

Data deficit

Since 1990, Oklahoma has conducted 111 executions, but autopsies have been conducted in less than half those cases.



**BY CARY ASPINWALL | WORLD STAFF WRITER
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The state has conducted autopsies on less than half of the inmates executed in Oklahoma since 1990 and, in many cases, does not perform tests that could show whether inmates were awake and paralyzed as painful drugs flowed into their veins, a Tulsa World investigation has found.

Because state records are inconsistent and blood is sometimes drawn long after inmates die, it is difficult to say how many inmates were conscious when they received potassium chloride, the third drug in Oklahoma's lethal injection process. Medical experts, judges and attorneys for the state agree that potassium chloride is excruciatingly painful if given to a conscious person.

The botched execution of Clayton Lockett on April 29 has sparked a nationwide discussion about the death penalty and new scrutiny in how

Oklahoma and other states put people to death.

The World created a database using 109 medical examiner's reports from Oklahoma inmates executed since 1990, including the levels of anesthetic in their blood following death where available. Experts in anesthesiology and clinical pharmacology reviewed the data to spot issues and problem cases.

Among the World's findings:

- The Oklahoma State Medical Examiner's office conducted full autopsies on all executed inmates until 2000, when state lawmakers passed a measure banning such autopsies except in narrow circumstances. Only 10 out of 50 inmates executed since the law was passed received an autopsy.
- Weights of executed inmates varied widely,



A view of cells on death row in H Unit at the Oklahoma State Penitentiary in McAlester. THE OKLAHOMAN FILE

from 145 pounds to 317 pounds, yet all received the same doses of drugs under the state's execution protocol. Those inmates had widely varying levels of anesthetic in their blood.

- Full or nearly full syringes of anesthetics were returned with inmates' bodies in at least four cases, an apparent violation of Department of Corrections protocol.
- Handling of evidence varied randomly from case to case, with some blood samples being held 30 days and others for five years.
- More than 30 inmates had levels of anesthetic in their blood below what experts say might be necessary to produce sufficient anesthesia. In many cases, state pathologists drew blood hours or days after inmates' deaths and tested it despite those samples being possibly useless in accurately reflecting drug levels.

Medical experts consulted by the World say Oklahoma should investigate the inmates' deaths and revise its lethal injection protocol to ensure inmates do not suffer "cruel and unusual" punishment during executions, violating the Eighth Amendment of the U.S. Constitution.

"I don't have enough data, but there is cause to investigate ... because of the potential for under-dose," said Frank Romanelli, professor and associate dean at the University of Kentucky's College of Pharmacy.

Romanelli has advocated for pharmacy students to learn about lethal injection protocols. He has not testified in legal challenges to the death penalty.

Officials with the Oklahoma DOC and Office of Chief Medical Examiner declined to comment on the autopsy data gathered and analyzed by the World. Attorney General Scott Pruitt's office did not respond to a request for an interview.

During challenges to Oklahoma's lethal injection protocol over the past decade, attorneys for the state have insisted their method is constitutional.

Key court rulings have found that while inmates cannot expect a pain-free death, the state cannot cause more pain than necessary during executions.

While ruling in favor of states' rights to execute by lethal injection in 2008, the U.S. Supreme Court said it was "uncontested" that without a proper dose of anesthetic administered to the inmate "there is a substantial, constitutionally unacceptable risk of suffocation" from the final two drugs used in most state's methods, including Oklahoma's.

In the years since that ruling, at least seven death penalty states have switched to single-drug lethal injection protocols. States also have scrambled to find new drugs as manufacturers have banned the use of their drugs in executions.

Oklahoma's protocol allows DOC to choose one of five drug combinations, including a single dose of an anesthetic called pentobarbital. The state opted instead to use a new three-drug combination featuring a sedative called midazolam in Lockett's execution.

Romanelli said if inmates do not receive a sufficient dose of the initial anesthetic, they may be conscious yet paralyzed before the third drug, potassium chloride, is administered, "which is extremely painful."

In at least 32 cases from 1990 through 2014, Oklahoma medical examiner's reports show levels of anesthetic in inmates' blood were below the threshold used by doctors to render patients unconscious. Each of those executions used a barbiturate — either sodium thiopental or pentobarbital — as the anesthetic in the three-drug cocktail.

Romanelli said the time lapse between when drugs are administered and when blood is drawn heavily influences those test results and the ability to interpret them. In some of the 32 cases, pathologists took samples within an hour, while in others they waited more than one day, records show.

Dr. Mark Heath, a board-certified anesthesiologist and a professor of anesthesiology at Columbia University, also reviewed the inmate autopsy data at the World's request. Heath has provided expert testimony in challenges to lethal injection protocols in Oklahoma and 15 other states.

Heath said the Oklahoma autopsy data shows "that all the prisoners did receive thiopental

or pentobarbital. It does not show whether it was properly delivered into their circulation or whether it was the first drug or the second drug.”

Heath said cases where the level of drugs are below the anesthetic threshold should be investigated to determine why.

In those cases, “that low level is inconsistent with being anesthetized,” he said.

Additionally, the full dose of lethal drugs is not always given, records show.

In at least four cases, full syringes of drugs — including the initial anesthetic — were sent with inmates’ bodies to the medical examiner. The practice appears to violate DOC’s protocol, which requires all drugs to be injected.

In one such case, inmate Olan Robison took 15 minutes to die, according to the medical examiner’s report. One of two syringes of sodium thiopental was returned nearly full with Robison’s body on the night he was executed, March 13, 1992.

Robison’s autopsy shows multiple needle punctures on his arms and bleeding below the surface, indicating problems with his IV.

Law bans autopsies

Preliminary results of an autopsy sought by attorneys for death row inmates indicate Lockett’s IV was inserted improperly. Lockett spent three minutes writhing, mumbling and rising from the gurney before prison officials closed a blind and discovered the drugs had leaked out of his IV.

Department of Corrections director Robert Patton ordered Lockett’s execution halted because the prison had no backup drugs on hand and medical personnel said they could not locate another suitable vein. Lockett died on the gurney 10 minutes later.

Gov. Mary Fallin called for an independent autopsy by the Dallas County Medical Examiner’s Office, which is pending. An investigation headed by Fallin’s public safety commissioner, Michael Thompson, is also pending.

Lockett was sentenced to die in the 1999 killing of Stephanie Neiman, 19, of Perry. Lockett and two accomplices abducted Neiman, two of her friends and a baby.

He shot Neiman twice and ordered her buried in a shallow grave beside a rural road, despite being told she was still alive.

While the state has ordered a full, independent autopsy for Lockett, autopsies are rare following executions in Oklahoma, the World’s investigation shows.

A state law passed in 2000 amended existing law that required the state medical examiner to investigate deaths of all prisoners.

“No autopsy shall be performed on the body of an executed inmate unless requested by the immediate family of the inmate prior to the execution or unless directed by the Department of Corrections or the Chief Medical Examiner,” states the law, sponsored by then-Sen. Glenn Coffee.

The law states the medical examiner “shall not automatically authorize or perform an autopsy” in such cases.

“The Chief Medical Examiner may authorize or perform an autopsy only when the public interest requires it,” the law states.

When Michael Lee Wilson was executed Jan. 9, his last words were “I feel my whole body burning.”

In that case, no autopsy was conducted. A brief medical examiner’s report fails to note how long Wilson took to die or placement of his IVs.

“No acute injuries noted,” it states.

Several death penalty states require coroners to conduct autopsies or investigations following executions, including South Dakota and Georgia.

Romanelli said the state should conduct autopsies and collect better data on levels of drugs in inmates’ blood to ensure the process is constitutional.

“If you have the data you can show one of two things,” he said. “The prison system can show it does what we say it does and the folks were sufficiently anesthetized or we can show it doesn’t do what we say it does.

“Without the data, I don’t understand how anyone could come to the conclusion that it meets the constitutional test.”

Heath said the state’s use of a paralyzing drug is akin to pulling a blind down during an execution, as occurred in Lockett’s case. The drug serves no purpose other than to prevent witnesses from seeing an inmate thrash around, he said.

“In places where prisoners are being paralyzed ... that conceals the critical information about whether or not it was done legally and constitutionally and humanely,” Heath said.

Statements and reactions witnessed during the execution of several of Oklahoma’s condemned inmates indicate they could have been conscious while the second or third drugs were administered.

On Jan. 7, 1999, Kay County killer John Castro said, “I can feel it,” after the drugs began flowing into his veins.

Seven months later, after Norman Newsted’s execution began, he remarked: “I can taste it.”

Both had levels of sodium thiopental in their blood below the level needed for sufficient anesthesia, records show.

The autopsy data shows a handful of cases in which medical personnel made multiple failed attempts to place IVs in inmates’ veins. DOC’s protocol requires an EMT-paramedic “or person with similar qualifications” to place IVs in the inmate’s arms. If the EMT has difficulty starting an IV, the physician takes over the process.

Medical personnel made seven attempts to start an IV on inmate John Bolz in 2006 before placing one in his femoral vein, a procedure also used for Lockett.

Records show the execution crew had to resort to using a single IV line in at least six cases.

Romanelli said starting IVs in such a high-pressure situation makes mistakes more likely.

“You take obese patients and patients with a lot of tattoos, and when you think about the high pressure situation of being in an execution environment. ... It requires a higher level of expertise.”

Execution secrecy law passed quietly

BY CARY ASPINWALL | WORLD STAFF WRITER
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A law that cloaks executions in secrecy and sparked a constitutional crisis in Oklahoma sailed through the state Legislature with scant debate.

When he introduced House Bill 1991 in 2011, then-Rep. Dan Sullivan described his legislation this way: “It changes the provisions as it relates to carrying out the death penalty. This is a request bill from the Department of Corrections and the Attorney General’s Office.”

“It doesn’t change who can witness the deal, does it?” one lawmaker asked.

Sullivan, R-Tulsa, replied that the bill “doesn’t really change that.”

Without further debate, House lawmakers passed the bill 94-0. In the Senate, where debates are not videotaped, the measure received three no votes.

The bill did change procedures for carrying out the death penalty, deleting specific language about the type of drugs that would be administered in lethal injections. However, the bill would have a far more sweeping impact because it also provided complete anonymity to execution participants and suppliers.

The clause, tucked into HB 1991, prevents the public from knowing whether doctors, pharmacists, EMTs and others taking part in executions are qualified.

Three years later, Gov. Mary Fallin would face off against the state Supreme Court over the law, claiming that the court had overstepped its authority in issuing stays for death-row inmates Clayton Lockett and Charles Warner. The inmates challenged the secrecy law, saying it prevented them from ensuring that the process of executing them would be constitutional.

State officials have cited the law in refusing to discuss the training of medical officials who attempted to execute Lockett on April 29. When the inmate was still writhing on the gurney 33 minutes after the lethal injection had started, they stopped the procedure. Lockett, however, died of a heart attack about 10 minutes later from what DOC Director Robert Patton said was “a massive heart attack.”

To ensure there is no record of the participants in executions, the Department of Corrections uses petty cash accounts to pay pharmacists, doctors and others.

State Attorney General Scott Pruitt’s office has said the secrecy is necessary due to threats by death-penalty opponents against pharmacies. When asked for details of such threats, Pruitt’s office declined, saying they are under investigation.

Critics say such laws, which are being adopted rapidly by other states, merely serve to protect doctors and pharmacists from criticism.

A federal judge ordered Missouri to overhaul the way it executed inmates after learning that a doctor with dyslexia had been mixing drugs for executions. That state has a secrecy law similar to

Execution secrecy law

State lawmakers quietly approved a law in 2011 banning release of information about participants in executions. Now that law prevents the public from knowing whether doctors and others who oversee them are qualified.

Here’s what the law says:

“The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings.

The purchase of drugs, medical supplies or medical equipment necessary to carry out the execution shall not be subject to the provisions of the Oklahoma Central Purchasing Act.”

Oklahoma’s.

An expert hired to review Oklahoma’s lethal-injection process by plaintiffs in a 2005 federal lawsuit concluded that the state’s protocol failed to meet the “minimum standard of safe care for any person.”

The expert, Dr. Richard Cook, is an anesthesiologist and professor at the University of Chicago. Cook wrote in a 2007 report that inmates in some executions showed signs that they were not properly anesthetized before painful drugs were administered.

As examples of such cases, Cook cited the Oklahoma executions of inmates including Scott Carpenter in 1997 and Loyd LaFavers in 2001.

Records and news accounts show that the physician supervising both executions was Dr. Robert Wiebe, an osteopathic physician who works in the emergency room at McAlester Regional Medical Center. Wiebe did not return multiple calls seeking comment.

Wiebe is in good standing with the board that oversees osteopathic doctors in Oklahoma and has been licensed since 1978. He is not board certified in emergency medicine, according to the American Board of Medical Specialties.

Wiebe cut short his Colorado vacation in 1995 to oversee the execution of inmate Robert Brecheen, news accounts state. Before his execution, Brecheen swallowed a large dose of pills in an attempt to kill himself.

The inmate was taken to McAlester Regional Medical Center, where Wiebe oversaw his treatment. Noting that “the law’s the law,” Wiebe said he administered drugs to reverse the overdose and returned with him to the prison for the execution, which records show began at 1:49 p.m.

“He was a little thick tongued, but he was well aware,” Wiebe told a reporter for The Oklahoman at the time.

A microphone malfunctioned, and witnesses could not hear Brecheen’s last words.

Two years later, Wiebe attended Carpenter’s execution and pronounced the inmate dead, according to news accounts. Witnesses said Carpenter’s body convulsed 18 times before he died.

Anthony Thornton, then a reporter for The Oklahoman, said Carpenter’s execution disturbed him.

“I actually told my editors if they could find somebody else, I didn’t want to witness any more. That was my last one,” Thornton said.

In LaFevers’ 2001 execution, witnesses said he repeatedly convulsed and his chest rose off the gurney during the six minutes it took him to die.

In an autopsy, an investigator with the Oklahoma State Medical Examiner’s Office states that LaFevers’ IV “infiltrated after the first drug was administered.” If an IV is not properly inserted

during an execution, the inmate may not be anesthetized during the process.

David Keith, CEO of McAlester Regional Medical Center, said the hospital has no contract to provide doctors to the Department of Corrections for executions. Individual doctors in the McAlester area have been overseeing executions “for several decades,” he said.

“I know there are doctors in this community that do this on their own. What doctors do on their own time is left to them,” Keith said.

Nearly all medical associations, including the American Medical Association and the National Association of Emergency Medical Technicians, ban the participation of their members in executions.

In addition to granting anonymity to doctors taking part in executions, Oklahoma also keeps the names of three volunteer executioners secret. Most other states with the death penalty do the same.