

URGENT ACTION

EXECUTION STAYED, DEATH WARRANT STILL ACTIVE

A judge in Georgia has granted Warren Hill a temporary stay of execution to consider a lethal injection question. A petition is still pending before the US Supreme Court on the claim that Warren Hill has “mental retardation” and that his execution would therefore violate the US Constitution. The execution warrant does not expire until noon on 20 July.

The US Supreme Court ruled in 2002 in *Atkins v. Virginia* that the execution of people with mental retardation violates the US Constitution. After an “Atkins” hearing, a Georgia judge found that under “a preponderance of the evidence”, **Warren Hill** had mental retardation. However, the state appealed to the Georgia Supreme Court which in 2003 ruled 4-3 that Georgia’s statutory “beyond a reasonable doubt” standard was acceptable (no other state uses this high a burden of proof in this context). The federal courts upheld this ruling, under the restrictive and deferential standard US law imposes on federal judicial review of state court decisions.

In affidavits signed in February 2013, the three experts who had testified for the state that they did not believe Warren Hill had mental retardation said that they had since changed their minds and now considered that Warren Hill did have mental retardation, thereby now agreeing with the four experts presented by the defence lawyers. Even with this new evidence, the federal courts have refused to stop the execution and review the merits of the current claim of mental retardation, citing the restrictions imposed on them by federal law.

On 12 July, with a petition still pending before the US Supreme Court on the mental retardation question, Warren Hill’s lawyers filed an emergency motion in county court in Georgia challenging the current state of affairs relating to Georgia’s lethal injection process. Their claim centres on legislation recently passed by the Georgia legislature in the face of the state’s ongoing problems in obtaining drugs for lethal injections. The legislation classifies as a “state secret”, and thereby purports to shield from judicial review, any “identifying information” relating to those who participate in or administer lethal injection, and to those individuals or entities which manufacture, supply, compound or prescribe the “drugs, medical supplies, or medical equipment” used in lethal injection executions.

About three hours before the execution was due to be carried out on the evening of 15 July, the Fulton County judge issued a stay and she will hold a hearing on 18 July. The current execution warrant expires at noon on 20 July, so if the stay is lifted before then, the state could yet move to conduct the execution under this warrant. That would be Warren Hill’s fourth execution date in the past year.

Please write immediately in English or your own language:

- Noting that all seven experts who have assessed Warren Hill now agree that he has mental retardation, which would render his execution unconstitutional;
- Calling on the Attorney General to concede this and to support the petition for Supreme Court intervention;
- Expressing concern about Georgia’s classification as a state secret certain information relating to the lethal injection process, thereby purporting to shield it from judicial review.

PLEASE SEND APPEALS BEFORE 20 JULY 2013 TO:

[Attorney General of Georgia](#)

The Honorable Sam Olens,
40 Capitol Square, SW, Atlanta, GA 30334, USA
Fax: +1 404 657 8733
Email: AGOlens@law.ga.gov
Salutation: **Dear Attorney General**

And copies to:

Governor Nathan Deal,
Georgia State Capitol, Atlanta, GA 30334, USA
Fax: +1 404 657 7332
Email, via website: <http://gov.georgia.gov/webform/contact-governor-international-form>

Please check with your section office if sending appeals after the above date. This is the fourth update of UA 197/12. Further information: <http://www.amnesty.org/en/library/info/AMR51/046/2013/en>

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ADDITIONAL INFORMATION

Particularly over the past four years, authorities in the USA, including Georgia, have faced difficulties in obtaining ingredients for lethal injection. With the sole US manufacturer of sodium thiopental, the barbiturate used in most such executions since 1976, suspending production and in early 2011 withdrawing from the market altogether, the USA's death penalty states have turned to each other, to sources overseas, and to the federal government, to seek alternative drugs and sources (see *USA: An embarrassment of hitches*, July 2011, <http://www.amnesty.org/en/library/info/AMR51/058/2011/en>).

It seems that Georgia has turned to a "compounding pharmacy" to produce the pentobarbital to be used in Warren Hill's execution. According to the federal US Food and Drug Administration (FDA), which does not regulate these entities, compounding pharmacies combine, mix or alter ingredients "in response to a prescription to create a medication tailored to the medical needs of an individual patient". Here the use would be to kill a condemned prisoner. According to the briefs filed on 12 July 2013 in Fulton County Court by Warren Hill's lawyers, the Georgia Department of Corrections has "entered into agreements with an unknown compounding pharmacy and an unknown prescriber of drugs in order to procure pentobarbital for the execution of Mr Hill". All information relating to the identities, including professional qualifications, of those involved was redacted from the documents provided to the lawyers by the Department of Corrections, under the recent legislation passed by the state legislature purporting to shield such information from disclosure, including during any judicial process.

The brief argues that without information about the origin or manufacturers of the drug, Warren Hill's lawyers are left with "no means for determining whether the drugs for his lethal injection are safe and will reliably perform their function, or if they are tainted, counterfeited, expired, or compromised in some other way". The lawyers argue that Warren Hill's constitutional rights to due process and not to be subjected to "cruel and unusual" punishment are at issue. Specifically, they argue that "the use of an unknown, anonymously produced substance to carry out his execution carries an intolerable risk of pain and suffering, and thus constitutes cruel and unusual punishment" under the Eighth Amendment to the US Constitution, and "Georgia's Lethal Injection Secrecy Law prevents Mr Hill from receiving any information necessary to prosecute his Eighth Amendment claim".

Meanwhile litigation continues in a number of states in relation to the lethal injection issues. Earlier this month, the Arkansas Attorney General was reported as saying that, in light of the continuing lethal injection problems being faced by his state, there were two choices, "either abolish the death penalty or change the method of execution."

Amnesty International opposes any use of the death penalty, regardless of the crime or the method use to kill the prisoner.

Name: Warren Hill
Gender m/f: m

Further information on UA 197/12: Index: AMR 51/049/2013 Issue Date: 16 July 2013