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IN FOCUS

The Federal Death Penalty

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The federal government practiced capital punishment from the country's beginning in 1776 (and in colonial times as well) until 1972, when the U.S. Supreme Court (in *Furman v. Georgia*) found particular applications of capital punishment to be unconstitutional under the Eighth and Fourteenth Amendments of the Constitution. In 1976, the Supreme Court considered revised *state* statutes (in *Gregg v. Georgia* and several other decisions) and held that the death penalty was constitutional under certain, limited circumstances. While many states quickly revised their laws and reinstated the death penalty following the *Furman* decision, the *federal* government did not reinstate the death penalty until 1988, when the death penalty was established as a punishment for certain offenses under the Anti-Drug Abuse Act of 1988. From 1988 through 2000, no federal inmates were executed. From 2001 through January 2021, the federal government executed 16 individuals. No federal inmates have been executed since 2021.

This In Focus focuses on federal death penalty policy in the context of death penalty practice in the United States. The term *federal* in this In Focus generally refers to U.S. Department of Justice (DOJ) policy and does not refer to the U.S. military, which has its own justice system, the Uniform Code of Military Justice. When referring to U.S. military policy, the term *military* is used. When referring to state and territory policy, the term *state* is used.

Current Federal Policy

Since 2020, the federal government has taken contrasting positions in its implementation of death penalty policy:

- In July 2020, under then-U.S. Attorney General Barr's direction and a revised Federal Execution Protocol Addendum (replacing the previous three-drug protocol used in executions with a single-drug procedure), the federal government resumed executions 17 years after the *Furman* decision. From July 2020 through January 2021, 13 federal inmates were executed, all by lethal injection.
- In December 2024, President Biden commuted to life imprisonment the sentences of 37 of 40 federal prisoners on death row. The remaining three individuals are still on death row as of the date of this In Focus.
- In January 2025, President Trump announced that the Attorney General "shall pursue the death penalty for all crimes of a severity demanding its use."

Federal death row inmates primarily reside in two Bureau of Prisons facilities—U.S. Penitentiary Terre Haute in Indiana for male death row inmates and Federal Medical Center Carswell in Fort Worth, TX, for female death row inmates. State death rows operate separately from federal policy.

Current Military Policy

While the U.S. military justice system has capital punishment as a sentencing option, it has not executed anyone since 1961. As of the date of this In Focus, four individuals reside on the military's death row, which is at the United States Disciplinary Barracks in Fort Leavenworth, KS.

States and Territories

Since the *Gregg* decision in 1976, most executions in the United States have been carried out by states: From 1976 through November 19, 2026, 34 states executed 1,693 individuals.

Most death row inmates in the country reside on *state* death rows in 25 state prison systems. Several states have the death penalty but do not currently have any inmates on death row. New Hampshire abolished the death penalty in 2019, but one individual remains on death row. Twenty-three states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam do *not* have the death penalty. Four states *with* the death penalty (California, Oregon, Ohio, and Pennsylvania) have paused executions via executive action.

Native American Tribes

Under the Federal Death Penalty Act of 1994 (FDPA), Native American tribes may opt in to the federal death penalty for capital crimes that occur in Indian country and are subject to the criminal jurisdiction of the federal government. According to one media report, most have not opted in. For certain federal crimes, DOJ may seek the death penalty whether a tribe has opted in or not. In 2020, the federal government executed a Navajo Nation tribal member after he was convicted for carjacking and murder. Currently, there are no tribal members on federal death row.

Methods of Execution

Lethal injection is the only method of execution currently used by the Bureau of Prisons. In November 2020, however, DOJ issued a new rule allowing federal executions to be carried out "in any manner consistent with [f]ederal law," including electrocution, lethal gas, and firing squad. In January 2025, DOJ's Office of Legal Policy concluded that "there remains significant uncertainty about whether the use of pentobarbital as a single-drug lethal injection causes unnecessary pain and suffering" and concluded that DOJ should not use it until that uncertainty is resolved. Further, in April 2026, the Office of Legal Policy said that DOJ should "consider alternative methods of execution when appropriate to promptly achieve finality in death penalty cases," including firing squad, electrocution, and lethal gas.

The U.S. military last executed a military prisoner in 1961 (John Bennett), and the method used was hanging. In 2026, the U.S.

Army announced that it has set a date for Nidal Hasan to be executed by firing squad.

All death penalty states authorize lethal injection as an execution method, and some also authorize alternative methods including electrocution, lethal gas, hanging, and firing squad. In South Carolina, electrocution is the default method, and in Idaho, firing squad is now the primary execution method. In some states, inmates may choose the method of execution, depending on the circumstances. Some states have also authorized any execution method that has not been declared unconstitutional.

In September 2026, the state of Tennessee attempted and failed to execute Christa Pike by lethal injection.

Criminal Procedure and Federal Crimes Punishable by Death

DOJ's death penalty procedure is based on the FDPA, codified at Title 18, Sections 3591-3599, of the *U.S. Code*. The decision to seek or not seek the death penalty must be considered by the Attorney General's Review Committee on Capital Cases with input from DOJ's Capital Case Section and approved by the Attorney General. As outlined in the *U.S. Code*, murder is a federal capital offense if committed under certain jurisdictional and/or aggravating circumstances. Some federal capital offenses, including espionage and treason, do not necessarily involve the death of another, but DOJ has not sought the death penalty for a crime other than murder since enactment of the FDPA.

All current federal death row inmates were sentenced to death for murders of multiple victims that involved aggravating factors, including use of weapons of mass destruction. The most recent addition to federal death row is Robert Bowers, who was convicted of 22 death-penalty-eligible offenses (including hate crimes resulting in death) stemming from his attack on congregants at the Pittsburgh Tree of Life synagogue in 2018. A federal jury unanimously found Bowers death-eligible, and according to media reports, the U.S. Court of Appeals for the Third Circuit is currently hearing arguments on whether to vacate Bowers's death sentence.

Public Opinion of the Death Penalty

Americans' responses to public opinion polling questions about capital punishment have varied over time and depend on how the questions are framed. In 2026, approximately 49% of Gallup survey respondents reported that they were in favor of the death penalty when asked, "Are you in favor of the death penalty for a person convicted of murder?" Gallup has asked this question in its polling since 1937. In 1965, Gallup reported the lowest percentage in favor of the death penalty (42%), and in 1994, support peaked at 80% in favor. In 2019, when asked to choose between the death penalty and life imprisonment with absolutely no possibility of parole for a person convicted of murder, 36% of Gallup respondents preferred the death penalty, and 60% chose life imprisonment with no possibility of parole. Gallup has not asked this question since 2019.

Considerations for Congress

Given the remaining individuals on both federal and military death rows, the planned execution of Nidal Hasan, uncertainty around the use of lethal injection as an execution method, and federal/military application of the death penalty overall, Congress may wish to conduct oversight or legislate in this area.

Congress may seek to reexamine, eliminate, reaffirm or add the death penalty as a punishment for certain crimes, subject to constitutional limitations. In the 119th Congress, H.R. 7702 would authorize the death penalty for certain sexual abuse offenses against children, while H.R. 8940/S. 4608 would prohibit the death penalty for any violation of federal (or military) law.

As DOJ considers alternative methods of execution, and as the military has announced plans to use a firing squad for the first time since 1945, Congress could choose to conduct oversight over how DOJ and/or the military carry out executions. Congress could review, add, or remove methods of execution, subject to constitutional limitations, among other legislative options. One bill in the 119th Congress (H.R. 8922) would amend Title 18, Section 3596, of the *U.S. Code* to specifically provide that a sentence of death may be carried out by lethal injection or hanging.

Given the judiciary's role in deciding whether the application of the death penalty is consistent with the U.S. Constitution, the Senate may consider judicial nominees' opinions on such matters during their confirmation hearings. Further, given the Attorney General's role in setting death penalty policy, the Senate may consider nominees' positions on the matter. And lastly, Congress could propose to amend the Constitution to explicitly allow or explicitly disallow the death penalty as a form of punishment beyond the Constitution's current express referencing of capital punishment.

There are a number of issues surrounding death penalty policy that Congress may consider in its legislative role. These may include sentencing justifications, sentencing criteria, wrongful convictions of those found guilty of capital crimes, and other issues that death penalty scholars have researched over the past several decades. Congress may request a review of policy from the Comptroller General or may establish special panels or hold hearings to review capital punishment in the United States.

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