

THE DEATH PENALTY IN 2006: YEAR END REPORT

Death Penalty Information Center
December 2006

Use of the Death Penalty Declines in 2006

Fewest Executions in Ten Years Public Supports Life Sentences over Death in Poll

Death Penalty Statistics*	2006	2005	1999
Executions	53	60	98
Death Sentences	114**	128	283
Death Row population (as of July 1)^	3,366	3,415	3,625
Percentage of executions by region:			
South	83%	72%	75%
Midwest	11%	23%	12%
West	6%	3%	12%
Northeast	0%	2%	1%
Public Opinion (Gallup Poll): What is the appropriate punishment for first-degree murder?			
Life Without Parole	48%	39%	38%
Death Penalty	47%	56%	56%
Death Penalty Statistics Since 1973			
Total Executions	1057		
Texas Executions	379		
Virginia Executions	98		
Oklahoma Executions	83		
Exonerated and released from death row	123		
*As of Dec. 14, 2006 with no more executions scheduled for this year.			
**Projection based on 6 months.			
^NAACP Legal Defense Fund, "Death Row USA"			

Overview

The use of the death penalty in the U.S. continued to decline in 2006, consistent with a pattern over the past six years. Executions dropped to their lowest level in 10 years as many states grappled with problems related to wrongful convictions and the lethal injection process. The number of death sentences and the size of death row are also decreasing. And for the first time, the Gallup Poll reported that more people supported a sentence of life without parole over the death penalty.

In 2006, New Jersey became the first jurisdiction to enact a moratorium on executions through legislation; it appointed a study commission to review its capital punishment system. In Illinois, a moratorium on all executions continued for the seventh year. New York's death penalty, overturned in 2004, was not reinstated. North Carolina and California, while not halting executions, began legislative studies of their capital punishment systems.

Lethal Injection Controversy Grows

Challenges to the lethal injection process have resulted in executions being stayed in many states for most of the year. Evidence that lethal injections could be causing needless, excruciating pain received a more positive reception in the courts than in previous years.

Research into the practice of anesthesiology revealed that inmates undergoing lethal injection might have been conscious during the process. Individual executions in Arkansas, California, Delaware, Maryland, Missouri, New Jersey, Ohio, South Dakota, and in the federal system were halted because of this issue.

The U.S. Supreme Court intervened at the 11th hour in the Florida case of Clarence Hill, resulting in the halting of all executions there. The Court ultimately ruled unanimously that lethal injection challenges could appropriately be raised using civil rights laws in federal court. Some courts have issued rulings on the constitutionality of the procedures used in various states, but the matter is far from resolved. If differences arise at the appellate level, the Supreme Court may review the merits of this issue.

Although courts in some states have conducted thorough reviews of the lethal injection process, other courts, responding to similar challenges, found no reason to hold hearings or to delay executions. Texas, for example, executed more people in 2006 than it did in 2005. Florida executed Clarence Hill, even after the U.S. Supreme Court ruled that he could proceed with his lethal injection challenge. The lower courts ruled that he had filed his complaint too late and therefore no delay or hearing was required.

The arbitrariness of some inmates receiving extensive hearings, while others were executed quickly, caught the attention of U.S. Court of Appeals Judge Boyce Martin, Jr., who wrote:

[T]he dysfunctional patchwork of stays and executions going on in this country further undermines the various states' effectiveness and ability to properly carry out death sentences. We are currently operating under a system wherein condemned inmates are bringing nearly identical challenges to the lethal injection procedure. In some instances stays are granted, while in others they are not and the defendants are executed, with no principled distinction to justify such a result.

Alley v. Little (6th Cir. May 16, 2006) (Martin, J., dissenting).

Declining Use of the Death Penalty

States with executions	2005	2006
Texas	19	24
Ohio	4	5
North Carolina	5	4
Florida	1	4
Oklahoma	4	4
Virginia	0	4
Alabama	4	1
California	2	1
Indiana	5	1
Mississippi	1	1
Montana	0	1
Nevada	0	1
South Carolina	3	1
Tennessee	0	1
Arkansas	1	0
Connecticut	1	0
Delaware	1	0
Georgia	3	0
Maryland	1	0
Missouri	5	0
TOTALS	60	53

The annual number of death sentences is now at its lowest level in 30 years. The number of death sentences remained steady at about 300 per year in the 1990s, but began to drop in 1999, and has declined almost 60% since then. The Bureau of Justice Statistics recorded 128 death sentences in 2005, down from 138 in 2004. Projections based on six months of 2006 indicate that the number of death sentences will be even lower this year, dropping to approximately 114. Even in Texas, death sentences have dropped 65% in the past 10 years.

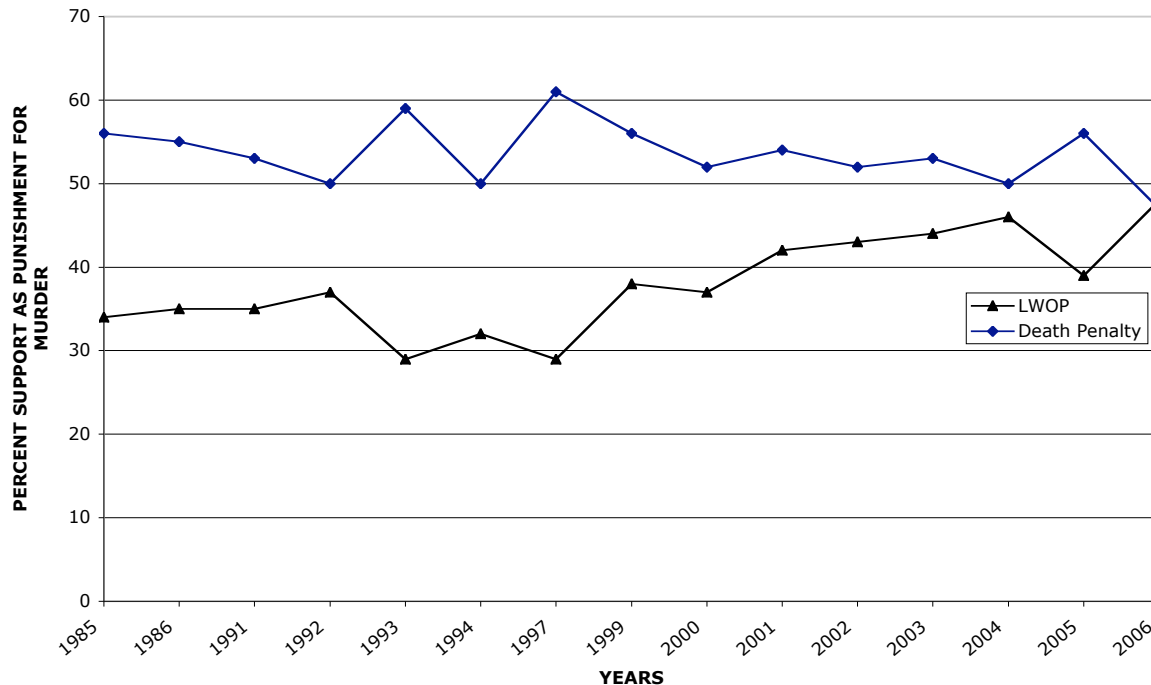
The 53 executions in 2006 was the lowest number since 1996, when there were 45. Lethal injection litigation temporarily halted some executions. If that controversy is resolved, executions could increase in 2007. Nevertheless, executions are down about 40% since their highpoint in 1999. The size of death row also decreased in 2006, continuing an annual decline that began in 2000 after 25 years of steady increases. Five of those put to death this year waived their appeals, thereby hastening their own execution. Eighty-three percent of those executed in 2006 were from the South.

Overall, public support for the death penalty remained about the same in 2006 compared to 2005. Gallup Polls this year indicated that two-thirds of

the American public supports the death penalty for murder. However, for the first time in the 20 years that Gallup has tested support for the death penalty against a sentence of life without parole, more people chose life without parole as the proper punishment for murder (48% to 47%). Virtually every state in the country now employs a sentence of life without parole, a significant change from 20 years ago.

MORE PEOPLE NOW SUPPORT ALTERNATIVES TO THE DEATH PENALTY

(Gallup Poll Results)



Other Significant Developments

ELECTIONS

The 2006 elections may be remembered as having finally laid to rest the common belief (though it was never entirely accurate in practice) that a candidate must vocally support the death penalty in order to be elected. This year saw a number of candidates elected who have publicly challenged the death penalty. Martin O'Malley, who opposes the death penalty, was elected governor of Maryland, replacing a governor who strongly supported it. Similarly, Massachusetts replaced its pro-death penalty governor with Deval Patrick, a former staff member of the NAACP Legal Defense Fund, which opposes the death penalty. Wisconsin re-elected Jim Doyle, an opponent of the death penalty, and Illinois re-elected Rod Blagojevich, who has continued the moratorium established by Gov. George Ryan. They joined other governors such as Timothy Kaine of Virginia and Jon Corzine of New Jersey, who oppose capital punishment.

Andrew Cuomo, who opposes the death penalty, was elected attorney general of New York, the state where his father, Mario Cuomo, blocked reinstatement of the death penalty as governor for 12 years. Jerry Brown was elected attorney general of California, the state with the largest death row. Brown's father, Pat Brown, had also served as governor, and the younger Brown convinced his father of the flaws in the death penalty.

Fifty-six percent of voters in Wisconsin approved a non-binding referendum recommending reinstatement of the death penalty as a possible punishment for defendants whose convictions were confirmed with DNA evidence. However, this degree of support for the death penalty is

significantly lower than the national average and may not represent a sufficient mandate for the legislature to overturn 150 years of not having capital punishment, especially where the new legislature and governor appear to be against such a measure.

Another development that went counter to the overall trend away from the death penalty was the use of the federal death penalty. In contrast to the states, the size of the federal death row continued to grow, especially in cases from states that themselves do not have the death penalty. Six people are now on federal death row from states that have rejected the death penalty in their legislatures, including North Dakota, Iowa, and Vermont. Three federal executions were scheduled earlier in the year, but all three were granted stays because of the lethal injection controversy.

SUPREME COURT

One of the most revealing decisions from the Supreme Court this year came in a case that involved a narrow point of Kansas law. Four Justices dissenting in *Kansas v. Marsh* (a case about whether a death sentence is allowed when the jury finds equal weight between aggravating and mitigating factors) stated that a new era had been ushered in by DNA testing, and they called for greater scrutiny in capital cases because of the "repeated exonerations . . . in numbers never imagined before." Justice Scalia viewed these concerns as an attack on the death penalty and disputed the importance of the innocence issue.

In *House v. Bell*, the Court ruled 5-3 that a Tennessee inmate could pursue his appeal in federal court because of doubts raised through DNA testing of evidence from his trial. The Court's sharp division on many death penalty issues was also reflected in the first decision of its new term, *Ayers v. Belmontes*, a 5-4 decision upholding a California death sentence. The dissenters said that the state's interests in carrying out an execution so long after the trial were small compared to the defendant's interests in a reliable proceeding.

MENTAL ILLNESS

An emerging death penalty issue was identified by the American Bar Association this year when it unanimously passed a resolution calling for an exemption from the death penalty for people whose severe mental illness may well have led to the crime. An almost identical resolution had been endorsed earlier by such groups as the American Psychiatric Association, the American Psychological Association, and the National Alliance for the Mentally Ill. The report in support of the ABA resolution said that those whom the resolution would exempt from the death penalty are no more morally culpable than the mentally retarded and juvenile offenders. The Supreme Court has held that the execution of the two latter groups is cruel and unusual punishment, in part because of their diminished moral culpabilities.



Justice Evelyn Lundberg Stratton of the Ohio Supreme Court voted to uphold a death sentence for a mentally ill man, but said it was time for the legislature to enact an exemption:

I urge our General Assembly to consider legislation setting the criteria for determining when a person with a severe mental illness should be excluded from the penalty of death. Unlike mental retardation, which can be determined by a number on an IQ test and other basic criteria, mental illnesses vary widely in severity. The General Assembly would be

the proper body to examine these variations, take public testimony, hear from experts in the field, and fashion criteria for the judicial system to apply.

State v. Ketterer, 111 Ohio St.3d 70 (2006) (Stratton, J., concurring).

STATE REPORTS

In a series of reports on state death penalty systems, the American Bar Association's Moratorium Project took a close look at how capital punishment is administered in Georgia, Alabama, Arizona and Florida. In each state, the reviewing team was made up of legal

practitioners and experts from a variety of perspectives. Among the findings of these assessment teams were:

Georgia: The state's death penalty fails to meet 43 ABA standards regarding the fairness and accuracy of the death penalty. The assessment team called for a moratorium on not only executions but also the prosecution of death penalty cases, and urged the state to study problems such as inadequate funding for defense counsel and racial disparities in capital sentencing.

Alabama: The report also called for a moratorium on executions in that state. The team urged lawmakers to take action to ensure effective representation at every stage of the capital process, to protect innocent people on death row, and to eliminate "judge override" of juries' sentencing recommendations in death penalty cases.

DEATH ROW INMATES BY STATE (July 1, 2006)	
California	657
Texas	401
Florida	396
Pennsylvania	228
Ohio	195
Alabama	193
N. Carolina	188
Arizona	125
Georgia	107
Tennessee	107
Oklahoma	91
Louisiana	87
Nevada	79
S. Carolina	71
Mississippi	66
Missouri	51
<i>U. S. Government</i>	43
Kentucky	38
Arkansas	37
Oregon	33
Indiana	24
Virginia	21
Idaho	20
Delaware	17
New Jersey	12
Illinois	10
Nebraska	10
<i>U.S. Military</i>	9
Utah	9
Washington	9
Connecticut	8
Kansas	8
Maryland	8
Montana	4
South Dakota	4
Colorado	2
New Mexico	2
Wyoming	2
New York	1
Total death row	3,366
7 sentenced in 2 states	

Arizona: The assessment team called for a centralized system for providing indigent defense and greater assurance of proportionate death sentences in capital cases.

Florida: The panel proposed extensive changes in the state's death penalty, which since 1973 has produced 22 wrongful capital convictions. Among the panel's recommendations were requiring a unanimous jury verdict on eligibility for the death penalty and creating commissions to investigate why wrongful convictions in capital cases have occurred and to review new claims of innocence.

Academic studies in South Carolina and Colorado found evidence of racial bias in the death penalty. Studies in Texas and North Carolina pointed to inadequate representation.

CASES

Death penalty cases in 2006, as in previous years, demonstrated the unpredictability of the process of trying to choose the "worst of the worst" cases. Among those executed this year was Samuel Flippen, who killed his two-year-old stepdaughter, Britnie Hutton. Before being sent to death row, Flippen had never been charged with or convicted of any crime. He was devoted to his school and church and was known as an upstanding and contributing member of the community. Britnie's father was opposed to Flippen's execution. The state originally offered Flippen a plea bargain to second-degree murder.

In contrast, defendants such as Zacharias Moussaoui, who admitted involvement in the 9/11 terrorist attacks, Charles Cullen, who confessed in New Jersey to 11 murders, John Allen Muhammad, who was convicted of six sniper killings in Maryland, Thomas Capano, a prominent Delaware lawyer convicted of murdering his mistress and dumping her in the ocean, and James Sullivan, a Georgia millionaire who paid a hit man to kill his wife, all received life sentences. Muhammad remains under a death sentence in Virginia, but the decision not to seek the death penalty in Maryland was supported by many of the victims' families. Capano had received the death penalty earlier, but it was overturned. The state decided not to pursue a

second death sentence, with the original prosecutor stating, "The death penalty was always a secondary issue."



INTERNATIONAL

In 2006, the **Philippines** abolished the death penalty after overwhelming votes in both houses of its legislature. The country had restored the death penalty in 1993 and had over 1,000 people on death row. The decision reflected legislative opinion that capital punishment was both ineffectual and a violation of human rights.

China, the world's leader in executions, took two steps likely to lead to fewer death sentences. All death penalty cases must now be reviewed by the People's Supreme Court, China's highest court, thereby taking the final decision out of local control. In addition, China's Chief Justice has told the country's judges they should avoid death sentences whenever there are legal grounds for doing so. These actions reflect China's growing sensitivity to human rights concerns.

New Voices

In 2006, many prominent officials and former supporters of the death penalty voiced concerns about the way capital punishment is being applied. For some, the death penalty can no longer be justified. Selected quotations follow:

JUDGES



Judge Carolyn Dineen King of the U.S. Court of Appeals for the Fifth Circuit:

"Also profoundly troubling is the risk that an innocent man will be executed. I must say that from my experience with capital cases, there is usually a great deal of evidence that the defendant is, in fact, guilty. But the lengthy investigation of the Houston crime lab, which exposed evidence of serious problems such as falsified test results, including DNA test results, and the tailoring of reports to fit police theories, certainly suggests that even scientific evidence, to which we normally attach considerable confidence, can be flawed. Only God's justice is perfect justice. The assessment of the death penalty, however well designed the system for doing so, remains a human endeavor with a consequent risk of error that may not be remediable."
(South Texas Catholic News, Oct. 20, 2006).

Ronald George, Chief Justice of the California Supreme Court:

"People want to have the death penalty, but they don't want to pay everything it costs to have it implemented in a judicious manner. . . . The system is very dysfunctional."
(Associated Press, April 30, 2006).

LAW ENFORCEMENT OFFICIALS

Former Bexar County (Texas) District Attorney Samuel Milsap:

"I've come to the conclusion . . . that the system as it relates to capital murder is simply broken. It's my view in fact that because it's driven by human beings and decisions that are made by human beings, it can't be fixed, and that as a result what has to happen is that the option to put people to death has to end."

(Pew Forum on Religion and Public Life, Transcript, July 21, 2006).



Kenneth Starr, former U.S. Special Prosecutor and current Dean of Pepperdine Law School:

"Society is not equipped to handle death penalty cases because of resources. Large law firms are not willing at this stage to take these cases on, at a cost of many thousands of dollars, in order to make sure that if the public wants the death penalty, it is not administered with arbitrariness and caprice."

(San Francisco Chronicle, Feb. 17, 2006).

NEWSPAPERS AND JOURNALISTS

Editorial - Delaware News Journal, July 28, 2006:

"Society should end this system. Americans are too reluctant to eliminate or streamline appeals. For valid reasons, they are afraid of being hasty and killing an innocent man. On the other hand, the long, costly process robs the death penalty of any deterrent effect. Put murderers away for life. Take away any chance of parole or release. Such a policy will never replace the lost victims or fully comfort their families. But it will keep them from having to relive murders with every appeal. And it will give respect to the idea of swift and sure justice."

Jack Fuller, former editor and publisher of the Chicago Tribune:

"The reason to abolish capital punishment is not that it is immoral for a society to choose death over life. Every time we decide to do a major construction project or launch a space-shuttle program or send in troops (or allow people to drive 70 m.p.h.) we know fairly precisely how many people are likely to die as a result. Nor is the reason that killing someone inflicts pain. That is almost beside the point, not least because we have the ability to anesthetize effectively if we have the wit to use it. The real reason is that no government is good enough to entrust with the absolute power that capital punishment entails."
(Chicago Tribune, July 3, 2006).

Anna Quindlen, Newsweek Columnist, June 26, 2006:

"Hardly any other civilized place does this anymore. In the past three decades, the number of nations that have abolished the death penalty has risen from 16 to 86. Last year four countries accounted for nearly all executions worldwide: China, Iran, Saudi Arabia and the United States. The question isn't whether executions can be made painless: it's whether they're wrong. Everything else is just quibbling. And most of the quibbling simply boils down to trying to make the wrong seem right."

Editorial, Spokane Spokesman-Review, May 28, 2006:

"Among the industrialized nations of the world, only the United States and Japan allow capital punishment. Of the 26 members of NATO, only the United States and Latvia allow capital punishment – and Latvia is perceived to be moving toward abolition of the death penalty. Because of the delays, the inconsistency, the drain on the public purse and the nightmarish possibility of executing an innocent person, it is time for the United States to end the practice."

Editorial, Asbury Park Press, May 16, 2006:

"Since its (New Jersey's death penalty) reinstatement in 1982, no cold-blooded murderer has been executed. Nearly 50 death sentences have been overturned by higher courts. For now, a yearlong moratorium on executions is in effect while a study commission looks at how New Jersey enforces its death penalty statute.

The commission should file its report now with the common-sense finding that New Jersey's death penalty is a failure and should be abolished in favor of life in prison without parole. To be effective, justice must be sure and swift. New Jersey's death penalty statute is neither. It is such a drain on resources as to be counterproductive."

Editorial, San Antonio Express-News, January 19, 2006:

"This month, New Jersey lawmakers voted to halt executions while a task force reviews the fairness and costs of imposing the death penalty. Texas should consider doing the same but for slightly different reasons. The disturbing facts coming out of an independent investigation into cases handled by the Houston Police Department lab beg for a temporary suspension of executions, at least until all cases the lab handled are reviewed."

OTHER VOICES

Religious leaders from Wisconsin:

"All of us in society are vulnerable to feelings of revenge and retribution when we are angered. We cannot let such feelings, often very personal feelings, dictate public policy. While we recognize that there is a difference of opinion between thoughtful, faithful people on this topic, we simply do not believe that a death penalty is necessary nor will it prevent violent crime." (Milwaukee Journal Sentinel, Oct. 15, 2006).

Pennsylvania State Representative Michael McGeehan, who earlier had supported expedited executions:

"It seems like more and more of these [innocence] cases are coming up, almost on a monthly basis. It's very disturbing that mostly what we do when we find out we convicted someone wrongly is just let them go and say, 'Oops.' Oops isn't good enough. . . . I led the charge to expedite the signing of death warrants. I wish I could turn back the clock." (Philadelphia Daily News, January 27, 2006).

Donald Heller, author of California's death penalty statute:

"[The state's death penalty law] was written to provide a fair method. In practice it has not worked out that way. . . . There are too many variables the law can't control." (Los Angeles Times, January 10, 2006).

Conclusions

The death penalty continues to recede in prominence. It is being used by fewer states, in fewer countries, and in fewer high-profile cases. In the U.S., the annual number of death sentences has dropped to an historic low, and the number of executions this year is the lowest in a decade. More people now support a sentence of life without parole over the death penalty. Criticism of capital punishment is no longer an untenable position for a political candidate.

Instead, some state legislators, judges, and public officials are looking for ways to make the death penalty system fairer. Other prominent leaders are saying that any value of capital punishment is far outweighed by its increasing burdens.

The number of states with the death penalty remains high, as does the size of death row, and several executions have been scheduled for the coming year. But most of the trends regarding capital punishment in the U.S. over the past five years indicate movement in the opposite direction. Concerns about innocence and basic due process for those facing execution will likely make expansion of the death penalty problematic. Exempting the seriously mentally ill, whose numbers on death row are unknown, presents a challenge for the courts and the public as they grapple with the larger question of whether to keep the death penalty at all.

Death Penalty Information Center

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion and serves as a resource to those working on this issue. Richard C. Dieter, DPIC's Executive Director, wrote this report with assistance from the DPIC staff. Further sources for facts and quotes in this report are available upon request. The Center is funded through the generosity of individual donors and foundations, including the J. Roderick MacArthur Foundation, the Open Society Institute, and the European Community. The views expressed in this report are those of DPIC and should not be taken to reflect the official opinion of our donors.