place and procedures; acquisition of lethal substance.

(1) The punishment of death shall be inflicted by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent and potassium chloride or other equally effective substances sufficient to cause death. The judgment shall be executed by the superintendent of the Department of Corrections institution in which the execution takes place, or by the designee of that superintendent. All executions shall take place within the enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections. The superintendent of the institution shall be present at the execution and shall invite the presence of one or more physicians, the Attorney General and the sheriff of the county in which the judgment was rendered. At the request of the defendant, the superintendent shall allow no more than two clergymen designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five friends and relatives designated by the defendant may be present at the execution. The superintendent shall allow the presence of any peace officers as the superintendent thinks expedient.

(2) The person who administers the lethal injection under subsection (1) of this section shall not thereby be considered to be engaged in the practice of medicine.

(3)(a) Any wholesale drug outlet, as defined in ORS 689.005, registered with the State Board of Pharmacy under ORS 689.305 may provide the lethal substance substances described in subsection (1) of this section upon written order of th Director of the Department of Corrections, accompanied by a certified copy of t judgment of the court imposing the punishment.

(b) For purposes of ORS 689.765 (3) the director shall be considered authori to purchase the lethal substance or substances described in subsection (1) of this section.

(c) The lethal substance or substances described in subsection ( ) of this section are not controlled substances when purchased, possessed or used for purposes of this section.

CREDIT

(1984 c. 3 § 7; 1987 c. 320 § 38; 1993 c. 137 § 1)

OR ST s 137.473

ORIGIN:

<General Materials (GM) References, Annotations, or Tables>

O. R. S. § 137.473
OR ST § 137.473
END OF DOCUMENT

Citation
SD ST § 23A 27A-35
SDCL § 23A-27A-35

Found Document

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Datab
SD-ST-

TEXT

SOUTH DAKOTA CODIFIED LAWS
TITLE 23A. CRIMINAL PROCEDURE
CHAPTER 23A-27A. CAPITAL PUNISHMENT

Current through End of 1999 Reg. Sess.

**23A-27A-35 Clergy and relatives or friends to attend at defendant's request.**

The warden of the state penitentiary must also, at the request of the defendant, permit such ministers of the gospel, priests or clergymen of any denomination as the defendant may desire, not exceeding two, to be present at the execution and any relatives or friends requested by the defendant not exceeding five.

CREDIT

Source: SL 1939, ch 135, § 13; 1939, ch 136; RMC Supp 1960, § 34.37A13; SDCL, § 23-49 23; SL 1979, ch 160, § 37.

S D C L § 23A 27A 35
SDCL § 23A-27A-35
END OF DOCUMENT

Citation
UT ST § 77 19 11
U.C.A. 1953 § 77-19-11

Found Document

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Databa
UT-ST-A

This document has been amended. See UPDATE.
See HELP for more information.

TEXT

UTAH CODE, 1953
TITLE 77. UTAH CODE OF CRIMINAL PROCEDURE
CHAPTER 19. THE EXECUTION


Current through End of 1999 General Session

77-19-11 Who may be present --Photographic and recording equipment.

(1) At the discretion of the executive director of the Department of Corrections or his designee, the following persons may attend the execution:
(a) the prosecuting attorney, or his designated deputy, of the county in which the defendant committed the offense for which he is being executed;
(b) no more than two law enforcement officials from the county in which the defendant committed the offense for which he is being executed;
(c) the attorney general or his designated deputy; and
(d) religious representatives, friends, or relatives designated by the defendant, not exceeding a total of five persons.
(2) The persons enumerated in Subsection (2) may not be required to attend, n may any of them attend as a matter of right.
(3) The executive director of the department or his designee shall permit the attendance at the execution of a total of nine members of the press and broadca news media named by the executive director of the department in accordance with rules of the department, provided that the selected news media members serve as pool for other members of the news media as a condition of attendance.
(4) (a) Photographic or recording equipment is not permitted at the execution site until the execution is completed, the body is removed, and the site has be restored to an orderly condition. However, the physical arrangements for the execution may not be disturbed.
(b) A violation of this subsection is a class B misdemeanor.
(5) All persons in attendance are subject to reasonable search as a condition of attendance.
(6) (a) The following persons may also attend the execution:
(i) staff as determined necessary for the execution by the executive direct of the department or his designee; and
(ii) no more than three correctional officials from other states that are preparing for executions, but no more than two correctional officials may be f any one state, as designated by the executive director of the department or hi designee.
(b) Any person younger than 18 years of age may not attend.
(7) The department shall adopt rules governing the attendance of persons at

UT ST § 77-19-11

TEXT
execution.
CREDIT

History: C. 1953, 77-19-11, enacted by L. 1980, ch. 15, § 2; 1985, ch. 212, § 2; 1988, ch. 190, § 6; 1996, ch. 113, § 2.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. The 1996 amendment, effective April 29, 1996, deleted former Subsection (1) which read: "The executive director of the Department of Corrections or his designee shall cause a physician to attend the execution"; redesignated former Subsections (2) through (8) as Subsections (1) through (7); and made stylistic changes throughout.

U.C.A. 1953 § 77-19-11
UT ST § 77-19-11
END OF DOCUMENT

UT-LEGIS - UT LEGIS H.F. 221 (2000)
Section 121. Section 77-19-11 is amended to read:

<< UT ST S 77-19-11 >>

77-19-11. Who may be present--Photographic and recording equipment.

(1) At the discretion of the executive director of the Department of Corrections or his designee, the following persons may attend the execution.
(a) the prosecuting attorney, or his designated deputy, of the county in which the defendant committed the offense for which he is being executed;
(b) no more than two law enforcement officials from the county in which the defendant committed the offense for which he is being executed;

(c) the attorney general or his designated deputy; and
(d) religious representatives, friends, or relatives designated by the defendant, not exceeding a total of five persons.
(2) The persons enumerated in Subsection <<-(2)->><<(1)>> may not be required to attend, nor may any of them attend as a matter of right.
(3) The executive director of the department or his designee shall permit the attendance at the execution of a total of nine members of the press and broadcast news media named by the executive director of the department in accordance with rules of the department, provided that the selected news media members serve as a pool for other members of the news media as a condition of attendance.
(4) (a) Photographic or recording equipment is not permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangements for the execution may not be disturbed.
(b) A violation of this subsection is a class B misdemeanor.
(5) All persons in attendance are subject to reasonable search as a condition of attendance.
(6) (a) The following persons may also attend the execution:
(i) staff as determined necessary for the execution, by the executive director

of the department or his designee; and
(ii) no more than three correctional officials from other states that are preparing for executions, but no more than two correctional officials may be from any one state, as designated by the executive director of the department or his designee.
(b) Any person younger than 18 years of age may not attend.
(7) The department shall adopt rules governing the attendance of persons at the execution.

Citation
WY ST § 7-13-908
W.S.1977 § 7-13-908

Search Result

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Database
WY ST-A

TEXT

WYOMING STATUTES 1977
TITLE 7. Criminal Procedure
CHAPTER 13. Sentence and Imprisonment
ARTICLE 9. Execution of Death Sentence

Current through End of 1999 Req. Sess.

§ 7-13-908. Witnesses.

(a) Only the following witnesses may be present at the execution:
(i) The director of the department of corrections and any persons deemed necessary to assist him in conducting the execution;
(ii) Two (2) physicians, including the prison physician;
(iii) The spiritual advisers of the prisoner;
(iv) The penitentiary chaplain;
(v) The sheriff of the county in which the prisoner was convicted; and
(vi) Not more than ten (10) relatives or friends requested by the prisoner.

CREDIT

(Laws 1965, ch. 11, § 6; C.S. 1910, § 6274; C.S. 1920, § 7571; R.S. 1931, § 33-1026; C.S. 1945, § 10-1711; W.S. 1957, § 7-398; W.S. 1977, § 7-13-911; Laws 1987, ch. 157, § 3; 1992, ch. 25, § 3.)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Editor's notes. -- There is no subsection (b) in this section as it appears in the printed acts.

Conflicting legislation. -- Laws 1992, ch. 25, § 5, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

W. S. 1977 § 7-13-908
WY ST § 7-13-908
END OF DOCUMENT

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
CORRECTION LAW
CHAPTER 43 OF THE CONSOLIDATED LAWS
ARTICLE 22-B - THE DEATH PENALTY



Current through L.1999, ch. 659

§ 660. Persons authorized to be present at execution

1. The commissioner, any persons designated by the commissioner to act as execution technicians or otherwise to assist in the execution, including correction officers, and a licensed physician or physicians may be present at the execution. The commissioner shall also select and invite the presence, by at least three days' prior notice, of a justice of the supreme court, the counsel for the convicted person, the district attorney and the sheriff of the county where the conviction was had, together with six adult citizens. The names of the execution technician or technicians shall never be disclosed, notwithstanding any other provision of law to the contrary, including article six of the public officers law. The names of the six adult citizens who witnessed the execution shall not be disclosed until after the execution.

2. The commissioner shall, at the request of the person sentenced to death, authorize and permit two clergymen to be present at the execution.

3. The inmate sentenced to death may name four relatives or bona fide friends to witness the execution, and the commissioner shall authorize said named relatives or friends of the inmate to witness the execution unless the commissioner determines that the presence of any named relative or friend at the execution would pose a threat to the safety or security of the designated correctional institution. No person under eighteen years of age shall be permitted to witness any execution.

CREDIT(S)

1999 2000 Electronic Pocket Part Update

(Added L.1995, c. 1, § 33.)

<<CORRECTION LAW>>

<Laws 1929, Chapter 243, amending Laws 1909, Chapter 47.>
<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999-2000 Electronic Pocket Part Update

Effective Date; Applicability; Savings Provisions. Section effective Sept. 1, 1995, and applicable only to offenses committed on or after that date, offenses committed prior to that date to be governed by laws in effect at the time the offense was committed, pursuant to L.1995, c. 1, § 38, set out as a note under Correction Law § 650.

Derivation. Former § 664, added L.1971, c. 545, § 11; repealed L.1994, c. 1, § 32. Said former § 664 derived from Former Code Crim Proc. § 507, as added L.1887, c. 31; L.1888, c. 489, § 7; L.1892, c. 16; repealed L.1970, c. 996, § 4.

Former § 660. Section, added L.1971, c. 545, § 11; repealed L.1995, c. 1, § 32, related to duty of governor upon termination of pregnancy of defendant, and is now covered by Correction Law § 657.

Separability of Provisions of L.1995, c. 1. See L.1995, c. 1, § 57, set out as a note under Correction Law § 650.

McKinney's Correction Law § 660

NY CORRECT § 660

END OF DOCUMENT

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
CORRECTION LAW
CHAPTER 42 OF THE CONSOLIDATED LAWS
ARTICLE 22-B--THE DEATH PENALTY



Current through L.1999, ch. 659

§ 656. Proceeding when person under sentence of death may be incompetent

1. The state may not execute an inmate who is incompetent. An inmate is "incompetent" when, as a result of mental disease or defect, he lacks the mental capacity to understand the nature and effect of the death penalty and why it is to be carried out.

2. Upon the filing of a petition in the supreme court in either the county in which an inmate sentenced to death is confined or in the county in which the inmate was prosecuted alleging that the inmate is incompetent, the court shall issue an order staying the execution if and to the extent a stay is necessary to permit determination of the petition. Upon application of either the inmate's counsel or the district attorney the petition may be transferred to the court in which the inmate was convicted unless such transfer would be unduly burdensome or impracticable. Promptly upon filing the petition, the court shall appoint a commission of three psychiatric examiners, hereinafter referred to as "the psychiatric commissioners," to inquire into the inmate's competence and report to the court as to the inmate's competence. The psychiatric commissioners shall be impartial and must be qualified psychiatrists or certified psychologists. Before commencing an inquiry, the psychiatric commissioners must take the oath prescribed in rule forty-three hundred fifteen of the civil practice law and rules to be taken by referees. The petition may be filed by the inmate, the inmate's counsel, an employee of the department, the inmate's legal guardian, a member of such inmate's immediate family or, in the event that the inmate does not have regular contact with a member of his or her immediate family, a bona fide friend who has maintained regular contact with the inmate. The petition must be accompanied by an affidavit of at least one qualified psychiatrist or certified psychologist who, based at least in part on personal examination, attests that in the psychiatrist's or psychologist's professional opinion the inmate is incompetent and lists the pertinent facts therefor. For purposes of this section the terms "qualified psychiatrist" and "certified psychologist" have the meaning set forth in section 730.10 of the criminal procedure law.

3. The petition shall be served upon either the district attorney who prosecuted the inmate or upon the district attorney for the county in which the inmate is confined. If the petition is served upon the district attorney for the county in which the inmate is confined, the court shall promptly notify the district attorney who prosecuted the inmate. Immediately upon appointing the psychiatric commissioners, the court shall direct that an examination of the convicted person promptly take place with all three of the psychiatric commissioners present at the same time. The court shall also direct, upon application of the inmate or the district attorney, that the inmate be examined by a qualified psychiatrist or certified psychologist designated by the inmate or the district attorney. Counsel for the inmate and the district attorney shall have the right to be present at each such examination. Upon the filing of a petition pursuant to subdivision two of this section, if the inmate does not have counsel and is financially unable to obtain counsel the court shall appoint competent counsel experienced in the trial of criminal matters to represent the inmate.

4. The psychiatric commissioners must receive and consider evidence offered by the inmate's counsel and the district attorney, including written submissions, testimony and expert psychiatric evidence. The proceeding before the psychiatric commissioners shall be conducted on the record but need not be conducted in accordance with the rules governing the admission of evidence at trial, but counsel for the people and the inmate shall have the right to cross examine witnesses.

5. When the proceeding before the psychiatric commissioners has been concluded, they must forthwith provide a transcript of the proceeding, together with their findings of fact, to the court with their opinion thereon. Unless impracticable, the psychiatric commissioners shall so act within sixty days from the filing of the petition. When an inmate shall be found incompetent by a majority of the psychiatric commissioners, the court shall accept such finding

unless clearly erroneous, and promptly enter an order finding the inmate to be incompetent, staying the execution of the inmate and directing that the inmate be committed to a secure facility under the jurisdiction of the office of mental health if the inmate's incompetency is the result of mental illness. In all other cases, the inmate shall remain in the custody of the department. When an inmate is found competent by a majority of the psychiatric commissioners, the court shall accept such finding unless clearly erroneous, promptly enter an order finding the inmate to be competent and vacating any stay previously issued, and the court shall promptly inform the judge or justice who issued the warrant for the execution of the inmate of the court's finding. Upon being so informed, the judge or justice shall promptly issue a new warrant in accordance with subdivision two of section six hundred fifty of this article. Any other provision of law notwithstanding, no other review, judicial or otherwise, shall be available with respect to an order finding the inmate to be incompetent or competent. If the court rejects the finding of a majority of the psychiatric commissioners on the ground that it is clearly erroneous, the court shall appoint another commission to proceed as provided in this section.

6. When an inmate has been committed to a secure facility pursuant to this section, the inmate shall remain there until the facility administrator determines that the inmate may be competent. Upon so determining, the facility administrator shall promptly notify the court that entered the order finding the inmate to be incompetent, and the court shall promptly notify counsel and the district attorneys and appoint another commission to proceed as provided in this section.

7. The court shall allow reasonable fees to the psychiatric commissioners. The court shall allow reasonable fees for time spent in court and for time reasonably expended out of court to counsel appointed pursuant to this section. The court shall allow all reasonably necessary costs, including without limitation the costs attendant to fees for the examination of the inmate by a qualified psychiatrist or certified psychologist, incurred by the inmate and the district attorney in connection with a petition pursuant to this section. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source. All such fees and costs shall be a state charge payable on vouchers approved by the court after audit by and on the warrant of the comptroller.

8. When a petition has previously been filed and determined pursuant to this section, the court in which a subsequent petition is filed or to which a subsequent petition is transferred, shall not issue an order staying the execution of the inmate unless the court finds, after notice to the district attorney who prosecuted the inmate and after affording the district attorney a reasonable opportunity to be heard in writing, that there is reasonable cause to believe that the inmate is incompetent; provided, however, that the court may issue an order staying the execution of the inmate, to the extent a stay is necessary to afford the district attorney an opportunity to be heard and such reasonable cause determination to be made.

CREDIT(S)

1999-2000 Electronic Pocket Part Update

(Added L.1995, c. 1, § 22.)

<<CORRECTION LAW>>

<Laws 1929, Chapter 243, amending Laws 1909, Chapter 47>

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999-2000 Electronic Pocket Part Update

Effective Date; Applicability. Savings Provisions. Section effective Sept. 1, 1995, and applicable only to offenses committed on or after that date, offenses committed prior to that date to be governed by laws in effect at the time the offense was committed, pursuant to L.1995, c. 1, § 38, set out as a note under Correction Law § 650.

Derivation. Former §§ 655, 656, 657. Said former § 655, added L.1971, c. 545, § 11; repealed L.1995, c. 1, § 32.

was from former Code Crim.Proc. § 495-a, added L.1909, c. 66, § 1; amended L.1910, c. 338, § 1; L.1940, c. 41, § 6; repealed L.1970, c. 996, § 4.

Said former § 656, added L.1971, c. 545, § 11; repealed L.1995, c. 1, § 32, was from former Code Crim.Proc. § 498, amended L.1910, c. 338, § 3; repealed L.1970, c. 996, § 4.

Said former § 657, added L.1971, c. 545, § 11; repealed L.1995, c. 1, § 32, was from former Code Crim.Proc. § 499, amended L.1910, c. 338, § 4; repealed L.1970, c. 996, § 4.

Separability of Provisions of L.1995, c. 1. See L.1995, c. 1, § 37, set out as a note under Correction Law § 650.

CROSS REFERENCES

Assignment of counsel and related services in criminal actions in which a death sentence may be imposed, see Judiciary Law § 35-b.

Capital prosecution extraordinary assistance program, see Executive Law § 837-f.

Payments of expert fees in criminal cases in which the death penalty may be imposed, see County Law § 707.

McKinney's Correction Law § 656

NY CORRECT § 656

END OF DOCUMENT