

136946

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

Public Domain/OJP/BJJ

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

130440

Bureau of Justice Statistics Bulletin

Capital Punishment 1991

By Lawrence A. Greenfeld
BJS Statistician

Eight States executed 14 prisoners during 1991, bringing the total number of executions to 157 since 1976, the year that the U.S. Supreme Court reinstated the death penalty. Those executed during 1991 had spent an average of 9 years and 8 months awaiting execution, about 1 year and 9 months longer on average than the 23 persons executed during 1990.

During 1991, 265 prisoners were received by State prison systems and 1 prisoner entered the Federal prison system under a sentence of death from the courts. During the year, 106 persons had their death sentence vacated, 2 had their sentence commuted, 1 received a conditional pardon by the governor, and 7 died while under a death sentence. At yearend, 34 States and the Federal prison system reported a total of 2,482 prisoners under sentence of death, a 5.8% increase over the number held at the end of 1990. All prisoners under sentence of death on December 31, 1991, had been convicted of murder. The median time since the death sentence was imposed for the 2,482 prisoners was 5 years.

About 7 out of 10 offenders under sentence of death for whom criminal history data were available had a prior felony conviction; about 1 in 12 had a prior homicide conviction. About 2 in 5 condemned prisoners had a criminal justice status at the time of the capital offense. Half of these were on parole; the rest were in prison, on escape from prison, on probation, or they had charges pending against them. Nearly 15% of those sentenced to death between 1988 and 1991 had received 2 or more death sentences.

Status of the death penalty, December 31, 1991

| Executions during 1991 | Number of prisoners under sentence of death | Jurisdictions without a death penalty |
|------------------------|---|---------------------------------------|
| Texas 5 | Texas 340 | Alaska |
| Florida 2 | Florida 311 | District of Columbia |
| Virginia 2 | California 301 | Hawaii |
| Georgia 1 | Pennsylvania 137 | Iowa |
| Louisiana 1 | Illinois 132 | Kansas |
| Missouri 1 | Oklahoma 125 | Maine |
| North Carolina 1 | Alabama 119 | Massachusetts |
| South Carolina 1 | Ohio 111 | Michigan |
| Total 14 | Georgia 101 | Minnesota |
| | 26 other jurisdictions 805 | New York |
| | Total 2,482 | North Dakota |
| | | Rhode Island |
| | | Vermont |
| | | West Virginia |
| | | Wisconsin |

JAN 25 1993

ACQUISITIONS

Figure 1

October 1992

This Bulletin marks the 62nd consecutive year that the Federal Government has published statistics on executions. Since 1953 the Federal Government has also provided data on persons under sentence of death, expanding in recent years to include criminal history information and whether the condemned had a status with the criminal justice system at the time of the capital offense. Data are collected prospectively on each case after entering a death-sentence status so that removals of a death sentence, executions, and other changes in status are systematically followed. The series also tracks changes in statutes relating to the death penalty and major cases

decided which may affect the application of the death penalty.

Computerized data on individuals who have been sentenced to death since 1973 are available to the public through the BJS-sponsored National Archive of Criminal Justice Data.

I would like to thank the many persons in State and Federal corrections agencies and offices of State attorneys general who make this annual report possible.

Steven D. Dillingham, Ph.D.
Director

The majority, 1,464 (59.0%), of those under sentence of death were white; 982 (39.6%) were black; 23 (0.9%) were American Indian; and 13 (0.5%) were Asian. Hispanic prisoners (184) accounted for 7.4% of those under a death sentence. Thirty-four (1.4%)

of those under a death sentence were female. The median age of all inmates under a death sentence was 34 years and the median age at which they had been sentenced to death was 29 years.

About 58% of those under sentence of death were held by States in the South. Western States held an additional 21%; Midwestern States, 15%; and the Northeastern States of Connecticut, New Jersey, and Pennsylvania, just under 6%. Texas had the largest number of condemned inmates (340), followed by Florida (311), California (301), Pennsylvania (137), and Illinois (132). One prisoner was in Federal custody under a death sentence on December 31, 1991.

During 1991, 30 State prison systems and the Federal prison system received a total of 266 prisoners under sentence of death from courts. Florida (45 admissions), Texas (26 admissions), California (24 admissions), and Pennsylvania (19 admissions) accounted for 43% of the inmates entering prison under a death sentence during the year.

The 14 executions in 1991 were carried out by 8 States: 5 in Texas, 2 each in Florida and Virginia, and 1 each in Georgia, Louisiana, Missouri, North Carolina, and South Carolina. Seven of those executed were white males (including one Hispanic male) and seven were black males. Seven of the executions were carried out by lethal injection and seven by electrocution.

From the beginning of 1977 to the end of 1991, a total of 157 executions were carried out by 16 States. Of these, 94 (59.9%) were white, and 63 (40.1%) were black. Those executed included 10 Hispanic males (9 white and 1 black) and 1 white female. Over the same period, 3,719 admissions under sentence of death occurred, of which 2,182 (58.7%) were white, 1,481 (39.8%) were black, and 56 (1.5%) were of other races. A total of 248 Hispanics (6.7%) were among the admissions over the period. During the same years, 1,462 removals from a death sentence occurred as a result of dispositions other than execution (resentencing, retrial, commutation, or death while awaiting execution). Of those removed from under a death sentence, 824 (56.4%) were white, 618 (42.3%) were black, and 20 (1.4%) were of other races. There were 69 Hispanics (4.7%) who had their death sentences removed during the period.

Persons under sentence of death, 1953-91

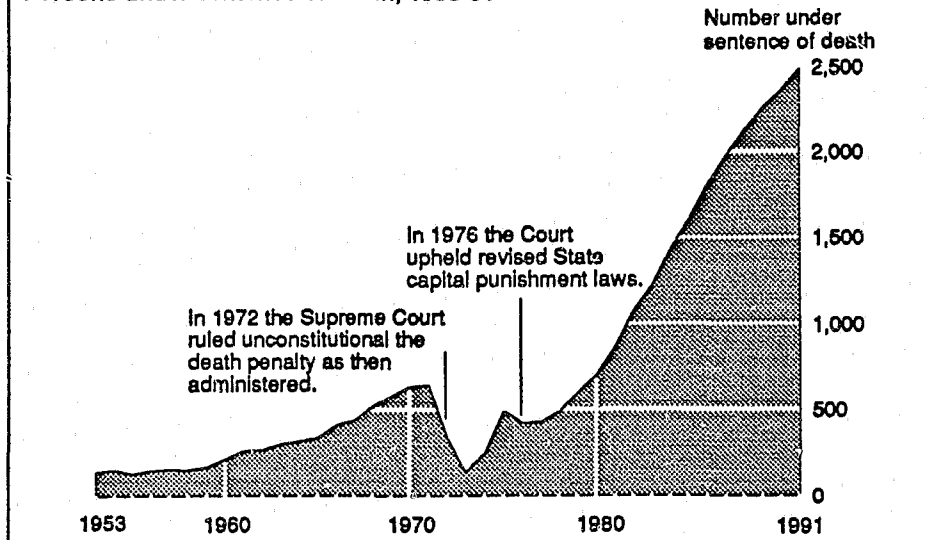


Figure 2

Capital punishment in the courts¹

Parker v. Dugger (decided January 22, 1991)

This case dealt with the question of the adequacy of the consideration given to mitigating evidence by both the trial judge and the Florida Supreme Court. The case arose from a triple murder related to drug trafficking. The petitioner was convicted of first-degree murder in two of the killings and third-degree murder in the other death. The advisory jury concluded that sufficient aggravating circumstances existed to support a sentence of death but recommended the imposition of two life sentences, finding that the mitigating circumstances outweighed the aggravating circumstances. The judge overruled the jury on one of the counts and sentenced the petitioner to death concluding that six statutory aggravating circumstances and no statutory mitigating factors were present. The Florida Supreme Court affirmed the conviction and sentence after striking two aggravating factors found by the trial judge and concluding that there were no mitigating factors.

In a habeas corpus proceeding, a U.S. district court granted relief, finding that, though the record contained indications of nonstatutory mitigating evidence, it did not show any consideration of such evidence by the trial judge or the Florida Supreme Court. The U.S. court of appeals disagreed with the district court finding that the record was sufficient to indicate that the judge had found the presence of mitigating factors but

viewed them to be insufficient relative to the evidence of aggravation. The Supreme Court concluded that while the trial judge's weighing of aggravating and mitigating factors was sufficient, the Florida Supreme Court erred in failing to properly reweigh the circumstances after striking two of the aggravating factors.

Ford v. Georgia (decided February 19, 1991)

The Supreme Court dealt with the issue of the timeliness of an objection to a prosecutor's use of peremptory challenges in the selection of jurors. The petitioner, who was black, was charged with the rape, kidnaping, and murder of a white woman. The petitioner had filed a pretrial motion indicating to the court that the prosecutor had a long history of using peremptory challenges to remove black persons from juries when the victim and defendant were of different races. The need to establish a pattern of racial discrimination in jury selection had been previously set forth in *Swain v. Alabama*. The trial judge in denying the motion noted that he had observed a number of cases in which white jurors had been struck and black jurors seated in trials of black defendants. During jury selection, the prosecution used 9 of its 10 peremptory challenges to strike black jurors and the final jury selected contained one black juror.

Following conviction and receiving a sentence to death, the petitioner appealed to the Supreme Court of Georgia alleging racial bias in the selection of jurors in violation of the sixth amendment. The

¹See page 17 for citations.

appeal was denied and the conviction and sentence were affirmed. While considering the petitioner's request for certiorari, the Supreme Court handed down **Batson v. Kentucky** which offered a more lenient standard on allegations of racial bias in jury selection than was the case in the **Swain** decision — defendants only had to prove the existence of racial bias in their own case and not a prior history of race-based jury selection. A subsequent decision (**Griffith v. Kentucky**) concluded that the **Batson** rule could be applied retroactively and the Supreme Court remanded the petitioner's case to the Georgia Supreme Court for consideration in light of these rulings. The Georgia Supreme Court, in reviewing the case a second time, concluded that a **Batson** claim could not be made because the objection to the jury selection process was made in a pretrial motion when it should have been raised after the jurors were selected based upon another ruling on **Batson** requirements (**State v. Sparks**) and was barred from Federal review. The Supreme Court concluded that the timeliness rules set down in **Sparks** were not a bar to Federal review of the petitioner's claim under **Batson** and the Georgia Supreme Court erred in setting down a new rule in **Sparks** which had not been in existence at the time the petitioner had been tried. A unanimous High Court reversed and remanded the case.

Arizona v. Fulminante
(decided March 26, 1991)

This case involved the issue of a coerced confession to an Arizona murder by a Federal prisoner who was serving time for an unrelated crime. The petitioner befriended a fellow Federal inmate who was a paid informant for the Federal Bureau of Investigation and posing as an organized crime figure. When the informant offered to protect the petitioner from hostile inmates in return for information about the murder, the petitioner confessed that he had sexually assaulted, choked, and shot his 11-year-old stepdaughter after making her beg for her life. The petitioner reiterated the confession to the informant's wife after discharge from Federal prison.

The trial court denied the defendant's motions to suppress both confessions to the murder, rejecting his assertion that the first confession had been coerced and the second confession was the "fruit" of the first. He was subsequently convicted and sentenced to death. On initial appeal to the Arizona Supreme Court, that court found

that the confession had been coerced but that its admission into evidence at trial was harmless error. After a motion for reconsideration, the Arizona Supreme Court, concluded that U.S. Supreme Court precedents precluded the use of harmless error analysis when applied to coerced confessions and reversed the conviction, ordering the defendant's retrial without the confession. The U.S. Supreme Court granted review of this case because of the apparent confusion across the State and Federal judiciary about coerced confessions and the applicability of harmless error analysis.

The High Court affirmed the Arizona Supreme Court's judgment concluding that the confession had been coerced and observed that the record revealed that both the prosecution and trial court recognized the central importance of the confession in both the conviction and sentencing phases of the trial. The Court split (5 to 4) in favor of a conclusion that the State had failed to adequately meet its burden of demonstrating that the confession did not affect the conviction and was, therefore, harmless error.

McClesky v. Zant
(decided April 13, 1991)

This case deals with the question of abuse of the protections of the writ of habeas corpus by a petitioner who was convicted of the murder of a police officer during the robbery of a furniture store and was sentenced to death. Among the evidence presented at trial was the testimony of another inmate held in the jail cell adjacent to that of the petitioner after his arrest. The witness said that the petitioner, while in jail, had boasted about killing the police officer.

After the conviction and sentence were affirmed by the Georgia Supreme Court, the petitioner filed a State habeas corpus claim indicating that his statements to a fellow jail inmate had been induced by the State without assistance of counsel in violation of findings of the Supreme Court in **Massiah v. United States**. The State habeas request was denied and the petitioner subsequently filed a Federal habeas petition which failed to raise a claim under **Massiah**. The U.S. district court granted relief on the habeas petition but was subsequently reversed by the U.S. court of appeals. The Supreme Court ultimately reviewed the case to evaluate the constitutionality of Georgia's death sentencing procedures and rejected the petitioner's claim.

The petitioner then filed a second State habeas claim contending that there was evidence about the State's relationship with the jailhouse witness which had not been disclosed at the time of trial. This request was also denied by the Supreme Court of Georgia. A second Federal habeas claim was subsequently filed, alleging violation of the requirements set forth in **Massiah**. Evidence obtained by the petitioner regarding the State's relationship with the jailhouse witness was found to be sufficient for the district court to grant relief based upon **Massiah**. The court of appeals reversed, however, concluding that the petitioner had abandoned his **Massiah** claim because it was not mentioned in the first Federal petition for habeas corpus relief. The Court of appeals concluded that the second Federal petition represented an abuse of the use of the writ. The Supreme Court affirmed the judgment of the court of appeals leaving the conviction and death sentence intact.

Lankford v. Idaho
(decided May 20, 1991)

In this split opinion (5-4) the Supreme Court reversed an Idaho Supreme Court's imposition of a death sentence on the grounds that the sentencing procedure violated the due process clause of the 14th amendment because it failed to provide adequate notice that the judge could sentence the defendant to death. The petitioner had been charged, together with his brother, with the beating deaths of a husband and wife who had been camping. Following the petitioner's arraignment on two counts of first-degree murder, the trial judge advised the petitioner that the maximum penalty upon conviction of either count was life imprisonment or death. The prosecutor determined that the petitioner's brother was somewhat more culpable for the crimes and sought a reduced sentence for the petitioner in exchange for a guilty plea. The trial judge refused to accept the plea bargain and the petitioner was subsequently convicted by a jury of both counts.

The trial court then entered a presentencing order which obligated the State to provide notice if it intended to seek the death penalty. The prosecutor responded that the State "...will not be recommending the death penalty as to either count of first-degree murder for which the defendant was earlier convicted." Throughout the sentencing hearing, neither prosecutor nor defense discussed the death penalty but at the hearing's conclusion the trial judge

sentenced the petitioner to death. The Supreme Court held that the trial court failed to give sufficient notice of its intention to impose the death sentence in spite of the trial court's notice, at arraignment, that the death penalty was a potential sentence after conviction. The High Court concluded that the presentencing order had the effect of limiting the issues to be debated at sentencing and the result was that the petitioner made no effort to rebut the aggravating circumstances found by the judge.

Yates v. Evatt
(decided May 28, 1991)

The Supreme Court also reversed the imposition of the death penalty in this case. This South Carolina case arose as a result of a convenience store robbery in which the mother of the store clerk was stabbed to death during a struggle between her son and one of the robbers. The petitioner had left the store prior to the murder after shooting and wounding the clerk. The robber who committed the homicide was shot to death by the store clerk. The petitioner was arrested and charged with murder, robbery, and other offenses including conspiracy. The murder charge was determined based upon the accomplice liability provision within South Carolina law, since that State does not have a statute encompassing felony-murder circumstances. The trial judge instructed the jury that in order to convict, the murder statute required the jury to find "malice aforethought," and he indicated that malice could be inferred from the use of a deadly weapon. The petitioner was subsequently convicted on all charges and the conviction was upheld by the State Supreme Court.

In a habeas corpus petition to the State Supreme Court, the petitioner alleged that the judge's instruction on the presumption of malice from the presence of a weapon was unconstitutional "burden shifting" from the prosecution to the petitioner based upon rulings by the U.S. Supreme Court in two other cases (*Sandstrom v. Montana* and subsequently *Francis v. Franklin*). The State Supreme Court denied the petition but the U.S. Supreme Court vacated the sentence and remanded the case concluding that the instruction was improper. On remand, the South Carolina Supreme Court found the jury instruction unconstitutional but concluded that the relevant rulings were not retroactive and reinstated the conviction.

Once again the U.S. Supreme Court took up the case concerned about the attention given by South Carolina to relevant decisions by the High Court. The U.S. Supreme Court again vacated the judgment of the South Carolina Supreme Court and held that the ruling in *Francis* was retroactive and the case was remanded for further proceedings. Again the South Carolina Supreme Court took up the case, concluding that two instructions on malice were erroneous but that these errors were harmless. On the third review by the U.S. Supreme Court, the High Court found that the State Supreme Court had applied an improper standard in its harmless error analysis and that the jury instructions could not be treated as harmless error — in particular, the State Supreme Court had apparently misread the record of the stabbing murder, concluding that the victim had been stabbed multiple times when the record revealed a single stab wound only.

Mu'Min v. Virginia
(decided May 30, 1991)

In this case the Supreme Court examined the issue of pretrial publicity and its effects on potential jurors. The petitioner was a convicted first-degree murderer who, while assigned to highway road work, escaped and robbed and murdered the female owner of a nearby store. The petitioner then returned to the prison work crew. After being charged with the murder, the petitioner and the case were the subjects of substantial media attention. Prior to trial, the petitioner requested a change of venue, a request which was deferred by the trial judge until after an attempt to select a jury. The petitioner requested that prospective jurors be questioned individually and that a list of 64 questions, most focusing upon the extent and content of exposure to pretrial publicity, be used during the voir dire. The trial judge denied the requests and conducted the jury selection process initially with the entire venire and then questioned smaller panels of four prospective jurors each about the effect of pretrial publicity on their opinion of the case. Eight of the twelve persons eventually sworn as jurors answered on voir dire that they had read or heard something about the case. None of these eight indicated that they had formed an opinion that would affect their ability to determine guilt or innocence. The jury subsequently convicted the petitioner and he was sentenced to death.

The petitioner appealed to the Supreme Court of Virginia contending that the jury selection process had been inadequate in

terms of uncovering the effects of the pretrial publicity. The Supreme Court of Virginia affirmed the conviction, however, concluding that the petitioner's right is only to determine the impartiality of jurors. The U.S. Supreme Court affirmed the findings of the Virginia courts concluding that the two-part jury selection process used by the trial judge satisfied the 6th amendment right to an impartial jury and the 14th amendment right to due process.

Schad v. Arizona
(decided June 21, 1991)

In this case the High Court dealt with two issues: whether jurors need to agree upon the mode of commission of a murder where the first degree murder statute describes both premeditated and felony murder and whether the court needs to give the jury an instruction on robbery as a lesser included offense.

The petitioner was convicted of the first-degree murder of a 74-year-old man who had been strangled by a rope and whose decomposed body was found near a roadside. The petitioner had been arrested in Utah while driving the victim's car and had in his possession the victim's wallet and credit cards which the petitioner had used. During the trial for first-degree murder, the prosecutor offered descriptions of the murder which encompassed both premeditated murder and felony murder, two types of murder described in the Arizona statute on murder in the first-degree. The defense argued that the only offense supported by the evidence was theft and requested that the trial judge provide the jury with an instruction on theft as a lesser included offense. The trial judge denied this request and advised the jurors that they could also convict on second-degree murder or find the defendant not guilty. The jury found the petitioner guilty of first degree murder and the judge sentenced him to death.

The Arizona Supreme Court in a split decision, affirmed the conviction holding that the jury need not unanimously indicate whether they believed the defendant committed premeditated murder or felony-murder and that the judge did not err by failing to provide instruction on the lesser included offense of robbery. The U.S. Supreme Court agreed with the findings of the Arizona courts and affirmed the conviction holding that juries need not agree on the mode of first-degree murder and that prior case law (*Beck v. Alabama*) did not entitle the petitioner to an instruction

on robbery as a lesser included offense—the option of finding the petitioner guilty of second-degree murder satisfied the need to provide a non-capital option should the jury determine the capital verdict inappropriate.

Coleman v. Thompson
(decided June 24, 1991)

This case focused upon the issue of State procedural bars to Federal review of habeas corpus petitions. The petitioner, convicted of rape and capital murder by a Virginia jury, had his conviction and death sentence affirmed by the Virginia Supreme Court and filed a habeas corpus petition with the circuit court in the same county in which he had been convicted.

The habeas petition raised a number of constitutional claims which had not been raised in the direct appeal before the Virginia Supreme Court and the circuit court denied the petition. The petitioner filed a subsequent notice of appeal with the circuit court 33 days after final judgment had been entered, 3 days later than permitted under the rules of the Virginia Supreme Court. The request for appeal of the habeas disposition was dismissed by the Virginia Supreme Court, and the petitioner subsequently filed a habeas petition in U.S. district court, alleging four constitutional claims cited in the appeal and seven additional claims from the State habeas petition.

The district court dismissed all 11 claims, concluding that the 7 claims contained in the State habeas petition had been procedurally defaulted, and this decision was affirmed by the court of appeals. The court of appeals held that the claims made in the State habeas petition were barred from Federal review because of the untimely filing of the notice of appeal within the State court system. The U.S. Supreme Court, in its review, affirmed (by a 6-to-3 vote) the lower courts' decisions, noting that federalism "concerns the respect that Federal courts owe the States and the States' procedural rules when reviewing the claims of State prisoners in Federal habeas corpus."

Payne v. Tennessee
(decided June 27, 1991)

In this case the Supreme Court addressed the issue of the use of victim impact statements during the sentencing phase of a capital trial. The case arose from a multiple murder in which the petitioner had used a butcher knife to stab to death a 28-year-old

mother and her 2-year-old daughter after attempting to sexually assault the mother. Another child, age 3, survived multiple stab wounds even though many of the wounds fully penetrated his body from front to back. After conviction for the two murders and the assault, the petitioner presented evidence from his girlfriend, parents, and a psychologist to be used as mitigation during the sentencing phase. The prosecution presented evidence from the victim's mother (the children's grandmother) on the effect of the murders and the assault on the surviving child. These statements by the grandmother were then used by the prosecutor in the closing arguments during the sentencing phase. The petitioner was sentenced to death by the jury on each of the murder counts.

On appeal to the Supreme Court of Tennessee, the petitioner alleged that the admission of the grandmother's testimony violated eighth amendment constraints on the use of victim impact statements imposed in *Booth v. Maryland* and was improperly used by the prosecutor in his closing based upon *South Carolina v. Gathers*. The Supreme Court of Tennessee held that the admission of the victim impact evidence was "harmless beyond a reasonable doubt" and was irrelevant to the jury's sentence and concluded that the prosecutor's comments during his closing were relevant to assessing the blameworthiness of the petitioner. The U.S. Supreme Court overruled its prior holdings in *Booth* and in *Gathers* and concluded that "if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on the subject, the eighth amendment erects no per se bar," and affirmed the decisions of the Tennessee courts. Concurring and dissenting opinions were filed.

Capital punishment laws

At yearend 1991 the death penalty was authorized by the statutes of 36 States and by Federal statute (table 1).² Two jurisdictions, Colorado and New Hampshire, had their statutes struck during the year by State court decisions. On July 9, 1991, the Supreme Court of Colorado in *People V. Young* (814 P.2d 834 (Colo. 1991)) affirmed the decision of a State trial court in a murder case concluding that Colorado's capital punishment statute was unconstitutional, violative of both the due process and the cruel and unusual punishment

clauses in the State constitution. The supreme court found that the language which required a sentence of death if the mitigating factors did not outweigh the aggravating factors would result in a mandatory death sentence if the two sets of factors were equally balanced and that such language introduced uncertainty and unreliability into the capital sentencing procedures. The legislature repealed and reenacted a new death penalty provision which became effective on September 20, 1991, and also passed legislation to retroactively deal with cases sentenced under the law which was struck (effective date of October 7, 1991).

On January 1, 1991, New Hampshire enacted a new set of provisions (RSA 630:5) designed to replace provisions relating to the application of the death penalty. The legislature, however, failed to indicate in the new section whether the procedures described were to be retroactively applied or were prospective only. In *State v. Johnson* (decided July 31, 1991), a murder case in which the defendant pled guilty, the trial court and the Supreme Court of New Hampshire concluded that because the new provisions contained two additional aggravating factors, resulting in a change in the substantive rights of the defendant, the death penalty statute could not be applied retroactively. The court also found that the prior provisions, which mentioned only jury-based adjudication and sentencing, could not be applied because the defendant had pleaded guilty and the statute provided no procedures for such a circumstance.

No jurisdictions enacted legislation newly authorizing the death penalty during the year.

Statutory changes

During 1991, 10 States revised statutory provisions relating to the death penalty. Most of the changes entailed further specification of aggravating circumstances or more precise definition of capital murder. One State, Colorado, repealed and reenacted the entire section relating to the death penalty. One State, Louisiana, changed the method of execution from electrocution to lethal injection. California introduced language removing the need to prove an intent to kill on the part of the defendant in felony murders. By State, these statutory changes were as follows:

²See Appendix II, p. 15-16, for a listing of Federal death penalty provisions.

Table 1. Capital offenses, by State, 1991

Alabama. Murder during kidnaping, robbery, rape, sodomy, burglary, sexual assault, or arson; murder of a peace officer, correctional officer, or public official; murder while under a life sentence; murder for pecuniary gain or contract; aircraft piracy; murder by a defendant with a previous murder conviction; murder of a witness to a crime. (13A-5-40)

Arizona. First-degree murder.

Arkansas. Capital murder as defined by Arkansas statute (5-10-101). Felony murder; arson causing death; intentional murder of a law enforcement officer; murder of prison, jail, court, or correctional personnel or of military personnel acting in line of duty; multiple murders; intentional murder of a public officeholder or candidate; intentional murder while under life sentence; contract murder.

California. Treason; homicide by a prisoner serving a life term; first-degree murder with special circumstances; train wrecking; perjury causing execution.

Colorado. First-degree murder; kidnaping with death of victim; felony murder.

Connecticut. Murder of a public safety or correctional officer; murder for pecuniary gain; murder in the course of a felony; murder by a defendant with a previous conviction for intentional murder; murder while under a life sentence; murder during a kidnaping; illegal sale of cocaine, methadone, or heroin to a person who dies from using these drugs; murder during first-degree sexual assault; multiple murders.

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder.

Georgia. Murder; kidnaping with bodily injury when the victim dies; aircraft hijacking; treason; kidnaping for ransom when the victim dies.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. Murder accompanied by at least 1 of 11 aggravating factors.

Indiana. Murder with 12 aggravating circumstances.

Kentucky. Aggravated murder; kidnaping when victim is killed.

Louisiana. First-degree murder; treason. (La. R.S. 14:30 and 14:113)

Maryland. First-degree murder, either premeditated or during the commission of a felony.

Mississippi. Capital murder includes murder of a peace officer or correctional officer, murder while under a life sentence, murder by bomb or explosive, contract murder, murder committed during specific felonies (rape, burglary, kidnaping, arson, robbery, sexual battery, unnatural intercourse with a child, nonconsensual unnatural intercourse), and murder of an elected official. Capital rape is the forcible rape of a child under 14 years old by a person 18 years or older. Aircraft piracy.

Missouri. First-degree murder. (565.020 RSMO)

Montana. Deliberate homicide; aggravated kidnaping when victim or rescuer dies; attempted deliberate homicide, aggravated assault, or aggravated kidnaping by a State prison inmate who has a prior conviction for deliberate homicide or who has been previously declared a persistent felony offender. (46-18-303, MCA)

Nebraska. First-degree murder.

Nevada. First-degree murder.

New Hampshire. Contract murder; murder of a law enforcement officer; murder of a kidnaping victim; killing another after being sentenced to life imprisonment without parole.

New Jersey. Purposeful or knowing murder; contract murder.

New Mexico. First-degree murder; felony murder with aggravating circumstances.

North Carolina. First-degree murder. (N.C.G.S. 14-17)

Ohio. Assassination; contract murder; murder during escape; murder while in a correctional facility; murder after conviction for a prior purposeful killing or prior attempted murder; murder of a peace officer; murder

arising from specified felonies (rape, kidnaping, arson, robbery, burglary); murder of a witness to prevent testimony in a criminal proceeding or in retaliation. (O.R.C. secs. 2929.02, 2903.01, 2929.04)

Oklahoma. Murder with malice aforethought; murder arising from specified felonies (forcible rape, robbery with a dangerous weapon, kidnaping, escape from lawful custody, first-degree burglary, arson); murder when the victim is a child who has been injured, tortured, or maimed.

Oregon. Aggravated murder.

Pennsylvania. First-degree murder.

South Carolina. Murder with statutory aggravating circumstances.

South Dakota. First-degree murder; kidnaping with gross permanent physical injury inflicted on the victim; felony murder.

Tennessee. First-degree murder.

Texas. Murder of a public safety officer, fireman, or correctional employee; murder during the commission of specified felonies (kidnaping, burglary, robbery, aggravated rape, arson); murder for remuneration; multiple murders; murder during prison escape; murder by a State prison inmate.

Utah. Aggravated murder. (76-5-202, Utah Code annotated)

Virginia. Murder during the commission or attempts to commit specified felonies (abduction, armed robbery, rape, sodomy); contract murder; murder by a prisoner while in custody; murder of a law enforcement officer; multiple murders; murder of a child under 12 years during an abduction; murder arising from drug violations. (18.2-31, Virginia Code as amended)

Washington. Aggravated first-degree premeditated murder.

Wyoming. First-degree murder, including felony murder.

Arkansas— Amended the definition of capital murder to include knowingly causing the death of a person 14 years of age or younger under circumstances manifesting extreme indifference to the value of human life and added sections defining the aggravating circumstances in capital murder to include murder committed in an especially cruel or depraved manner and murder committed with a destructive device, bomb, or explosive.

California— As a result of Propositions 114 and 115, amended provisions relating to the murder of peace officers; revised sections of the penal code dealing with the definitions of first-degree murder, and the penalties for first-degree murder; enumerated 17 statutory special circumstances to be considered as aggravating factors during the sentencing phase; changed the language relating to the determination of

the intent to kill; defined the culpability and penalties for accomplices to first-degree murder; and, limited capital sentencing to those age 18 or older at the time of the offense.

Colorado— Repealed and reenacted the entire section dealing with procedures for the imposition of sentences in class 1 felonies and, as a result of a Colorado Supreme Court decision (*People v. Young*, 814 P.2d 834 (Colo. 1991)) which struck in part the application of the death penalty proceeding for crimes committed between July 1, 1988, and September 20, 1991, added a new part designed to avert a hiatus in the imposition of the death penalty.

Delaware— Revised provisions relating to the jury's consideration of aggravating and mitigating evidence and changed the jury's role in sentencing to an advisory function,

with the judge responsible for the final determination of the appropriateness of the death penalty after a conviction for first-degree murder.

Illinois— Added an 11th aggravating circumstance related to State prisoners who commit felony murder or who participate in a conspiracy or solicitation to commit felonies which result in murder.

Louisiana— Changed the method of execution from electrocution to lethal injection for those executed on or after September 15, 1991.

New Hampshire— Revised the listing of capital murder offenses to include murders arising from felonious, aggravated sexual assaults and amended the procedures to be used in capital case processing and sentence imposition and execution.

Oregon — Clarified the role of alternate jurors during the sentencing phase of a capital trial if a juror who was present during the guilt phase is unable to serve; revised instructions to the jury about unanimity in weighing the "issues" relevant to the appropriateness of the death penalty; instituted an automatic stay of execution if the defendant seeks a review from the U.S. Supreme Court; and enumerated new procedures to be used on remand during a resentencing proceeding if prejudicial error is determined to have occurred during sentencing.

Utah — Changed the term "first-degree murder" to "aggravated murder" and changed the term "second-degree murder" to "murder" and, in the section describing aggravated circumstances in capital felony sentencing proceedings, changed the word "murder" to "homicide."

Virginia — Added murders resulting from forcible sodomy or attempted forcible sodomy to the listing of capital murder circumstances.

Method of execution

At yearend 1991 lethal injection (22 States) and electrocution (12 States) were the most common methods of execution authorized (table 2). Six States authorized lethal gas; three States, hanging; and two States, a firing squad. Nine States authorized more than one method — lethal injection and an alternative method — generally at the election of the condemned prisoner or based on the date of sentencing.

Some States have stipulated an alternative to lethal injection, anticipating that it may be found unconstitutional. Each of the other four methods, previously challenged on eighth amendment grounds as cruel and unusual punishment, has been found to be constitutional. The method of execution for Federal offenders is that of the State in which the execution takes place.

Automatic review

Of the 36 States with capital punishment statutes at yearend 1991, 34 provided for review of all death sentences regardless of the defendant's wishes. Arkansas had no specific provisions for automatic review, and Ohio (ORC Section 2929.05) provides for review by the Court of Appeals and the Supreme Court "upon appeal." The Federal death penalty procedures do not provide for automatic review after a sentence of death is imposed. While most of the 34 States authorized an automatic review of both the

conviction and sentence, Idaho, Indiana, and Montana require review of the sentence only. In Idaho, review of the conviction must be appealed or forfeited. In Indiana, a defendant may waive review of the conviction. Typically the review is undertaken regardless of the defendant's wishes and is conducted by the State's

highest appellate court. If either the conviction or the sentence is vacated, the case may be remanded to the trial court for additional proceedings or for retrial. It is possible that, as a result of retrial or resentencing, the death sentence may be reimposed.

Table 2. Method of execution, by State, 1991

| <u>Lethal injection</u> | <u>Electrocution</u> | <u>Lethal gas</u> | <u>Hanging</u> | <u>Firing squad</u> |
|------------------------------|-------------------------|-----------------------------|------------------------------|---------------------|
| Arkansas ^{a,b} | Alabama | Arizona | Montana ^a | Idaho ^a |
| Colorado ^{a,c} | Arkansas ^{a,b} | California | New Hampshire ^{a,d} | Utah ^a |
| Delaware | Connecticut | Colorado ^{a,c} | Washington ^a | |
| Idaho ^a | Florida | Maryland | | |
| Illinois | Georgia | Mississippi ^{a,e} | | |
| Louisiana | Indiana | Missouri ^a | | |
| Mississippi ^{a,f} | Kentucky | North Carolina ^a | | |
| Missouri ^a | Nebraska | | | |
| Montana ^a | Ohio | | | |
| Nevada | South Carolina | | | |
| New Hampshire ^{a,d} | Tennessee | | | |
| New Jersey | Virginia | | | |
| New Mexico | | | | |
| North Carolina ^a | | | | |
| Oklahoma | | | | |
| Oregon | | | | |
| Pennsylvania | | | | |
| South Dakota | | | | |
| Texas | | | | |
| Utah ^a | | | | |
| Washington ^a | | | | |
| Wyoming | | | | |

Note: Federal executions are to be carried out according to the method of the State in which they are performed.

^aAuthorizes 2 methods of execution.

^bArkansas authorizes lethal injection for those whose capital offense occurred after 7/4/83; for those whose offense occurred before that date, the condemned prisoner may select lethal injection or electrocution.

^cColorado authorizes lethal gas for those whose crimes occurred before 7/1/88 and lethal injection for those whose crimes occurred on or after 7/1/88.

^dNew Hampshire authorizes hanging only if lethal injection cannot be given.

^eMississippi authorizes lethal injection for those convicted after 7/1/84; execution of those convicted prior to that date is to be carried out with lethal gas.

Table 3. Minimum age authorized for capital punishment, yearend 1991

| <u>Age less than 18</u> | <u>Age 18</u> | <u>None specified</u> |
|----------------------------------|--------------------------|-----------------------|
| Alabama (16) | California | Arizona |
| Arkansas (14) ^a | Colorado | Delaware |
| Georgia (17) | Connecticut ^b | Florida |
| Indiana (16) | Illinois | Idaho |
| Kentucky (16) | Maryland | Montana |
| Louisiana (16) | Nebraska | Pennsylvania |
| Mississippi (16) ^c | New Jersey | South Carolina |
| Missouri (16) | New Mexico | Washington |
| Nevada (16) | Ohio | |
| New Hampshire (17) | Oregon | |
| North Carolina (17) ^d | Tennessee | |
| Oklahoma (16) | Federal system | |
| South Dakota ^a | | |
| Texas (17) | | |
| Utah (14) | | |
| Virginia (15) | | |
| Wyoming (16) | | |

Note: Ages at the time of the capital offense were indicated by the offices of the State attorneys general.

^aSee Kansas Code Ann. 9-27-318(b)(1) (Repl. 1991).

^bSee Conn. Gen. Stat. 53a-46a(g)(1).

^cMinimum age defined by statute is 13, but effective age is 16 based on an interpretation of U.S. Supreme

Court decisions by the State attorney general's office.

^dAge required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; the age then may be 14.

^eAge 10, but only after a transfer hearing to try a juvenile as an adult.

Minimum age

Eight States at the end of 1991 did not specify a minimum age at the time of the offense for which the death penalty may be imposed (table 3). In some States the minimum age is set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Eleven States and the Federal death penalty require a minimum age of 18; the remaining States have indicated various ages of eligibility between 14 and 17.

Prisoners under sentence of death at yearend 1991

Thirty-four States and the Federal prison system reported a total of 2,482 prisoners under sentence of death on December 31, 1991, an increase of 136 or 5.8% over the count at the end of 1990 (table 4). States with the largest number of prisoners under sentence of death were Texas (340), Florida (311), California (301), Pennsylvania (137), and Illinois (132). Although 36 States (covering 78% of the

Nation's adult population) had statutes authorizing the death penalty, 2 of these reported no prisoners under sentence of death at yearend (New Hampshire and South Dakota).

Of the 2,482 persons under sentence of death, 1,434 (57.8%) were in Southern States, 521 (21.0%) were in Western States, 381 (15.4%) were in States in the Midwest, and 145 (5.8%) were confined in the Northeastern States of Connecticut, New Jersey, and Pennsylvania. One

Table 4. Prisoners under sentence of death, by region, State, and race, yearend 1990 and 1991

| Region and State | Prisoners under sentence of death 12/31/90 | | | Received under sentence of death | | | Removed from death row (excluding executions) ^a | | | Executed | | | Prisoners under sentence of death 12/31/91 | | |
|----------------------|--|-------|-------|----------------------------------|-------|-------|--|-------|-------|--------------------|-------|-------|--|-------|-------|
| | Total ^b | White | Black | Total ^b | White | Black | Total ^b | White | Black | Total ^b | White | Black | Total ^b | White | Black |
| U.S. total | 2,346 | 1,368 | 940 | 266 | 163 | 101 | 116 | 60 | 52 | 14 | 7 | 7 | 2,482 | 1,464 | 982 |
| Federal ^c | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| State | 2,346 | 1,368 | 940 | 265 | 162 | 101 | 116 | 60 | 52 | 14 | 7 | 7 | 2,481 | 1,463 | 982 |
| Northeast | 134 | 53 | 80 | 21 | 6 | 14 | 10 | 2 | 8 | 0 | 0 | 0 | 145 | 57 | 86 |
| Connecticut | 2 | 2 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 2 | 2 |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | 10 | 4 | 6 | 0 | 0 | 0 | 6 | 2 | 4 | 0 | 0 | 0 | 4 | 2 | 2 |
| Pennsylvania | 122 | 47 | 74 | 19 | 6 | 12 | 4 | 0 | 4 | 0 | 0 | 0 | 137 | 53 | 82 |
| Midwest | 362 | 169 | 191 | 37 | 21 | 16 | 17 | 5 | 12 | 1 | 0 | 1 | 381 | 185 | 194 |
| Illinois | 128 | 47 | 81 | 7 | 1 | 6 | 3 | 0 | 3 | 0 | 0 | 0 | 132 | 48 | 84 |
| Indiana | 48 | 32 | 16 | 3 | 2 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 49 | 33 | 16 |
| Missouri | 71 | 39 | 32 | 13 | 9 | 4 | 6 | 3 | 3 | 1 | 0 | 1 | 77 | 45 | 32 |
| Nebraska | 11 | 7 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 8 | 3 |
| Ohio | 104 | 44 | 59 | 13 | 8 | 5 | 6 | 1 | 5 | 0 | 0 | 0 | 111 | 51 | 59 |
| South Dakota | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South | 1,362 | 801 | 540 | 158 | 104 | 53 | 73 | 40 | 31 | 13 | 7 | 6 | 1,434 | 858 | 556 |
| Alabama | 117 | 58 | 58 | 6 | 4 | 2 | 4 | 2 | 2 | 0 | 0 | 0 | 119 | 60 | 58 |
| Arkansas | 33 | 21 | 12 | 2 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 34 | 22 | 12 |
| Delaware | 6 | 2 | 4 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 3 | 4 |
| Florida | 291 | 138 | 103 | 45 | 29 | 16 | 23 | 12 | 11 | 2 | 1 | 1 | 311 | 204 | 107 |
| Georgia | 99 | 53 | 46 | 7 | 2 | 5 | 4 | 1 | 3 | 1 | 0 | 1 | 101 | 54 | 47 |
| Kentucky | 27 | 21 | 6 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 24 | 6 |
| Louisiana | 32 | 14 | 18 | 7 | 3 | 4 | 1 | 0 | 1 | 1 | 0 | 1 | 37 | 17 | 20 |
| Maryland | 17 | 2 | 15 | 1 | 1 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 18 | 1 | 15 |
| Mississippi | 46 | 18 | 28 | 5 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 51 | 21 | 30 |
| North Carolina | 84 | 45 | 35 | 17 | 10 | 7 | 26 | 13 | 11 | 1 | 1 | 0 | 74 | 41 | 31 |
| Oklahoma | 117 | 80 | 28 | 12 | 6 | 5 | 4 | 3 | 1 | 0 | 0 | 0 | 125 | 83 | 32 |
| South Carolina | 40 | 17 | 23 | 8 | 7 | 1 | 2 | 2 | 0 | 1 | 1 | 0 | 45 | 21 | 24 |
| Tennessee | 85 | 57 | 23 | 12 | 10 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 97 | 67 | 28 |
| Texas | 323 | 201 | 117 | 26 | 19 | 7 | 4 | 3 | 1 | 5 | 3 | 2 | 340 | 214 | 121 |
| Virginia | 45 | 24 | 21 | 6 | 5 | 1 | 2 | 2 | 0 | 2 | 1 | 1 | 47 | 26 | 21 |
| West | 488 | 330 | 122 | 49 | 31 | 18 | 16 | 13 | 1 | 0 | 0 | 0 | 521 | 393 | 146 |
| Arizona | 87 | 77 | 7 | 13 | 11 | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 97 | 85 | 9 |
| California | 280 | 173 | 39 | 24 | 11 | 13 | 3 | 2 | 0 | 0 | 0 | 0 | 301 | 182 | 112 |
| Colorado | 3 | 3 | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 3 | 3 | 0 |
| Idaho | 15 | 19 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 21 | 0 |
| Montana | 6 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 4 | 0 |
| Nevada | 59 | 42 | 17 | 4 | 2 | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 60 | 41 | 19 |
| New Mexico | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Oregon | 10 | 8 | 2 | 3 | 3 | 0 | 4 | 3 | 1 | 0 | 0 | 0 | 9 | 8 | 1 |
| Utah | 11 | 8 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 9 | 3 |
| Washington | 10 | 8 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 10 | 8 | 2 |
| Wyoming | 2 | 2 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |

Note: States not listed and the District of Columbia did not authorize the death penalty as of 12/31/90. Some figures shown for yearend 1990 are revised from those reported in *Capital Punishment 1990*, NCJ-131648. The revised figures include 20 inmates who either were reported late to the National Prisoner Statistics Program or were not in the custody of State correctional authorities on 12/31/90 (4 in Florida, 3 each in Illinois and Texas, 2 each in Georgia and Nevada, and 1 each in Kentucky, Louisiana, Maryland, Ohio, Pennsylvania and Tennessee) and exclude 30 inmates who were relieved of the death sentence on or before 12/31/90 (12 in Florida, 4 in Arizona, 3 each in Illinois and Maryland, 2 each in Ohio and South Carolina, and 1 each in Georgia, Mississippi, Missouri, and Oklahoma).

^aIncludes 6 deaths due to natural causes (2 each in Pennsylvania and Florida, and 1 each in Missouri and California) and 1 suicide in Nevada.

^bTotals include persons of other races.

^cExcludes 5 males held under Armed Forces jurisdiction with a military death sentence for murder.

person was held by Federal authorities under sentence of death on December 31, 1991.

During the year the largest percentage increase in the number of prisoners under sentence of death occurred in Northeastern States with growth of 8.2% (an additional 11 offenders), followed by an increase of 6.8% (33 additional offenders) in the West, an increase of 5.3% (72 additional offenders) in the South, and an increase of 5.2% (19 additional offenders) in Midwestern States. Five States reported a decline in the number of prisoners under sentence of death at the end of 1991 compared to a year earlier: North Carolina reported 10 fewer than at the end of 1990; New Jersey reported a decline of 6 prisoners; and Maryland, Oregon, and Wyoming each reported holding 1 less inmate under sentence of death on December 31, 1991.

During 1991, the number of whites under sentence of death increased from 1,368 to 1,464, the number of blacks increased from 940 to 982, and the number of persons of other races (American Indians and Asians or Pacific Islanders) decreased from 38 to 36.

The number of Hispanics grew from 171 to 184, and the number of women increased by 2, from 32 to 34, over the year (table 5). During the year 20 Hispanics were received under sentence of death, 6 were removed from death row, and 1 was executed. The largest numbers of Hispanic prisoners under sentence of death on December 31, 1991, were in Texas (56), California (38), Florida (31), and Arizona (19). The 34 women under sentence of death at yearend 1991 were held in 16 States. North Carolina (6), Alabama (5), and Oklahoma (4) held the largest numbers of women under a death sentence.

Since 1977 one woman has been executed.

| State | Women under sentence of death, 12/31/91 | | |
|----------------|---|-------|-------|
| | Total | White | Black |
| Total | 34 | 22 | 12 |
| North Carolina | 6 | 5 | 1 |
| Alabama | 5 | 3 | 2 |
| Oklahoma | 4 | 3 | 1 |
| Ohio | 3 | 0 | 3 |
| Texas | 3 | 2 | 1 |
| Florida | 2 | 2 | 0 |
| Mississippi | 2 | 0 | 2 |
| Missouri | 2 | 2 | 0 |
| Arizona | 1 | 1 | 0 |
| California | 1 | 1 | 0 |
| Kentucky | 1 | 1 | 0 |
| Nevada | 1 | 0 | 1 |
| Pennsylvania | 1 | 0 | 1 |
| South Carolina | 1 | 1 | 0 |
| Tennessee | 1 | 1 | 0 |

Table 5. Hispanics and women under sentence of death, by State, 1990 and 1991

| | Under sentence of death, 12/31/90 | | Received under sentence of death | | Death sentence removed* | | Under sentence of death, 12/31/91 | |
|----------------|-----------------------------------|-------|----------------------------------|-------|-------------------------|-------|-----------------------------------|-------|
| | Hispanics | Women | Hispanics | Women | Hispanics | Women | Hispanics | Women |
| U.S. total | 171 | 32 | 20 | 4 | 7 | 2 | 184 | 34 |
| Alabama | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 5 |
| Arizona | 19 | 0 | 2 | 1 | 2 | 0 | 19 | 1 |
| Arkansas | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| California | 37 | 1 | 2 | 0 | 1 | 0 | 38 | 1 |
| Colorado | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Florida | 27 | 2 | 5 | 0 | 1 | 0 | 31 | 2 |
| Georgia | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Idaho | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Illinois | 8 | 0 | 0 | 0 | 0 | 0 | 8 | 0 |
| Indiana | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |
| Kentucky | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Mississippi | 1 | 2 | 0 | 0 | 0 | 0 | 1 | 2 |
| Nevada | 6 | 1 | 1 | 0 | 0 | 0 | 7 | 1 |
| Missouri | 0 | 1 | 1 | 2 | 0 | 1 | 1 | 2 |
| North Carolina | 1 | 5 | 1 | 1 | 0 | 0 | 2 | 6 |
| Ohio | 5 | 4 | 1 | 0 | 1 | 1 | 5 | 3 |
| Oklahoma | 5 | 4 | 0 | 0 | 0 | 0 | 5 | 4 |
| Oregon | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | 3 | 1 | 0 | 0 | 1 | 0 | 2 | 1 |
| South Carolina | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Tennessee | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 1 |
| Texas | 51 | 3 | 6 | 0 | 1 | 0 | 56 | 3 |
| Utah | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |

*No women were executed during 1991. One Hispanic was executed during 1991 in Texas.

Nearly 99% (2,448) of those under a sentence of death were males, and the majority, 58.4%, were white (table 6). Blacks constituted 39.6% of those under sentence of death, and another 1.4% were American Indians (23) or Asian Americans (13). Of those for whom ethnicity was known, about 8% were Hispanic.

The race and sex of those under sentence of death at yearend 1989 were as follows:

| | White | Black | Other |
|----------|-------|-------|-------|
| Male | 1,442 | 970 | 36 |
| Hispanic | 172 | 9 | 0 |
| Female | 22 | 12 | 0 |
| Hispanic | 1 | 1 | 0 |

A slightly higher percentage of the inmates under sentence of death, for whom information on education was available, had attended some college (10.2%) compared to those who had not gone beyond seventh grade (8.0%). The median level of education was 11th grade. Less than a third (28.8%) of the condemned inmates for whom data on marital status were available were married. Nearly half (46.6%) of those under sentence of death had never been married.

The median age of those under sentence of death was about 34 years (table 7). About 0.6% were under age 20, and 2.9% were 55 or older. The youngest offender under sentence of death was 16 years old (born April 1975); the oldest was 77 years old (born December 1914). At the time their sentences were imposed, eight of those under sentence of death had been less than 18 years old. More than half of the inmates under sentence at the end of 1991 had been between 20 and 29 years old when they received their death sentences.

Entries and removals of persons under sentence of death

During 1991, 30 State prison systems and the Federal prison system reported receiving prisoners under sentence of death (table 4). Florida reported the largest number (45), followed by Texas (26), California (24), and Pennsylvania (19). All of the 266 prisoners received under sentence of death were convicted of murder; 160 were white males, 100 were black males, 1 was an American Indian male, 1 was an Asian male, 3 were white females, and 1 was a black female; and 20 were Hispanics.

Table 6. Demographic profile of prisoners under sentence of death, 1991

| Characteristic | Prisoners under sentence of death, 1991 | | |
|--------------------------------------|---|------------|------------|
| | Yearend | Admissions | Removals |
| Total number under sentence of death | 2,482 | 266 | 130 |
| Sex | | | |
| Male | 98.6% | 98.5% | 98.5% |
| Female | 1.4 | 1.5 | 1.5 |
| Race | | | |
| White | 59.0% | 61.3% | 51.5% |
| Black | 39.6 | 38.0 | 45.4 |
| Other* | 1.4 | .8 | 3.0 |
| Ethnicity | | | |
| Hispanic | 8.0% | 7.9% | 5.8% |
| Non-Hispanic | 92.0 | 92.1 | 94.2 |
| Education | | | |
| 7th grade or less | 8.0% | 6.5% | 11.8% |
| 8th | 8.3 | 6.0 | 11.8 |
| 9th-11th | 37.3 | 36.9 | 37.0 |
| 12th | 36.1 | 40.1 | 32.8 |
| Any college | 10.2 | 10.6 | 6.7 |
| Median education | 11th grade | 12th grade | 12th grade |
| Marital status | | | |
| Married | 28.8% | 24.7% | 25.6% |
| Divorced/separated | 22.1 | 17.0 | 28.1 |
| Widowed | 2.5 | 3.6 | 2.5 |
| Never married | 46.6 | 54.7 | 43.8 |

Note: Percentage and median calculations are based on those cases for which data were reported. Missing data by category were as follows:

| | 1991 | | |
|----------------|---------|------------|----------|
| | Yearend | Admissions | Removals |
| Ethnicity | 189 | 14 | 10 |
| Education | 313 | 49 | 11 |
| Marital status | 183 | 19 | 9 |

*Consists of 23 American Indians and 13 Asians present at yearend 1991, 1 American Indian and 1 Asian admitted during 1991, and 2 American Indians and 2 Asians removed during 1991.

Table 7. Age at time of capital sentencing and current age of prisoners under sentence of death, yearend 1991

| Age | Prisoners under sentence of death | | | |
|---|-----------------------------------|---------|----------------------|---------|
| | At time of sentencing | | On December 31, 1991 | |
| | Number | Percent | Number | Percent |
| Total under sentence of death on 12/31/90 | 2,482 | 100% | 2,482 | 100% |
| 17 or younger | 8 | .3 | 1 | -- |
| 18-19 | 93 | 3.7 | 13 | .5 |
| 20-24 | 620 | 25.0 | 179 | 7.2 |
| 25-29 | 653 | 26.3 | 444 | 17.9 |
| 30-34 | 489 | 19.7 | 643 | 25.9 |
| 35-39 | 300 | 12.1 | 475 | 19.1 |
| 40-44 | 178 | 7.2 | 351 | 14.1 |
| 45-49 | 71 | 2.9 | 212 | 8.5 |
| 50-54 | 36 | 1.5 | 91 | 3.7 |
| 55-59 | 18 | .7 | 33 | 1.3 |
| 60 or older | 16 | .6 | 40 | 1.6 |
| Mean age | | 30 | | 35 |
| Median age | | 29 | | 34 |

Note: The youngest person under sentence of death was a black inmate in Florida born in April 1975 and sentenced to death in October 1991. The oldest person under sentence of death was a white inmate in Missouri born in December 1914 and sentenced to death in May 1991.
-- Less than 0.05%.

Twenty-four States reported a total of 109 persons whose sentence of death was vacated or commuted. North Carolina (26 exits) and Florida (21 exits) had the largest number of departures from death row due to vacated sentences, and 2 States, Georgia and Ohio, each reported a single commutation of a death sentence.

Of the 109 persons whose death sentences were vacated, commuted, or removed during 1991, 77 had their sentences vacated but their convictions upheld by a higher court; 29 had both their convictions and sentences vacated; 2 had their sentences commuted; and, 1 was given a conditional pardon by the governor.

At yearend, 48 of the 109 were serving a reduced sentence (47 to life imprisonment, 1 to a sentence of more than 20 years), 22 were awaiting a new trial, 37 were awaiting resentencing, and 2 had further prosecution dropped.

In addition, seven persons died while under sentence of death in 1991. Six of these deaths resulted from natural causes — two each in Florida and Pennsylvania and one each in Missouri and California. Nevada reported one death by suicide.

From 1977, the year after the Supreme Court reinstated the death penalty, through 1991, there were 3,719 persons admitted to State prisons under a sentence of death; 1,462 persons had their death sentences removed over the same period as a result of appellate court decisions and higher court reviews, commutations, or death while under sentence; and 157 persons were executed.³

Among individuals who received a death-sentence between 1977 and 1991, 2,182 (58.7%) were white, 1,481 (39.8%) were black, and 56 (1.5%) were of other races. Among those removed from a death sentence other than by execution, 824 (56.4%) were white, 618 (42.3%) were black, and 20 (1.4%) were of other races. Of the 157 executed, 94 (59.9%) were white and 63 (40.1%) were black.

³The same individual may have had several movements entering or exiting death row. Over the period from 1977 to 1991, the 3,719 persons admitted under sentence of death had 3,913 admission movements. Over the period, there were 1,511 release movements and 1,462 persons actually removed.

Criminal history of inmates under sentence of death in 1991

Among those under sentence of death at yearend 1991 for whom criminal-history information was available, 68.7% had a history of felony convictions (table 8). Among those for whom information on prior homicide convictions was available, 8.3% had a previous conviction for that crime.

Among those for whom legal status at the time of the capital offense was reported, 41.0% had an active criminal justice status. Half of these were on parole, while the rest

had charges pending, were on probation, were prison inmates or escapees, or had some other criminal justice status. Excluding those with pending charges, more than 1 in 3 (34.4%) were already under sentence for another crime when the offense for which they were condemned occurred; in a number of States such status is considered an aggravating factor in capital sentencing.

The criminal history patterns were similar for whites, blacks, and Hispanics although higher percentages of blacks had prior felony convictions and prior homicide

Table 8. Criminal-history profile of prisoners under sentence of death, by race, 1991

| | Prisoners under sentence of death | | | | Percent ^a | | | |
|--|-----------------------------------|-------|-------|----------|------------------------|-------|-------|----------|
| | All races ^b | White | Black | Hispanic | All races ^b | White | Black | Hispanic |
| U.S. total | 2,482 | 1,291 | 973 | 184 | 100% | 100% | 100% | 100% |
| Prior felony convictions | | | | | | | | |
| Yes | 1,587 | 792 | 672 | 108 | 68.7% | 65.7% | 74.7% | 62.4% |
| No | 723 | 413 | 228 | 65 | 31.3 | 34.3 | 25.3 | 37.6 |
| Not reported | 172 | 86 | 73 | 11 | | | | |
| Prior homicide convictions | | | | | | | | |
| Yes | 181 | 82 | 81 | 15 | 8.3% | 7.2% | 9.5% | 9.1% |
| No | 1,998 | 1,053 | 769 | 149 | 91.7 | 92.8 | 90.5 | 90.9 |
| Not reported | 303 | 156 | 123 | 20 | | | | |
| Legal status at time of capital offense | | | | | | | | |
| Charges pending | 140 | 79 | 45 | 8 | 6.5% | 7.0% | 5.8% | 5.1% |
| Probation | 178 | 100 | 65 | 11 | 8.2 | 8.8 | 7.7 | 7.1 |
| Parole | 437 | 186 | 208 | 41 | 20.2 | 16.4 | 24.8 | 26.3 |
| Prison escapee | 41 | 25 | 13 | 2 | 1.9 | 2.2 | 1.5 | 1.3 |
| Prison inmate | 61 | 31 | 24 | 6 | 2.8 | 2.7 | 2.9 | 3.6 |
| Other status ^c | 29 | 16 | 11 | 1 | 1.3 | 1.4 | 1.3 | .6 |
| None | 1,275 | 697 | 470 | 87 | 59.0 | 61.5 | 56.0 | 55.8 |
| Not reported | 321 | 157 | 133 | 28 | | | | |

^aPercentages are based on those offenders for whom data were reported.

^bIncludes whites, blacks, Hispanics, and persons of other races.

^cIncludes 12 persons on furlough or work release, 4 persons on mandatory conditional release, 4 persons out on bail, 2 persons residing in halfway houses, 2 persons residing in pre-release centers, 1 person confined in a local jail, 1 person under house arrest, 1 for whom charges were pending from the U.S. Army, 1 assigned to road gang work, and 1 on an accelerated release program.

Table 9. Number of death sentences received by those sentenced to death between January 1, 1988, and December 31, 1991, by race or ethnicity

| Number of death sentences received | Race or ethnicity | | | |
|---|--------------------|--------|--------|----------|
| | Total ^a | White | Black | Hispanic |
| Total | 100.0% | 100.0% | 100.0% | 100.0% |
| 1 | 85.2 | 84.3 | 86.6 | 84.9 |
| 2 | 10.6 | 11.5 | 9.1 | 10.8 |
| 3 or more | 4.2 | 4.2 | 4.3 | 4.3 |
| Number admitted under sentence of death 1988-1991 | 1,102 | 574 | 417 | 93 |

Note: Totals may not add to 100% due to rounding. All 1,102 received their death sentence for murder.

^aIncludes 18 persons of other races.

convictions. Both Hispanics and blacks were more likely than whites to have been on parole at the time the capital offense occurred.

Overall, the median elapsed time since sentencing was 60 months and the mean was 66 months for those under a sentence of death at yearend. Females reflected a much shorter stay under a death sentence, a median of 2 years and 9 months, compared to more than 5 years for males. Whites, blacks, and Hispanics evidenced little difference in average length of stay since receiving a death sentence.

| | Elapsed time since sentencing | |
|----------|-------------------------------|---------|
| | Mean | Median |
| Total | 60 mos. | 66 mos. |
| Male | 61 | 66 |
| Female | 33 | 45 |
| White | 59 | 65 |
| Black | 63 | 67 |
| Hispanic | 54 | 61 |

Beginning in 1988, data were collected on the number of death sentences imposed on each individual entering prisons under a sentence of death. Among the 1,102 individuals admitted between 1988 and

1991, nearly 15% entered with more than 1 death sentence (table 9). Blacks, whites, and Hispanics all had relatively similar distributions of single or multiple death sentences.

Executions

Since 1930, when data on executions were first collected by the Federal Government, 4,016 executions have been conducted under civil authority (table 10).² Since the death penalty was reinstated by the Supreme Court in 1976, the States have executed 157 persons:

| | | | |
|------|----|------|----|
| 1977 | 1 | 1986 | 18 |
| 1978 | 2 | 1987 | 25 |
| 1981 | 1 | 1988 | 11 |
| 1982 | 2 | 1989 | 16 |
| 1983 | 5 | 1990 | 23 |
| 1984 | 21 | 1991 | 14 |
| 1985 | 18 | | |

A total of 16 States have carried out executions since 1977. During the period, 84 white, non-Hispanic males; 9 white, Hispanic males; 52 black, non-Hispanic males; 1 black, Hispanic male; and 1 white,

²An additional 160 executions have been carried out under military authority since 1930.

non-Hispanic female have been executed. The largest numbers of executions occurred in Texas (42), Florida (27), Louisiana (20), and Georgia (15).

Table 10. Number of persons executed, by jurisdiction in rank order, 1930-91

| State | Number executed | |
|----------------------|-----------------|------------|
| | Since 1930 | Since 1977 |
| U.S. total | 4,016 | 157 |
| Georgia | 381 | 15 |
| Texas | 339 | 42 |
| New York | 329 | |
| California | 292 | |
| North Carolina | 267 | 4 |
| Florida | 197 | 27 |
| Ohio | 172 | |
| South Carolina | 166 | 4 |
| Mississippi | 158 | 4 |
| Louisiana | 153 | 20 |
| Pennsylvania | 152 | |
| Alabama | 143 | 8 |
| Arkansas | 120 | 2 |
| Virginia | 105 | 13 |
| Kentucky | 103 | |
| Tennessee | 93 | |
| Illinois | 91 | 1 |
| New Jersey | 74 | |
| Maryland | 68 | |
| Missouri | 68 | 6 |
| Oklahoma | 61 | 1 |
| Washington | 47 | |
| Colorado | 47 | |
| Indiana | 43 | 2 |
| West Virginia | 40 | |
| District of Columbia | 40 | |
| Arizona | 38 | |
| Nevada | 34 | 5 |
| Federal system | 33 | |
| Massachusetts | 27 | |
| Connecticut | 21 | |
| Oregon | 19 | |
| Iowa | 18 | |
| Utah | 16 | 3 |
| Kansas | 15 | |
| Delaware | 12 | |
| New Mexico | 8 | |
| Wyoming | 7 | |
| Montana | 6 | |
| Vermont | 4 | |
| Nebraska | 4 | |
| Idaho | 3 | |
| South Dakota | 1 | |
| New Hampshire | 1 | |
| Wisconsin | 0 | |
| Rhode Island | 0 | |
| North Dakota | 0 | |
| Minnesota | 0 | |
| Michigan | 0 | |
| Maine | 0 | |
| Hawaii | 0 | |
| Alaska | 0 | |

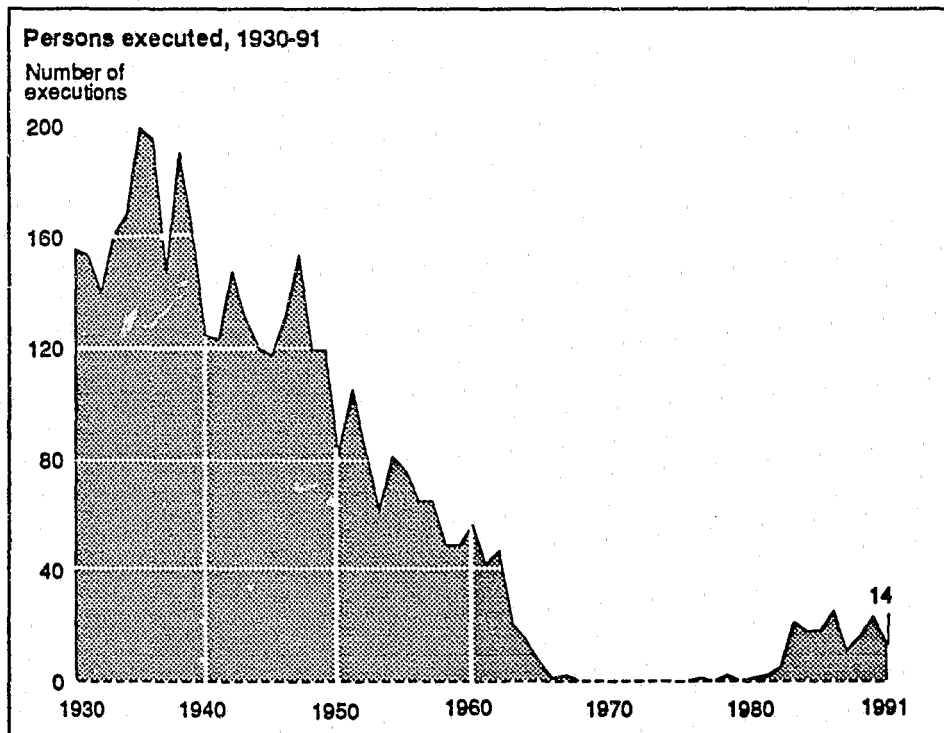


Figure 3

In 1991, Texas carried out five executions; Virginia and Florida each executed two persons; and Georgia, Louisiana, Missouri, North Carolina, and South Carolina each executed one person. Those executed in 1991 were all male and included six white, non-Hispanics; one white, Hispanic; and seven black, non-Hispanics.

Since 1977, a total of 4,101 offenders have been under a death sentence for varying lengths of time (table 11). There were 157 executions (3.8% of those at risk) and 1,462 removals (35.6% of those at risk) during this period. A slightly higher percentage of whites than blacks or Hispanics were executed (4.0%, 3.8%, and 3.8%, respectively), and blacks had a slightly higher removal rate by means other than execution.

For those executed since 1977, the average time between the imposition of the most recent sentence received and execution was 7 years and 1 month (table 12). Black prisoners executed between 1977 and 1991 had spent an average of 7 years and 11 months under sentence of death; white prisoners, an average of 6 years and 8 months; and Hispanic prisoners, an average of 7 years. For the 14 prisoners executed during 1991, the average time spent under a death sentence was 9 years and 8 months.

The methods used for the 157 persons executed between 1977 and 1991 were —

| | Executions, 1977-91 | | | |
|------------------|---------------------|-------|-------|----------|
| | All | White | Black | Hispanic |
| Total | 157 | 85 | 62 | 10 |
| Lethal injection | 61 | 37 | 15 | 9 |
| Electrocution | 90 | 45 | 44 | 1 |
| Lethal gas | 5 | 2 | 3 | 0 |
| Firing squad | 1 | 1 | 0 | 0 |

Table 11. Prisoners under sentence of death who were executed or who received other dispositions, by race and ethnicity, 1977-91

| Race and ethnicity ^a | Total under sentence of death, 1977-91 ^c | Prisoners executed | | Prisoners who received other dispositions ^a | |
|---------------------------------|---|--------------------|------------------|--|------------------|
| | | Number | Percent of total | Number | Percent of total |
| All races or ethnic groups | 4,101 | 157 | 3.8% | 1,462 | 35.6% |
| White | 2,135 | 85 | 4.0 | 759 | 35.6 |
| Black | 1,649 | 62 | 3.8 | 614 | 37.2 |
| Hispanic | 263 | 10 | 3.8 | 69 | 26.2 |
| Other ^d | 54 | 0 | 0 | 20 | 37.0 |

^aIncludes persons removed from a sentence of death because of statutes struck down on appeal, sentences or convictions vacated, commutations, or death other than by execution. Of the 1,462 removals, 88 resulted from death other than by execution.

^bWhite, black, and other categories exclude Hispanics. Among the 263 Hispanics, 247 were white, 14 were black, and 2 were of other races.

^cIncludes those persons sentenced to death prior to 1977 who were still under sentence of death on 12/31/91 (28), those persons sentenced to death prior to 1977 whose death sentence was removed between 1977 and 12/31/91 (354), and those persons sentenced to death between 1977 and 12/31/91 (3,719).

^dIncludes American Indians, Alaska Natives, Asians, and Pacific Islanders.

Table 12. Time between imposition of death sentence and execution, by race, 1977-91

| Year of execution | Number executed | | | Average elapsed time from sentence to execution for: | | |
|-------------------|-----------------|-------|-------|--|---------|---------|
| | All races | White | Black | All races | White | Black |
| Total | 157 | 94 | 63 | 85 mos. | 80 mos. | 93 mos. |
| 1977-83 | 11 | 9 | 2 | 51 | 49 | 58 |
| 1984 | 21 | 13 | 8 | 74 | 76 | 71 |
| 1985 | 18 | 11 | 7 | 71 | 65 | 80 |
| 1986 | 18 | 11 | 7 | 87 | 78 | 102 |
| 1987 | 25 | 13 | 12 | 86 | 78 | 96 |
| 1988 | 11 | 6 | 5 | 80 | 72 | 89 |
| 1989 | 16 | 8 | 8 | 95 | 78 | 112 |
| 1990 | 23 | 16 | 7 | 95 | 97 | 91 |
| 1991 | 14 | 7 | 7 | 116 | 124 | 107 |

Note: Average time was calculated from the most recent sentencing date. The range for elapsed time for the 143 executions was from 3 months to 180 months. Some numbers have been revised from those previously reported. The average elapsed time for the 9 white Hispanics and 1 black Hispanic case was 84 months. They are included in the white and black categories in the table.

Appendix I. Current status of inmates under sentence of death, 1973-91

Since 1973 a total of 4,444 individuals have been sentenced to death (appendix table 1). The table shows the status of those received in each year with respect to their death sentence, as of December 31, 1991.

For example, of the 187 persons whose sentence to death occurred in 1978, 23 have been executed, 3 have died while in

confinement, 21 have been relieved of the death sentence because courts struck down wholly or in part the statutes under which they were sentenced, 34 have had their conviction overturned on appeal, 58 have had their sentence overturned on appeal, 8 have had their sentence commuted, and 40 were still under a death sentence at yearend 1991. Of the 2,482 persons under sentence of death on December 31, 1991, 132 or 5.3% were sentenced prior to 1980.

Of the 2,482 persons under sentence of death at yearend 1991, Florida, Georgia, Texas, and Utah had the inmates who had served the longest under sentence of death among all condemned inmates (appendix table 2). By contrast, Colorado, Connecticut, New Mexico, Oregon, and the Federal prison system had no inmates sentenced prior to 1987.

Appendix table 1. Prisoners sentenced to death and the outcome of their sentence, by year of sentencing, 1973-91

| Year of sentence | Number sentenced to death | Number of prisoners removed from death row | | | | | | Under sentence of death 12/31/91 | |
|------------------|---------------------------|--|------|-----------------------|------------|--------------------------|----------|----------------------------------|-------------------|
| | | Appeal or higher courts overturned: | | | | Other or unknown reasons | | | |
| | | Executed | Died | Death penalty statute | Conviction | | Sentence | | Sentence Commuted |
| 1973 | 42 | 2 | 0 | 14 | 9 | 8 | 9 | 0 | 0 |
| 1974 | 150 | 8 | 4 | 65 | 16 | 29 | 22 | 1 | 5 |
| 1975 | 299 | 5 | 4 | 171 | 23 | 62 | 21 | 2 | 11 |
| 1976 | 234 | 10 | 5 | 137 | 16 | 39 | 15 | 0 | 12 |
| 1977 | 139 | 16 | 2 | 40 | 26 | 32 | 7 | 0 | 16 |
| 1978 | 187 | 23 | 3 | 21 | 34 | 58 | 8 | 0 | 40 |
| 1979 | 157 | 11 | 8 | 2 | 29 | 52 | 6 | 1 | 48 |
| 1980 | 184 | 14 | 11 | 3 | 30 | 42 | 4 | 0 | 80 |
| 1981 | 238 | 15 | 9 | 0 | 37 | 61 | 3 | 1 | 112 |
| 1982 | 274 | 16 | 10 | 0 | 24 | 52 | 4 | 0 | 167 |
| 1983 | 256 | 15 | 8 | 1 | 17 | 42 | 2 | 1 | 170 |
| 1984 | 288 | 14 | 7 | 1 | 28 | 49 | 4 | 7 | 178 |
| 1985 | 284 | 1 | 3 | 1 | 23 | 54 | 2 | 3 | 197 |
| 1986 | 312 | 1 | 0 | 0 | 34 | 43 | 3 | 5 | 218 |
| 1987 | 298 | 1 | 3 | 1 | 29 | 41 | 0 | 4 | 219 |
| 1988 | 306 | 3 | 4 | 0 | 17 | 31 | 0 | 0 | 251 |
| 1989 | 268 | 2 | 2 | 0 | 7 | 20 | 1 | 0 | 236 |
| 1990 | 262 | 0 | 2 | 0 | 2 | 2 | 0 | 0 | 256 |
| 1991 | 266 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 266 |
| Total, 1973-91 | 4,444 | 157 | 93 | 457 | 401 | 717 | 112 | 25 | 2,482 |

Note: Table based upon most recent death sentence received.

Appendix II. Federal laws providing for the death penalty

Since the Supreme Court's decision in *Furman v. Georgia* in 1972, striking down the death penalty as then applied, four death penalty statutes have been enacted by the Congress:

- (A) Any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A) or section 960(b)(1) who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and (B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or

subchapter II of this chapter who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death (21 U.S.C. 848(e)).

- Espionage by a member of the Armed Forces: communication of information to a foreign government relating to nuclear weaponry, military spacecraft or satellites, early warning systems, war plans, communications intelligence or cryptographic information, or any other major weapons or defense strategy (10 U.S.C. 906(a)).

- Witness tampering where death results (18 U.S.C. 1512).

- Death resulting from aircraft hijacking (49 U.S.C. 1472 and 1473).

At the end of 1991, five males were awaiting execution under a military death sentence for murder. The following capital punishment provisions, which were enacted prior to the *Furman* decision, remain in the United States Code:

- Murder while a member of the Armed Forces (10 U.S.C. 918)

- Destruction of aircraft, motor vehicles, or related facilities resulting in death (18 U.S.C. 32-34)

- Retaliatory murder of a member of the immediate family of law enforcement officials (18 U.S.C. 115(b)(3) [by cross-reference to 18 U.S.C. 1111])

- Murder of a member of Congress, an important executive official, or a Supreme Court Justice (18 U.S.C. 351 [by cross-reference to 18 U.S.C. 1111])

- Espionage (18 U.S.C. 794)

- Destruction of government property resulting in death (18 U.S.C. 844(f)(d)(i))

Appendix table 2. Prisoners under sentence of death on December 31, 1991, by State and year of sentencing

| State | Year of death sentence | | | | | | | | | | | | | | | | | | | Under sentence of death 12/31/91 |
|---|------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-------|----------------------------------|
| | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | | |
| Total sentenced to and remaining on death row, 12/31/91 | | | | | | | | | | | | | | | | | | | | |
| Florida | 1 | 6 | 4 | 4 | 13 | 12 | 11 | 10 | 20 | 18 | 24 | 15 | 19 | 19 | 29 | 28 | 33 | 45 | 311 | |
| Georgia | 2 | 1 | 2 | 4 | 5 | | 2 | 4 | 6 | 5 | 7 | 5 | 9 | 12 | 5 | 10 | 15 | 7 | 101 | |
| Texas | 1 | 2 | 4 | 3 | 8 | 5 | 14 | 17 | 21 | 23 | 16 | 34 | 38 | 34 | 34 | 33 | 27 | 26 | 340 | |
| Utah | 1 | | | | | | | | | 1 | | 3 | | 1 | 2 | 3 | | 1 | 12 | |
| Montana | | 1 | | | | | | | | 1 | | | | 1 | 2 | 1 | | | 6 | |
| Nebraska | | 1 | | | 4 | | | 1 | 1 | | 2 | | 1 | | 1 | | | 1 | 12 | |
| Arizona | | | 1 | 1 | | 6 | 9 | 4 | 9 | 5 | 5 | 6 | 1 | 8 | 11 | 7 | 11 | 13 | 97 | |
| Mississippi | | | 1 | 2 | | | 3 | 4 | 6 | 1 | 1 | 2 | 3 | 7 | 3 | 3 | 10 | 5 | 51 | |
| Arkansas | | | | 1 | | 1 | 1 | 5 | 2 | 1 | | 2 | 3 | 3 | 2 | 5 | 6 | 2 | 34 | |
| Nevada | | | | | | 2 | 1 | 3 | 5 | 5 | 4 | 5 | 3 | 5 | 6 | 10 | 7 | 4 | 60 | |
| Oklahoma | | | | 1 | 2 | 1 | 2 | 3 | 3 | 8 | 13 | 7 | 15 | 14 | 21 | 14 | 9 | 12 | 125 | |
| California | | | | 2 | 10 | 4 | 18 | 31 | 27 | 26 | 16 | 24 | 26 | 31 | 29 | 33 | 24 | 301 | | |
| Indiana | | | | | 1 | 2 | 4 | 2 | 5 | 5 | 8 | 4 | 4 | 4 | 8 | | 3 | 3 | 49 | |
| Kentucky | | | | | 1 | | 1 | 2 | 5 | 4 | 1 | 2 | 4 | 3 | 2 | 1 | 1 | 3 | 30 | |
| Tennessee | | | | | 5 | 1 | 4 | 6 | 4 | 6 | 7 | 11 | 9 | 10 | 6 | 7 | 9 | 12 | 97 | |
| Alabama | | | | | | 1 | 2 | 5 | 14 | 12 | 9 | 8 | 8 | 12 | 10 | 18 | 14 | 6 | 119 | |
| Illinois | | | | | | 3 | 11 | 8 | 6 | 12 | 8 | 11 | 14 | 7 | 14 | 11 | 20 | 7 | 132 | |
| Maryland | | | | | | | | 1 | 2 | | 3 | | 1 | | 1 | 3 | 4 | 1 | 16 | |
| Missouri | | | | | | | 1 | 5 | 4 | 2 | 6 | 8 | 8 | 9 | 13 | 2 | 6 | 13 | 77 | |
| North Carolina | | | | | | 2 | 3 | 4 | 3 | 5 | | 8 | 1 | 5 | 6 | 6 | 14 | 17 | 74 | |
| South Carolina | | | | | | 2 | 3 | 1 | 1 | 4 | 4 | 4 | 7 | | 2 | 6 | 3 | 8 | 45 | |
| Virginia | | | | | | 1 | 1 | 1 | 2 | | 7 | 1 | 10 | 6 | 3 | 4 | 5 | 6 | 47 | |
| Delaware | | | | | | | 2 | | 2 | | | | 1 | | 1 | | | 1 | 7 | |
| Louisiana | | | | | | | 1 | | 3 | 2 | 3 | 8 | 3 | 8 | 1 | | 1 | 7 | 37 | |
| Pennsylvania | | | | | | | 1 | 5 | 7 | 10 | 8 | 13 | 16 | 11 | 21 | 17 | 9 | 19 | 137 | |
| Idaho | | | | | | | | 1 | 4 | | 5 | 1 | 1 | | 3 | 3 | 1 | 2 | 21 | |
| Ohio | | | | | | | | | 2 | 12 | 14 | 18 | 13 | 9 | 12 | 9 | 9 | 13 | 111 | |
| Washington | | | | | | | | | 2 | 1 | | 1 | 1 | 1 | | | 3 | 1 | 10 | |
| Wyoming | | | | | | | | | 1 | | | | | | | | | | 1 | |
| New Jersey | | | | | | | | | | | | | 1 | | | | 3 | | 4 | |
| Colorado | | | | | | | | | | | | | | 2 | | | | 1 | 3 | |
| Connecticut | | | | | | | | | | | | | | 1 | | 1 | | 2 | 4 | |
| New Mexico | | | | | | | | | | | | | | 1 | | | | | 1 | |
| Oregon | | | | | | | | | | | | | | | 1 | 5 | | 3 | 9 | |
| Federal | | | | | | | | | | | | | | | | | | 1 | 1 | |
| Totals | 5 | 11 | 12 | 16 | 40 | 48 | 80 | 112 | 167 | 170 | 178 | 197 | 218 | 219 | 251 | 236 | 256 | 266 | 2,482 | |

- First-degree murder (18 U.S.C. 1111)
- Mailing of injurious articles with the intent to kill or resulting in death (18 U.S.C. 1716)
- Assassination or kidnaping resulting in the death of the President or Vice President (18 U.S.C. 1751 [by cross-reference to 18 U.S.C. 1111])
- Willful wrecking of a train resulting in death (18 U.S.C. 1992)
- Bank-robbery-related murder or kidnaping (18 U.S.C. 2113)
- Treason (18 U.S.C. 2381).
- Murder of Federal judges and officers (18 U.S.C. 1114)

Appendix table 3. Executions, by State and method, 1977-91

| State | Number executed | Method of execution | | | |
|----------------|-----------------|---------------------|---------------|------------|--------------|
| | | Lethal injection | Electrocution | Lethal gas | Firing squad |
| Total | 157 | 61 | 90 | 5 | 1 |
| Texas | 42 | 42 | | | |
| Florida | 27 | | 27 | | |
| Louisiana | 20 | | 20 | | |
| Georgia | 15 | | 15 | | |
| Virginia | 13 | | 13 | | |
| Alabama | 8 | | 8 | | |
| Missouri | 6 | 6 | | | |
| Nevada | 5 | 4 | | 1 | |
| Mississippi | 4 | | | 4 | |
| North Carolina | 4 | 4 | | | |
| South Carolina | 4 | | 4 | | |
| Utah | 3 | 2 | | | 1 |
| Arkansas | 2 | 1 | 1 | | |
| Indiana | 2 | | 2 | | |
| Illinois | 1 | 1 | | | |
| Oklahoma | 1 | 1 | | | |

Note: This table shows the distribution of execution methods used since 1977. As can be seen, the most frequently used method, electrocution, was used in 57% of the executions carried out. Lethal injection accounted for 39% of the executions. Three States, Arkansas, Nevada and Utah, have employed two methods.

Appendix table 4. Number sentenced to death and removals, by jurisdiction and reason for removal, 1973-91

| State | Total sentenced to death, 1973-91 | Number of removals, 1973-91 | | | | | Undersentences of death 12/31/91 |
|----------------|-----------------------------------|-----------------------------|------|-----------------------------------|-------------------|----------------|----------------------------------|
| | | Executed | Died | Sentence or conviction overturned | Sentence commuted | Other removals | |
| U.S. total | 4,444 | 157 | 93 | 1,575 | 112 | 25 | 2,482 |
| Federal | 2 | 0 | 0 | 1 | 0 | 0 | 1 |
| Alabama | 185 | 8 | 2 | 55 | 1 | 0 | 119 |
| Arizona | 155 | 0 | 3 | 54 | 1 | 0 | 97 |
| Arkansas | 59 | 2 | 1 | 22 | 0 | 0 | 34 |
| California | 439 | 0 | 14 | 108 | 15 | 1 | 301 |
| Colorado | 14 | 0 | 1 | 9 | 1 | 0 | 3 |
| Connecticut | 4 | 0 | 0 | 0 | 0 | 0 | 4 |
| Delaware | 20 | 0 | 0 | 13 | 0 | 0 | 7 |
| Florida | 600 | 27 | 12 | 230 | 18 | 2 | 311 |
| Georgia | 225 | 15 | 6 | 100 | 3 | 0 | 101 |
| Idaho | 28 | 0 | 1 | 6 | 0 | 0 | 21 |
| Illinois | 185 | 1 | 3 | 42 | 0 | 7 | 132 |
| Indiana | 72 | 2 | 1 | 20 | 0 | 0 | 49 |
| Kentucky | 50 | 0 | 1 | 18 | 1 | 0 | 30 |
| Louisiana | 124 | 20 | 3 | 57 | 6 | 1 | 37 |
| Maryland | 34 | 0 | 1 | 15 | 2 | 0 | 16 |
| Massachusetts | 4 | 0 | 0 | 2 | 2 | 0 | 0 |
| Mississippi | 112 | 4 | 1 | 53 | 0 | 3 | 51 |
| Missouri | 98 | 6 | 3 | 12 | 0 | 0 | 77 |
| Montana | 11 | 0 | 0 | 4 | 1 | 0 | 6 |
| Nebraska | 20 | 0 | 2 | 4 | 2 | 0 | 12 |
| Nevada | 82 | 5 | 3 | 12 | 2 | 0 | 60 |
| New Jersey | 34 | 0 | 1 | 21 | 0 | 8 | 4 |
| New Mexico | 22 | 0 | 0 | 16 | 5 | 0 | 1 |
| New York | 3 | 0 | 0 | 3 | 0 | 0 | 0 |
| North Carolina | 299 | 3 | 4 | 214 | 2 | 0 | 74 |
| Ohio | 239 | 0 | 3 | 124 | 1 | 0 | 117 |
| Oklahoma | 212 | 1 | 2 | 84 | 0 | 0 | 125 |
| Oregon | 26 | 0 | 0 | 17 | 0 | 0 | 10 |
| Pennsylvania | 190 | 0 | 5 | 47 | 1 | 0 | 121 |
| Rhode Island | 2 | 0 | 0 | 2 | 0 | 0 | 0 |
| South Carolina | 113 | 3 | 3 | 61 | 0 | 0 | 45 |
| Tennessee | 149 | 0 | 4 | 47 | 0 | 2 | 97 |
| Texas | 508 | 42 | 9 | 74 | 42 | 0 | 340 |
| Utah | 22 | 3 | 0 | 6 | 0 | 0 | 12 |
| Virginia | 73 | 13 | 2 | 6 | 0 | 1 | 47 |
| Washington | 20 | 0 | 1 | 9 | 0 | 0 | 10 |
| Wyoming | 9 | 0 | 1 | 7 | 0 | 0 | 2 |
| Percent | 100% | 3.7 | 2.1 | 29.9 | 2.2 | .6 | 61.5 |

Methodological note

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) Inmates are originally added to the National Prisoner Statistics (NPS) death-row counts not at the time the court hands down the sentence but at the time they are admitted to a State or Federal correctional facility. (2) Subsequently, admissions to death row or releases as a result of a court order are attributed to the year in which the sentence or court order occurred; prior-year counts are, therefore, adjusted to reflect the actual dates of court decisions (see note, table 4). (3) NPS death-row counts are always for the last day of the calendar year and thus will differ from counts for more recent periods.

1991 U.S. Supreme Court decisions cited

Yates v. Evatt, 111 S.Ct. 1884 (1991).
Decided May 28, 1991.

Payne v. Tennessee, 111 S.Ct. 2597 (1991).
Decided June 27, 1991.

Schad v. Arizona, 111 S.Ct. 2491 (1991).
Decided June 21, 1991.

Mu'min v. Virginia, 111 S.Ct. 1899 (1991).
Decided May 30, 1991.

Lankford v. Idaho, 111 S.Ct. 1723 (1991).
Decided May 20, 1991.

McClesky v. Zant, 111 S.Ct. 1454 (1991).
Decided April 16, 1991.

Arizona v. Fulminante, 111 S.Ct. 1246 (1991). Decided March 26, 1991.

Ford v. Georgia, 111 S.Ct. 850 (1991).
Decided Feb. 19, 1991.

Parker v. Dugger, 111 S.Ct. 731 (1991).
Decided Jan. 22, 1991.

Other cases cited

Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed 2d 759 (1965)

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed. 2d 69 (1986)

Griffith v. Kentucky, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed. 2d 649 (1987)

State v. Sparks, 257 Ga.97, 355 S.E. 2d 658 (1987)

Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed. 2d 246 (1964)

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed. 2d 39 (1979)

Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed. 2d 344 (1985)

Beck v. Alabama, 447 U.S. 625, 100 S.Ct. 2382, 65 L.Ed. 2d 392 (1980)

Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed. 2d 440 (1987)

South Carolina v. Gathers, 490 U.S. 805, 109 S.Ct. 2207, 104 L.Ed. 2d 876 (1989)

People v. Young, 814 P. 2d 834 (Colorado, 1991)

State v. Johnson, 134 N.H. 570, 595 A.2d 498 (1991)

Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed. 2d 346 (1972)

State notes

Arkansas — Act 683 amended 5-10-101(a), 5-10-102(a)(3), and 5-4-604(8) of the Arkansas Code Annotated to provide for capital sentencing for murders of victims 14 years old or younger and to add murders by a destructive device to the list of aggravating circumstances. Effective date 7/15/91.

California — Approved Proposition 114 (murder of a peace officer) which amends Section 190.2 of the Penal Code and Proposition 115 which implements the Victims Justice Reform Act and amends the State Constitution. Effective date 1/6/91.

Colorado — Repealed and reenacted 16-11-103 of the Colorado Revised Statutes describing the procedures for imposing sentences for Class 1 felonies. Effective date 9/20/91. Added 16-11-801 to provide for the death penalty for persons committing Class 1 felonies between July 1, 1988 and September 20, 1991. Effective date 10/7/91.

Delaware — Amended 11 Delaware Code Section 4209 on the methods for weighing aggravating and mitigating circumstances and redefined the jury's role in capital sentencing to advisory only. Effective date 11/4/91.

Illinois — Amended 9-1 of the Criminal Code of 1961 to incorporate an additional aggravating circumstance for felony murders involving state prisoners. Effective date 1/1/92.

Louisiana — Amended 15:569 of the Louisiana Revised Statutes to provide for death by lethal injection. Effective date 9/1/91.

New Hampshire — Amended 630:1 defining capital murder and repealed and reenacted 630:5 of the Revised Statutes Annotated detailing the procedures to be used in capital cases. Effective date 1/1/91.

Oregon — Amended 163.150 of the Oregon Revised Statutes to address stays of execution while appealing and procedures for resentencing on remand from appeal. Effective date 6/30/91. Also amended the same section to address the use of alternate jurors in the sentencing phase of a capital trial. Effective date 7/30/91.

Utah — Amended 76-5-202 and 76-3-207 of the Utah Criminal Code to change the terminology from first and second degree murder to aggravated murder and murder, respectively. Effective date 4/29/91.

Virginia — Amended 18.2-31(5) of the Code of Virginia to include murders arising from forcible sodomy as a category of capital murder. Effective date 7/1/91.