

Alabama bought execution drugs on the black market

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Alabama lawmakers have found themselves shaken by a nationwide crisis concerning the death penalty, sparked by the gruesome execution of Clayton Lockett by the state of Oklahoma in 2014. Executioners injected Lockett first with the sedative midazolam, which failed to anaesthetize him. He was conscious and aware when the second and third injections, used to paralyze him and then stop his heart, took effect.

A recent article in the *Atlantic* detailed Lockett's torturous last hour and exposed a tangled labyrinth of lawlessness and secrecy concerning lethal injection protocols in many states, including Alabama. Midazolam's maker, Akorn pharmaceuticals, has stated publicly that it does not support the use of midazolam for lethal injections and has demanded that Alabama return its supply in exchange for a full refund.

The Supreme Court of the United States is set to review Oklahoma's use of the drug. Last March, Alabama's district judge Keith Watkins announced that Alabama was temporarily staying executions in anticipation of the review.

For more than a decade, sodium thiopental—a surgical anesthetic—was a mainstay in lethal injection protocols; the first of three drugs administered in most lethal injection combinations, it rendered death penalty victims unconscious before the second and third injections paralyzed them and stopped their hearts. In 2010, the Food and Drug Administration found contaminants in sodium thiopental batches and took it off the market. Since then, Alabama has been one of several states desperate for substitutes.

According to the *Atlantic* article, Alabama resorted to procuring sodium thiopental and another drug, pentobarbital, from black market sources overseas; in 2011, the Drug Enforcement Agency seized the state's illegal supply of the anesthetic.

At this point, it appears that Alabama decided to procure midazolam. Midazolam, which is not an anesthetic but a sedative, has failed in numerous executions—Lockett's being the most visibly gruesome—to render the victims unconscious before the paralytic agents took effect. Akorn maintains that it has not sold midazolam to Alabama. Alabama Department of Corrections spokesman Bob Horton has said that the state is not prepared to reveal its source for midazolam.

In 2011, death row inmate Thomas Arthur challenged the state's lethal injection procedure, stating that it was a violation of 14th Amendment rights guaranteeing equal protection of laws, specifically laws against cruel and inhumane punishment. Arthur's contentions hinge upon claims that state officials do not routinely check for consciousness after administering the first injection to death row inmates.

While Alabama officials have resisted revealing which drugs the state has purchased or who has supplied them, court documents from a death penalty appeal in February demonstrate that Alabama's attorney general submitted materials from Akorn as "the manufacturer's insert" for its intended method of execution. US District Judge Keith Watkins granted Arthur a stay of execution in February and reaffirmed that the state was staying lethal injections until the Supreme Court reached a decision in the Lockett case.

Alabama's lawmakers have responded to these developments by reaffirming their support for the death penalty, pushing to expand capital murder sentencing, and attempting to make their execution procedures more opaque. In March, the state House of Representatives pushed through a hastily drafted bill to reinstate the uniform use of the electric chair—last used in 2002—for executions should drugs for its lethal injections be banned or become otherwise

unobtainable.

The bill, called the “Preservation of Capital Punishment Act,” was amended to prohibit the publication of any information on the state’s methods of execution, including the constituents of any lethal injection drugs and the makers of those drugs. The sponsor of the bill, Representative Lynn Greer, stated that it was important to protect those involved in executions—from state officials to drug manufacturers—from “harassment” by anti-death penalty advocates. The bill also expands the definition of capital murder. It was passed 76-26.

Alabama sentences more people to death and executes more people per capita than any other state in the United States. In 2009, Alabama, a state populated by 4.5 million people, handed down more death sentences than Texas, with a population of 24 million.

A defendant in a capital murder case in Alabama walks into the courtroom with the scales tipped precariously toward death from the outset. Death penalty opponents are stricken from serving on capital murder cases. Prosecutors in Alabama are not required to gain a jury’s unanimous support for a death sentence; only 10 jurors are required for a verdict of death. Even when a jury votes unanimously for life sentences, though, judges are allowed to override a jury sentence of life in order to impose the death penalty.

Alabama is one of three states to provide for judicial override of sentences, but it is the only state in which judges are allowed to override life sentences. Twenty percent of Alabama’s death row inmates were sentenced to death by judicial override. Judges have used judicial override to impose death in cases where the defendant was mentally disabled; they’ve also used it to condemn seven minors, the youngest of whom was 15. Judges have also imposed the death sentence in cases where the defense attorneys had fallen asleep in the middle of proceedings.

There are several instances of blatant judicial capriciousness. In one case, a judge who overrode a life sentence stated, “the sociological literature suggests Gypsies intentionally test low on standard IQ tests.” In another, the judge stated in court that he felt obligated to sentence a white teenager to death because he had previously sentenced three black people to death.

Once a person is sentenced to death in Alabama, there is little hope of avoiding execution. The state caps

payments to defense attorneys at \$1,000 per appellate court appearance. When 95 percent of death row inmates are indigent, this deters appeals, although lawmakers like Representative Greer cite the cost of appeals as expenses the public cannot afford. Many death row inmates do not have legal counsel once they have been convicted.

Seven Alabama death row inmates have been exonerated over the years. Despite this fact, lawmakers have persistently defended the state’s right to execute its citizens. Not only that, these same lawmakers have sought to exempt the state from what little oversight exists in its application of the death penalty. While Alabama stands out for the particularly arbitrary way it imposes and carries out the death penalty, it is not the only one fighting for its right to kill its own people.

Thirty-two states allow the death penalty. In response to the challenges posed by Clayton Lockett’s case, several of those states have doubled down on efforts to maintain executions. Utah, for example, has reinstated the firing squad.

Virginia lawmakers, like Alabama’s, have sought to reinstate the electric chair. Tennessee’s governor recently signed a bill into law that would allow his state to electrocute its citizens. In Oklahoma, where Clayton Lockett died so painfully, the state can now legally asphyxiate inmates to death with nitrogen gas.

The death penalty’s defenders have called the institution an “important symbol” of American justice. There is no doubt that the death penalty is an important symbol in America, but not of justice. In the face of increasing police impunity, diminished rights of the accused, and decreased funding for forensic investigations and appeals, the death penalty is a symbol of the state’s enmity toward the population.



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