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THE DEATH PENALTY IN 2010: YEAR END REPORT

Death Penalty Information Center
December 2010

As Use of the Death Penalty Continues to Decline, a Majority of Americans Support Repeal

Executions Drop 12%--Death Sentences Remain Near Historic Lows

Death Penalty Statistics	2010	2009	2000
Executions*	46	52	85
New Inmates Under Death Sentence**	114	112	234
Death Row population (as of Jan 1)^	3,261	3,297	3,652
Percentage of executions by region:			
South (35 executions)	76%	87%	89%
Midwest (8)	17%	13%	6%
West (3)	7%	0%	5%
Northeast (0)	0%	0%	0%
TEXAS (17)	40%	49%	47%
Executions Since 1976	1,234		
Texas	464		
Virginia	108		
Oklahoma	94		
Public Opinion^^			
<i>The penalty for murder should be:</i>			
Death penalty	33%		
Life without parole plus restitution	39%		
Life without parole	13%		
Life with parole	9%		
TOTAL FOR ALTERNATIVES	61%		
<small>*As of Dec. 20, 2010, with no more executions scheduled this year. Mississippi's Atty. Gen. has requested a date of Dec. 29, but courts have not responded. **2000 and 2009-Bureau of Justice Statistics; 2010-DPIC research - through Dec. 20, 2010. ^NAACP Legal Defense Fund, "Death Row USA" ^^Lake Research Partners Poll, May 2010 (1,500 registered voters)</small>			

The death penalty continued to be mired in conflict in 2010, as states grappled with an ongoing controversy over lethal injections, the high cost of capital punishment, and increasing public sentiment in favor of alternative sentences. Executions dropped by 12% compared with 2009, and by more than 50% since 1999. The number of new death sentences was about the same as in 2009, the lowest number in 34 years.

In a recent **national poll conducted by Lake Research Partners**, 61% of U.S. voters chose various alternative sentences over the death penalty as the proper punishment for murder. Only 33% chose the death penalty. A plurality of voters (39%) selected life in prison without parole coupled with restitution by the defendant to the victim's family as the most appropriate penalty. The economy clearly was on

the public's mind, as fully 65% in the same poll supported replacing the death penalty and using the money saved for crime prevention. (See <<http://www.deathpenaltyinfo.org/pollresults>>).

Most voters in death penalty states said they would continue to support elected officials if they voted to replace the death penalty with a sentence of life without parole. This poll finding was borne out by the recent election of high state officials who have challenged the death penalty. Jerry Brown was elected governor and Kamala Harris attorney general of California, despite well-financed TV ads attacking them as being opponents of the death penalty. Daniel Malloy, who opposed the death penalty in the midst of a high profile capital trial that riveted the state's attention, was elected governor of Connecticut, replacing a governor who had vetoed a bill to abolish the death penalty. Martin O'Malley was re-elected governor of Maryland after introducing a bill to abolish the death penalty. New York elected Andrew Cuomo as governor and Massachusetts re-elected Gov. Deval Patrick, both of whom oppose the death penalty. Conservative U.S. Senator Sam Brownback, who has voiced his moral reservations about capital punishment, was chosen as the new governor in Kansas, and Illinois re-elected Gov. Pat Quinn, who supported the existing hold on all executions in his state. The election of these officials demonstrates that voters do not make the death penalty a litmus test for high office.

Executions by State	2009	2010*
Texas	24	17
Ohio	5	8
Alabama	6	5
Virginia	3	3
Oklahoma	3	3
Mississippi	0	3
Georgia	3	2
Florida	2	1
Louisiana	0	1
Arizona	0	1
Utah	0	1
Washington	0	1
Tennessee	2	0
South Carolina	2	0
Indiana	1	0
Missouri	1	0
TOTALS	52	46
*See note in chart on p.1.		

Although 35 states retain the death penalty, only 12 carried out executions in 2010, mostly in the South, and only 7 carried out more than one execution. Since the death penalty was reinstated in 1976, 82% of the executions have been in the South. California has not had an execution in almost 5 years, and the same is true for North Carolina, Maryland, Pennsylvania, and several other states.

Executions Slowed by Lethal Injection Controversy

The carrying out of executions remained controversial and cumbersome in 2010. Over 40 execution dates were stayed, many because of continuing problems with the process of lethal injections. A nationwide shortage of one of the drugs used in all death penalty states required executions to be postponed or cancelled in Arkansas, California, Oklahoma, Tennessee and Kentucky. Arizona was able to carry out its sole execution for the year only by importing the drug sodium thiopental from Great Britain, which now restricts its further exportation. California was on the brink of resuming executions, but the state Supreme Court said more time should be allowed to review new execution protocols

instituted by the Department of Corrections, and with this postponement, the state's supply of sodium thiopental expired. Further postponements are likely as a source for sodium thiopental remains uncertain. Oklahoma received federal court approval of a new drug, pentobarbital, used in the euthanasia of animals, to replace the sodium thiopental that is in short supply. On December 16, Oklahoma apparently became the first state in the country to use this drug in an execution, though some states do not reveal the drugs used.

Texas Use Drops As Evidence Points to Mistakes

Texas, the country's perennial leader in executions, experienced a 29% drop in executions in 2010 as fewer dates were set and several cases were sent back for further review. The state's adoption of a sentence of life without parole in 2005, changes in the District Attorneys in prominent jurisdictions such as Houston and Dallas, and the ongoing residue of past mistakes have led to a sharp decline in the use of the death penalty in the state that drives national death penalty statistics.

For the second year in a row new death sentences in Texas (8, as of mid-December) were 80% less than the peak experienced in 1999, when there were 48.

DEATH ROW INMATES BY STATE (Jan 1, 2010)	
California	697
Florida	398
Texas	337
Pennsylvania	222
Alabama	201
Ohio	168
N. Carolina	167
Arizona	135
Georgia	106
Tennessee	90
Louisiana	85
Oklahoma	84
Nevada	78
S. Carolina	63
Mississippi	61
Missouri	61
<i>U. S. Government</i>	59
Arkansas	42
Kentucky	35
Oregon	32
Delaware	19
Idaho	17
Indiana	15
Virginia	15
Illinois	15
Nebraska	11
Connecticut	10
Kansas	10
Utah	10
Washington	9
<i>U.S. Military</i>	8
Maryland	5
Colorado	3
South Dakota	3
Montana	2
New Mexico*	2
New Hampshire	1
Wyoming	1
Total death row 3,261	
(7 inmates in the national total received two death sentences in different states.)	
*Abolished death penalty for future cases.	

Former death row inmate Anthony Graves was freed from prison in Texas when the state dropped all charges against him after 16 years. Special prosecutor Kelly Sigler said, "[W]e found not one piece of credible evidence that links Anthony Graves to the commission of this capital murder. . . . He is an innocent man." Nationally, there have been 138 exonerations from death row since 1973.

Evidence of critical errors made in cases where an execution has occurred continued to mount in Texas. A special court of inquiry examined whether Texas executed an innocent man in 2004 when Cameron Willingham was put to death for arson. Experts now believe the evidence used to convict him was highly unreliable. In another Texas case, new DNA tests have shown that misleading evidence was presented at the trial of Claude Jones, who was executed in 2000, just before then-governor George Bush left office. A strand of hair, the sole physical evidence placing Jones at the murder scene, has now been shown to have no connection to him and belonged to the victim instead.

Such examples have caused deep concerns about the death penalty not only in Texas but across the country. In the above national poll, the public found concerns about innocence to be the most convincing reason for replacing the death penalty (71% found this to be a convincing reason for repeal). There also was strong bi-partisan support for doing everything possible to prevent the execution of innocent people. At least 80% of Republicans, Democrats, Conservatives, Moderates and Liberals all supported that premise.

Death Sentences Remain Near Historic Lows

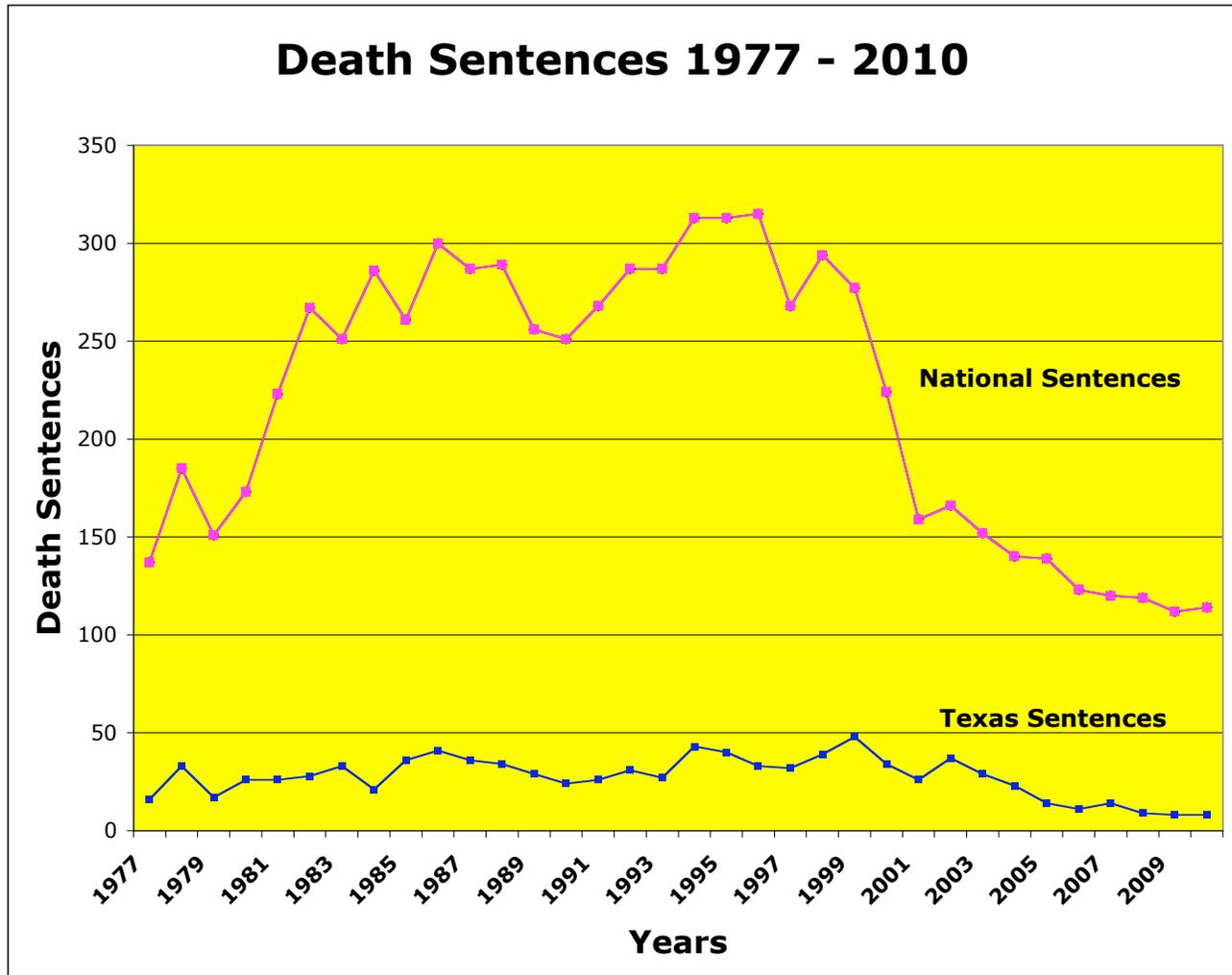
According to DPIC's projections, the number of death sentences in 2010 will be 114, near the historic low recorded last year and about 64% less than the number in 1996, when death sentences peaked at 315. California again led the country in death sentences with 29, about the same as last year. Many death penalty states such as Virginia, Georgia, Missouri, and Indiana had no new death sentences in 2010. The South and the West combined for 85% of the death sentences, while the Midwest and Northeast had 11% (the remainder being federal).

On December 2, 2010, the Bureau of Justice Statistics released its figures on capital punishment for **2009**. Although its methodology for counting death sentences differs slightly from DPIC's (they count the number of admissions under a sentence of death to the correctional system, rather than the number of judicial sentences), it

reached the same conclusion that the number of death sentences in 2009 was lowest since 1973.

According to BJS, 112 people were sentenced to death in 2009 compared to 119 in 2008. (For years other than the current one--in which BJS data is not available--DPIC uses the BJS figures on death sentences.) BJS also reported that the time between sentencing and execution for those executed in 2009 was 14 years, the longest for any year since the death penalty was re-instated.

The decline in death sentences has occurred in all four regions of the country over the past decade, with a 50% drop nationally when the first decade of 2000 is compared to the 1990s. The size of death row also continued to decline after increasing steadily from 1976 until 1999. As of January 1, 2010, there were 3,261 inmates on death row compared to 3,297 at the same time in 2009.



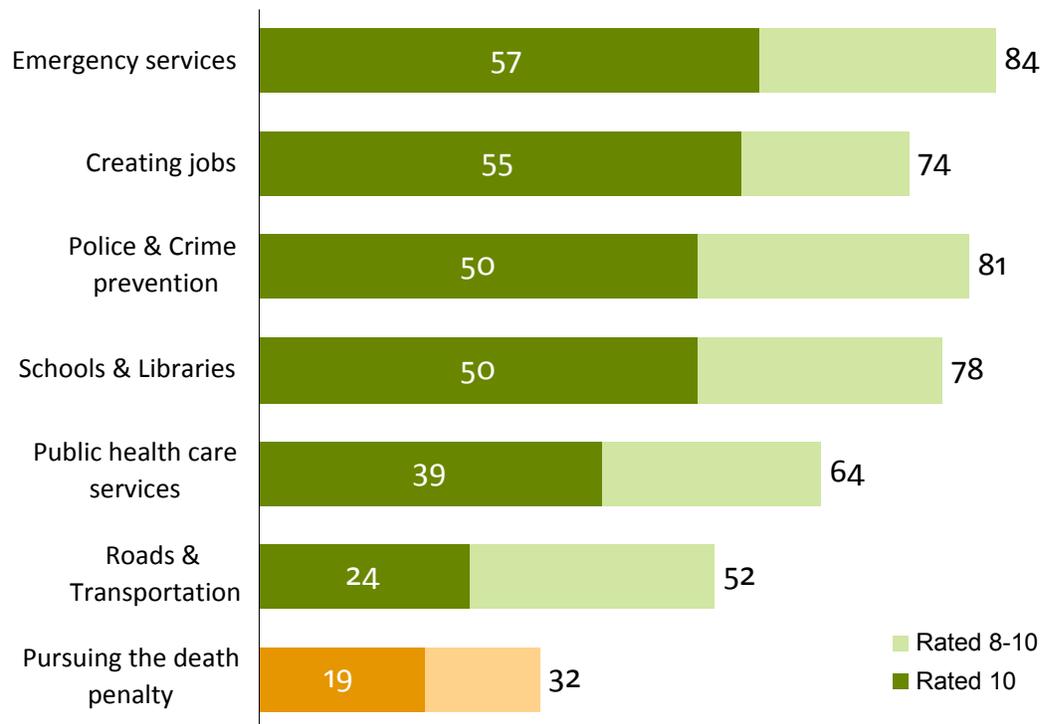
Economics Casts New Light on the Death Penalty

Many states are beginning to look at the death penalty pragmatically, studying its costs and possible returns, and comparing it with other ways of addressing violent crime. Legislative commissions in Illinois, New Hampshire, and Pennsylvania examined the costs of the death penalty, and for the first time the National Conference of State Legislatures hosted a panel that explored this issue. In a year when the average police department budget was cut 7%, the lack of measurable returns from the death penalty are causing many leaders to question whether it is worth the millions it takes to prosecute even one capital case. In Illinois, a state commission reported \$100 million had been spent on assisting counties with death penalty prosecutions over the past 7 years, while the state's deficit has grown to one of the largest in the country. Illinois has not had an execution for almost 12 years, and voters just re-elected a governor who supports continuing this hold on executions.

In the opinion poll, voters put the death penalty *last* in a list of priorities for state spending. Areas of emergency services, job creation, policing, education, and transportation all scored

significantly higher than the death penalty as a budgetary priority (see graph below). Yet the demands of adequate representation, the necessary hiring of forensic and mental health experts, and the need for thorough appellate review to avoid further mistakes mean that the costs per capital case likely will increase in the future.

Q. These days, state and local governments often have to make tough budgetary choices. For each one of the following, please rate how high a priority it is for your state or local government on a scale of 0 to 10, where 10 means it is a very high priority, and 0 means it is not a high priority at all. If you are not sure, please say so.



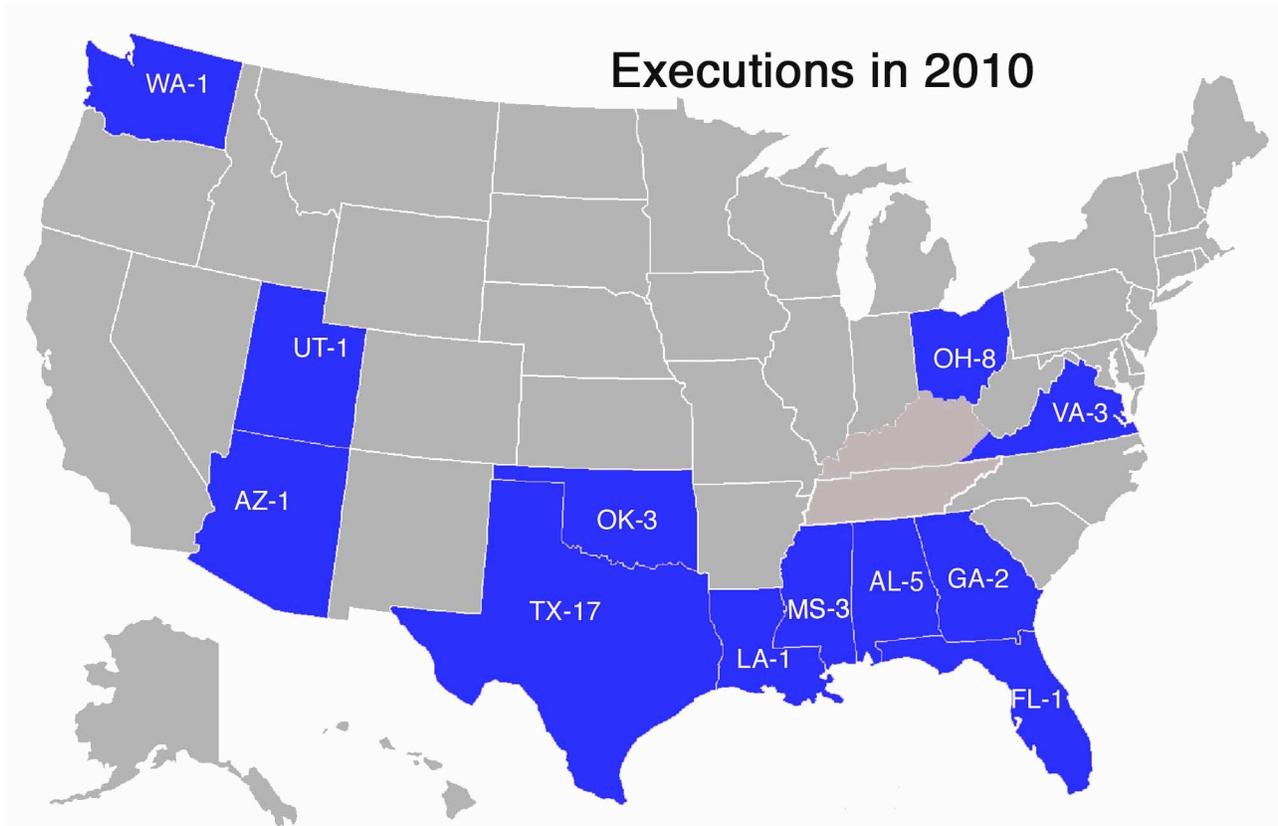
Arbitrariness Persists

One of the most common rationales for the death penalty is that it is needed to punish the “worst of the worst” offenders. A look at some of the executions carried out in 2010 casts doubt on whether that works in practice. Virginia executed Teresa Lewis, a grandmother with an IQ of 72, who did not physically participate in the murders that led to her death sentence. The two co-defendants who actually shot the victims received life sentences. Alabama executed a defendant with even stronger evidence of mental disabilities. Holly Wood’s IQ had been recorded at below 70, the level at which intellectual disability is presumed to exist, but he was not spared because no court required that his inexperienced attorney discover or present such mitigating evidence at his trial. Brandon Rhode was executed in Georgia shortly after being hospitalized for a suicide attempt. His attorneys asserted in vain that he suffered from fetal alcohol disorder and was mentally incompetent to be executed.

Meanwhile in New York, Salvatore Vitale, a crime boss who confessed in federal court to 11 murders, was sentenced to time served and released after 7 years in prison because he cooperated with the government. Rasheed Scrugs, who admitted to murdering a police officer in Philadelphia, was given a life sentence when the jury sharply divided on sentencing.

In other instances the expiration date on a lethal injection drug or the 11th-hour intervention of the Supreme Court made the difference between life and death. Former Justice John Paul Stevens,

writing recently in the *New York Review of Books*, questioned the death penalty because it failed to meet the principle that "any decision to impose the death sentence be, and appear to be, based on reason rather than caprice and emotion." He said the Supreme Court's "more recent cases have endorsed procedures that provide less protections to capital defendants than to ordinary offenders." Arbitrariness continues, as 114 death sentences were drawn from the approximately 14,000 murders committed annually. Factors outside of the severity of the crime such as geography, finances, the race of the victim, and the quality of representation often play an important role in determining who is sentenced to death.



Notable Quotes

Many of those who have carefully analyzed the system of capital punishment, including leaders in law enforcement, former supporters of the death penalty, and the editors of leading newspapers, have come to the conclusion that it is seriously flawed. Among those who spoke out this year were:



Elie Wiesel, Nobel Peace laureate and Holocaust survivor, voiced his opposition to the death penalty during an October lecture on capital punishment at Wesleyan University, Connecticut. Wiesel, who lost both parents and a sister in the Nazi death camps, spoke especially to family members of murder victims. He encouraged the criminal justice system to focus efforts on the survivors of violent crimes so that "families will not feel cheated by the law." But he said the death penalty was not the solution: "I know the pain of those who survive. Believe me, I know... Your wound is open. It will remain. You are mourning, and how can I not feel the pain of your mourning? But death is not the answer."



Washington Attorney General Rob McKenna said he is not sure the death penalty is the way to handle the worst crimes in his state, although he would continue to uphold the law if the people still desire it. "I could live without it frankly. I think it's very expensive, and the delays are inordinate, delaying closure for the victims' families."



Richard A. Viguerie (pictured), chairman of ConservativeHQ.com and **Brent Bozell**, founder of the Media Research Center, wrote: "We lifelong conservatives and Tea Party supporters recently urged the death sentence for Teresa Lewis in Virginia be commuted to life in prison without parole instead. . . . Society may protect itself without putting a human to death as it would a wild animal. Since we believe each person has a soul, and is capable of achieving salvation, life in prison is now an alternative to the death penalty When it comes to life and death, mistakes are made."



Ron McAndrew, a former warden who oversaw executions on Florida's death row, testified at a New Hampshire hearing regarding the trauma prison staff endure during an execution. McAndrew said, "Many colleagues turned to drugs and alcohol from the pain of knowing a man had died at their hands. And I've been haunted by the men I was asked to execute in the name of the state of Florida." McAndrew said he has received numerous calls from distressed prison workers and executioners, and some corrections officers have committed suicide because of their guilt and regret. He concluded, "Being a corrections officer is supposed to be an honorable profession. The state dishonors us by putting us in this situation. This is premeditated, carefully thought out ceremonial killing."



Reginald Wilkinson who witnessed many executions as Ohio Prison Director from 1991 to 2006, said, "I'm of the opinion that we should eliminate capital punishment. Having been involved with justice agencies around the world, it's been somewhat embarrassing, quite frankly, that nations just as so-called civilized as ours think we're barbaric because we still have capital punishment."

Editorials

Numerous editorials expressed opposition to the death penalty in the past year:

"The death penalty is too costly and applied too unfairly. Life without the possibility of parole is the appropriate penalty – and far less costly to taxpayers." **Fort Wayne (IN) Journal Gazette, Nov. 21, 2010.**

"In the past, we've supported the death penalty as long as the legal system gives the accused a fair trial that results in a verdict of guilt beyond reasonable doubt. Sadly, in light of experiences in recent years, that goal seems unrealistic." **Chicago Sun-Times, Nov. 8, 2010.**

"To be sure, we are outraged by the brutal crimes committed against the Petit family. . . . But outrage and sympathy do not outweigh our firm belief that it is wrong - plain and simple - for the government to take an individual life." **Connecticut Post, Sept. 10, 2010.**

"There simply is no denying that our system of capital punishment in the United States is unalterably broken. To continue to adhere to it is to tread beyond the bounds of what constitutes a humane, moral and just society." **Salt Lake City Tribune, April 17, 2010.**

"This newspaper feels more strongly than ever that those flaws are sufficiently widespread that the justice system cannot be trusted to impose irreversible sentences of death." **Dallas Morning News, Dec. 24, 2009.**

Conclusion

The economy was on the public's mind as fully 65% supported replacing the death penalty and using the money saved for crime prevention instead.

According to recent polling, the problems and risks of the death penalty have convinced the majority of Americans it is time to consider replacing this punishment with alternative sentences. The mistakes of the past, including the possible executions of innocent people, have led to a decline in the use of the death penalty. However, the enormous apparatus that remains in place absorbs hundreds of millions of dollars that could better be spent on other crime fighting measures.

Executions declined by 12% compared to 2009, and death sentences remained near their record low. Carrying out the death penalty was reserved to a handful of states, mostly in the South. Controversies over lethal injection added to the public's growing frustration about the death penalty. Only 33% of Americans oppose replacing the death penalty with a sentence of life without parole.

Prominent leaders and editorial writers are calling on state legislatures to take action, especially as other programs with a proven record of increasing public safety are being cut. The recent elections underscore that the death penalty is no longer the third rail of American politics. The public's election of governors who have challenged the death penalty indicates more states will consider abandoning this practice in coming years.

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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 Dieter, DPIC's Executive Director, wrote this report with assistance from DPIC staff. Further sources for facts and quotes in it are available upon request. The Center is funded through the generosity of individual donors and foundations, including the Roderick MacArthur Foundation, the Open Society Institute, and the European Union. The views expressed in this report are those of DPIC and should not be taken to reflect the opinion of its donors.