

CRIMINAL JUSTICE/CORRECTIONS

TABLE 9.26

Capital Punishment

| <i>State or other jurisdiction</i> | <i>Capital offenses by state</i> | <i>Prisoners under sentence of death</i> | <i>Capital punishment abolished</i> | <i>Method of execution</i> |
|------------------------------------|--|--|-------------------------------------|---|
| Alabama | Intentional murder with 18 aggravating factors (Ala. Stat. Ann. 13A-5-40(a)(1)-(18)). | 182 | | Electrocution or lethal injection |
| Alaska | ... | ... | 1957 | ... |
| Arizona | First-degree murder, including pre-meditated murder and felony murder, accompanied by at least 1 of 14 aggravating factors (A.R.S. § 13-703(F)). | 121 | | Lethal gas or lethal injection (a) |
| Arkansas | Capital murder (Ark. Code Ann. 5-10-101) with a finding of at least 1 of 10 aggravating circumstances; treason. | 32 | | Lethal injection or electrocution (b) |
| California | First-degree murder with special circumstances; sabotage; train wrecking causing death; treason; perjury causing execution of an innocent person; fatal assault by a prisoner serving a life sentence. | 740 | | Lethal injection |
| Colorado | First-degree murder with at least 1 of 17 aggravating factors; first-degree kidnapping resulting in death; treason. | 3 | | Lethal injection |
| Connecticut | ... (c) | 0 | 2012 | ... |
| Delaware | ... (d) | (d) | 2016 | ... |
| Florida (e) | First-degree murder; felony murder; capital drug trafficking; capital sexual battery. | 354 | | Electrocution or lethal injection |
| Georgia | Murder with aggravating circumstances; kidnapping with bodily injury or ransom when the victim dies; aircraft hijacking; treason. | 56 | | Lethal injection |
| Hawaii | ... | ... | 1957 | ... |
| Idaho | First-degree murder with aggravating factors; first-degree kidnapping; perjury resulting in death. | 9 | | Lethal injection |
| Illinois | ... (f) | 0 | 2011 | ... |
| Indiana | Murder with 17 aggravating circumstances (IC 35-50-2-9). | 11 | | Lethal injection or electrocution |
| Iowa | ... | ... | 1965 | ... |
| Kansas | Capital murder with 8 aggravating circumstances (KSA 21-3439, KSA 21-4625, KSA 21-4636). | 10 | | Lethal injection |
| Kentucky | Capital murder with presence of at least one statutory aggravating circumstance; capital kidnapping (KRS 532.025). | 31 | | Electrocution or lethal injection (g) |
| Louisiana (e) | First-degree murder; treason (La. R.S. 14:30 and 14:113). | 70 | | Lethal injection |
| Maine | ... | ... | 1887 | ... |
| Maryland | ... (h) | ... | 2013 | (h) |
| Massachusetts | ... | ... | 1984 | ... |
| Michigan | ... | ... | 1846 | ... |
| Minnesota | ... | ... | 1911 | ... |
| Mississippi | Capital murder (Miss Code Ann. § 97-3-19(2)); aircraft piracy (Miss Code Ann. § 97-25-55(1)). | 46 | | Lethal injection |
| Missouri | First-degree murder (565.020 RSMO 2000). | 25 | | Lethal injection or lethal gas |
| Montana (e) | Capital murder with 1 of 9 aggravating circumstances (Mont. Code Ann. § 46-18-303); aggravated kidnapping; felony murder; capital sexual intercourse without consent (Mont. Code Ann. § 45-5-503). | 2 | | Lethal injection |
| Nebraska | (s) | 12 | | ... |
| Nevada | First-degree murder with at least 1 of 15 aggravating circumstances (NRS 200.030, 200.033, 200.035). | 76 | | Lethal injection |
| New Hampshire | ... (i) | 1 | 2019 | (i) |
| New Jersey | ... (j) | ... | 2007 | ... |
| New Mexico | ... (k) | 2 | 2009 | Lethal injection (k) |
| New York | (l) First-degree murder with 1 of 13 aggravating factors (NY Penal Law § 125.27). | 0 | 2007 | Lethal injection |
| North Carolina | First-degree murder with the finding of at least 1 of 11 statutory aggravating circumstances. (NCGS §14-17). | 143 | | Lethal injection |
| North Dakota | ... | ... | 1973 | ... |
| Ohio | Aggravated murder with at least 1 of 10 aggravating circumstances (O.R.C. secs. 2903.01, 2929.02, and 2929.04). | 142 | | Lethal injection |
| Oklahoma (e) | First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances. | 48 | | Electrocution, lethal injection or firing squad (m) |
| Oregon | (n) Aggravated murder (ORS 163.095-150). | 33 | | Lethal injection |
| Pennsylvania | First-degree murder with 18 aggravating circumstances. | 158 | | Lethal injection |
| Rhode Island | ... | ... | 1984 | ... |
| South Carolina (e) | Murder with 1 of 12 aggravating circumstances (§ 16-3-20(C)(a)). | 39 | | Electrocution or lethal injection |
| South Dakota | First-degree murder with 1 of 10 aggravating circumstances. | 3 | | Lethal injection |
| Tennessee | First-degree murder (Tenn. Code Ann. § 39-13-202) with 1 of 16 aggravating circumstances (Tenn. Code Ann. § 39-13-204). | 61 | | Lethal injection or electrocution (o) |
| Texas (e) | Criminal homicide with 1 of 9 aggravating circumstances (TX Penal Code § 19.03). | 228 | | Lethal injection |
| Utah | Aggravated murder (76-5-202, Utah Code Annotated). | 9 | | Lethal injection or firing squad (p) |
| Vermont | ... | ... | 1964 | ... |
| Virginia | First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31). | 3 | | Electrocution or lethal injection |
| Washington | (t) | 8 | 2018 | (t) |
| West Virginia | ... | ... | 1965 | ... |

See footnotes at end of table

TABLE 9.26

Capital Punishment (continued)

| State or other jurisdiction | Capital offenses by state | Prisoners under sentence of death | Capital punishment abolished | Method of execution |
|-----------------------------|--|-----------------------------------|------------------------------|------------------------------------|
| Wisconsin | ... | ... | 1853 | ... |
| Wyoming | First-degree murder; murder during the commission of sexual assault, sexual abuse of a minor, arson, robbery, burglary, escape, resisting arrest, kidnapping, or abuse of a minor under 16 (W.S.A. § 6-2-101 (a)). | 1 | | Lethal injection or lethal gas (q) |
| Dist. of Columbia | ... | ... | 1981 | ... |
| American Samoa | First-degree murder (ASC §46.3513). (p) | 0 | | Hanging (r) |
| Guam | ... | ... | | ... |
| CNMI* | ... | ... | | ... |
| Puerto Rico | ... | ... | | ... |
| U.S. Virgin Islands | ... | ... | | ... |

Sources: The Council of State Governments' survey March, 2019; U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Capital Punishment, 2015–Statistical Tables, December 2015. The Death Penalty Information Center, 2019.

*Commonwealth of Northern Mariana Islands

Notes:

1. The United States Supreme Court ruling in *Roper v. Simmons*, 543 U.S. 551 (2005) declared unconstitutional the imposition of the death penalty on persons under the age of 18.
2. The United States Supreme Court ruling in *Atkins v. Virginia*, 536 U.S. 304 (2002) declared unconstitutional the imposition of the death penalty on mentally handicapped persons.
3. The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the execution method is that of the State in which the conviction took place (18 U.S.C. 3596).

Key:

...—No capital punishment statute.

- (a) Arizona authorizes lethal injection for persons sentenced after November 15, 1992; inmates sentenced before that date may select lethal injection or gas.
- (b) Arkansas authorizes lethal injection for those whose offense occurred on or after July 4, 1983; inmates whose offense occurred before that date may select lethal injection or electrocution.
- (c) On April 25, 2012, Connecticut Governor Dannel Malloy signed into law a bill (SB 280) repealing the state's death penalty. The repeal law did not affect the status of the 11 prisoners then on death row. The Connecticut Supreme Court subsequently ruled in August 2015 that the death penalty violated the state constitution. The Court reaffirmed that holding in May 2016 and reiterated that the state's remaining death row prisoners must be resentenced to life without possibility of parole.
- (d) The Delaware Supreme Court declared the state's death-penalty statute unconstitutional in 2016. The state's 13 former death-row prisoners have been resentenced to life without parole.
- (e) The United States Supreme Court struck a portion of the Louisiana capital statute on June 25, 2008 (*Kennedy v. Louisiana*, U.S. 128 S.Ct. 2641). The statute (La. Rev. Stat. Ann. § 14:42(D)(2)) allowing execution as a punishment for the rape of a minor when no murder had been committed had been ruled constitutionally permissible by the Louisiana Supreme Court. The U.S. Supreme Court found that since no national consensus existed for application of the death penalty in cases of rape where no murder had been committed, such laws constitute cruel and unusual punishment under the Eighth

and Fourteenth Amendments. The ruling affects laws passed in Florida, Oklahoma, South Carolina, Texas, and Montana.

- (f) Governor Pat Quinn signed a bill (SB 3539) on March 9, 2011 that abolishes the death penalty effective July 1, 2011. He commuted all death sentences to life without parole.
- (g) Kentucky authorizes lethal injection for persons sentenced on or after March 31, 1998; inmates sentenced before that date may select lethal injection or electrocution.
- (h) On May 2, 2013, Governor Martin O'Malley signed into law a bill (SB 276) that abolishes the death penalty for future crimes. Gov. O'Malley announced on December 31, 2014, that he would commute the sentences of the four remaining death-row inmates to life in prison without the possibility of parole.
- (i) The N.H. Legislature abolished the death penalty when they voted to override Gov. Sununu's veto of the legislation on May 30, 2019. The state has only one person on death row and last carried out an execution in 1939. It is not known what the disposition of his sentence will be at press time.
- (j) New Jersey repealed its death penalty statute in 2007.
- (k) Governor Bill Richardson signed a bill in March of 2009 abolishing the death penalty. The law is not retroactive and leaves two inmates on death row.
- (l) The New York Court of Appeals has held in 2004 that a portion of New York's death penalty sentencing statute (CPL 400.27) was unconstitutional (*People v. Taylor*, 9 N.Y.3d 129 (2007)). As a result, no defendants can be sentenced to death until the legislature corrects the errors in this statute. Efforts to restore the statute have been voted down. By 2007, all seven of those sentenced to death under the state law had their sentences overturned. New York has had an effective moratorium on capital punishment since then.
- (m) Oklahoma authorizes electrocution if lethal injection is held to be unconstitutional, and firing squad if both lethal injection and electrocution are held to be unconstitutional.
- (n) In November 2011, Governor John Kitzhaber placed a moratorium on all executions in Oregon. An amended bill to narrow the circumstances in which the death penalty may be imposed in Oregon has passed the state senate. On May 21, 2019 the Oregon Senate passed SB 1013, which would limit the state's use of capital punishment to three aggravating circumstances. The bill would allow prosecutors to pursue the death penalty for only three crimes: acts of terrorism in which at least two people are killed, the murder of a child younger than age 14, and murder committed in prison by a person already incarcerated for a previous murder conviction. Under Oregon's current law, 12 aggravating factors can make a murder death-eligible.

CRIMINAL JUSTICE/CORRECTIONS

TABLE 9.26

Capital Punishment (continued)

- (o) Tennessee authorizes lethal injection for those whose capital offense occurred after December 31, 1998; those who committed the offense before that date may select electrocution by written waiver.
- (p) Authorizes firing squad if lethal injection is held unconstitutional. Inmates who selected execution by firing squad prior to May 3, 2004, may still be entitled to execution by that method.
- (q) Wyoming authorizes lethal gas if lethal injection is ever held to be unconstitutional.
- (r) The last execution was in the 1920s.
- (s) In a referendum on the November 8, 2016 ballot 60 percent of Nebraska voters elect to keep the death penalty and lethal injection as state law. On January 26, 2017 Gov. Ricketts signs new, flexible execution protocol, allowing acquisition of necessary drugs to resume. As of November 9, 2017 the state is prepared to use a four-drug protocol, signaling a new death warrant could be issued in 2018. Legal challenges are underway.
- (t) On October 11, 2018, the Washington Supreme Court declared the state's death penalty statute unconstitutional, saying that it was applied in an arbitrary and racially discriminatory manner.