

Plea for Execution Drug

Faced With Shortage of Anesthetic, Oklahoma Seeks Court Permission for New One

By [NATHAN KOPPEL](#)

Oklahoma is preparing to argue in court next week that a drug used to euthanize animals can also be used to execute death row inmates amid a nationwide shortage of an anesthetic used in executions.

It is one of a number of states scrambling to find the drugs needed to perform capital punishment due to a shortage of thiopental sodium, the only anesthetic that states have so far used in lethal injections, according to lawyers.

States tend to adopt the death-row methods used by other states, so the Oklahoma court decision could have an impact elsewhere in the U.S.



Agence France-Presse/Getty Images

The lethal injection room used for executions inside the Florence, Ariz., prison complex.

Hospira Inc., the sole U.S. maker of thiopental, announced this summer that it had ceased production of the drug until 2011, citing a shortage in one of thiopental's raw ingredients.

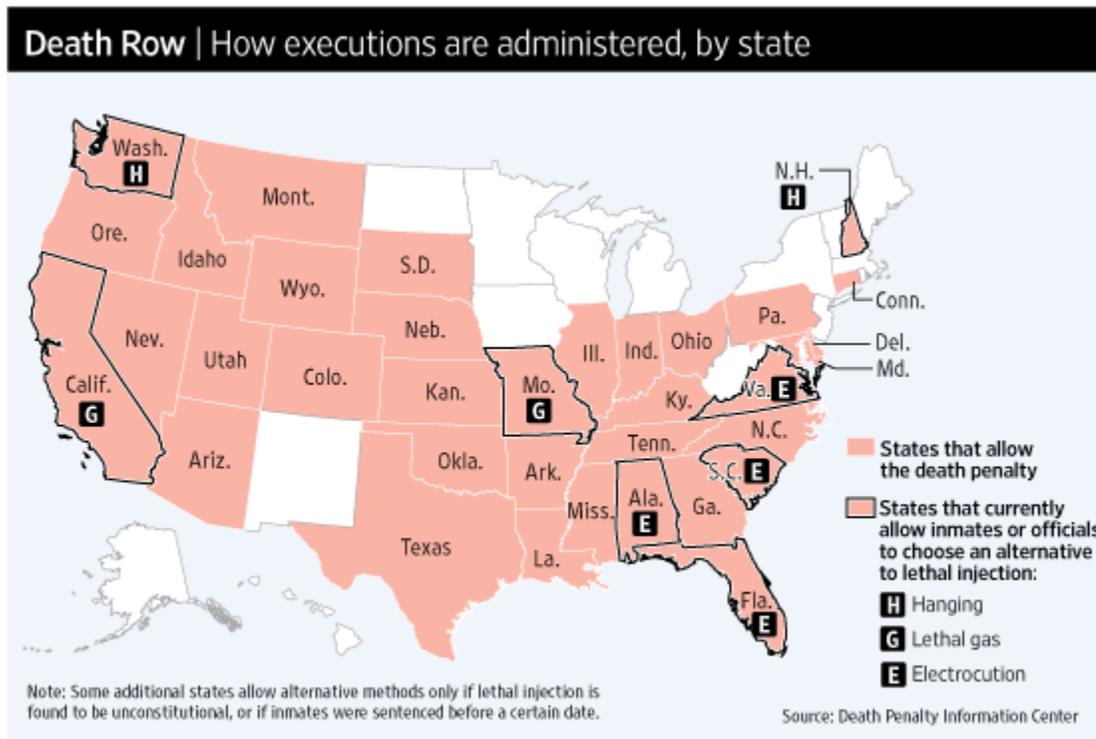
Oklahoma, which is scheduled to execute John David Duty on Dec. 16, has said that veterinarians regard pentobarbital, which it is proposing as a substitute anesthetic for death row inmates, "as an ideal anesthetic agent for humane euthanasia in animals," that is "substantially" similar to thiopental, according to a court filing last month.

If approved, pentobarbital could be a new standard for lethal injections.

Attorneys for Mr. Duty, who was sentenced to death for murdering his cell mate in 2001, have said in court papers they didn't want their client to be a guinea pig for pentobarbital. The drug "is untested, potentially dangerous, and could well result in a torturous execution," the attorneys stated in a court filing. Oklahoma City federal judge Stephen Friot is due to hear the arguments next week.

The thiopental shortage has required some states to delay executions. Defense lawyers say their clients' lives now depend partly on whether prison personnel can find as little as three grams of the drug, which is used to render an inmate unconscious before other drugs are injected to cause paralysis and stop an inmate's heart.

"It's like a game of Russian roulette," said Stephen Ferrell, counsel to Stephen Michael West, who is due to be executed on Nov. 30 by Tennessee, another state grappling with a shortage.



Many states, including Arizona, California, Kentucky and Tennessee, have combed domestic or overseas suppliers in search of thiopental, in some cases successfully. Other states, such as Texas, have a sufficient stockpile on hand to cover near-term executions, but they could run into

delays next year if Hospira doesn't make a new supply. In the U.S., the drug has fallen out of favor among physicians, who more commonly prescribe other anesthetics.

Efforts to obtain thiopental from foreign sources have spawned legal battles. One suit filed last week in London alleges that Tennessee ordered a supply of thiopental from Britain to carry out the scheduled January execution of Edmund Zagorski.

"We have looked at a number of different providers of thiopental sodium in the United States, some of which have sources overseas," said Dorinda Carter, a spokeswoman for the Tennessee Department of Correction, declining to provide more details.

Defense lawyers say that inmates are at a heightened risk of suffering severe pain during executions if states use imported or unproven drugs. A foreign supply of thiopental, particularly if it comes from a source not approved by the Food and Drug Administration, could be less powerful than the domestic variety, defense attorneys have said. They contend further that prison officials might not use proper care in transporting thiopental, potentially exposing it, for example, to temperature extremes that could hurt its effectiveness.



Associated Press

Jeffrey Landrigan, above, was executed in Arizona on Oct. 26 with thiopental sodium imported from Britain. A shortage of the drug has prompted states to search abroad, but that has spawned legal battles.

"Whether or not an execution is humane turns entirely on whether thiopental deeply anesthetizes the inmate," said Megan McCracken, an attorney with the Death Penalty Clinic at the University

of California Berkeley School of Law. "That is why the provenance of thiopental is so important."

In California, U.S. District Judge Jeremy Fogel called off the scheduled Sept. 30 execution of rapist-murderer Albert Greenwood Brown Jr., which would have been the first death sentence carried out in this state in nearly five years, due partly to fact that the state's supply of thiopental was due to expire in October. The state later obtained a supply of the drug that does not expire until 2014.

Tennessee obtained thiopental from either Arkansas or Georgia to carry out the West execution, according to Mr. Ferrell, citing state documents he reviewed. "I would trust hospitals to transport drugs safely, but I doubt that departments of correction use the same level of care," said Mr. Ferrell, a federal defender in Tennessee. Tennessee would not comment on the drug's source.

Concerns over thiopental are compounded, defense lawyers said, by the fact that prison officials have been largely secretive about the steps they are taking to locate thiopental on the grounds that suppliers don't want their identities disclosed.

"To protect our ability to get these drugs, we want to be sure we protect our sources," said a spokeswoman with the Arizona Attorney General's Office, which acquired thiopental from Britain to perform the Oct. 26 execution of Jeffrey Landrigan. After Arizona's move was challenged, the U.S. Supreme Court signed off on the imported thiopental.

Hospira stressed in a recent statement that thiopental is designed to save lives during surgical procedures and "is not indicated for capital punishment."

The debate over thiopental, including whether states can use a substitute anesthetic, baffles Dr. A. Jay Chapman, the former medical examiner of Oklahoma who is credited with picking thiopental in the 1970s as a suitable drug for lethal injections. "I have seen what [death-row inmates] do to other people: torture, rapes, lacerated tissues," said Dr. Chapman, who now lives in California. "If they have a bit of pain exiting this world, it is of no great concern to me."

—*Jeanne Whalen contributed to this article.*

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