

# Arizona invites lawyers for death row inmates to provide execution drugs

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Unable to procure the drugs needed for lethal injections, the Arizona department of corrections is now inviting lawyers for death row inmates to provide the drugs to be used to kill their clients.

According to Arizona's new execution protocol issued by Corrections Director Charles Ryan last month, "the inmate's counsel or other third parties acting on behalf of the inmate's counsel" may provide the director with the barbiturates pentobarbital, a sedative, or sodium thiopental, an anesthetic, for one or three-drug methods, as long as they are able to obtain a sufficient quantity and quality of the drug "from a certified or licensed pharmacist, pharmacy, compound pharmacy, manufacturer, or supplier."

Attorneys balked at the suggestion, while critics have lampooned the proposal as do-it-yourself (DIY) or bring-your-own-drug (BYOD) executions.

The clause is "unprecedented, wholly novel and frankly absurd," Megan McCracken, a lethal injection expert at the University of California Berkeley School of Law, told the *Guardian*.

"A prisoner's lawyer cannot obtain these drugs legally, or legally transfer them to the department of corrections, so it's hard to fathom what the Arizona department was thinking in including this nonsensical provision as part of its execution protocol," she said.

The policy also poses ethical issues for lawyers who are charged with defending the rights of their clients, not assisting the state in executing them.

States have found it increasingly difficult to acquire these drugs since the European Commission banned the export of drugs to the US for use in executions in 2011 and 2012. Many American companies followed suit. In 2016, Pfizer took measures to block the sale of any of its products to be used in executions, eliminating the last source of FDA-approved drugs for lethal injection.

A number of states have attempted to skirt the restrictions by seeking out drugs from the loosely regulated compounding pharmacies or importing them from overseas. In 2015, for example, Arizona paid nearly \$27,000 to illegally import sodium thiopental from India, but FDA officials blocked the shipment at the airport.

In response to the ban on the drugs, other states, such as Mississippi and Utah, are reverting back to even more barbaric forms of execution like the gas chamber, electric chair, and firing squad.

States have also tried to get around the ban by substituting these drugs with experimental drug cocktails, which have resulted in a number of horrifying botched executions.

In Ohio in January 2014, Dennis McGuire was injected with a combination of midazolam, a sedative and anesthetic, and hydromorphone, a painkiller. Normally lethal injections take 10 minutes, but he writhed in pain for 25 minutes before dying. Midazolam, as a number of botched executions make clear, is an unreliable anesthetic.

The following April in Oklahoma, Clayton Lockett was injected with an experimental cocktail. During the 43-minute execution, he kicked, struggled, and attempted to speak; the doctors finally halted the execution after his vein had "blown," but he succumbed to a heart attack minutes later.

Three months later in Arizona, Joseph Wood was injected with a combination of midazolam and hydromorphone. Woods repeatedly gasped and snorted for nearly two hours before expiring.

"He gulped like a fish on land," according to a reporter with the *Arizona Republic* who witnessed the execution. "The movement was like a piston: The mouth opened, the chest rose, the stomach convulsed. ...

It was death by apnea. And it went on for an hour and a half.”

In the aftermath of the gruesome botched execution, Arizona placed a temporary hold on executions. The state’s new protocol is a callous ploy to get around these restrictions.

Nonetheless, states continue to employ midazolam in lethal injections, such as in the execution of Ronald Smith in Alabama last month, which lasted for 34 minutes.

As of July 1, 2016, Arizona had 126 death row inmates, according to the Death Penalty Information Center. Arizona has executed 37 people since 1976. In the US, there are 2,905 death row inmates, only slightly lower than the peak of 3,593 in 2000.

Thirty-one states, along with the federal government and US military, currently have the death penalty. Since the Supreme Court reinstated the death penalty in 1976, 1,446 individuals have been executed in the United States.

More than 150 people on death row have been subsequently found innocent since 1973. In June 2015, Texas executed Lester Bower, despite evidence that he likely did not commit the crime he was executed for.

The United States remains the only Western country that has not banned the death penalty.

In 2002, the Supreme Court ruled it unconstitutional to execute the intellectually disabled, but left it up to the states to determine what constitutes an intellectual disability, allowing for the execution of the intellectually disabled in Texas and Georgia.

The court ruled in 2005 that it was unconstitutional for defendants to receive the death penalty if they were juveniles at the time the crime was committed.

In the 2015 case of *Glossip v. Gross*, the Court ruled 5-4 that the use of midazolam did not constitute cruel and unusual punishment because the Oklahoma prisoner in the case had not, in the words of Justice Samuel Alito, “identified any available drug or drugs that could be used in place of those that Oklahoma is now unable to obtain.”

As Justice Sonya Sotomayor noted in a dissent, by the logic of the majority decision, “it would not matter whether the state intended to use midazolam, or instead to have the petitioners drawn and quartered, slowly tortured to death or actually burned at the stake.”



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