**Capital Punishment:**
Recent Enactments and 2016 Ballot Initiatives

### Recent Enactments

**2016 Enactments**

**Florida HB 7101**—Modifies sentencing protocols in response to U.S. Supreme Court Case *Hurst v. Florida*. Removes provisions authorizing a court to override a jury’s decision to impose life without the possibility of parole. Requires prosecutors to give notice of their intent to seek the death penalty. Requires juries to find each aggravating factor by unanimous vote for a defendant to be eligible for a death sentence. Requires the jury to determine whether aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation. Provides that at least 10 out of the 12 jurors must determine that death is an appropriate sentence for the recommendation of the jury to be a sentence of death. Authorizes a court to impose life without the possibility of parole if the jury unanimously recommends a sentence of death.

**Mississippi SB 2239**—Specifies the manner for inflicting the punishment of death by continuous intravenous administration of certain lethal chemicals. Provides for the selection of an execution team and requires that the identity of the members thereof, as well as that of certain witnesses or certain suppliers of lethal injection chemicals remain confidential. Prohibits certain disciplinary action against licensed team members or suppliers and provides for civil and criminal immunity.

**Tennessee SB 2342**—Requires all biological evidence collected for a criminal offense in which one or more of the defendants receive a sentence of death to be preserved until all defendants are executed, otherwise die, or all related charges are dismissed. Requires an investigating law enforcement agency to preserve any biological evidence collected but never introduced at trial.

**Virginia HB 815**—Specifies that if the Director of the Department of Corrections certifies that lethal injection is not available as a method of execution, electrocution shall be used instead. Provides that it shall not be certified that lethal injection is not available unless all reasonable effort has been made to procure such lethal substances.

**2015 Enactments**

**Arkansas HB 1012**—Modifies execution procedure concerning victims and witnesses.

**Arkansas HB 1751**—Modifies state law concerning drugs used for lethal injection; provides confidentiality for persons who supply lethal injection drugs or participate in an execution.

**Georgia HB 71**—Requires notice be provided to a victim’s family and the district attorney when a clemency hearing is requested. Allows both to provide written input and requires the parole board to provide a written explanation when it commutes a death sentence.

**Idaho SB 1040**—Requires capital defendants to file claims of ineffective assistance of appellate counsel within 42 days of the Idaho Supreme Court issuing the final remittitur in the unified appeal.

**Indiana SB 8**—Adds the aggravating factor of decapitating or attempting to decapitate the victim while the victim is still alive to make a charge of murder eligible for capital punishment.
Indiana HB 1304—Adds aggravating factors to make murder eligible for capital punishment including committing a murder at a school or a building used primarily for religious worship.


Louisiana SCR 100—Requests that the Louisiana State Law Institute study and make recommendations regarding accelerating the capital punishment appeals process.

Nebraska L 268—Repeals the death penalty and all related statutory provisions and makes the maximum penalty for murder life imprisonment with the possibility of parole.

Nevada AB 69—Repeals provisions of law requiring the Nevada Supreme Court to decide an appeal from judgment imposing the death penalty within a certain period of time.

North Carolina HB 173—Conforms state law to the United States Supreme Court holding in Hall v. Florida, allowing defendants to present additional evidence of an intellectual disability even if their intelligence quotient (IQ) is higher than 70.

North Carolina HB 774—Authorizes medical professionals other than a licensed physician to monitor injection of required lethal substances as long as a licensed physician is present on the premises and available to examine the body after execution and pronounce the person dead. Defines medical professional to include a physician assistant, nurse practitioner, registered nurse, emergency medical technician, or emergency medical technician-paramedic. Removes language requiring lethal injection drugs to include an ultrashort acting barbiturate in combination with a chemical paralytic agent. Adds to the list of confidential public records the name, address, qualifications, and other identifying information of any person or entity that manufacturers, compounds, prepares, prescribes, dispenses, supplies, or administers drugs or supplies obtained for any purpose authorized by law.

Oklahoma SJR 31—Directs the Secretary of State to refer to the people a proposed amendment to the Oklahoma Constitution adding Section 9A to Article II which states that all death penalty statutes are in effect, that the method of execution can be changed and that the death penalty is not cruel and unusual punishment.

Oklahoma HB 1879—Specifies that if lethal injection is held to be unconstitutional, then a sentence of death is to be carried out by nitrogen gas.

Pennsylvania HR 143—Condemns Governor Tom Wolf’s moratorium on capital punishment and calls upon him to reverse his action and carry out his constitutional duty to enforce the law.

Texas SB 1743—Amends the Government Code to expand the powers and duties of the Office of Capital Writs (OCW) and to rename that office the Office of Capital and Forensic Writs. Expands the duties of the office beyond post-conviction matters in death penalty cases to include habeas corpus and other post-conviction matters in cases involving certain scientific evidence that becomes available after a conviction.

Texas SB 1697—Provides for confidentiality of identifying information regarding persons, procedures and substances used in an execution. Includes identifying information of any person who participates in an execution procedure, including a person who uses, supplies, or administers a substance during the execution and any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.

Utah HB 11—Provides that if substances are not available to carry out an execution by lethal injection on the date of the warrant then the execution shall be carried out by firing squad.

Utah HJR 26—Gives the Legislative Management Committee items of study it may assign to the appropriate interim committee including capital punishment and methods of execution.
Wyoming HB 49—Provides confidentiality for the identity of persons or entities involved in administering an execution.

2014 Enactments

Colorado HB 1214—Adds first degree murder of an emergency services provider to the list of aggravating factors that make a defendant eligible for capital punishment.

Louisiana HR 142—Directs the Department of Public Safety and Corrections to study the best practices in administering the death penalty in the most humane manner.

Louisiana SCR 54—Creates the Capital Punishment Fiscal Impact Commission to conduct a study of the fiscal impact of capital punishment in the state. Requires the commission to examine the costs of prosecuting and adjudicating all potential capital murder cases including costs relating to legal counsel, investigation, the cost of incarceration of persons awaiting trial, psychiatric and medical evaluations, expert witnesses, requests for clemency, and other factors.

Ohio HB 663—Provides confidentiality and license protection for entities involved in executing a sentence of capital punishment by lethal injection. Creates a schedule of fees to be paid to counsel in a capital case. Specifies that attorney client privilege does not apply in a capital case where the client subsequently claims ineffective counsel. Provides jury instructions. Creates a study committee to examine how homicide victims’ families can best be supported and addresses post-conviction relief petitions.

2013 Enactments

Florida HB 7083—Authorizes the Governor to sign a warrant of execution if the Supreme Court clerk does not comply. Requires the Supreme Court to report capital post-conviction cases and requires courts to report findings of ineffective counsel. Provides for payment of private registry attorneys to represent offenders in post-conviction cases. Prohibits conflicts of interest and provides for public records in post-conviction capital cases proceedings.

Georgia HB 122—Provides for the confidentiality of identifying information of any person or entity who participates in or administers the execution of a death sentence, and the identifying information of any person or entity that manufactures, supplies, compounds, or prescribes the drugs, medical supplies, or medical equipment utilized in the execution of a death sentence.

Kansas HB 2043—Modifies provision regarding notice of intent to seek capital punishment.

Maryland SB 276—Repeals the death penalty and procedures and requirements related to the death penalty. Provides that in specified cases in which the state has filed a notice to seek a sentence of death, the notice shall be considered withdrawn and it shall be considered a notice to seek a sentence of life imprisonment without the possibility of parole under specified circumstances.

Mississippi SB 2223—Adds as aggravating factor for capital cases certain acts of terrorism committed to influence the policy of a governmental entity by intimidation or coercion, or to affect the conduct of a governmental entity by mass destruction or assassination.

Nevada AB 444—Requires the legislative auditor to conduct an audit of the fiscal costs of the death penalty. Requires that the audit include an examination and analysis of the costs of prosecuting and adjudicating capital cases compared to noncapital cases.

North Carolina SB 306—Excludes the administration of a lethal injection from the practice of medicine. Codifies the process that prohibits regulatory boards from sanctioning health care professionals for assisting in the execution process. Requires the setting of an execution date if any of the events which are provided by statute have occurred. Eliminates the process by which a defendant may use statistics to have a sentence of death reduced to life in prison.
Oklahoma SB 1036—Amends sentencing proceeding requirements upon a conviction or adjudication of guilt of a defendant of murder in the first degree, wherein the state is seeking the death penalty.

Tennessee SB 2580—Specifies that if the lethal injection method of carrying out the punishment of death is found to be unconstitutional or the commissioner certifies to the governor that an essential ingredient for that method is unavailable, the method of carrying out the death sentence is electrocution.

Texas SB 1292—Relates to DNA testing of biological evidence in death penalty capital cases.

2016 Ballot Initiatives

California Proposition 62—Would repeal the death penalty as maximum punishment for persons found guilty of murder and replace it with life imprisonment without possibility of parole. Would apply retroactively to persons already sentenced to death. Specifies that persons found guilty of murder and sentenced to life without possibility of parole would be required to work while in prison as prescribed by the corrections department. Would increase to 60 percent the portion of wages earned by persons sentenced to life without the possibility of parole that may be applied to any victim restitution fines or orders against them.

California Proposition 66—Would change procedures governing state court appeals and petitions challenging death penalty convictions and sentences. Would designate the superior court for initial petitions and limit successive petitions. Would impose time limits on state court death penalty review and require appointed attorneys who take noncapital appeals to accept death penalty appeals. Would exempt prison officials from existing regulation process for developing execution protocols. Would authorize death row inmate transfers among state prisons. Would require death row inmates to work and pay victim restitution. States that other voter approved measures related to death penalty are null and void if this measure receives more affirmative votes.

Nebraska Referendum on LB 268 (2015)—Would retain the death penalty as a possible penalty for the crime of murder in the first degree by repealing Legislative Bill 268, passed in 2015 by the First Session of the 104th Nebraska Legislature.

Oklahoma State Question 776—Would add a new section to the constitution stating that all death penalty statutes are in effect, that capital punishment is not cruel and unusual punishment, and that any method of execution shall be allowed as specified by the legislature unless prohibited by the US Constitution.