



Status of Death Penalty Laws in 2023 (a supplement to the report, *Capital Punishment, 2023 – Statistical Tables*)

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As of December 31, 2023, a total of 29 states and the federal government authorized the death penalty (**tables 1 and 2**). While New Hampshire repealed the death penalty (HB 455), effective May 30, 2019, the repeal did not affect previously imposed death sentences. As of December 31, 2023, New Hampshire held one male prisoner under sentence of death.

In 2023, the Washington state legislature repealed provisions of the sentencing statute for aggravated first-degree murder (RCW 10.95.030), removing the option for death sentences (Chapter 102, Laws of 2023, Section 20). The Washington Supreme Court declared that the state death penalty was unconstitutional, as applied on October 11, 2018 (*State v. Gregory*, 192 Wash. 2d 1, 427 P.3d 621 (2018)). The amended law provided that adults sentenced for aggravated first-degree murder will be sentenced to life imprisonment without the possibility of parole, effective April 21, 2023.

Statutory changes

During 2023, four states revised statutory provisions relating to the death penalty.

Florida amended the code of criminal procedure to lower the threshold for imposition of a death sentence. The law change required that 8 out of 12 jurors vote for a death sentence compared to the previous requirement that the jury decision had to be unanimous, (Fla. Stat. § 921.141), effective April 20, 2023. It also revised statutory provisions relating to its death penalty. The legislature added the crime of sexual battery of a child under age 12 as a capital to the list of offenses eligible for the death penalty (Fla. Stat. § 794.011), effective October 1, 2023.

Idaho amended the code of criminal procedure to authorize firing squad as a means of execution (I.C. § 19-2716), effective July 1, 2023.

The Kentucky legislature added as an aggravating factor the intentional murder of a child under the age of 12 (KRS 532.025(2)(a)(9)), effective June 29, 2023.

South Carolina revised a portion of the capital statute to require that identifying information of any person or entity participating in planning or administration of executions be kept confidential. It also exempted the purchase or acquisition of materials used in executions from the state's procurement code (S.C. Code § 24-3-580), effective May 12, 2023.

Authorized methods of execution in 2023

Methods of execution are defined by statute and vary by jurisdiction. In 2023, all 29 states with a death penalty statute authorized lethal injection as a method of execution (**table 3**). Fourteen states also authorized an alternative method of execution: electrocution (8 states), firing squad (5), lethal gas (3), nitrogen hypoxia (3), and hanging (1).

In states that authorized multiple methods of execution, the condemned prisoner usually selected the method. Five states (Arizona, Arkansas, Kentucky, Tennessee, and Utah) stipulated which method must

be used depending on the date of either the offense or sentencing. Five states specified alternative methods if lethal injection was ruled to be unconstitutional: Arkansas authorized electrocution; Delaware authorized hanging; Oklahoma authorized electrocution, firing squad, or nitrogen hypoxia; Utah authorized firing squad; and Wyoming authorized lethal gas. Two states (Florida and Tennessee) authorized the use of any constitutional method in the event that current methods are held unconstitutional.

A South Carolina statute authorized both electrocution and firing squad as alternative methods of execution. As of December 31, 2023, a challenge to the constitutionality of these alternative methods was pending in the South Carolina Supreme Court (*Owens, et al. v. Stirling*, Appellate Case No. 2022-001280).

Federal prisoners are executed by lethal injection, pursuant to 28 C.F.R. Part 26. For offenses prosecuted under the federal Violent Crime Control and Law Enforcement Act of 1994, the law of the state in which the conviction took place determines the method used (18 U.S.C. § 3596).