



DATA & INFORMATION RELEVANT TO H. 3755 – DEATH BY ELECTROCUTION OR LETHAL INJECTION

H. 3755 proposes to make electrocution the only method for carrying out an execution in South Carolina if the director of the Department of Corrections (SCDC) certifies lethal injection is not “available” at the time a condemned inmate must select an execution method.

Under current law, when an execution date is set for a condemned inmate, the inmate has a statutory right to elect between lethal injection and electrocution as the method of execution. If he waives his right to make an election (and was sentenced after the introduction of lethal injection), the default method of execution is lethal injection. H. 3755 would remove the inmates’ right of election if the director of SCDC certifies lethal injection is not available. See S.C. Code § 24-3-530.

CONCERNS ABOUT H. 3755 LANGUAGE

The bill does not define the term “available,” leaving it unclear what, if any, efforts SCDC must undertake to attempt to make lethal injection available as an execution method.

SOUTH CAROLINA DEATH PENALTY INFORMATION¹

- *Death Row:* 39 men currently on death row
- *Executions:*
 - 43 executions carried out since the death penalty’s reinstatement in 1977 (36 by lethal injection; 7 by electrocution).
 - Historically, from 1865–1972, South Carolina carried out 859 executions.
 - Last lethal injection execution carried out 5/6/2011 (Jeffrey Motts)
 - Last electrocution execution carried out 6/20/2008 (James Earl Reed, elected electrocution)
 - All executions are now carried out at the Capital Punishment Facility located at Broad River Correctional Institution.

¹ Justice 360 death penalty tracking data.

SOUTH CAROLINA ELECTROCUTION HISTORY

- Electrocution was adopted in 1912² when the State assumed responsibility for carrying out executions (at Central Correctional Institution in Columbia) as opposed to the individual counties carrying out the executions.
- The electric chair was purchased in 1912. It was last updated (as far as we know) in 1962.³

LETHAL INJECTION HISTORY

- Lethal injection as an execution method was adopted by South Carolina a quarter-century ago in 1995. The bill sponsor, Rep. Harry Hallman, indicated “lethal injection is more humane than dying in the electric chair.”⁴

— EXECUTION METHODS AUTHORIZED IN THE US —

METHOD ⁵	# OF EXECUTIONS BY METHOD SINCE 1976	# OF STATES AUTHORIZING METHOD	JURISDICTIONS THAT AUTHORIZE
Lethal Injection	1349	32 states+ and U.S. Military and U.S. Gov’t +includes 4 states that no longer have an active death penalty	Alabama, Arizona, Arkansas, California, Colorado [^] , Delaware, [*] Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, ^{**} North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington [*] , Wyoming, U.S. Military, U.S. Government [^] Colorado abolished the death penalty prospectively on March 23, 2020, and those on death row at that time had their sentences commuted. Lethal injection could only still apply if someone capitally charged before July 1, 2020 is sentenced to death. [*] Delaware and Washington have declared their capital sentencing procedures unconstitutional and have resented all death-row prisoners to life without parole. ^{**} New Hampshire abolished the death penalty but the repeal may not apply retroactively, leaving a prisoner on death row facing possible execution.
Electrocution	163	9 states (all have lethal injection as primary method)	[Alabama], [Arkansas], Florida, Kentucky, [Mississippi], [Oklahoma], [South Carolina], [Tennessee], Virginia [Brackets] around a state indicate that the state authorizes the listed method as an alternative method if other methods are found to be unconstitutional or are unavailable/impractical. The supreme courts of Georgia (2001) and Nebraska (2008) have ruled that the use of the electric chair violates their state constitutional prohibitions against cruel and unusual punishment.

² The Newberry Herald, August 9, 1912 (“First Electrocution in State today”).

³ “Thorne and Young to be 1st Victims of Sate’s New Electric Chair,” The Greenwood Index Journal, April 19, 1962.

⁴ The Item, p. 10, Mar. 2, 1995 (“Death row inmates would be able to choose between the electric chair and lethal injection under a bill sponsored by Rep. Harry Hallman.”)

⁵ <https://deathpenaltyinfo.org/executions/methods-of-execution>

— EXECUTION METHODS AUTHORIZED IN THE US —
(CONTINUED)

METHOD ⁵	# OF EXECUTIONS BY METHOD SINCE 1976	# OF STATES AUTHORIZING METHOD	JURISDICTIONS THAT AUTHORIZE
Lethal Gas	11	7 states (all have lethal injection as primary method)	Alabama, Arizona, Arkansas, California, [Alabama], Arizona, California, [Mississippi], Missouri, [Oklahoma], [Wyoming]
Hanging	3	3 states* (all have lethal injection as primary method) *Includes one state that no longer has an active death penalty statute.	Delaware, [New Hampshire],** Washington **New Hampshire abolished the death penalty but the repeal may not apply retroactively, leaving a prisoner on death row facing possible execution. Courts in Delaware and Washington struck down the states' death penalty statutes and applied those rulings to all prisoners on the states' death rows.
Firing Squad	3	3 states (all have lethal injection as primary method)	[Mississippi], [Oklahoma], [Utah]

- No other state designates electrocution as the sole means of execution if lethal injection is “unavailable.”⁶ All other states provide other alternatives or require lethal injection to be declared unconstitutional before defaulting to electrocution.

⁶The state statutes provide:

- Alabama – choice between lethal injection, electrocution, or nitrogen hypoxia, unless all are held unconstitutional. Ala. Code § 15-18-82.1(a), (c).
- Arkansas – primary method is lethal injection, unless lethal injection is “invalidated,” in which case electrocution becomes the primary method. A.C.A. § 5-4-617 (a), (l).
- Florida – choice between lethal injection and electrocution, unless electrocution or lethal injection are “held to be unconstitutional,” in which case the persons sentenced to death will be “executed by any constitutional method of execution.” F.S.A. 922.105(1), (3).
- Kentucky – sole method is lethal injection, unless the individual was sentenced prior to 3/31/1998, in which case the individual has a choice between lethal injection and electrocution. KRS § 431.220 (1)(a), (b).
- Mississippi – primary method is lethal injection, then nitrogen hypoxia, then electrocution, then firing squad. The subsequent methods can only be used if all prior methods listed are declared unconstitutional or are “otherwise unavailable.” Miss. Code § 99-19-51(1)-(4).
- Oklahoma – primary method is lethal injection, then nitrogen hypoxia, then electrocution, then firing squad. The subsequent methods can only be used if all prior methods listed are declared unconstitutional or are “otherwise unavailable.” Okl. St. Ann. § 1014(A)-(D).
- Tennessee – sole method is lethal injection, unless the individual committed the offense prior to 1/1/1999, in which case the individual has a choice between electrocution and lethal injection. If electrocution or lethal injection are “declared to be unconstitutional,” in which case the persons sentenced to death will be “executed by any constitutional method of execution.” T.C.A. § 40-23-114(a), (d).
- Virginia – choice between lethal injection and electrocution. Va. Code Ann. § 53.1-234.