

States Delay Executions Owing To Drug Shortage

by [Kathy Lohr](#)

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Nate Jenkins/AP

Nebraska officials unveiled the lethal injection chamber at Nebraska State Penitentiary in July. Nebraska is one of the 33 states that use the three-drug cocktail in executions.

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Some states are delaying executions because of a shortage of sodium thiopental, a drug used as an anesthetic and given to prisoners during lethal injections.

It's one of three drugs used for lethal injection in more than 30 states.

States' problems getting the drug could raise questions about the legality of lethal injection.

'Concerns About Haphazard Method'

Some states have been trying to get additional supplies of the drug for months. In August, Gov. Steve Beshear was asked to sign death warrants for three prisoners in Kentucky but could set only one execution date because it only had a single dose.

"We've had the drug on back order since March," says Todd Henson, a spokesman for the Kentucky Department of Corrections. "The company that supplies it to us advised that they were unable to produce it because they weren't able to get the active ingredient from their supplier."

Hospira, based in Lake Forest, Ill., is apparently the only manufacturer of the drug. The company has told Kentucky officials it won't be available until early next year.

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- James Hardiman, legal director of the ACLU of Ohio

Two states, Washington and Ohio, use only sodium thiopental in their executions. They administer enough of the sedative to cause an overdose, which kills the prisoner. Ohio officials won't discuss how the shortage will affect upcoming executions.

But questions about lethal injection are not new to Ohio. A year ago, corrections officers spent two hours trying to find a vein in a prisoner, but never did. That execution was stopped. Now, the drug shortage complicates the issue.

"I think it's definitely a problem," says James Hardiman, legal director of the ACLU of Ohio. "Even if there is enough for the initial execution, there is not enough for backups. So we've got — have had — some very serious concerns about this haphazard method of implementing the ultimate punishment."

Ohio officials say they have a backup drug, but would not elaborate. Still, implementing the use of a different drug may be a problem.

In Oklahoma, officials want to use a substitute drug. But a judge didn't agree, and last month stopped an execution.

"States can't just change their method of execution without either some legislation — or at least an administrative procedure — that goes before public comment," says Richard Dieter with the Death Penalty Information Center, a group that opposes the death penalty. "And so to make the change is a six-month or a year process."

Three-Drug Cocktail

The U.S. Supreme Court decision that upheld lethal injection focused on the use of the three-drug cocktail. And Dieter says that means states can't carry out lethal injection however they want to.

"If you start to change the drugs, you at least have to make a showing that this has been vetted, tested," he says. "What evidence do you have that this isn't going to be severely painful, and unreliable?"

Legal experts say the shortage has created new questions.

Deborah Denno, a professor at Fordham University Law School, says in states where only this drug is used, executions should not go forward. Other states, Denno says, will have a problem.

"This is the drug that's supposed to induce unconsciousness in an inmate, and if you don't have it, that's per se going to be cruel and unusual [punishment] because the second two drugs are a paralytic agent and a toxic and that's going to be incredibly painful," she says. "And there's consensus on that being inhumane."

More than a dozen executions are scheduled before the end of the year. And more legal challenges are expected as corrections departments try to figure out how to proceed without the use of this key drug.