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Contact: Margot Friedman at mfriedman@dupontcirclecommunications.com or 202-330-9295 (text or voice)

deathpenaltyinfo.org Twitter: @DPInfoCtr @RDunhamDPIC

On the 50th Anniversary of U.S. Supreme Court's Invalidation of Death Penalty Statutes, Study of More Than 9,700 Death Sentences Shows that Capital Punishment Continues to be Arbitrary, Discriminatory, and Rife with Error

Death Penalty Information Center Launches First Comprehensive Database of Every Death Sentence Handed Down Between Court's Ruling in *Furman* and Jan. 1, 2021

(Washington, D.C.) Marking tomorrow's 50th anniversary of the U.S. Supreme Court decision in *Furman v. Georgia*, which struck down all of the nation's death penalty statutes as arbitrary and capricious, the Death Penalty Information Center (DPIC) unveiled a first-of-its-kind database documenting more than 9,700 death sentences handed down across the country between the Court's ruling in *Furman* and January 1, 2021. The data provide powerful evidence that the nation's use of capital punishment continues to be arbitrary, unreliable, and infected with bias.

View the Death Sentence Database here: <https://deathpenaltyinfo.org/database/sentences>

Over the past five years, DPIC has researched every death sentence imposed in the U.S. in the modern era of the death penalty and catalogued the name, race, and gender of the defendant; the state and county (or federal district) of prosecution; the year the sentence was imposed; the outcome of the particular sentence; and the ultimate outcome or current status of the case. To DPIC's knowledge, this level of research has never been done before.

"After 50 years, the data show a wasteful punishment, incompetently applied and beset by arbitrary factors such as race, place, and time," said Robert Dunham, DPIC's Executive Director. "The most likely outcome of a death sentence once it is imposed is that it will be overturned. Fewer than 1.1% of counties account for half of death row. Thirty-year-old cases are coming up for execution that wouldn't even be capitally prosecuted today. And when you look behind the data, the features that best characterize executions — race of victim, vulnerable defendants, when the case was tried, and the lack of meaningful judicial process — are illegitimate bases to administer the law. The Court said America wasn't able to administer the death penalty fairly or reliably a half century ago. The data show we still can't do it today."

Dunham said that the census database also verifies that, "when it comes to executions, white lives matter more than Black lives." Executions carried out over the 50 years were six times more likely to involve a white victim than only victims who were Black. Defendants of color were disproportionately likely to be wrongfully convicted of capital offenses, took longer to be exonerated, and comprised an overwhelming majority of the likely

intellectually disabled people who continue to be executed in the U.S. despite the constitutional prohibition against that practice, Dunham said.

Key findings from DPIC's analysis of more than 9,700 death sentences include:

Case Outcomes: The single most likely outcome of a capital case once a death sentence is imposed is that the conviction or death sentence will be overturned and the defendant will not be resentenced to death.

- Fewer than 1 in 6 death sentences result in an execution.
- A death sentence is 3 times more likely to be reversed as a result of a court decision than it is to result in an execution.
- At least 189 people who were wrongfully convicted and sentenced to death have been exonerated since 1973. That is one person exonerated for every 8.2 people who are executed. (189 exonerations/1547 executions based on data updated through June 29, 2022.)
- More than 530 capital convictions and/or death sentences have been overturned because of, or resulted in exonerations involving, prosecutorial misconduct. That is nearly 5.5% of all death sentences imposed in the U.S. in the past 50 years.

Geographic arbitrariness: The U.S. death penalty is geographically arbitrary and is disproportionately carried out in small number of states and counties characterized by outlier practices and lack of meaningful judicial process.

- Just 34 counties — fewer than 1.1% of all the counties in the U.S. — accounted for half of everyone on death row in U.S. states as of 1/1/2021. 2% of U.S. counties accounted for 60.8% of all state death-row prisoners. 82.8% of U.S. counties did not have anyone on death row.
- Just 5 counties — Harris, TX; Dallas, TX; Bexar, TX; Tarrant, TX; and Oklahoma, OK — account for more than 1/5 of all executions in the U.S. in the past 50 years. 2% of U.S. counties accounted for half of all executions in the U.S., while 84% of U.S. counties have not had any executions in the past 50 years.
- Fewer than 2.4% of all counties in the U.S. (just 75 counties) account for half of all death sentences imposed in state courts in the past 50 years.
- Outlier practices disproportionately contribute to death sentences and executions. Counties in Alabama and Florida, which authorized non-unanimous death sentences, accounted for the most death sentences and had the highest per capital death-row populations in counties with smaller populations.

- The quality of counsel had a direct impact on sentencing outcomes. More than 200 death sentences were imposed in Philadelphia, PA in cases in which defendants were represented by poorly trained and underfunded court-appointed counsel. No one represented by the Philadelphia public defender's specialized homicide unit ever was sentenced to death.
- Likewise, states with the highest execution rates also tended to have the worst access to meaningful judicial review. More than 100 people were executed in Texas after U.S. Supreme Court case precedent had already established the unconstitutionality of their death sentences. In 96% of capital post-conviction proceedings in Harris County, Texas, in which factual issues were contested, county judges adopted the prosecutors' proposed findings of fact and legal conclusions word for word.

Race: While the vast majority of murders are committed against individuals of the same race as the perpetrator, the census data showed:

- It is 5.9 times more likely that an execution carried out in the U.S. over the past 50 years involved one or more white victims (1207 cases) than that it involved only Black victims (206 cases). 78.1% of executions in the U.S. in the past 50 years were in cases involving white victims. 13.3% were in cases with only Black victims. 6.5% were in cases with only Latinx victims.
- 60% of African Americans who have been executed were sentenced to death for killing white victims. Just 34.4% of executions of African Americans were for killing Black victims. 3.2% involved Latinx victims.
- 48.1% of executions of death-sentenced Latinx prisoners occurred in cases involving at least one white victim, identical to the percentage involving only Latinx victims. 2.3% involved Black victims and 1.6% involved Asian victims.
- By contrast, 94.4% of executions of white prisoners were in cases involving white victims. Just 2.4% of executions of white prisoners were for killing Black victims and 2.3% were for killing Latinx victims.

The census data also showed that members of vulnerable groups who are sentenced to death (juveniles, intellectually disabled prisoners, the innocent) are disproportionately likely to be defendants of color. DPIC found that:

- Defendants of color constitute 52.8% of those sentenced to death over the past 50 years. Yet they make up 64.2% of death-row exonerees and 83.1% of all death-row prisoners later found to be ineligible for the death penalty because of intellectual disability.

- While Black defendants constitute 41.7% of those sentenced to death in the past 50 years, they are 54.0% of death-row prisoners who have been exonerated. 68.3% of death-row prisoners later found to be ineligible for the death penalty because of intellectual disability are Black.
- Latinx defendants constitute 8.9% of those sentenced to death and are exonerated in roughly the same percentage (8.6%). However, they comprise 14.1% of death-sentenced prisoners subsequently found ineligible for the death penalty because of intellectual disability.
- Defendants of color constitute 44.3% of those executed in the U.S. over the past 50 years but are 54.5% of those executed for offenses committed as juveniles, 69.8% of the intellectually disabled defendants to be executed before *Atkins v. Virginia* declared the practice unconstitutional, and 75.0% of the likely intellectually disabled prisoners who have been executed despite *Atkins*' prohibition of the practice.
- While Black defendants constitute 34.2% of those executed in the modern era, half of those executed for offenses committed as juveniles were Black. 63.0% of the intellectually disabled defendants executed before *Atkins* and 62% of the likely intellectually disabled defendants executed post-*Atkins* also have been Black.
- Latinx defendants constitute 8.3% of those executed in the U.S. in the past 50 years but 14.3% of the likely intellectually disabled prisoners to have been executed post-*Atkins*.

The Decline of the Death Penalty: The dataset quantifies the decline of the death penalty across the United States by multiple measures.

- **Death sentences** have declined in the United States by approximately 90% after peaking at more than 300 per year for three consecutive years in the mid 1990s, including a 70% decline over the decade preceding the pandemic. There have been fewer than 50 new death sentences imposed each year since 2015.
- The decline has occurred at all levels, from the number of states and counties imposing death sentences to the number of death sentences imposed in those states and counties. More than 200 counties sentenced defendants to death in 1986, and an average of 180 counties per year imposed death sentences from 1993–1996. The number of counties imposing death sentences each year has declined more than 80% since then, to an average of 31.6 between 2015 and 2019.
- The number of counties imposing more than one death sentences per year has declined even more. Since peaking at an average of 51.2 multiple death-sentencing counties in 1994–1999, it has fallen by nearly 94% to 3.2 such counties in the years

2015–2019. No more than 3 counties have imposed multiple death sentences since 2016.

- **Executions** have declined in the United States by approximately 75% after peaking at 98 in 1999, to an average of 23.6 in the five years before the pandemic. There have been fewer than 30 executions in the U.S. every year since 2015.
- No executions have been carried out in the Northeast in more than fifteen years and no northeastern state has carried out an involuntary execution in more than fifty years. Arizona is the only state west of Texas to have executed any person in more than a decade.

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To speak with Robert Dunham, DPIC's Executive Director, or Ngozi Ndulue, DPIC's Deputy Director, please contact Chloe Madvig at cmadvig@deathpenaltyinfo.org.

The Death Penalty Information Center (www.deathpenaltyinfo.org) is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. DPIC was founded in 1990 and prepares in-depth reports, issues press releases, conducts briefings for the media, and serves as a resource to those working on this issue.