DEATH PENALTY INFORMATION CENTER

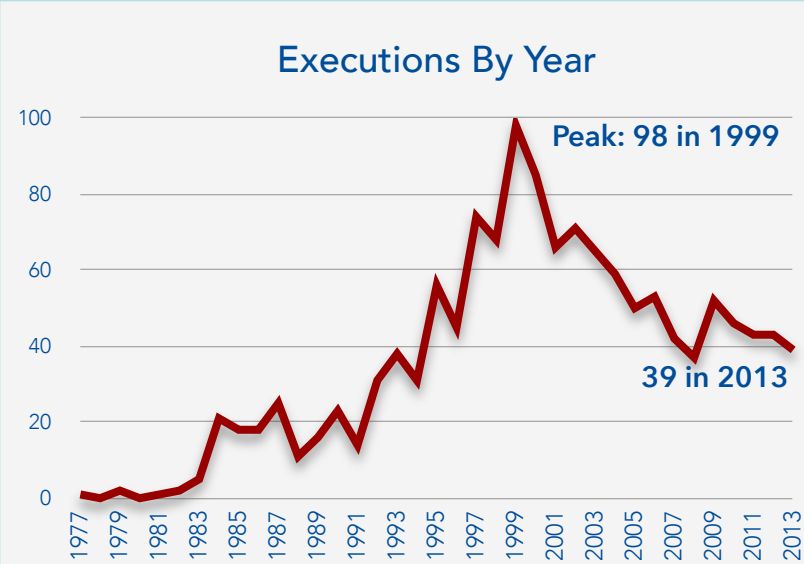
THE DEATH PENALTY IN 2013: YEAR END REPORT

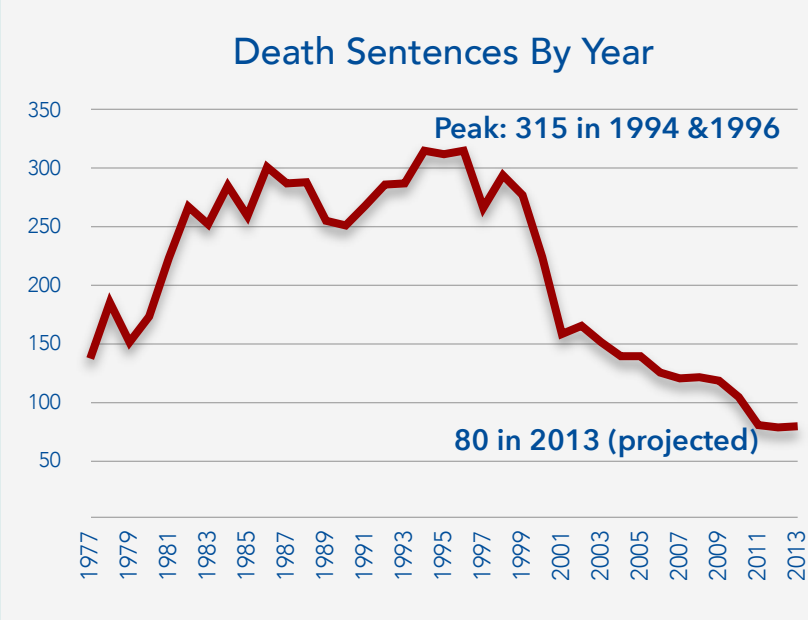
EXECUTIONS DECLINE NEARLY 10%; DEATH SENTENCES REMAIN CLOSE TO HISTORIC LOW

Maryland is Sixth State in Six Years to End Capital Punishment

KEY FINDINGS

- There were 39 **executions** in 9 states: only the second time in 19 years there were fewer than 40 executions.
- There were 80 **death sentences** in 2013, a slight increase from 2012, but near the lowest number since 1973.
- **Maryland** abolished the death penalty in 2013, the 6th state in six years to do so.
- **Public support** for the death penalty reached its lowest level in 40 years.





NARROWING OF DEATH PENALTY USE CONTINUES IN 2013

Executions by State	2012	2013
Texas	15	16
Florida	3	7
Oklahoma	6	6
Ohio	3	3
Arizona	6	2
Missouri	0	2
Alabama	0	1
Georgia	0	1
Virginia	0	1
Mississippi	6	0
South Dakota	2	0
Delaware	1	0
Idaho	1	0
Totals	43	39

In 2013 the use of the death penalty continued its steady decline by almost every measure. **Executions** dropped by about 10% from 2012, from 43 to 39, marking only the second time in the past 19 years their number was below 40. Executions in 2013 were carried out in 9 states, with 59% occurring in **Texas** (16) and **Florida** (7). Most death penalty states had no executions in 2013, or 2012.

At least 33 cases with execution dates received stays in 2013. Although no clemencies were granted, Alabama posthumously pardoned three of the Scottsboro Boys, who were sentenced to death in 1931. The legislature and governor agreed that grave injustices had occurred when 8 young black men were convicted of raping 2 white women.

The number of **new death sentences** was near its lowest level since the death penalty was reinstated in the 1970s. With less than two weeks remaining in 2013, there have been 80 new death sentences, three more than in 2012, and far fewer than in 1996, when there were 315. The number of death sentences in 2013 represents a 75% decline from the peak of the mid-1990s (see graph on page 1). **Florida** (15) and **California** (24) provided almost half of the death sentences this year. Many prominent death penalty states in the south, including **South Carolina**, **Virginia**, **Tennessee**, and **Louisiana**, had no death sentences. For the sixth year in a row, Texas (9) had fewer than 10 death sentences, a stark difference from 1999, when it recorded 48. Other leading states with death sentences in 2013 were Alabama (5), Ohio (4), Pennsylvania (4), Arizona (3), Indiana (3), and Missouri (3). Fifteen states imposed at least 1 death sentence in 2013, compared to 18 in 2012.

The number of people on **death row** continued to decline. As of April 1, 2013, there were 3,108 inmates on death rows across the country, compared to 3,170 at the same time last year. The total population on death row has decreased every year since 2001. In 2000, 3,670 inmates were under sentence of death.

For the sixth year in a row, Texas had less than 10 death sentences, a stark difference from 1999, when it recorded 48.

The **number of states** with capital punishment decreased to 32, with Maryland being the latest state to repeal the death penalty (for future offenses). In 2006, 38 states still retained the death penalty. Since then, there has been a 50% increase - from 12 to 18 - in the number of non-death penalty states. Thirty states, plus the District of Columbia, the federal government, and the U.S. military, have not had an execution in over 5 years.

Public support for the death penalty as measured in the annual Gallup poll declined to 60%, its lowest level in 40 years. Less than half (47%) of Democrats polled support the death penalty. Forty percent (40%) of Americans do not believe the death penalty is administered fairly. Prior Gallup polls that offered respondents alternative sentence choices found support for the death penalty to be less than 50%. In a *Boston Globe* poll of city residents, a strong majority (57%) supported a sentence of life without parole for Dzhokhar Tsarnaev, the man accused of the Boston Marathon bombing. Only 33% supported a death sentence if he were convicted.

SIGNIFICANT CASES

In October 2013, **Reginald Griffin** of Missouri was freed, with all charges related to his death sentence dismissed, becoming the 143rd person since 1973 to be exonerated from death row. Griffin had been convicted 30 years ago of a murder in prison, after prosecutors had withheld critical evidence about another suspect.

Warren Hill in Georgia came within hours of execution in July when a superior court judge granted a stay, questioning the constitutionality of the state's secrecy regarding lethal injections. Hill's other legal claim was that he suffered from mental retardation. Years earlier the state had refuted that claim by stating Hill had failed to meet the state's strict standard of "proof beyond a reasonable doubt" because a few doctors differed from the overall diagnosis of mental retardation. As Hill's execution grew closer, he was able to show the doctors were now in agreement on his disability, but the state said the new evidence came too late. The stay granted on lethal injection grounds may provide an opportunity for courts to consider Hill's mental retardation claim.

Death Row By State	2013
California	731
Florida	412
Texas	298
Pennsylvania	198
Alabama	197
N. Carolina	161
Ohio	147
Arizona	126
Georgia	95
Louisiana	88
Tennessee	84
Nevada	80
Oklahoma	58
US Government	58
S. Carolina	52
Missouri	48
Mississippi	46
Arkansas	38
Oregon	37
Kentucky	34
Delaware	18
Idaho	13
Indiana	13
Nebraska	11
Connecticut*	11
Virginia	10
Kansas	10
Utah	9
Washington	8
US Military	5
Maryland*	5
Colorado	4
S. Dakota	3
Montana	2
New Mexico*	2
New Hampshire	1
Wyoming	1
Total	**3,108**

As of April 1, 2013.
Six inmates received two death sentences in different states, but each is recorded as 1 in the national total.
*Abolished death penalty for future cases.

Duane Buck, who was granted a stay of execution in 2011, was denied relief by a divided Texas Court of Criminal Appeals in 2013, despite the testimony of a psychologist at his trial that blacks had a greater propensity for future dangerousness than whites. All of the other defendants in Texas whose capital trials were similarly marred by testimony from this psychologist were given new sentencing hearings.

The **U.S. Supreme Court** agreed to hear a case from Florida (*Hall v. Florida*) to examine Florida's unusual requirements for demonstrating mental retardation. Florida maintains that an IQ even slightly above 70 disqualifies a claim of mental retardation.

LETHAL INJECTION CONTROVERSY

One of the reasons for fewer executions in 2013 was the ongoing problem that states have had in finding a consistent means of carrying out executions. California, North Carolina, Arkansas, and Maryland (which abolished the death penalty in 2013) have not had an execution in over 7 years because of their inability to settle on a lethal injection protocol. Federal executions are on hold for the same reason. Many drugs used in lethal injections are manufactured in Europe, where opposition to the death penalty has resulted in a ban on exporting drugs for executions.

In order to continue executions, states such as Texas, Georgia, Missouri, and Ohio have turned to a controversial source of execution drugs: compounding pharmacies. Until November 2013, these institutions were not subject to regulation by the U.S. Food and Drug Administration, and in recent years contaminated drugs from some compounding pharmacies have caused scores of deaths and widespread illness.

To shield the sources of controversial drugs from public scrutiny, many states have resorted to secrecy, even declaring the compounding pharmacies to be part of their anonymous "execution team." Such censorship has attracted increasing judicial skepticism, with executions in Georgia and Florida being put on hold for examination of the laws shielding makers of lethal drugs.

All of the lethal injections in 2013, except two in Florida, used the drug pentobarbital, either alone or in combination with other drugs. Florida used a drug never tried before in lethal injections--midazolam hydrochloride. State and federal courts are reviewing this process.

The frustrations in finding an acceptable lethal injection process has led some law enforcement officials to doubt the future of the death penalty. In speaking to a group of sheriffs,

"They ought to just bring back the firing squad - I don't care. If they're going to have a death penalty in Ohio, they should carry it out. And if you don't want it, get rid of it. That's fine with me."

Arkansas Attorney General Dustin McDaniel asked: "Do we continue with a broken system … throwing money and resources at essentially pointless litigation, or do we modify the system? And there's only really two modifications that I see available – it's either abolish the death penalty or change the method of execution."

The chief prosecutor of Hamilton County, Ohio, Joe Deters, voiced similar sentiments: "They ought to just bring back the firing squad - I don't care. If they're going to have a death penalty in Ohio, they should carry it out. And if you don't want it, get rid of it. That's fine with me."

SIX REPEAL STATES IN SIX YEARS

In the 1980s and 90s, the number of death penalty jurisdictions slowly increased. However, in the past six years a steady stream of states has repealed capital punishment. When New Jersey abolished the death penalty through legislation in 2007, it was the first state to do so in 40 years. Since then, New York, New Mexico, Illinois, Connecticut, and Maryland have taken similar steps to end capital punishment. (New York's legislature repeatedly rejected attempts to fix its unconstitutional statute.)

"Over the longer arc of history, I think you'll see more and more states repeal the death penalty. It's wasteful. It's ineffective. It doesn't work to reduce violent crime."

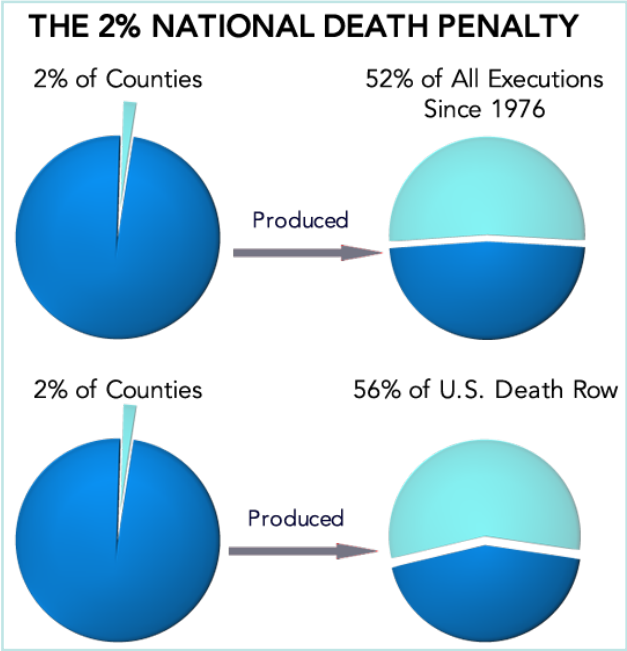
Maryland had studied and debated the death penalty for many years before taking final action in 2013. The votes to end the death penalty in the Senate (27-20) and the House (82-56) were by significant margins, and Governor Martin O'Malley marked the final step with a high-profile signing ceremony on May 2, predicting other states would follow a similar course: "Over the longer arc of history, I think you'll see more and more states repeal the death penalty. It's wasteful. It's ineffective. It doesn't work to reduce violent crime."

Delaware and **Colorado** came close to passing similar legislation in 2013 and may return to the issue soon. Delaware's Senate passed a repeal bill, which did not pass the House. Colorado's governor, John Hickenlooper, granted a stay of execution to Nathan Dunlap and essentially put executions on hold, stating, "If the State of Colorado is going to undertake the responsibility of executing a human being, the system must operate flawlessly. Colorado's system for capital punishment is not flawless." He added, "It is a legitimate question whether we as a state should be taking lives."

In **Nebraska**, the Judiciary Committee passed a repeal measure without dissent. However, the bill was blocked by a filibuster. **New Hampshire**'s legislature will consider a repeal bill in 2014, and Governor Maggie Hassan said she would sign such a measure.

Some states, however, passed legislation in 2013 that may expand the use of the death penalty. **North Carolina** repealed its *Racial Justice Act,* which gave capital defendants an opportunity to present statistical evidence of racial bias in their county or state. **Florida** passed the *Timely Justice Act* that requires the governor to be informed of cases that have exhausted their normal appeals, and sets deadlines for death warrants and executions, once the clemency process is completed.

USE OF DEATH PENALTY ISOLATED IN FEW COUNTIES



The use of the death penalty has been sharply skewed along geographic lines for many years. In 2013, 82% of the executions were carried out in the **South**, a percentage that has remained fairly constant since the death penalty was reinstated in 1976. In October, DPIC released a new report analyzing the use of the death penalty on a county basis. The study revealed that relatively few jurisdictions employ capital punishment regularly. *Only 2% of the counties in the U.S. have been responsible for the majority of cases leading to executions since 1976. Likewise, only 2% of the counties are responsible for the majority of today's death row population and recent death sentences.* Eighty-five percent (85%) of the counties in the U.S. have not had a single case resulting in an execution in over 45 years.

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This trend continued in 2013. Only about 1% of the counties in the country had a case resulting in an execution this year. Similarly, all of the death sentences in 2013 came from about 2% of the counties in the U.S. The report noted that although the death penalty is sparsely applied, taxpayers across the country are burdened with the high costs of capital punishment emanating from a very small percentage of the counties.

QUOTES FROM 2013

There were many "new voices" in 2013 expressing concerns about the death penalty, including judges, conservative leaders, law enforcement officials, and legislators:

"In complete honesty, when I was governor I was not nearly as concerned about the unfairness of the application of the death penalty as I am now. I know much more now."

- Former President Jimmy Carter,who had signed the Georgia law reinstating the death penalty

"There is little reason to believe that any defendant now on Oregon's Death Row will ever be executed. [Yet] we taxpayers pay nearly all of the expenses of prosecuting and defending death-penalty cases."

- Edwin J. Peterson, former Chief Justice of Oregon's Supreme Court

"For years, people like me thought that being tough on crime meant supporting the death penalty. Times have changed, and it's time for conservatives to get on the right side of the death penalty argument. One can oppose the death penalty and still be in favor of a tough, affordable, accurate and fair criminal justice system."

-Mary Kate Cary, former speechwriter for President George H. W. Bush

"As a victim's father who has been trapped in the labyrinth of the death penalty, and after seeing the real misuse of resources, I am begging our elected officials to do away with our broken death penalty system. Colorado can do better by our corrections officials, and we can do much better by victims."

- Robert Autobee, former corrections officer and father of Eric Autobee, also a corrections officer, who was murdered

"I am all in favor of taking a tough approach to crime. I believe people who commit murder should die in prison. I also believe we should use crime-fighting tools that are efficient and have proven results. The death penalty does not meet either of those standards."

-Steve Monks, former Chair of the Durham County (NC) Republican Party

"Throughout history, race has unfortunately played a part, an ugly part, in our criminal justice system. This is an opportunity for us to address not only the past, and those individuals who are still being affected by the disparities in treatment, but also in looking forward to make sure that we don't have those same disparities in our criminal justice system."

-Dallas County (TX) District Attorney Craig Watkins, speaking in favor of a state Racial Justice Act

"The time, money, and energy spent trying to secure the death of this defendant would have been better spent improving this country's mental-health and educational institutions, which may help prevent crimes such as the ones we are presented with today."

-Judge Boyce Martin, U.S. Court of Appeals for the Sixth Circuit, on the occasion of his final death penalty decision

"Death penalty supporters say that carrying out the death penalty is family closure. Closure is a myth. The death penalty does absolutely nothing for families except more pain."

-Senator Colby Coash (NE), a former death penalty supporter

CONCLUSION

The number of executions, the size of death row, and the number of death penalty states all declined in 2013. Death sentences were near their lowest level since the reinstatement of the death penalty in 1976. Even many southern states, including South Carolina, Virginia, Tennessee, and Louisiana, had no death sentences in 2013. With Maryland's repeal of capital punishment, the number of states without the death penalty grew to 18. Public support for the death penalty is at a 40-year low.

It is likely these trends will continue as more state legislatures consider repealing what has become a very expensive and unpredictable punishment. Nevertheless, over 3,000 people remain on death row, and some states like Florida and North Carolina have taken measures to expand the use of the death penalty.

The problems of mistakes, unfairness, and even the method of execution have exasperated many supporters of the death penalty, contributing to less reliance on capital punishment. Death sentences in Texas have declined by almost 80% since 1999. When examined on a county basis, only 2% of U.S. counties are responsible for the majority of executions and prisoners on death row. Because of restrictions by drug manufacturers, states have been forced to try new combinations of lethal drugs, some obtained from questionable sources, to carry out executions.

The history of the death penalty shows that none of these problems is easily fixed, and new ones are almost certain to arise. The death penalty is increasingly seen by both proponents and opponents as a failed program that may not be worth ttempts to repair it.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with information and analysis 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's staff. ***Further sources for facts and quotations are available upon request.*** *The Center is funded through the generosity of individual donors and foundations, including the Roderick MacArthur Foundation, the Open Society Foundations, Atlantic Philanthropies, and the Proteus Action League. The views expressed in this report are those of DPIC and do not necessarily reflect the opinions of its donors.*