



## Status of the death penalty in 2022

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As of December 31, 2022, a total of 30 states and the federal government authorized the death penalty (**tables 1 and 2**). While the Washington Supreme Court declared the state death penalty statute unconstitutional, as applied, on October 11, 2018 (*State v. Gregory*, 192 Wash. 2d 1, 427 P.3d 621 (2018)), the Washington state legislature had neither revised nor repealed the statute as of yearend 2022.

In 2019, New Hampshire repealed the death penalty (HB 455), effective May 30, 2019. The repeal did not affect previously imposed death sentences, and as of December 31, 2022, New Hampshire held one male prisoner under sentence of death.

### *Statutory changes*

During 2022, four states revised statutory provisions relating to the death penalty.

Florida revised a statute making confidential the identity of any person or entity participating in an execution, past, present, or future (FS 945.10(1)(j)), effective May 12, 2022.

Idaho also amended a section of the statute making the identities of specified “persons or entities involved in the planning, training, or performance of an execution” confidential and prohibiting licensing boards from suspending or revoking the licenses of participants in executions (I.C. § 19-2716A(4)-(5)), effective March 23, 2022.

The Kentucky legislature added a diagnosis of “serious mental illness” to the disorders that exempt defendants from receiving death sentences when convicted of capital offenses (KRS 532.130, 532.135, and 532.140). This applies to persons who, at the time of the offense, had active symptoms and a documented history of mental disorders (such as schizophrenia, schizoaffective disorder, bipolar disorder, or delusional disorder), and “the disorder is not manifested primarily by repeated criminal conduct or attributable solely to the acute effects of the voluntary use of alcohol or other drugs.” The law also revised timelines for filing motions and court determination of intellectual disabilities or serious mental illness. The change applies to defendants whose trials commenced after the effective date of the law, April 8, 2022.

Mississippi revised the code of criminal procedure, giving the Commissioner, the Deputy Commissioner for Finance and Administration, and the Deputy Commissioner for Institutions of the Mississippi Department of Corrections discretion to select lethal injection, nitrogen hypoxia, electrocution, or firing squad as the method of execution (Miss. Code Ann. § 99-19-51), effective July 1, 2022.

## Authorized methods of execution in 2022

Methods of execution are defined by statute and vary by jurisdiction. In 2022, all 30 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 (4), lethal gas (3), nitrogen hypoxia (3), and hanging (2).

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.

A South Carolina statute authorized both electrocution and firing squad as alternative methods of execution. As of December 31, 2022, 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).