

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 970

Introduced by Lippincott, 34; Aguilar, 35; Albrecht, 17; Ballard, 21;
Brewer, 43; Clements, 2; DeKay, 40; Dorn, 30; Erdman, 47;
Hardin, 48; Holdcroft, 36; Jacobson, 42; Kauth, 31; Lowe,
37; Meyer, 41; Murman, 38; Sanders, 45; Slama, 1.

Read first time January 04, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the death penalty; to amend sections
- 2 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and
- 3 83-972, Revised Statutes Cumulative Supplement, 2022; to provide for
- 4 execution by nitrogen hypoxia; to define terms; to transfer
- 5 provisions; to harmonize provisions; and to repeal the original
- 6 sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 11 of this act:

2 (1) Department means the Department of Correctional Services;

3 (2) Director means the Director of Correctional Services;

4 (3) Lethal injection means intravenous injection of a substance or
5 substances in a quantity sufficient to cause death; and

6 (4) Nitrogen hypoxia means inhalation of pure nitrogen for a
7 sufficient time to cause death.

8 Sec. 2. Section 83-964, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 ~~83-964~~ A sentence of death shall be enforced by either lethal
11 injection or nitrogen hypoxia, with the method to be determined by the
12 department ~~the intravenous injection of a substance or substances in a~~
13 ~~quantity sufficient to cause death.~~ The execution shall be carried out
14 ~~lethal substance or substances shall be administered~~ in compliance with
15 an execution protocol created and maintained by the department ~~Department~~
16 ~~of Correctional Services.~~

17 Sec. 3. Section 83-965, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 ~~83-965~~ (1) A sentence of death shall be enforced by the director
20 ~~Director of Correctional Services.~~ Upon receipt of an execution warrant,
21 the director shall proceed at the time named in the warrant to enforce
22 the sentence, unless the director is informed that enforcement of the
23 sentence has been stayed by competent judicial authority, the sentence
24 has been commuted, or the conviction has been pardoned.

25 (2) The director shall create, modify, and maintain a written
26 execution protocol describing the process and procedures by which an
27 execution will be carried out consistent with this section. The director
28 shall (a) select the substance or substances to be employed in an
29 execution by lethal injection, (b) select the equipment to be employed in
30 an execution by nitrogen hypoxia, (c) create a documented process for
31 obtaining the necessary substances or equipment, (d) ~~(e)~~ designate an

1 execution team composed of one or more executioners and any other
2 personnel deemed necessary to effectively and securely conduct an
3 execution, (e) ~~(d)~~ describe the respective responsibilities of each
4 member of the execution team, (f) ~~(e)~~ describe the training required of
5 each member of the execution team, and (g) ~~(f)~~ perform or authorize any
6 other details deemed necessary and appropriate by the director.

7 (3) For an execution by lethal injection, the ~~The~~ execution protocol
8 shall require that the first or only substance injected be capable of
9 rendering the convicted person unconscious and that a determination
10 sufficient to reasonably verify that the convicted person is unconscious
11 be made before the administration of any additional substances, if any.

12 Sec. 4. Section 83-966, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 ~~83-966~~ Notwithstanding any other provision of law:

15 (1) Any prescription, preparation, compounding, dispensing,
16 obtaining, or administration of the substances or equipment deemed
17 necessary to perform an execution by a lethal injection or nitrogen
18 hypoxia shall not constitute the practice of medicine or any other
19 profession relating to health care which is subject by law to regulation,
20 licensure, or certification;

21 (2) A pharmacist or pharmaceutical supplier may dispense the
22 designated substances, without a prescription, to the Director of
23 Correctional Services or the director's designee upon production of a
24 written request from the director for the designated substances necessary
25 to conduct an execution;

26 (3) Obtaining, preparing, compounding, dispensing, and administering
27 the substance or substances designated by the execution protocol does not
28 violate the Uniform Controlled Substances Act or sections 71-2501 to
29 71-2512; and

30 (4) If a person who is a member of the execution team is licensed by
31 a board or department, the licensing board or department shall not

1 censure, reprimand, suspend, revoke, or take any other disciplinary
2 action against that person's license as a result of that person's
3 participation in a court-ordered execution.

4 Sec. 5. For an execution by lethal injection, the director may
5 designate any person qualified under the terms of the execution protocol
6 to administer to the convicted person the substances necessary to comply
7 with the execution protocol.

8 Sec. 6. Section 83-967, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 ~~83-967 (1) The Director of Correctional Services may designate any~~
11 ~~person qualified under the terms of the execution protocol to administer~~
12 ~~to the convicted person the substances necessary to comply with the~~
13 ~~execution protocol.~~

14 ~~(2)~~The identity of all members of the execution team, and any
15 information reasonably calculated to lead to the identity of such
16 members, shall be confidential and exempt from disclosure pursuant to
17 sections 84-712 to 84-712.09 and shall not be subject to discovery or
18 introduction as evidence in any civil proceeding unless extraordinary
19 good cause is shown and a protective order is issued by a district court
20 limiting dissemination of such information.

21 Sec. 7. Section 83-968, Revised Statutes Cumulative Supplement,
22 2022, is amended to read:

23 ~~83-968~~ No death sentence shall be voided or reduced as a result of a
24 determination that a method of execution was declared unconstitutional
25 under the Constitution of Nebraska or the Constitution of the United
26 States. In any case in which an execution method is declared
27 unconstitutional, the death sentence shall remain in force until the
28 sentence can be lawfully executed by any valid method of execution.

29 Sec. 8. Section 83-969, Revised Statutes Cumulative Supplement,
30 2022, is amended to read:

31 ~~83-969~~ When any convicted person is sentenced to death, such

1 punishment shall be inflicted at a department ~~Department of Correctional~~
2 ~~Services~~ facility under the supervision of the director ~~Director of~~
3 ~~Correctional Services~~ and in such a manner as to exclude the view of all
4 persons except those permitted to be present as provided in sections 9
5 and 10 of this act ~~83-970 and 83-971~~.

6 Sec. 9. Section 83-970, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 ~~83-970~~ Besides the director ~~Director of Correctional Services~~ and
9 those persons required to be present under the execution protocol, the
10 following persons, and no others, except as provided in section 10 of
11 this act ~~83-971~~, may be present at the execution: (1) The member of the
12 clergy in attendance upon the convicted person; (2) no more than three
13 persons selected by the convicted person; (3) no more than three persons
14 representing the victim or victims of the crime; and (4) such other
15 persons, not exceeding six in number, as the director may designate. At
16 least two persons designated by the director shall be professional
17 members of the Nebraska news media.

18 Sec. 10. Section 83-971, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 ~~83-971~~ Whenever the director ~~Director of Correctional Services~~ shall
21 deem the presence of a military force necessary to carry into effect the
22 provisions of sections 2 and 8 of this act ~~83-964 and 83-969~~, he or she
23 shall make the fact known to the Governor ~~of the state~~, who may ~~is hereby~~
24 ~~authorized to~~ call out so much of the military force of the state as in
25 his or her judgment may be necessary for the purpose.

26 Sec. 11. Section 83-972, Revised Statutes Cumulative Supplement,
27 2022, is amended to read:

28 ~~83-972~~ Whenever the director ~~Director of Correctional Services~~ shall
29 inflict the punishment of death upon a convicted person, in obedience to
30 the command of the court, he or she shall make return of his or her
31 proceedings as soon as may be to the clerk of the court where the

1 conviction was had, and the clerk shall subjoin the return to the record
2 of conviction and sentence.

3 Sec. 12. Original sections 83-964, 83-965, 83-966, 83-967, 83-968,
4 83-969, 83-970, 83-971, and 83-972, Revised Statutes Cumulative
5 Supplement, 2022, are repealed.