

Death Penalty Facts and Figures: WHAT YOU SHOULD KNOW...

I. Race and the Death Penalty

“If you wish to know what justice is, let injustice pursue you.” – Eugenio Maria de Hostas

- The colors of a defendant and a victim's skin play a crucial and unacceptable role in deciding who receives the death penalty in America. People of color have accounted for a disproportionate 43% of total executions since 1976, and are 55% of those currently awaiting execution. [<https://www.aclu.org/other/race-and-death-penalty>]
- According to the 2010 census, 27 percent of Alabama’s population are black and 67 percent are white. Yet of the 185 people on Alabama’s death row, 94 (51 percent) are black and 88 (48 percent) are white. Prominent researchers have documented a pattern of discrimination in the application of the death penalty based on the race of the victim, race of the defendant, or both, in nearly every state that uses capital punishment. Each year in Alabama, nearly 65 percent of all murders involve black victims, yet 73 percent of the people currently awaiting execution in Alabama were convicted of crimes in which the victims were white. Fewer than 5 percent of all murders in Alabama involve black defendants and white victims, but over 52 percent of black death row prisoners have been sentenced for killing someone white. [<https://eji.org/death-penalty/race-and-poverty>]
- Although black people in Alabama constitute 27 percent of the total population, none of the 19 appellate court judges and only one of the 42 elected District Attorneys in Alabama is black.

II. Mental Illness and the Death Penalty

“Mental illness is nothing to be ashamed of, but stigma and bias shame us all.” – Bill Clinton

- A report released in October 2016 estimates that 300 veterans are currently condemned to be executed in the United States. The report brings attention to the long-lasting effects of trauma and the resulting disabilities that many veterans have experienced, and

raises questions about imposing the death penalty on trauma survivors and other people with severe mental illnesses.

- The Supreme Court has barred the death penalty for people with intellectual disabilities, and for children whose brains are not yet fully developed. People deemed insane cannot be executed, but the legal definition of insanity does not account for mental illnesses, like post-traumatic stress disorder, that should be considered in evaluating the appropriate sentence.
- The study (<http://deathpenaltyinfo.org/veterans>), by the Death Penalty Information Center, documents that many of the veterans sentenced to death suffered from PTSD or other mental illnesses as a result of their combat service, but their lawyers did not present their military service or the mental illness that resulted and too often went untreated. Today, only about half of the veterans diagnosed with PTSD or major depression after serving in Iraq or Afghanistan are receiving treatment.
- At least 13 percent of the people executed in the modern death-penalty era have been so-called “volunteers” who gave up their appeals, and researchers have found that more than 75 percent of death row inmates who “volunteer” for execution by waiving their appeals suffer from documented mental illness. Nonetheless, courts have failed to conduct meaningful competency evaluations that focus on the person’s understanding of the consequences of the decision as well as on his reasons for wanting to give up and on the rationality of his thinking and reasoning.
- Since 2000, five people from Alabama’s death row have cut short their appeals process and volunteered to be executed.
- Three quarters of American executions in 2015 involved cases of "crippling disabilities and uncertain guilt," according to a report by the Charles Hamilton Houston Institute for Race and Justice at Harvard University. Saying that the 2015 executions revealed "a broken capital punishment system," the report found that, "[o]f the 28 people executed [in 2015], 75% were mentally impaired or disabled, experienced extreme childhood trauma or abuse, or were of questionable guilt." It said seven people who were executed suffered from serious intellectual impairment or brain injury, including Warren Hill, who even the state's doctors agreed had

intellectual disability, and Cecil Clayton, who lost 20% of his prefrontal cortex as a result of a sawmill accident. An additional seven suffered from serious mental illnesses. One, Andrew Brannan, was a decorated war veteran whom the Veterans Administration had classified as 100% disabled as a result of combat-related Posttraumatic Stress Disorder from his service in Vietnam. The report identified five more cases in which the executed prisoners had experienced extreme childhood trauma and abuse, and another two - Lester Bower and Brian Keith Terrell - in which it said the executed men "were potentially innocent." The report also highlighted developments described in DPIC's Year End Report, including the increasing isolation of death penalty to use by a small number of jurisdictions. "Only a handful of outlier counties still impose the death penalty," the report said, and an examination of practices in those counties often "reveals themes of overzealous prosecutors who often bend the rules, poorly performing defense lawyers, and a legacy of racial bias." As a result, "these outlier counties tend to [also have] an unacceptable history of convicting the innocent and individuals with crippling mental impairments."

III. Intellectual Disability and the Death Penalty

"Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, the [intellectually disabled] do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants." – Justice Stevens writing for the majority in *Atkins v. Virginia*

- In 2002, the United States Supreme Court issued an opinion in *Atkins v. Virginia* establishing a categorical bar, excluding individuals with mental retardation from being subject to the death penalty.
- In accordance with United States Supreme Court case law banning the execution of offenders with mental retardation, 26 states have adopted statues prohibiting this practice. Alabama is not one of them. Consequently, and despite repeated pleas from judges in the state, courts have been forced to cobble together stopgap standards and procedures to comply with the United States Supreme Court decision. The Legislature's abdication of its

responsibilities in this area has resulted in the legitimate risk that Alabama might continue to execute mentally retarded offenders.

IV. Judicial Override

“What could explain Alabama judges’ distinctive proclivity for imposing death sentences in cases where a jury has already rejected that penalty? There is no evidence that criminal activity is more heinous in Alabama than in other States, or that Alabama juries are particularly lenient in weighing aggravating and mitigating circumstances. The only answer that is supported by empirical evidence is one that, in my view, casts a cloud of illegitimacy over the criminal justice system: Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures.” – Justice Sotomayor dissenting in *Woodward v. Alabama*.

- “Today, Alabama stands alone: No other State condemns prisoners to death despite the considered judgment rendered by a cross-section of its citizens that the defendant ought to live.” Justice Sotomayor dissenting in *Woodward v. Alabama*.
- In Alabama, since 1976, 101 jury recommendations for life have been overridden by elected judges.
- Post-1976, ten men have been executed in Alabama, despite never having a jury vote that they should die.
- Currently in Alabama, nearly 20% of present death row inmates are on Death Row because of the action of one elected official, rather than a decision by a jury.
- Alabama’s trial and appellate court judges are elected. Because judicial candidates frequently campaign on their support and enthusiasm for capital punishment, political pressure injects unfairness and arbitrariness into judges’ decisions to override jury life verdicts and impose the death penalty. The proportion of death sentences imposed by override often is elevated in election years. In 2008, 30 percent of new death sentences were imposed by judge override, compared to 7 percent in 1997, a non-election year. In some years, half of all death sentences imposed in Alabama have been the result of override.

- Prior to this year, Alabama, Delaware and Florida had statutes that allowed a judge to override a jury's vote for life.
- In *Hurst v. Florida*, the United States Supreme Court held that a statute which allowed someone to be sentenced to death without a jury finding the appropriate facts and voting that the person should be executed, violated the 6th Amendment's right to a jury trial.
- After *Hurst*, the Florida Legislature took swift action to rewrite their capital sentencing statute, and Delaware's Supreme Court declared Delaware's statute unconstitutional.
- Alabama's death sentencing statute has been described by the State as virtually identical to Florida's capital sentencing statute.
- However, the Alabama Legislature has taken no action to remedy the statute's obvious constitutional flaw. When a circuit judge found that Alabama's statute was unconstitutional, the Alabama Court of Criminal Appeals reversed that decision and allowed capital trials to continue in Alabama.
- The United States Supreme Court has remanded three cases back to the Alabama Court of Criminal Appeals with specific instructions to review the cases in light of *Hurst*. No decisions on those cases have been made.

V. Innocence

- In Alabama, six people have been exonerated from death row since 1976.
- Eyewitness testimony is unreliable. Nationally, 70% of the cases where DNA exonerated a defendant had an eyewitness identification.
- There is such a thing as a false confession. Nationally, 25% of the cases where DNA exonerated, a defendant had made a confession or inculpatory statement.

VI. Lawyer Incompetence and Neglect

“The failure to provide adequate counsel to capital defendants and death row prisoners is a defining feature of the American death penalty. Whether a defendant will be sentenced to death typically depends more on the quality of his legal team than any other factor.” –EJI Report

- “Alabama sets low eligibility requirements for lawyers appointed to represent indigent capital defendants at trial.” *Maples v. Thomas*, United States Supreme Court
- “Appointed counsel need only be a member of the Alabama bar and have ‘five years’ prior experience in the active practice of criminal law.’ Ala. Code §13A-5-54 (2006). Experience with capital cases is not required.” *Maples v. Thomas*, United States Supreme Court
- “Alabama provides no additional training in handling capital cases and has historically capped fees for appointed counsel at extremely low rates.” Alabama Post-Conviction Relief Project Fact Sheet
- Alabama does not have a statewide public defender system or a state post-conviction office, and fails to provide appointed counsel in state post-conviction litigation until a petition has been filed, and then only if the judge deems it necessary. Post-conviction counsel’s fees are still capped by statute at \$1,500. Alabama Post-Conviction Relief Project Fact Sheet
- “Appointed counsel in death penalty cases are also undercompensated. Until 1999, the State paid appointed capital defense attorneys just ‘\$40.00 per hour for time expended in court and \$20.00 per hour for time reasonably expended out of court in the preparation of [the defendant’s] case.’ Ala. Code §15-12-21(d) (1995). Although death penalty litigation is plainly time intensive, the State capped at \$1,000 fees recoverable by capital defense attorneys for out-of court work. Even today, court-appointed attorneys receive only \$70 per hour. 2011 Ala. Acts no. 2011-678, pp. 1072-1073, §6.” *Maples v. Thomas*, United States Supreme Court
- Ron Smith is an inmate on Alabama’s death row currently facing an execution date of December 8, 2016. Ron Smith’s lawyers failed to pay the filing fee for his state post-conviction petition – for more

than six months after his case was filed. As a result, his federal habeas petition was ruled untimely and the federal courts refused to consider the merits of his claims. Ron Smith's case was discussed in a New York Times column by Adam Liptak on January 7, 2013, "Lawyers Stumble, and Clients Take Fall."

- Robin Myers is an inmate on Alabama's death row. He is out of court, but an execution date has not yet been set. In Robin Myers' case, his lawyer abandoned him during the appeal from his state post-conviction hearing, without filing a formal withdrawal or notifying Mr. Myers, even though Mr. Myers is intellectually disabled. Over a year after his deadlines ran, Mr. Myers received a notice from the State that it would be pursuing an execution date—but Mr. Myers could not even read the letter that was sent to him. Due to the state lawyer's abandonment, Mr. Myers had failed to complete the appeals process in state post-conviction. The federal courts held he was barred from proceeding with his claims in federal court.