THE DEATH PENALTY IN 2001: YEAR END REPORT

Death Penalty Information Center
December 2001

Executions Decline 22%
Death Row Numbers Also Drop
Death Penalty Reforms Initiated Across Country

Death Penalty Numbers* - 2001

Executions in 2001 (85 in 2000 and 98 in 1999)	66
Executions since death penalty was reinstated in 1976	749
Public support for death penalty (*Gallup Poll*, May 2001)	65%
Death row population on Oct. 1 (3,726 on Jan. 1)	3,709
Freed from death row and exonerated in 2001	5
Freed and exonerated since 1973	98
Commutations in 2001	3
Leading execution states in 2001	
Oklahoma	18
Texas	17
Leading death row states	
California	602
Texas	454
Percentage of executions by region in 2001	
South	79%
Midwest	15%
West	6%
Northeast	0%

*As of December 12, 2001, with no more executions scheduled. Death row as of 10/1/01.

Throughout 2001, growing concerns about capital punishment were reflected in a series of legislative changes to restrict the death penalty, and executions declined sharply for the second straight year. For the first time since the death penalty was reinstated, the number of people on death row also appears to be decreasing.

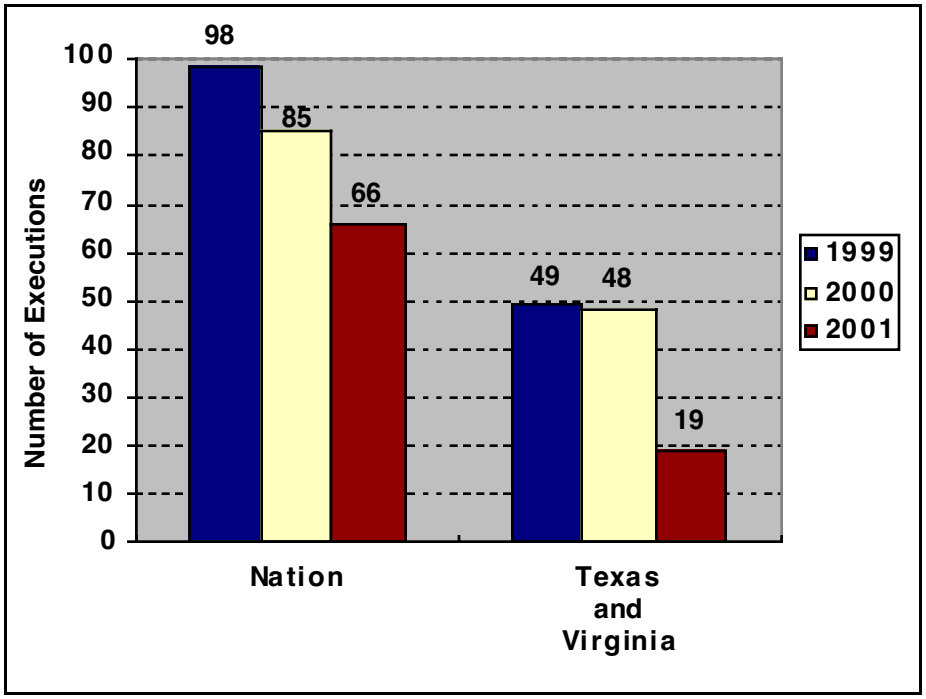
The critical question remaining is whether a system so marred by mistakes and unfairness can be made acceptable to the public or should it be abandoned altogether. A growing number of bipartisan state and national lawmakers have joined former death penalty supporters and long-time critics to express concerns about the fairness and accuracy of this system.

During the past year, nearly every state that retained the death penalty considered or passed legislation to provide better protection for defendants in capital cases. Five states enacted laws to end the execution of mentally retarded defendants, an issue the Supreme Court will examine early next year. Even the shift of the country's focus to the events of September 11 did not halt the trend towards death penalty reform.

These developments, as well as the exoneration of five additional death row

inmates, contributed to changes in the public's perception of the death penalty. Support for capital punishment dropped to its lowest level in over 20 years, and polls showed considerable support for a temporary halt to executions while governments study the problems in their capital punishment systems.

A drop in the number of executions in the leading death penalty states of Texas and Virginia contributed to the first two-year decline since the death penalty was reinstated. The number of people on death row also declined, from 3,726 at the start of the year to 3,709 as of October 1, reversing a trend of steadily increasing death row populations. The latest statistics available from the Justice Department reveal that the number of people sentenced to death in 2000 (214) dropped 24% from the previous year, and was the lowest number of death sentences in 20 years.



However, not all of the movement was toward restricting the death penalty. Both the federal government and New Mexico returned to the death penalty in 2001, after four decades of no executions. Timothy McVeigh was executed on June 11 and Juan Garza on June 19, marking the first federal executions since 1963. Despite problems with its death penalty, Oklahoma executions spiked to a new high of 18.

Public Opinion

In addition to a decline in the number of executions, 2001 also found public support for capital punishment dropping. A May 2001 Gallup Poll found that nationwide support for the death penalty had fallen to 65%, a significant 15 percentage point decline from 1994 findings, and the lowest level of support in 23 years. In a *USA Today* survey the same month, many of those who voiced opposition to the death penalty noted that they were recent converts to an anti-death penalty position -- persuaded by the belief that some innocent people have been wrongly convicted.

Polls conducted earlier in the year reported a similar steady decline in support. An *ABC News* poll completed in April revealed a decline in support for the death penalty and a majority of Americans in favor of moratorium on executions. The poll found that 51% of Americans support a nationwide moratorium while a commission studies whether the death penalty is applied fairly.

Peter D. Hart Research Associates, in a March 2001 poll, found that only 60% of Americans favored the death penalty, and that:

- 72% favored suspension of the death penalty until questions about its fairness can be studied, up from 64% in August 2000
- 91% favored requiring courts to allow death row inmates access to DNA tests that could prove their innocence
- 84% favored requiring court-appointed attorneys in death penalty cases to have prior experience in such cases and to be certified to handle them by the local bar association.

An October Gallup Poll following the September 11th terrorist attacks on the United States found that, within the margin of error of the poll, support for the death penalty (68%) had not measurably increased.

Emerging Voices

As problems associated with the application of the death penalty continued to take center stage, a growing number of new voices questioned the fairness and wisdom of the process. Among those urging a closer scrutiny of capital punishment were Supreme Court Justices and former supporters of the death penalty.

"More often than we want to recognize, some innocent defendants have been convicted and sentenced to death."

-- Sandra Day O'Connor
U.S. Supreme Court Justice
October 2001

In speeches to bar associations in July and October, **U.S. Supreme Court Justice Sandra Day O'Connor** said there were "serious questions" about whether the death penalty is fairly administered in the U.S. She added, "If statistics are any indication, the system may well be allowing some innocent defendants to be executed." O'Connor also addressed the need for quality representation in capital cases, noting that "perhaps it's time to look at minimum standards for appointed counsel in death cases and adequate compensation for appointed counsel when they are used." (Associated Press, 7/2/01)

In April, **U.S. Supreme Court Justice Ruth Bader Ginsburg** voiced her support for a moratorium on the death penalty in Maryland and criticized the inadequate funding available for those who represent poor people. "People who are well represented at trial do not get the death penalty," said Ginsburg. "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial." (Associated Press, 4/10/01)

In October, **former Arizona Court of Appeals Judge Rudolph J. Gerber** expressed his concerns about the death penalty. Gerber, who spent over 25 years as a prosecutor and judge, wrote:

> For those who do not or cannot address the moral issues, there remain the disturbing facts . . . that our capital punishment falls disproportionately on minorities . . . and sweeps some innocent defendants. . . in its wide nets. . . . (Arizona Republic, 10/11/01)

In July, **Senior Texas State District Judge C.C. Cooke** expressed his concerns about the fairness of the death penalty. The Texas judge recalled how the 11 death penalty cases he presided over during his 23-years as a judge altered his feelings about capital punishment. Cooke helped craft the state's death penalty law when he served as a state representative. Among the flaws cited by Cooke were inadequate legal representation, lack of access to DNA testing, and the racial disparity of those executed. "I think the mood is changing in this country and people are realizing there are deficiencies in the system," said Cooke. "We always think we've got the right person, but the system is not infallible." (Ft. Worth Star Telegram, 7/24/01)

Two prominent supporters of the effort to reinstate the death penalty in Massachusetts changed their position on capital punishment during 2001. **State Senator Stephen F. Lynch**, who supported the death penalty for the past 5 years in the state Senate, reversed his stance on the death penalty, based on evidence of wrongful convictions, and called for a moratorium on executions. **Robert Curley**, who served as a key leader in the state campaign to reinstate the death penalty after his 10-year-old son was murdered, announced in June that he now opposes the death penalty.

In January**, Del. Frank Hargrove (**R- Hanover County), a conservative Virginia Republican, introduced a bill to abolish the death penalty. Hargrove, who once proposed bringing back hanging as a method of execution in Virginia, said that he is troubled by the possibility that mistakes could lead to the execution of an innocent person.

Many others, including former wardens, victims family members, and people deeply involved with the system that leads to the death penalty lent their voices to a chorus that supported reform and rethinking about the wisdom of executions.

Reforms Enacted

In 2001, lawmakers in nearly every state that retained the death penalty sponsored a series of capital punishment-related bills that have paved the way for unprecedented reform. Among the measures considered by legislative bodies in states around the country were:

MENTAL RETARDATION	♦ Governors from five states (**Arizona, Connecticut, Florida, Missouri, and North Carolina**) signed legislation banning the execution of the mentally retarded. This development brings the number of states banning this practice to 18.
MORATORIUM	♦ Legislation calling for a moratorium on executions was introduced in 18 states and the federal government, though none was enacted. Moratorium measures nearly passed in both **Maryland** and **Nevada** , and **New Mexico's** legislature came close to passing a bill to abolish the death penalty.
ACCESS TO DNA EVIDENCE	♦ 17 states enacted legislation to provide inmates with greater opportunity for post-conviction DNA testing.
INDIGENT DEFENSE	♦ Although not always related to capital punishment, many death penalty states made changes in their systems of indigent defense in an attempt to provide better representation. Among the more notable were changes in **Indiana Arkansas, Kansas, Louisiana, Montana, Nebraska, Oklahoma, Oregon, and Texas.**

States with executions	2000	2001
Oklahoma	11	**18**
Texas	40	**17**
Missouri	5	**7**
N. Carolina	1	**5**
Georgia	0	**4**
Virginia	8	**2**
Delaware	1	**2**
Indiana	0	**2**
U.S. Govt.	0	**2**
Florida	6	**1**
Arkansas	2	**1**
California	1	**1**
Nevada	0	**1**
New Mexico	0	**1**
Ohio	0	**1**
Washington	0	**1**
Alabama	4	**0**
Arizona	3	**0**
Louisiana	1	**0**
S. Carolina	1	**0**
Tennessee	1	**0**
Totals	85	**66**

Other Developments

Also in 2001:

- For the first time ever, a state supreme court ruled a method of execution to be cruel and unusual punishment when Georgia's Court prohibited the use of the electric chair. Across the country, there were no electrocutions this year.

- In Texas, a federal court overturned the death penalty conviction of Calvin Burdine, whose lawyer slept through parts of his trial. This absence of representation had been upheld by the Texas courts and other federal courts.

- Three death sentences were commuted (in Oklahoma, North Carolina, and the federal system), higher than the yearly average for commutations since 1976.

Death Penalty Studies and Independent Reviews

State commission studies are underway or have recently been completed in ten states (Arizona, Connecticut, Delaware, Illinois, Indiana, Maryland, Nebraska, Nevada, North Carolina, and Virginia), and the federal government is conducting a follow-up review to supplement its report released earlier this year. In addition, a number of media-sponsored investigative reports and independent studies revealed a wealth of information about the application of the death penalty throughout the United States.

Among the more prominent findings:

- In August 2001, a commission appointed by **Arizona's** Attorney General recommended that:
  - ⇒ A statewide public defender's office be created to represent defendants in death penalty cases
  - ⇒ Death sentences of mentally incompetent defendants be permanently commuted to the maximum prison sentence available
  - ⇒ The execution of juvenile and mentally retarded offenders be prohibited. *(Note: Arizona enacted legislation to ban the execution of the mentally retarded in April.)*

- A study released in December by **Virginia's** Joint Legislative Audit Review Commission found that the death penalty is applied inconsistently, with more death sentences sought in rural and suburban jurisdictions than in urban ones, even when the underlying crimes are similar. In addition, the study noted that Virginia's Supreme Court has never found a case of excessive sentencing in the 119 capital cases that have come before it since 1977.

- After a year-long study of **Indiana's** death penalty, the Indiana Criminal Law Study Commission is finalizing its report. A preliminary version of their findings revealed that race of the victim appears to play a role in death penalty sentencing, though the state's attorney general saw little need for reform. The report also indicated that it costs the state 35% more to have the death penalty than it would if life without parole were the most severe punishment available.

- Seven **Indiana** newspapers spent a year examining the fairness of the state's capital punishment system and released their findings in October. Among the findings is that the

decision to seek the death penalty is often arbitrary, depending on the personal views of the prosecutor and whether or not a county can afford a death penalty trial.

DEATH ROW INMATES BY STATE

(NAACP Legal Defense Fund, October 1, 2001)

California	602
Texas	454
Florida	385
Pennsylvania	244
North Carolina	235
Ohio	203
Alabama	188
Illinois	175
Georgia	131
Arizona	128
Oklahoma	120
Tennessee	104
Louisiana	93
Nevada	88
Missouri	75
South Carolina	73
Mississippi	68
Kentucky	42
Arkansas	39
Indiana	39
Oregon	30
Virginia	29
U.S. Government	23
Idaho	20
New Jersey	18
Delaware	17
Maryland	15
Washington	15
Utah	11
Connecticut	7
U.S. Military	7
Colorado	6
Montana	6
Nebraska	6
New York	6
New Mexico	5
South Dakota	5
Kansas	4
Wyoming	2
Inmates sentenced in multiple states	-9

♦ A study commissioned by the **Nebraska** legislature was released in August. It found that death sentences are almost 4 times more likely when the victim in the underlying murder was of higher socio-economic status than when the victim is of lower status, even when similar crimes are compared. The study also found evidence of geographical disparities among Nebraska counties in seeking the death penalty. There was disagreement regarding treatment of minorities between state officials, who pronounced the death penalty to be fair, and the principal researcher, who said the study found evidence of racial disparities.

♦ A report released in August by the **New Jersey** Supreme Court found that the state's death penalty is more likely to be sought against defendants who kill white victims: "There is unsettling statistical evidence indicating that cases involving killers of white victims are more likely to progress to a penalty phase than cases involving killers of African-American victims."

♦ Researchers at the University of **North Carolina** found that the odds of being sentenced to death are 3.5 times higher for defendants whose victims are white than those with non-white victims. "Race and the Death Penalty in North Carolina An Empirical Analysis: 1993-1997."

♦ A 5-part investigative series in *The Tennessean* revealed that:

⇒ Of the 151 **Tennessee** death sentences reviewed on appeal since 1977, half were overturned, primarily because of trial errors or inadequate representation.

⇒ Since the death penalty was reinstated, at least 39 Tennessee lawyers who have been disciplined by the state have represented defendants in capital cases. The list of eligible defense attorneys for capital cases includes a lawyer convicted of bank fraud, a lawyer convicted of perjury, and a sanctioned lawyer whose failure to order a blood test let an innocent man linger in jail for four years on a rape charge.

⇒ Since 1977, 25% of the black men sentenced to death have had all white juries and, in more than half of those cases, the victim was also white.

In **Washington**, an investigative series by the *Seattle Post-Intelligencer* found that one-fifth of the 84 people who have faced execution in the past 20 years were represented by lawyers who had been, or were later, disbarred, suspended or arrested. The article also noted that judges contributed to the problem by appointing

inexperienced and often poorly paid local lawyers to defend capital defendants, instead of those recommended by the state Supreme Court.

Innocence

Five inmates walked free from the nation's death rows in 2001, bringing the total number of exonerated death row inmates to 98.

Charles Fain, a Vietnam veteran, was on Idaho's death row for 18 years before his release following DNA testing.

Peter Limone was released from death row after serving 33 years for a 1965 murder. His release came as a result of a Justice Department task force's discovery of compelling new evidence that Limone was actually innocent. In 1968, Limone was sentenced to die in Massachusetts' electric chair, but he was spared in 1974 when the state abolished the death penalty and his sentence was commuted to life in prison.

Gary Drinkard was released after serving six years on Alabama's death row when his conviction was overturned by the Alabama Supreme Court. A team of lawyers and investigators from Alabama and the Southern Center for Human Rights in Atlanta spent hundreds of hours establishing that Drinkard was at home when the crime was committed.

Joaquin Martinez was acquitted of all charges at his retrial for a 1995 murder in Florida. After four years on death row, Martinez's conviction had been overturned by the Florida Supreme Court because of improper statements by a police detective at trial. Key prosecution witnesses subsequently changed their stories and recanted their testimony. Both the Pope and the King of Spain had intervened on behalf of Martinez, who is a Spanish national.

Jeremy Sheets was released after four years on Nebraska's death row when the Nebraska Supreme Court overturned his conviction and prosecutors dropped all charges against him.

In **Oklahoma**, investigations continued into the work and testimony of police chemist Joyce Gilchrist, who has been fired from her position after providing false information in numerous cases. A federal grand jury has subpoenaed information from at least nine of Gilchrist's cases in which the defendant has already been executed.

International Developments

As the number of nations that have abolished capital punishment in law or in practice grew to 109 in 2001, the international community continued its challenge of the United States' death penalty policies.

Earlier in the year, the **International Court of Justice** (ICJ) handed down a ruling in favor of **Germany**, which had sued the United States in the World Court for violating international laws and treaties by executing two German foreign nationals, Karl and Walter LaGrand. The Court, in a 14-1 decision, held that the U.S. had breached its obligation under the Vienna

"During my nearly four years in France, no single issue evoked as much passion and as much protest as executions in the United States... some 300 million of our closest allies think capital punishment is cruel and unusual and it might be worthwhile to give it some further thought."

- Felix G. Rohatyn (2001)
former U.S. Ambassador to France

Convention on Consular Relations by denying the brothers the right to consular notification and by not informing German authorities of their arrests and convictions until 10 years after they occurred. The Court also held, for the first time in its history, that orders by the Court pending a final decision are legally binding, and criticized Arizona prosecutors for ignoring its order to stay the execution of Karl LaGrand.

The **United Nations** Committee on the Elimination of Racial Discrimination released preliminary conclusions in August regarding U.S. compliance with the Convention on the Elimination of All Forms of Racial Discrimination. The committee noted "a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty" in America.

The parliamentary assembly of the **Council of Europe**, the continent's largest human rights organization, passed a resolution saying that the United States and Japan should have their observer status revoked unless they make "significant progress" toward abolishing the death penalty by 2003. The U.S. has enjoyed observer status in the Council since 1996. Abolition of the death penalty has been a condition of membership since 1994.

South Africa and **Canada** issued strong rulings against extraditing defendants to countries such as the United States that use the death penalty, unless there are assurances that this punishment will not be sought. **Spain** and other European countries expressed concerns about extraditing suspects related to the September 11 attack on the U.S. if the death penalty would be pursued.

Conclusions

In 2001, there was a substantial decline in executions, coupled with decreased public support for capital punishment. Significant death penalty reforms were enacted, which may lead to a more restricted death penalty in the future. Additional exonerations of inmates who had spent many years on death row, and revelations from state and independent studies of unfairness in the capital punishment system, have caused some former proponents of the death penalty to question its value.

Emerging voices from the highest levels of government and civic leadership have joined international critics in calling for even tighter controls and, in some instances, abolition of the death penalty. Nevertheless, many people, including many political leaders, continue to support the death penalty, implying that a lively debate on this subject will carry over into the new year.

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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, and Brenda Bowser, Communications Director. We gratefully acknowledge the support of the Open Society Institute, the Columbia Foundation and the Scherman Foundation in supporting this work. Further sources for this report are available upon request.