



P.O. Box 28004 • Raleigh, North Carolina 27611-8004

Phone (919) 834-3466 • Fax (866) 511-1344

www.acluofnc.org

July 31, 2015

The Honorable Patrick McCrory
Governor of the State of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: HB 744 Restoring Proper Justice Act

Dear Governor McCrory,

As an organization deeply committed to the principles of due process and the protection against cruel and unusual punishment found in the Eighth Amendment, we write to you today on behalf of our more than 10,000 members and supporters to urge you to veto HB 774, the so-called Restoring Proper Justice Act. This bill would exempt execution protocol changes from the regular rule-making process. It would also make confidential information about where compounds or drugs used in executions are coming from so decisions about life and death could be made in secret with no public oversight. The bill also allows any medical professional, not just a doctor, to be present at an execution, which could mean that a qualified medical doctor will not be present if problems arise during an execution. Given that this bill eliminates transparency around government protocols that will end a person's life and could result in botched executions, we ask that you veto HB 774.

Execution is the ultimate punishment and it is irreversible. If North Carolina is going to execute its death row prisoners, the government must be accountable and the process must remain transparent, not shrouded in secrecy and hidden from the public. This punishment is carried out in the name of the citizens of North Carolina. Public confidence in the system is based on the knowledge that the process is fair and constitutional. If the information this bill seeks to hide is not available, the public will not have what it needs to maintain confidence in the system or hold the government accountable for botched executions. There are strong feelings on both sides of the issue, and the death penalty is part of the public discourse, which is why information about the death penalty should remain subject to public scrutiny.

To be fully accountable, North Carolina must provide the public, defendants, and courts information about the process and drugs to be used to ensure that the process is humane and in compliance with state and federal laws and the U.S. Constitution. North Carolina should not hide behind a curtain of secrecy when carrying out executions, preventing the courts, the public and counsel for the condemned from obtaining basic details regarding the state's execution process. To hide basic information like where the execution cocktail was obtained is contrary to basic American principles. It also will undoubtedly create more litigation, brought either by those representing death row inmates or those seeking the information to engage in public dialogue who are denied this information. It will slow down litigation in death penalty cases and needlessly spend taxpayer dollars to defend the law.

At a time when experimental drugs have been used in botched executions shrouded in secrecy, it seems foolhardy for North Carolina to follow that example. In 2014, experimental drug combinations were used in the horrifically botched and torturous executions of Clayton Lockett in Oklahoma, Joseph Wood in Arizona, and Dennis McGuire in Ohio, who moved, called out, choked, gasped, snorted and turned blue, taking close to 20 minutes to finally die. Executions in Oklahoma and South Dakota performed with compounded pentobarbital appeared to have serious problems as well, including the execution of Michael Lee Wilson in Oklahoma, whose last words, after being injected with compounded pentobarbital were "I feel my whole body burning." While the drugs used in these executions may have been known, these states kept the source of the drugs secret. Additionally, as HB 774 would no longer require a medical doctor to be present during the execution, if something were to go wrong, it is unlikely that the physician's assistant, emergency medical technician, or other health care professional present would have the skills necessary to address the problem. North Carolina should be doing everything in its power to avoid repeating these mistakes, not following the lead of Oklahoma, Arizona, and Ohio.

The reality is that HB 774 is not needed. Current rule-making requirements for execution protocols have not prevented executions in North Carolina from being carried out. If this bill is allowed to become law, it will only lead to more litigation and increase the risk of problems arising during an execution. Additionally, the idea of less transparency around important government functions runs contrary to basic American values. For these reasons, the American Civil Liberties Union of North Carolina and our more than 10,000 members and supporters ask that you veto HB 774. Thank you for your consideration of this matter.

Best regards,

A handwritten signature in cursive script that reads "Sarah Preston". The ink is dark and the signature is fluid, with the first and last names clearly legible.

Sarah Preston

Acting Executive Director