



Free markets. Real solutions.

R STREET SHORTS NO. 78
November 2019

THE STATE OF GEORGIA'S DEATH PENALTY

Marc Hyden and Arthur Rizer

INTRODUCTION

In 2016, Georgia's nine executions led the nation¹—surpassing even Texas.² While this could be mistaken as a thriving Peach State death penalty, the truth is far different. Rather, capital punishment is quickly dwindling in Georgia. In fact, juries have delivered only one death sentence in over five years,³ and national polls show that death penalty support is near historic lows for several reasons, including the capital punishment's inherent risk to innocent life, high costs and failure to adequately protect society.⁴ Given the death penalty's shortcomings, the Georgia legislature ought to debate its repeal.

RISK TO INNOCENT LIFE

Since 1976, Georgia has executed the sixth-highest number of inmates of any state—74 individuals at last count.⁵ However, juries have wrongly convicted and sentenced six individuals to die who were later released.⁶ This means that roughly for every 12 people Georgia executes, one is released from death row. This is a poor rate by any standard.⁷ What's more, Georgia has executed individuals when questions existed regarding the veracity of their verdicts, including Troy Davis,

who was executed even though seven of the nine non-law enforcement trial witnesses either recanted or substantively revised their original testimonies.⁸

Erroneous convictions often stem from mistaken eyewitness testimony, prosecutorial misconduct, inept defense attorneys and faulty forensics. Indeed, many forms of forensic analyses once thought to be hardened science are unreliable—at best—like bite mark, tool mark⁹ and hair analyses.¹⁰ And, while DNA evidence is often considered the gold standard, it is only available in up to 10 percent of cases—not to mention that the presence of DNA does not necessarily equate to guilt.¹¹ In light of all this, despite the best available science and intentions, wrongful convictions are inevitable, but the problem with capital cases, in particular, is that the most egregious mistakes are irreversible.

PUBLIC SAFETY

Given such risks, taxpayers should at least expect substantial societal benefits in return for the death penalty, but studies suggest otherwise. In fact, the largest-ever survey of deterrence studies concluded that there is no credible evidence to suggest that the death penalty serves as a general deterrent to murder.¹²

Indeed, if the death penalty actually worked as intended, one would expect homicide rates to eventually drop in places where the death penalty was used more often, while low death penalty-use regions would have higher murder rates. However, this is not the case, as states that consistently execute more individuals also consistently have higher murder rates per capita.¹³ Moreover, 88 percent of criminologists believe that the death penalty is an ineffective deterrent to murder,¹⁴ and a 2008 poll of police chiefs found that they rank capital punishment as the least effective method of reducing crime.¹⁵

ARBITRARINESS

Ostensibly, the death penalty is meant to deal with the worst of criminal offenders. In practice, however, it is essentially a lottery of geography. For example, the same offender could commit an identical murder in two adjacent counties and receive two different sentences—one of life or one of death—because most counties do not deliver death sentences. This is because the death penalty has been prohibited in 21 states and four states have governor-imposed moratoriums, but its application is random even where it is legal because many prosecutors opt against seeking it.¹⁶

In fact, only 2 percent of all counties in the United States account for the majority of its death sentences, and a small minority of Georgia's counties drive most of the Peach

State's.¹⁷ Such uneven and arbitrary use of capital punishment provides no justification for why some are condemned and others are not. And worse, it quite literally means that one defendant could be deprived of their life merely minutes down the road from where the same trial—for the same defendant—would not result in death. Accordingly, a punishment's severity often has less to do with the alleged crime and more to do with prosecutorial whims.

Such miscarriage of justice is exacerbated by the fact that one of the strongest indicators of who will receive a death sentence is the race of the crime's victim. Since 1983, nearly 88 percent of all Georgia executions stemmed from the murder of a white victim, while African-American victims accounted for only around 12 percent of executions.¹⁸ This suggests that some lives are actually more important than others in the eyes of the justice system, which fundamentally conflicts not only with its ideals but also with the law.

VICTIMS' FAMILIES

Victims' loved ones also deserve consideration. While their death penalty views vary, studies show that capital punishment does not serve them well. For example, a study conducted by the University of Minnesota discovered that only 2.5 percent of victims' families reported feeling as though they had reached closure due to capital punishment—most were somewhat ambivalent, and 20.1 percent asserted that the death penalty did not aid their recovery at all.¹⁹ Indeed, another survey conducted by the University of Marquette Law School found that victims' loved ones “show higher levels of physical, psychological, and behavioral health” in cases where life was pursued instead of death.²⁰

The reasons for this are clear. The death penalty process is not swift or sure. Most cases are overturned on appeal and take years to traverse the court system, which forces victims' friends and family members to regularly relive the worst moments of their lives. And, in the end, this painful and arduous process often does not even result in an execution. The original death sentence is simply a hollow promise to victims' family members that cannot be delivered, but even in cases that ultimately end in executions, victims' loved ones deserve better than the decades of agony that they receive.

HIGH COSTS

Starting in the 1990s, many states, including Georgia, began to grapple with the death penalty's rising costs. In fact, some places in the state like Lincoln County, Georgia struggled to fund a single capital case and as a result raised taxes to cover the costs.²¹ As if this was not controversial enough, when that particular defendant was awarded a retrial due to judicial irregularities, the county commissioners simply refused to

pay for it, and a magistrate subsequently jailed them until they agreed to fund the retrial.²²

While no one has published a death penalty cost study specifically related to Georgia, around two dozen have been conducted on various states—all of which have reached the same conclusion: The death penalty is far more expensive than life without parole. For example, from 2005-2006, North Carolina could have saved \$11 million dollars by seeking life without parole rather than the death penalty.²³ Likewise, California's capital punishment system has cost taxpayers over \$4 billion beyond the price of life without parole.²⁴

Death cases cost more than life without parole largely because of the “super due process” that is applied to them. There are more pretrial motions, more attorneys, a more extensive appeals process and longer trials. Meanwhile, the convicted are held on death rows, which are much more expensive than housing in general population. And, while the super due process exists to guard against wrongful executions, mistake still occur, and thus any cuts to the judicial process would only increase the likelihood of executing an innocent person.

CONCLUSION

Death penalty debates are often mired in moral and philosophical arguments, which for years have been inadequate at changing hearts and minds. However, as increasing amounts of data, studies and anecdotal evidence come to light, more individuals are rethinking capital punishment on more rational and pragmatic grounds, which may account for flagging death penalty support in polls. As American voters increasingly express their discomfort with capital punishment, the State of Georgia should follow suit and reconsider its use of the death penalty. Doing so would save money and protect the integrity both of the justice system and the fundamental conservative principles of life and liberty.

ABOUT THE AUTHOR

Marc Hyden is the Director of State Government Affairs at the R Street Institute.

Arthur Rizer is the Director of Criminal Justice and Civil Liberties at the R Street Institute.

ENDNOTES

1. Kate Brumback, "Georgia leads nation in number of executions as Texas slows," *Associated Press*, Dec. 20, 2016. <https://apnews.com/a612377546404da098d-852849a800b10>.
2. "Execution Database," Death Penalty Information Center, Oct. 11, 2019. <https://deathpenaltyinfo.org/executions/execution-database?filters%5Byear%5D=2016&filters%5Bstate%5D=Georgia>.
3. Becky Kellogg, "Tiffany Moss's original death sentence dates come and go," *11 Alive*, June 19, 2019. <https://www.11alive.com/article/news/tiffany-moss-original-death-sentence-dates-come-and-go/85-2a66eed0-2e26-4148-b3c7-483f398c866a>.
4. "Pew Poll Finds Uptick in Death Penalty Support, Though Still Near Historic Lows," Death Penalty Information Center, June 12, 2018. <https://deathpenaltyinfo.org/news/pew-poll-finds-uptick-in-death-penalty-support-though-still-near-historic-lows>.
5. "Executions by State and Region Since 1976," Death Penalty Information Center, Oct. 11, 2019. <https://deathpenaltyinfo.org/executions/overview/number-of-executions-by-state-and-region-since-1976>.
6. "Innocence Database," Death Penalty Information Center, Oct. 11, 2019. <https://deathpenaltyinfo.org/policy-issues/innocence-database?filters%5Bstate%5D=Georgia>.
7. *Ibid.*
8. Ed Pilkington, "Troy Davis: 10 reasons why he should not be executed," *The Guardian*, Sept. 21, 2011. <https://www.theguardian.com/world/2011/sep/21/troy-davis-10-reasons>.
9. Michael J. Saks et al., "Forensic bitmark identification: weak foundations, exaggerated claims," *U.S. National Library of Medicine*, Nov. 23, 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5570687>.
10. Spencer Hsu, "FBI Admits Flaws in Hair Analysis Spanning Decades," *The Washington Post*, April 20, 2015. https://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html.
11. "New Projects Tackle Non-DNA Cases," Innocence Project, Feb. 9, 2009. <https://www.innocenceproject.org/new-projects-tackle-non-dna-cases>.
12. D. Nagin et al., "Deterrence and the Death Penalty," Committee on Law and Justice at the National Research Council, April 2012. <https://deathpenaltyinfo.org/news/deterrence-national-research-council-concludes-deterrence-studies-should-not-influence-death-penalty-policy>.
13. "Studies: FBI Crime Report Shows Murder Rates Remain Higher in Death Penalty States," Death Penalty Information Center, Oct. 30, 2015. <https://deathpenaltyinfo.org/news/studies-fbi-crime-report-shows-murder-rates-remain-higher-in-death-penalty-states>.
14. Michael Radelet et al., "Do Executions Lower Homicide Rates?: The Views of Leading Criminologists," Death Penalty Information Center, 2009. <https://deathpenaltyinfo.org/news/study-88-of-criminologists-do-not-believe-the-death-penalty-is-an-effective-deterrent>.
15. "Law Enforcement," The Death Penalty Information Center, last accessed Nov. 4, 2019. <https://deathpenaltyinfo.org/facts-and-research/new-voices/law-enforcement>.
16. "State by State," The Death Penalty Information Center, 2019. <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state>.
17. "The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All," The Death Penalty Information Center, Oct. 1, 2013. <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/the-2-death-penalty-how-a-minority-of-counties-produce-most-death-cases-at-enormous-costs-to-all>.
18. "Executions by Race and Race of Victim," The Death Penalty Information Center, Oct. 1, 2019. <https://deathpenaltyinfo.org/executions/overview/executions-by-race-and-race-of-victim>.
19. Scott Vollum et al., "Covictims of capital murder," *Violence and Victims* 22:5 (February 2007). https://www.researchgate.net/publication/5783278_Covictims_of_Capital_Murder_Statements_of_Victims'_Family_Members_and_Friends_Made_at_the_Time_of_Execution.
20. Marilyn Peterson Armour et al., "Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison," *Marquette Law Review* 96:1 (Fall 2012). <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5144&context=mulr>.
21. "County Commissioners Jailed for Refusing to Pay Legal Bill," *Associated Press*, Oct. 31, 1991. <https://www.apnews.com/eaf07fc17f0f39aad6379f4195719b81>.
22. *Ibid.*
23. Philip J. Cook, "Potential Savings from Abolition of the Death Penalty in North Carolina," *American Law and Economics Review* (Dec. 11, 2009). <https://files.deathpenaltyinfo.org/legacy/documents/CookCostRpt.pdf>.
24. Arthur L. Alarcón and Paula M. Mitchell, "Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle," *Loyola of Los Angeles Law Review* 44 (Sept. 10, 2012). <https://deathpenaltyinfo.org/documents/LoyolaCalifCosts.pdf>.