



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 30, 2023

MEMORANDUM FOR HEADS OF AFFECTED COMPONENTS  
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *(Signature)*

SUBJECT: Changes to the Justice Manual's Provisions Regarding Capital Crimes

The Attorney General has directed a review of relevant Department policies and procedures to promote the fair and just administration of federal laws governing capital crimes.<sup>1</sup> In so directing, the Attorney General specified that this review should evaluate whether relevant provisions in the Justice Manual should be rescinded or modified.

The Office of the Deputy Attorney General (ODAG) has since engaged with components across the Department to review relevant policies and procedures.<sup>2</sup> In particular, the group conducted a comprehensive review of Title 9, Chapter 10 of the Justice Manual, which addresses capital crimes. Based on the group's recommendations, I am today directing various changes to that chapter of the Justice Manual.

To begin, I am directing that several interim changes to the Justice Manual be made permanent. In January 2022, I directed two interim changes designed to avoid unnecessary delays in cases where capital prosecution is clearly not warranted.<sup>3</sup> In September 2022, I directed analogous changes, on an interim basis, to the procedures governing withdrawal requests (*see* JM 9-10.160). These interim procedures have proven effective in streamlining decisions in capital-eligible cases while maintaining the Department's commitment to consistency and fairness in these determinations.

I am also directing additional changes to Title 9, Chapter 10 of the Justice Manual, consistent with the group's recommendations. These changes reflect that the determination whether to pursue a capital prosecution is among the most momentous decisions prosecutors must make and carries deeply profound consequences for the accused and victims' families. The

<sup>1</sup> Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures*, [https://www.justice.gov/d9/2022-12/attorney\\_general\\_memorandum\\_july\\_1\\_2021.pdf](https://www.justice.gov/d9/2022-12/attorney_general_memorandum_july_1_2021.pdf).

<sup>2</sup> ODAG convened representatives from the Department's Civil Rights Division, Criminal Division, Executive Office for U.S. Attorneys, National Security Division, Office for Access to Justice, Office of the Attorney General, Office of Justice Programs, Office of Legal Policy, Office of the Pardon Attorney, Office for Victims of Crime, and U.S. Attorney's Offices.

<sup>3</sup> Memorandum from the Deputy Attorney General, *Interim Changes to Procedures for Authorization Not to Seek the Death Penalty* (January 25, 2022).

revised provisions will: provide additional guidance on when to bring capital-eligible charges and/or seek capital punishment (*see* JM 9-10.030, 9-10.140); optimize the decision-making process, while continuing to ensure centralized review (*see* JM 9-10.130); ensure that withdrawal requests receive appropriate consideration (*see* JM 9-10.160); reestablish certain procedures governing capital cases where judgment has been entered, while modifying and rescinding others (*see* JM 9-10.190, 9-10.200, 9-10.210); and make additional clarifications and improvements to the protocol, including to resolve uncertainties that have arisen in the administration of capital cases over the years.

The revisions to the Justice Manual, which supersede any prior conflicting guidance, appear in the following sections:

- 9-10.030 – Purposes of the Capital Case Review Process
- 9-10.050 – Confidentiality of Process
- 9-10.070 – Expedited Decision Submissions
- 9-10.080 – Non-Expedited Decision Submissions
- 9-10.090 – Special Findings in Indictments
- 9-10.110 – Substantial Federal Interest [Removed]
- 9-10.120 – Conditional Plea Agreements
- 9-10.130 – Capital Review Committee
- 9-10.140 – Standards for Determinations
- 9-10.150 – Post-Decision Actions
- 9-10.160 – Withdrawal of the Notice of Intention to Seek the Death Penalty
- 9-10.190 – Direct Appeal and Post-Conviction Proceedings
- 9-10.200 – Post-Exhaustion Procedures
- 9-10.210 – Execution Scheduling

Attachment: Distribution List

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