



# The Federal Death Penalty

Updated December 1, 2020

In July 2020, under [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, ending a 17-year moratorium on the federal death penalty. Since the beginning of July, eight inmates have been executed and [several more federal death row inmates are scheduled to be executed](#) in December and January.

This Insight focuses on *federal* death penalty policy in the context of death penalty practice in the country overall. Most death row inmates in the U.S. reside on *state* death rows in state prisons across 29 states, while *federal* death row inmates reside in various federal prisons and are sent to U.S. Penitentiary Terre Haute in Indiana to be executed.

## Capital Punishment Policy

The *federal* government practiced capital punishment from the country's beginning 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. From 1976 through November 30, 2020, the federal government executed 11 individuals, including 8 in 2020. As of that date, there are 54 inmates on [federal death row](#). While the U.S. military justice system has capital punishment as a sentencing option, it has not executed anyone since 1961. As of April 2020, [four individuals reside on the military's death row](#).

Since the *Gregg* decision in 1976, [most executions in the United States have been carried out by the states](#); from 1976 through November 30, 2020, states have executed 1,516 individuals. More than [2,500 individuals currently reside on death row](#) across 29 states, including one inmate in New Hampshire even though it abolished the death penalty in 2019. Twenty-two states and the District of Columbia do not have the death penalty.

## 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

**Congressional Research Service**

<https://crsreports.congress.gov>

IN11474

the federal government. [Most have not opted in](#). For certain federal crimes, the Department of Justice (DOJ) may seek the death penalty whether a tribe has opted in or not. In 2020, the federal government [executed a tribal member of Navajo Nation 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 federal government and U.S. military. In November 2020, [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. While 28 states use lethal injection as their primary method, some also have alternative methods including electrocution, lethal gas, hanging, and firing squad. In some states, inmates may choose the method of execution, depending on the circumstances.

## Criminal Procedure and Federal Crimes Punishable by Death

[DOJ’s death penalty procedure](#) is based on the FDPA, and is codified at [18 U.S.C. Sections 3591 to 3599](#). 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 the DOJ, [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 a number of jurisdictional and/or aggravating circumstances](#). A few federal capital crimes, including espionage and treason, do not (necessarily) involve an individual causing 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 murder of varying degrees and types, the most common being drug-related killings. One comparatively recent addition to federal death row is [Dylann Roof](#), who killed nine parishioners at a Charleston, SC, church in 2015. Roof, among other crimes, was convicted of nine counts of using a firearm to commit murder and nine counts of obstruction of religious exercise resulting in death, both of which are punishable by death.

## Public Opinion of the Death Penalty

Americans’ responses to public opinion polling questions about capital punishment vary depending on how the questions are framed. In 2020, [approximately 55% 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?” In 2019, when respondents were asked, “if you could choose between the following two approaches, which do you think is the better penalty for murder—[... the death penalty (or) life imprisonment, with absolutely no possibility of parole]?”, 36% of Gallup respondents reported that they think the death penalty is better, and 60% chose life imprisonment with no possibility of parole.

## Considerations for Congress

Given the recent resumption of federal executions, Congress may seek to reexamine or reaffirm the death penalty as a punishment for certain crimes. Congress could choose to conduct oversight of how DOJ carries out executions. Congress could review, add, or remove crimes that are punishable by death, subject to constitutional limitations, among other legislative options.

In the 116<sup>th</sup> Congress, various bills have been introduced that would change federal capital punishment. For example, several would abolish the death penalty in the U.S. Code or the Uniform Code of Military Justice. Others would eliminate the death penalty as a penalty option if death results while depriving an [individual’s rights under the color of law](#). Alternatively, some bills would expand the death penalty. For example, some would expand the list of aggravating factors in death penalty determinations to include

killing or targeting first responders, while one bill would add the death penalty as a penalty option for [certain drug offenses](#) involving fentanyl.

## Author Information

Lisa N. Sacco  
Analyst in Illicit Drugs and Crime Policy

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.