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ANALYSIS

# Trump's New Order to Expand the Death Penalty Misses Key Details

The order shows the president's desire for more executions. But it's unclear how the administration will carry out its plans, legal experts say.



President Donald Trump signs an executive order in Washington, D.C., on Monday, Jan. 20, 2025. JIM LOSCALZO/POOL VIA CNP, VIA ZUMA PRESS WIRE

By SHANNON HEFFERNAN and MAURICE CHAMMAH

Shortly after being sworn in, President Donald Trump signed an order to expand the death penalty, confirming a widespread expectation that the Department of Justice may seek capital punishment more often under his administration. The first Trump administration carried out more executions than any president in at least a century. But legal experts say the order is short on details about how the administration will carry out its plans in the face of legal and bureaucratic barriers.

“This executive order is lacking in so many important details that it’s hard to know exactly what’s intended by some of these statements. Much of it sounds more like campaign rhetoric than policy statements,” said Robin Maher, executive director of the Death Penalty Information Center, a nonprofit organization that researches and analyzes the issue.

Pam Bondi, Trump’s nominee for attorney general, fought to maintain death sentences when she was attorney general in Florida.

In the past, the U.S. attorney general has had wide latitude in deciding whether to seek the death penalty in individual cases. Trump’s order instructs the office to pursue federal jurisdiction and seek the death penalty, “regardless of other factors,” for people who murder a law enforcement officer or who are in the country illegally and commit a capital crime.

But Maher said it would be “unprecedented and contrary to established law” for prosecutors to seek a federal death sentence for every capital crime where the defendant is an undocumented immigrant.

Republicans in Congress and state legislatures have long sought to expand use of the death penalty for people who kill police. Under federal law, jurors can consider the targeting of law enforcement as an “aggravating factor” in deliberating over the death penalty when the victim is a federal agent, judge or corrections officer. Several U.S. senators recently introduced the Thin Blue Line Act, which would add local and state police officers, firefighters and other first responders to the law.

Miriam Gohara, a clinical professor of law at the Yale Law School, said the most striking piece of Trump’s order regarded the people who had their sentence commuted from death to life in prison.

Before leaving office, Biden commuted the sentences of 37 people. Trump's order said the attorney general should ensure that those people are "imprisoned in conditions consistent with the monstrosity of their crimes and the threats they pose."

Gohara said that raises legal concerns. "The punishment is being incarcerated. The punishment is not the condition of confinement. That's not legal," she said.

People in maximum-security facilities already face harsh conditions, like the use of solitary confinement. "Are they going to intentionally put some sort of atmosphere in place that is intolerable?" said Gohara. "I can't imagine that is actually something that they could carry out. On the other hand, I don't want to underestimate them either."

Trump's order also said officials will explore whether some of the people whose sentences were commuted can be charged in state courts and receive new death sentences that way. But Gohara was skeptical that prosecutors would spend precious resources on decades-old cases where the person was already in a federal prison for life.

While the Trump administration has no jurisdiction over state cases, the president's order says the federal government will work to ensure that states can keep killing people on death row by helping local governments obtain drugs for lethal injection.

Pharmaceutical companies have been refusing to supply corrections agencies with the deadly drugs, citing moral and business concerns. Some states have abandoned executions, while others have explored alternative ways to kill people, including firing squads and gas chambers.

The order also instructs the attorney general to work to overthrow Supreme Court precedents that "limit the authority of state and federal governments to impose capital punishment." The order does not reference specific cases, but this could be an allusion to Supreme Court rulings that limit the death penalty when the person convicted was under 18 at the time of the crime or has an intellectual disability. It could also refer to Supreme Court rulings that death sentences are inappropriate in cases where the victim does not lose their life. There have recently been efforts in states like Florida to allow capital punishment for the rape of a child.

While the order directs federal prosecutors to seek the death penalty more often, there is no guarantee that they will succeed in any individual case. Roughly half of Americans still support the death penalty in various polls, but a growing number reject it in individual cases when serving as jurors. The decline in support owes to a mix of interrelated factors: changing societal views on mental illness and intellectual disability, aggressive efforts by defense lawyers to present

defendants' childhoods as mitigating factors and reluctance by prosecutors to seek the punishment in the first place. Last year, 26 people were sentenced to death in state and federal courts across the country, compared with a peak of more than 300 a year in the mid-1990s, according to the Death Penalty Information Center. **lul**

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