

NEWS

Department of Justice Withdraws Federal Execution Protocol and Keeps Moratorium on Executions in Place

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By Death Penalty Information Center

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**METHODS OF EXECUTION LETHAL INJECTION FEDERAL DEATH PENALTY
US FEDERAL GOVERNMENT**



Three and a half years after announcing its investigation into the federal death penalty protocol, Attorney General Merrick Garland announced on January 15, 2025 that the Department of Justice (DOJ) is rescinding the federal government's single-drug pentobarbital lethal injection protocol. The DOJ's decision was based on what AG Garland called "significant uncertainty" about whether executions by pentobarbital caused unnecessary pain and suffering. The DOJ's statement expressed a desire to "err on the side of treating individuals humanely." It followed an extensive set of consultations with federal and state authorities, medical experts, experienced capital counsel, and other stakeholders. Federal Execution regulations were not changed. Single-drug lethal injection is authorized by statute in 20 of the 27 states where the death penalty is legal.

"Because it cannot be said with reasonable confidence that the current execution protocol 'not only afford[s] the rights guaranteed by the Constitution and laws of the United States' but 'also treat[s] individuals [being executed] fairly and humanely,'...that protocol should be rescinded, and not reinstated unless and until that uncertainty is resolved."

ATTORNEY GENERAL MERRICK GARLAND IN A LETTER TO THE DIRECTOR OF THE FEDERAL BUREAU OF PRISONS

On July 1, 2021, Attorney General Merrick Garland ordered the Department of Justice's Office of Legal Policy to coordinate a review of the federal execution protocol addendum and the Department's regulations regarding federal executions. The review included an examination of autopsies of executed individuals, reports of medical experts, and accounts of execution witnesses. The review concluded that there is "significant uncertainty about whether pentobarbital can be used in a single-drug execution protocol without causing unnecessary pain and suffering." Specifically, the DOJ noted: (1) there is a risk that individuals who are executed with pentobarbital will experience flash (acute) pulmonary edema; (2) pentobarbital may not adequately anesthetize the individual before they experience pulmonary edema; and that (3) flash pulmonary edema creates a sensation experts liken to being waterboarded. The first Trump Administration used this protocol to execute thirteen people in 2020 and 2021.

A review of state statutes by DPI indicates that 20 of the 27 states that still allow the death penalty have statutes that allow single-drug lethal injection (Arizona, Arkansas, California, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, and most recently, Tennessee). The remaining seven death-penalty states specifically authorize three-drug proto-

cols (Alabama, Mississippi, Montana, Oregon, Pennsylvania, Utah, and Wyoming). Autopsies
conducted on dozens of individuals executed by federal and state governments in recent years
using one-drug pentobarbital have revealed evidence of flash pulmonary edema.

TAGS

 Merrick Garland

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SOURCES

AG Garland's letter can be accessed here.

The DOJ's full report can be accessed here.

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