

# A look at the status of the death penalty in several states

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FILE – In this November 2005 file photo, Larry Greene, public information director of the Southern Ohio Correctional Facility, demonstrates how a curtain is pulled between the death chamber and witness room at the prison in Lucasville, Ohio. Magistrate Judge Michael Merz in Dayton, Ohio, declared Ohio's new three-drug lethal injection process unconstitutional on Thursday, Jan. 26, 2017, and delayed three executions, including the execution of Ronald Phillips that had been scheduled Feb. 15, 2017. (AP Photo/Kiichiro Sato, File)

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COLUMBUS, Ohio (AP) — The stop-and-start nature of U.S. executions in recent years hit another speed bump this week when a federal judge found Ohio's latest lethal injection procedure unconstitutional.

The ruling by Magistrate Judge Michael Merz went far beyond nitpicking the state's procedures, and on one point raised potential problems for at least three other states that use the disputed sedative midazolam.

States have struggled for years now to find lethal drugs that pass constitutional muster after pharmaceutical companies and distributors banned their use in executions.

Some states turned to midazolam to replace anesthetics and barbiturates used more successfully in the past, but that led to problematic executions and numerous court challenges.

Alabama, Oklahoma and Virginia are among the states whose protocols have called for midazolam, though the prison departments in those states may not currently have the drug.

In the Ohio ruling, the judge agreed with attorneys for three condemned killers that midazolam, the first drug in Ohio's process, couldn't pass a constitutional bar of causing "substantial risk of serious harm" previously set by the U.S. Supreme Court in a 2008 ruling out of Kentucky.

The judge also barred Ohio from using the second and third drugs in the states' protocol, which paralyze inmates and then stop their hearts. Instead, the state should look to use a compounded version of pentobarbital, a barbiturate, the judge said.

Ohio has been unable to obtain pentobarbital, although other states such as Missouri and Texas have been able to without saying where it's from.

Ohio said it had enough drugs in its latest three-drug method to carry out four executions.

Struggles by states to find drugs and put inmates to death amid legal challenges come as death sentences and executions continue to decline sharply.

Only 30 people were sentenced to death in the United States last year, the lowest number since the early 1970s. Just 20 people were executed in 2016, the fewest since 1991, and a far cry from 1999, when there were 98 executions.

Some of the country's historically most active death penalty states and their outlook for executions:

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## ALABAMA

— Inmates on death row: 183.

— Scheduled executions: None. State is currently seeking an execution date for Robert Melson, sentenced to die for the 1994 shooting death of three fast-food workers.

— Execution method: Lethal injection unless inmate requests the electric chair. In past executions, the state used midazolam; rocuronium bromide, a paralytic; and potassium chloride, which stops the heart.

— Supply and source: The state is presumed to have a supply of execution drugs since the attorney general's office is seeking an execution date. The Department of Corrections refuses to disclose the source of drugs or how they were obtained.

— Last execution: Dec. 8, Ronald Bert Smith Jr., for killing a convenience store clerk in a 1994 robbery. Smith coughed and his upper body heaved repeatedly for 13 minutes as he was being sedated.

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## FLORIDA

— Inmates on death row: 383.

— Scheduled executions: None.

— Execution method: Inmates can choose between lethal injection and the electric chair. The lethal injection drugs are etomidate, an anesthetic; rocuronium bromide; and potassium chloride.

— Supply and source: The state refuses to name the source of its drugs or other details.

— Last execution: Jan. 7, 2016, Oscar Ray Bolin Jr., sentenced to die for killing three Tampa Bay-area women.

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## GEORGIA

— Inmates on death row: 57.

— Scheduled executions: None, but several inmates are close to exhausting appeals. Georgia law requires that execution dates be set no more than 20 days in advance and no less than 10.

— Execution method: Lethal injection using compounded pentobarbital, a barbiturate.

— Supply and source: A compounding pharmacy the state won't identify under a 2013 secrecy law. Records show the drug has been manufactured about a week beforehand, delivered one to two days before an execution, and has a shelf life of about 30 days.

— Last execution: Dec. 6, William Sallie, for killing his father-in-law in 1990.

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## LOUISIANA

— Inmates on death row: 73.

— Scheduled executions: None scheduled. A federal lawsuit challenging Louisiana's lethal injection method has delayed executions since 2014 with no resolution expected until at least 2018.

— Execution method: Newest method calls for midazolam and hydromorphone, a painkiller.

— Supply and source: State does not currently have a supply or source of lethal injection drugs.

— Last execution: Jan. 7, 2010, Gerald Bordelon, sentenced to die for killing his 12-year-old stepdaughter in 2002.

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## MISSOURI

— Inmates on death row: 25.

— Scheduled executions: Jan. 31, Mark Christeson, sentenced to die for killing a woman and her two children in 1998.

— Execution method: Single dose of pentobarbital.

— Supply and source: Believed to be manufactured by a compounding pharmacy. The Associated Press and other news organizations are involved in a lawsuit over the secrecy of Missouri's process, including how it obtains the execution drug.

— Last execution: May 11, Earl Forrest, for killing two people in a drug dispute and a sheriff's deputy in a subsequent shootout in 2002.

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## OHIO

— Inmates on death row: 138.

— Scheduled executions: 29.

— Execution method: The current method calling for midazolam; rocuronium bromide; and potassium chloride, is on hold following a federal judge's ruling Thursday rejecting that process.

— Supply and source: A 2015 secrecy law and court rulings allow the Ohio prisons department to shield the source of its drugs. Records show the state had enough of its three drugs on hand for multiple executions. The state says that doesn't take into account the drugs' expiration dates and other factors.

— Last execution: Jan. 16, 2014, Dennis McGuire, for the 1989 killing of a woman. McGuire was put to death with a never-tried two-drug combination including midazolam and hydromorphone, a painkiller, and snorted and gasped during the 26 minutes it took him to die.

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## OKLAHOMA

— Inmates on death row: 48.

— Scheduled executions: None. Executions are on hold until a new set of lethal injection protocols are approved. If that happens, 13 inmates have exhausted their appeals and could be executed.

— Execution method: Lethal injection; if unavailable the other methods allowed are nitrogen gas, the electric chair and the firing squad.

— Supply and source: Oklahoma does not currently have a Drug Enforcement Administration license, and according to a prison system spokesman is not legally able to store execution drugs at the Oklahoma State Penitentiary in McAlester, where death row is located. Oklahoma previously obtained drugs from an unidentified pharmacy.

— Last execution: Jan. 15, 2015, Charles Warner, for the 1997 killing of his roommate's infant daughter. "My body is on fire," he said after receiving midazolam, the first in a three-drug method, though he showed no other signs of distress. Nine months later, it was learned that prison officials used the wrong third drug in the state's execution protocol — potassium acetate instead of potassium chloride — to execute Warner.

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## TENNESSEE

— Inmates on death row: 63.

— Scheduled executions: None.

— Execution method: A single dose of compounded pentobarbital, or the electric chair. Executions are on hold pending a state Supreme Court decision on a challenge by inmates to the single dose, which replaced a three-drug method.

— Supply and source: The Tennessee Department of Correction doesn't have any lethal drugs currently but officials "are diligently working to secure them."

— Last execution: Dec 2, 2009, Cecil Johnson, sentenced to die for killing three people during a 1980 convenience store robbery.

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## TEXAS

— Inmates on death row: 242.

— Scheduled executions: John Ramirez, on Feb. 2, for killing a convenience store clerk in 2004; and Tilon Lashon Carter, Feb. 7, for killing an 89-year-old man in 2004.

— Execution method: Lethal injection using pentobarbital.

— Supply and source: An unidentified compounding pharmacy provides the drugs, but all information about the drug is shielded by state law.

— Last execution: Thursday, Terry Edwards, sentenced to die for killing two people in a 2002 robbery in Dallas.

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## VIRGINIA

— Inmates on death row: 6.

— Scheduled executions: None.

— Execution method: Inmates can choose between the electric chair and a three-drug combination of midazolam or pentobarbital or thiopental sodium in the first step; rocuronium bromide or pancuronium bromide for the second step; and potassium chloride.

— Supply and source: Before the state's last execution, on Jan. 18, prison officials said they had enough lethal drugs for two executions. They obtained midazolam and potassium chloride from a compounding pharmacy whose identity is confidential under state law. They also have rocuronium bromide from Cardinal Health, an Ohio-based pharmaceutical wholesaler.

— Last execution: Ricky Gray, Jan. 18, for the 2006 slayings of 9- and 4-year-old sisters and their parents at their Richmond home.

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Contributing to this report were Associated Press writers Kimberly Chandler in Montgomery, Alabama; Brendan Farrington in Tallahassee, Florida; Kate Brumback in Atlanta; Erik Schelzig in Nashville; Rebecca Santana in New Orleans; Michael Graczyk in Houston; Sean Murphy in Oklahoma City; Alanna Durkin Richer in Richmond, Virginia; and Jim Salter in St. Louis. Andrew Welsh-Huggins can be reached on Twitter at <https://twitter.com/awhcolumbus> . His work can be found at <http://bigstory.ap.org/content/andrew-welsh-huggins>.