

THE DEATH PENALTY IN 2002: YEAR END REPORT

Death Penalty Information Center
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CONCRETE CHANGES SHAPE DEATH PENALTY IN 2002

Supreme Court and States Take Action; Executions Become More Isolated

Death Penalty Numbers* - 2002

Executions in 2002 (66 in 2001 and 85 in 2000)	71
Executions since 1976	820
Death Row population** - as of Oct. 1, 2002	3,697
Exonerated and freed from death row in 2002	4
Exonerated and freed since 1973	102
Commutations in 2002**	3
<u>Leading Execution States in 2002:</u>	
Texas	33
Oklahoma	7
Missouri	6
<u>Leading death row states:</u>	
California	613
Texas	454
Florida	386
<u>Percentage of executions by region in 2002:</u>	
South (regions by federal breakdown)	86%
Midwest	13%
West	1%
Northeast	0%

*As of December 17, 2002, with no more executions scheduled for this year.

** Pending clemencies in IL

In 2002, the death penalty continued to come under increasing scrutiny and its use became more geographically isolated within the United States. Executions occurred almost exclusively in the South, and one state, Texas, accounted for three times as many as the total in the West, Midwest, and Northeast states combined.

Most states did not carry out any executions in 2002. Only 13 states used the ultimate sanction this year. The last time fewer states carried out executions was 1993. As in almost every year since the death penalty was reinstated in 1976, the **South** led the U.S. in executions by a wide margin, accounting for 86% of all executions. Outside the South, only Missouri, Ohio, and California conducted an execution.

Texas carried out 33 executions this year, nearly half of the country's total executions (71) and nearly 5 times

as many as **Oklahoma**, the next leading state with 7. For the second straight year, Texas was the only state to execute juvenile offenders. Despite international protests, the state executed 3 inmates who were under 18 at the time of their offense, all of whom were black. Of the 21 juvenile offenders executed in the U.S. since the death penalty was reinstated, 13 (62%) have been in Texas.

States with executions	2001	2002
Texas	17	33
Oklahoma	18	7
Missouri	7	6
Georgia	4	4
Virginia	2	4
Florida	1	3
South Carolina	0	3
Ohio	1	3
Alabama	0	2
North Carolina	5	2
Mississippi	0	2
California	1	1
Louisiana	0	1
U.S. Gov't	2	0
Indiana	2	0
Delaware	2	0
Arkansas	1	0
Nevada	1	0
Washington	1	0
New Mexico	1	0
Totals	66	71

There were other indications of the declining use and increasing skepticism about the death penalty: new death sentences and executions remained at a lower level compared to the late 1990s, and the size of death row declined after years of increases. Public opinion (see separate section below) remained divided on whether the death penalty or a sentence of life without parole was the most appropriate sentence for first degree murder. Support for the death penalty is lower than the support registered in the early 1990s, despite the terrorist attacks of September 11, 2001 and the recent sniper shootings in the Washington, DC area.

Death Sentences Down 50%

The Bureau of Justice Statistics, in its recent capital punishment report covering the previous year (2001), indicated that the number of new death sentences in 2001 declined dramatically to 155, a nearly 50% drop from the average of 296 death sentences per year between 1994 and 2000. Executions in 2002 increased slightly--71 this year compared to 66 in 2001-- but were down from the high of 98 executions in 1999. The overall size of death row, which had been steadily increasing since the death penalty was

reinstated in 1976, has leveled off and actually declined slightly. According to the NAACP Legal Defense Fund's "Death Row USA," the size of death row stood at 3,726 in January, 2001, at 3,711 in January, 2002, and at 3,697 as of October 1, 2002.

Despite the continued concentration of almost all executions in the South, the FBI's annual report of Crime in the United States indicated that again in 2001 the South had the highest murder rate of the four regions of the country. The South's rate of 6.7 murders per 100,000 people was the only one above the national average. The Northeast, the region with by far the fewest executions, had the lowest murder rate, 4.2. Texas, the country's leading execution state, experienced an *increase* in its homicide rate in 2001. States with the death penalty have consistently had a much higher murder rate than states without the death penalty, and since 1995, when New York joined Kansas in becoming the most recent states to reinstate the death penalty, the gap between these two groups has, in fact, grown larger.

Supreme Court Alters Death Penalty Law



In 2002, the U.S. Supreme Court issued two landmark death penalty decisions restricting capital punishment and spurring state legislators to enact reforms to death penalty laws. These two decisions could result in many death row inmates receiving life sentences. Four justices also indicated a strong willingness to address the execution of juvenile offenders in the near future.

Key Decisions Reverse Previous Positions

In *Atkins v. Virginia*, the Supreme Court held that the execution of inmates with mental retardation is a violation of the constitutional ban on cruel and unusual punishment. The 6-3 ruling found that a national consensus against such executions had emerged since an earlier ruling in 1989. Since then, 16 more states and the federal government had enacted laws prohibiting such executions. Many states are in the

process of reviewing individual claims of mental retardation and of changing their laws to comply with the Court's ruling.

One week after its *Atkins* ruling, the Supreme Court decided *Ring v. Arizona*. The High Court held, 7-2, that it is unconstitutional to have a judge, rather than a jury, decide on the presence of aggravating factors that make a case eligible for the death penalty. The *Ring* ruling has sparked widespread changes, and some confusion, as courts and legislatures work to determine the decision's impact on capital punishment laws. Montana and Indiana changed their laws in anticipation of the Court's ruling. Delaware, Colorado, Nevada, Nebraska and Arizona revised their laws after the Court's *Ring* decision. Idaho has acknowledged the need for similar action on its statute. At least one federal case has been remanded to the lower courts in light of the *Ring* ruling, and federal prosecutors are altering their procedures in the hope of avoiding legislative change. So far, Florida and Alabama, which allow judges to override jury recommendations in capital cases, have resisted any changes to their laws.



The United States is the only country in the industrialized world that still executes anyone, and executing children puts us in the company of Somalia -- only Somalia.

- Rosalynn Carter,
American Bar Association
Annual Conference, 2002

Juvenile Death Penalty

After crafting the majority opinion in *Atkins v. Virginia*, Justice John Paul Stevens told attendees at the 9th Circuit's Judicial Conference that the death penalty for juveniles would be the "next area for debate." Noting that the United States is "out of step with the views of most countries in the Western world," Justice Stevens indicated that state legislatures might be the first to reconsider this issue.

Currently, 38 states have statutes authorizing the death penalty. Sixteen of those states, along with the federal government, have expressly chosen 18 (at the time of the crime) as the minimum age for the death penalty.

In October, Justice Stevens joined Justices Souter, Ginsburg, and Breyer in calling the execution of juvenile offenders a "shameful practice." In their dissent from the Supreme Court's refusal to consider relief for Kevin Stanford in Kentucky, the Justices stated, "The practice of executing such offenders is a relic of the past and is inconsistent with evolving standards of decency in a civilized society."

Rulings in Other Federal Courts

Two federal judges in unrelated cases held that the existing death penalty is unconstitutional. These trial-level judges, who are closest to the day-to-day operation of the

system, and thus in the best position to observe its weaknesses, held that the present procedures in capital cases fail to protect defendants' basic rights. Judge Rakoff in New York held in *United States v. Quinones* that recent revelations about the high risk of executing the innocent rendered the existing system unconstitutional. He found it likely that innocent people would be executed, and that the current death penalty system was inadequate to prevent this deprivation of fundamental rights.

In *United States v. Fell*, Judge Sessions in Vermont held that the Supreme Court's decision in *Ring v. Arizona* (requiring jury decision-making in sentencing) meant that sentencing proceedings in capital cases had to be held with the full protections afforded at the trial on guilt. Because

federal sentence hearings use relaxed standards of evidence, the judge refused to allow the U.S. Attorneys to seek the death penalty. But Judge Sessions also noted that a more serious issue is at stake: "Capital punishment is under siege," he wrote, noting other opinions challenging the death penalty. He called on Congress to decide if the death penalty was appropriate at all, and if so, to bring it into conformity with constitutional requirements.

If the death penalty is to be part of our system of justice, . . . standards and safeguards governing the kinds of evidence juries may consider must be rigorous, and constitutional rights and liberties scrupulously protected.

-United States v. Fell, Sept. 24, 2002

Quinones was reversed by the U.S. Court of Appeals, and *Fell* is being similarly challenged. But these opinions, combined with the recent landmark reversals from the U.S. Supreme Court, indicate that death penalty law is far from settled and likely to undergo more revisions and uncertainty in the near future.

MINIMUM AGE FOR DEATH PENALTY ELIGIBILITY

Age Sixteen (17 states)

Alabama, Arizona, Arkansas, Delaware, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Wyoming

Age Seventeen (5 states)

Florida#, Georgia, New Hampshire, North Carolina, Texas

Age Eighteen (16 states and the federal government)

California, Colorado, Connecticut, Illinois, Indiana, Kansas, Maryland, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, Washington, federal government

#A recent referendum might allow the minimum age to be set at 16.

In the States

In Illinois, a blue ribbon Commission appointed by Governor George Ryan recommended sweeping changes to the state's capital punishment law and practices as a pre-condition for lifting the moratorium on executions. The recommendations included sharply decreasing the crimes eligible for the death penalty, videotaping police interrogations, and improving the resources available in capital cases. Because of the errors apparent in the existing system, and the uncertainty that the legislature will actually implement the proposed reforms, it is anticipated that Gov. Ryan will issue a significant number of commutations before leaving office.

In 2002, Maryland became the second state to institute a death penalty moratorium, pending the release of a study

on racial disparities. Although the governor-elect recently said he will lift the moratorium in January, the problems related to the high percentage of blacks on death row, and the almost exclusive use of the death penalty for those who kill white victims, will continue to be a source of controversy in both the legislature and the courts.

Other states continued the process of reforming their death penalty systems, especially in light of the mistakes revealed over the past few years. Indiana raised the age of eligibility from 16 to 18 and allowed juries to make the final decision in death sentencing. Pennsylvania passed a bill to allow post-conviction DNA testing. As indicated above, states are amending their statutes in an effort to comply with the Supreme Court's decisions in *Ring v. Arizona* and *Atkins v. Virginia*. Still other states, like California and Washington, attempted to improve their systems of death penalty representation by imposing more stringent standards on trial attorneys. On the national level, the Innocence Protection Act received bipartisan co-

sponsorship from 250 U.S. Representatives and was approved by the Senate Judiciary Committee before Congress adjourned.

Studies

In February, Professor James Liebman of Columbia University issued his second report on the death penalty system. He found that the more aggressively a state or county uses the death penalty, the more likely they are to make mistakes. In December, the Texas Defender Service released a study of the habeas corpus process in Texas and found that inmates had a one in three chance of being executed without their cases being adequately investigated or argued by a competent appeals attorney.

A North Carolina study by the Common Sense Foundation found grossly incompetent representation in capital trials. And Murder Victims Families for Reconciliation issued a report showing that victims who oppose the death penalty are often excluded from the legal process.

Emerging Voices

The ongoing difficulty of shaping the death penalty into a fair and accurate system prompted a number of prominent people to speak out in 2002:

- During a Nashville speech to federal and state judges, U.S. Sixth Circuit **Judge Gilbert Merritt** said that capital punishment is "by far the most difficult, time-consuming, frustrating, and critical joint problem (judges) have to grapple with on a daily basis." Merritt noted that, despite the intense scrutiny given death penalty cases, he has reviewed two cases in which he has "serious doubts" that the right man was sentenced to death. (The Tennessean, September 27, 2002).
- As he stepped down as chief justice of the Illinois Supreme Court, **Justice Moses Harrison** said the state's death penalty is immoral and should be abolished. "Our system's the greatest in the world, but we know that it's not infallible," he said. "Despite the courts' efforts to fashion a death penalty scheme that is just, fair and reliable, the system is not working," he had written earlier. (Associated Press, September 5, 2002).
- Arizona Supreme Court **Justice Stanley Feldman** stated that the fundamental issue of whether the death penalty should be retained in Arizona cannot be ignored. As the state Supreme Court's longest-serving justice, Feldman criticized efforts in Arizona to "perfect what I consider to be imperfectible" and noted: "There is no way to really do it right. The final decision has always come down to the members of our (Supreme Court) as to whether someone should live or someone should die. . . I am not smart enough to make that decision on any fair and consistent basis . . ." (Associated Press, July 15, 2002).
- **Ross Byrd** - son of James Byrd, Jr., a black man whose racially motivated 1998 dragging death in Texas drew national attention, is fighting to commute the death sentence of his father's murderer to a sentence of life in prison without parole. Byrd initially supported the death sentence of John King, but recently joined a vigil at the Huntsville prison where King is awaiting his execution. "When I heard King had exhausted his appeals, I began thinking, 'How can this help me or solve my pain?' and I realized that it couldn't," said Byrd. (Houston Chronicle, July 4, 2002).
- **Thomas Sullivan**, Member of the Illinois Commission on Capital Punishment:
"I have been involved in the criminal-justice system for more than 45 years as a prosecutor and defense lawyer. I have come to the view that the state will make the best use of public funds by substituting life imprisonment for capital punishment.

**DEATH ROW INMATES
BY STATE**
(NAACP Legal Defense
Fund, Oct. 1, 2002)

California	613
Texas	454
Florida	386
Pennsylvania	244
North Carolina	219
Ohio	202
Alabama	190
Illinois	175
Arizona	125
Georgia	120
Oklahoma	119
Tennessee	106
Louisiana	97
Nevada	87
South Carolina	76
Missouri	70
Mississippi	69
Arkansas	42
Kentucky	39
Indiana	40
Oregon	30
Virginia	26
<i>U.S. Government</i>	26
Idaho	22
Delaware	20
Maryland	17
New Jersey	16
Washington	12
Utah	11
Connecticut	7
Nebraska	7
<i>U.S. Military</i>	7
Montana	6
New York	5
Colorado	5
South Dakota	5
Kansas	4
New Mexico	3
Wyoming	2
Total	3,697
(7 inmates sentenced in more than one state)	

"We will substantially reduce direct costs, avoid the risk of more near-fatal errors, put an end to questions about racial discrimination in the enforcement of the Illinois death-penalty system, and make funds available for crime prevention and rehabilitation." (Chicago Tribune, May 15, 2002).

- **Scott Turow**, Author, former Assistant U.S. Attorney:
"Capital punishment has been one of the most notorious train wrecks of American politics." (Wall Street Journal, April 24, 2002).

Public Opinion

The terrorist attacks of September 11, 2001 and the more recent sniper shootings in the Washington, DC area might have precipitated a significant tilt towards the death penalty, but apparently that has not taken place. A recent analysis by George Gallup, Jr. following a Gallup poll in October, 2002, concluded that "recent events have had little effect" on public support for the death penalty. The poll found 70% support for the death penalty, down slightly from a similar poll conducted in May, 2002. The poll in May found that Americans only marginally support the death penalty (52%) when the punishment is compared to a sentence of life without parole. Moreover, only about half (53%) of Americans believe the death penalty is applied fairly.

Although death penalty supporters were elected in some states in November, it is significant that the regions most critically affected by recent events--New York City and Montgomery County, Maryland--have responded in a way that belies reliance on the death penalty: the New York City Council passed a resolution in 2002 calling for a moratorium on the death penalty, and the people earlier elected a mayor, who publicly opposed the death penalty. In Montgomery County, scene of most of the sniper shootings, voters selected a U.S. Representative who opposed the death penalty over an 8-term Republican who supported it.

Innocence

The issue of innocence continued to play a major role in the death penalty debate in 2002. As four additional exonerations brought the total number of inmates freed from death row since 1973 to 102, reactions were heard from judges, editorial writers, and government officials across the country.

The year began with the release of Juan Roberto Melendez. After nearly 18 years on Florida's death row, prosecutors dropped all charges against Melendez on January 3, 2002. His conviction had been overturned because the state had withheld crucial evidence about the case. Melendez returned to his native Puerto Rico, where he was greeted with celebrations.

In April, Ray Krone became the 100th person exonerated and freed from death row. DNA testing showed that he did not commit the murder for which he was convicted 10 years

earlier. Maricopa County Attorney Rick Romley stated: "[Krone] deserves an apology from us, that's for sure. A mistake was made here. . . . What do you say to him? An injustice was done and we will try to do better. And we're sorry." Krone traveled to Washington, D.C. where he spoke in support of the proposed Innocence Protection Act.

We now know, in a way almost unthinkable even a decade ago, that our system of criminal justice, for all its protections, is sufficiently fallible that innocent people are convicted of capital crimes with some frequency. . . . [If] we sanction execution, with full recognition that the probable result will be the state sponsored death of a meaningful number of innocent people, have we not thereby deprived these people of the process that is their due?

-U.S. v. Quinones, April 25, 2002

Krone's release prompted former supporters of the death penalty to question its use. *The Arizona Republic*, a long-time supporter of capital punishment, called on the state to abandon the death penalty:

[W]e now know beyond dispute that the criminal-justice system wrongly sentences people to death. We even know their names, because since 1970, [over 100] them have subsequently been found innocent. Moreover, the pace of exonerations has been accelerating, due in part to the wider use of DNA evidence.

. . . .
The theoretical argument that the criminal-justice system, being a human institution, is bound to be fallible is no longer theoretical. It's a reality, and public policy must confront it. (July 28, 2002).

Two more death row inmates were freed before the end of the year: Thomas Kimbell in Pennsylvania, and Larry Osborne in Kentucky. As the year came to an end, many of the 102 who have been released from death rows since the 1970s gathered at Northwestern University's Center on Wrongful Convictions to highlight this issue. The focus on these exonerations, the anticipated clemencies in Illinois, combined with the state Commission's recommendations for broad changes in the death penalty, made a powerful statement about the importance of innocence in this debate.

International Developments

In 2002, the number of abolitionist countries continued to grow. **Turkey** abolished the death penalty for ordinary crimes, replacing capital punishment with life in prison without parole. The **Federal Republic of Yugoslavia** and **Cyprus** abolished the death penalty for all crimes. In the **Philippines**, a moratorium on executions was declared as legislators considered abolition of the death penalty.

British Foreign Office Minister Ben Bradshaw, when addressing the possibility that three British citizens being held at the U.S. naval base at Guantanamo Bay could be subject to capital punishment after being tried in a military tribunal, stated: "The British Government regularly, in cases where the death penalty may be imposed on British citizens, makes our views on the death penalty very plain to the American authorities. We are opposed to the death penalty."

Abolitionist and Retentionist Countries

(as of August 2002)

76 - Abolitionist for all crimes
 15 - Abolitionist for ordinary crimes only
20 - Abolitionist de facto (no executions in 10 yrs)

111- TOTAL-Abolitionist in law or practice

84 - Retaining the Death Penalty
 (source: Amnesty International)

Foreign Nationals

As of November, 2002, there were 118 foreign nationals from at least 31 countries on death rows in the United States. Three foreign nationals were executed in the U.S. in 2002.

Prior to the execution of Javier Medina in Texas, Mexican President Vicente Fox sent a letter to Texas Governor Rick Perry calling for a halt to the execution. Fox said that the punishment was illegal because it would violate the Vienna Convention on Consular Relations that

requires foreigners detained by authorities to be notified of their consular rights. Medina's final appeal to the U.S. Supreme Court was accompanied by a petition signed by 14 nations, including Argentina, Brazil, Poland, and Spain, calling for a stay of execution.

The petitions were denied, and Medina was executed on August 14, 2002. In protest of the execution, President Fox canceled a trip to Texas during which he was to meet with President Bush.

Conclusions

Concerns about capital punishment prodded governors, courts, and other officials to take concrete action on the death penalty in 2002. Two federal judges went so far as to declare the death penalty unconstitutional because of the lack of adequate protections for defendants. Governor Ryan in Illinois is reviewing all the state's death sentences in light of the many mistakes uncovered in his state, and the governor of Maryland declared a moratorium on executions. The 100th death row inmate was freed this year, and the Supreme Court reversed prior decisions in two key areas, signaling its concern for the proper administration of this punishment.

Reforms are likely to expand in the near future as the public's concern about the death penalty continues to grow. Whether these reforms are able to accomplish what has so far eluded decades of "tinkering with the machinery of death" (Justice Blackmun in *Callins v. Collins*), remains to be seen. An increasing share of the public and its leaders are insisting that if the death penalty cannot be administered accurately and fairly, then it should not be administered at all.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information regarding 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. This report was written by Richard C. Dieter, Executive Director, with assistance from the DPIC staff. We gratefully acknowledge the support of the Open Society Institute, the Tides Foundation, and the Scherman Foundation in supporting this work. Further sources for facts and quotes in this report are available upon request.