

THE DEATH PENALTY IN 2005: YEAR END REPORT

Death Penalty Information Center
December 2005

Death Sentences Reach Record Lows As Country Turns to Life Without Parole

- New York's Capital Punishment Law Not Renewed
- Texas Adopts Life Without Parole
- Supreme Court Ends Death Penalty for Juveniles

Death Penalty Statistics*	2005	2004	1999
Death Sentences	125**	125	276
Death Row population (as of Oct. 1)	3,383	3,471	3,625
Executions	60	59	98
Clemencies granted	3	4	5
Public Support for Death Penalty#	64%	64%	71%
Percentage of executions by region:			
South	72%	85%	75%
Midwest	23%	12%	12%
West	3%	3%	12%
Northeast	2%	0%	1%
Death Penalty Statistics Since 1973			
Total Executions	1004		
Texas Executions	355		
Virginia Executions	94		
Oklahoma Executions	79		
Exonerated and freed from death row	122		
*As of Dec. 15, 2005 with no more executions scheduled for this year.			
**Corrected Projection (3/28/06)			
#Gallup Poll			

The year 2005 may be remembered as the year that life-without-parole became an acceptable alternative to the death penalty in the U.S. Texas became the 37th out of 38 death penalty states to adopt this option for its juries. New York's legislature did not restore the death penalty after it was found unconstitutional, leaving life without parole as the punishment for capital murder. Across the country, the number of death sentences dropped to record lows

and some of the most notorious offenders received life sentences rather than death. The year drew to a close with a commutation to a sentence of life without parole for Robin Lovitt in Virginia. This left Virginia, the state with the the second largest number of executions since 1976, with no executions for the year.

The declining use of the death penalty in 2005 extended the steady drop in death sentences and in the size of the death row in recent years. Although executions increased by one in 2005, they are still 39% below their peak in 1999.

Death sentences averaged about 300 per year nationally during the late 1990s. Since then, the number of death sentences per year has dropped 55%, to 125 in 2004. The projection for 2005 is 96 death sentences (based on data from 3/4 of the year) (Correction: the number of

death sentences for 2005 should be estimated at 125, the same as for 2004)—the lowest number since the death penalty was reinstated in 1976. In Harris County, Texas, often referred to as the “capital of capital punishment,” there were only 2 death sentences in all of 2005.

Instead of the death penalty, juries, legislators, prosecutors, and victim family members increasingly expressed their preference for life-without-parole sentences, which carry much less uncertainty than death sentences. According to a study by the *New York Times*, the number of prisoners serving life sentences has doubled in the past decade.

Edna Weaver, whose daughter was murdered in New Jersey, expressed relief that the defendant was spared the death penalty: “I’m so thankful it came out the way it did. . . . I wouldn’t want another mother to feel like I do—it’s a feeling I could never put into words.”

Similarly, the family of Louisiana murder victim Kim Groves asked the federal government to forgo seeking the death penalty for co-defendants Paul Hardy and Len Davis: “Executing these two men will not bring Kim Groves back to life. . . . The family believes the death penalty would in fact be the lesser of the punishments and that the finality and duration of a life sentence would be much more difficult and severe to Mr. Davis, in particular, than death.”

Even in notorious cases, such as that of Eric Rudolph, who killed two people at a medical clinic and set off a bomb at the Olympics in Atlanta, federal prosecutors accepted a guilty plea and a sentence of life-without-parole. In Kansas, Dennis Rader, who murdered 10 people, was given multiple life sentences. Similarly, in recent years serial killers such as Gary Ridgway in Washington, who confessed to 48 murders, and Charles Cullen, a nurse who killed 17 people in New Jersey and Pennsylvania, were given life without parole sentences.

State Developments

The moratorium on executions in **Illinois** continued for the 6th straight year. The ban on executions in **New Jersey** also continued as the state reviews its method of execution. In December, the New Jersey Senate overwhelmingly approved a bill that would establish a formal moratorium on executions and implement a study of the state’s death penalty system. In **Kansas** and **New York**, the states’ highest court overturned the death penalty law in 2004 and no replacement legislation has been passed. The U.S. Supreme Court has agreed to review the Kansas decision, but the New York law would require a legislative remedy, which was rejected by the Assembly. In **New Mexico**, the House of Representatives had voted to abolish the death penalty, and last year the state senate came close to taking the same action. **Massachusetts** resoundingly defeated the governor’s proposal for a “foolproof” death penalty by a vote of 100-53. **California** and **North Carolina** approved legislative commissions to study their respective death penalty systems. Just as in 2004, most of the states that have the death penalty conducted no executions in 2005.

A bill entitled the “Streamlined Procedures Act” was introduced in the U.S. Congress to further curtail federal review of state death penalty cases. Although the bill received extensive opposition from organizations representing both federal and state judges, it is still under consideration. If enacted, it would be contrary to the trend of what is happening in the states.

Perhaps the most significant development this year was **New York’s** rejection of a death penalty reinstatement bill after the state’s highest court struck the law down. In 1995, New York became the most recent state to adopt the death penalty, ending a long political battle. Although it was widely anticipated that the legislature would simply fix the statute, three committees of the Assembly elected to hold public hearings on the death penalty, a process not undertaken in 1995 when the statute was enacted. The hearings in Albany and New York City evoked a cascade of testimony from religious leaders, victims’ representatives, legal experts and law enforcement leaders—almost all of whom pointed to the problems that the death penalty inevitably creates. The state had spent over \$170 million dollars during 9 years, resulting in 7

death sentences and no executions. No one testifying could promise that a similar result would not occur if the death penalty were reinstated. At the end of the hearings, all three committee chairs opposed the legislation. The bill was soundly defeated in committee.

Supreme Court

The U.S. Supreme Court in 2005 continued to review its earlier decisions and to place more restrictions on the use of the death penalty. In *Roper v. Simmons*, the Court held that a national consensus had been reached against the execution of juvenile offenders and declared the practice unconstitutional. This brought U.S. law into compliance with international treaties and laws barring this practice. In *Miller-El v. Dretke*, the Court reversed the Texas courts and lower federal courts that had acceded to racial bias in jury selection. The Court overturned the death sentence of Thomas Miller-El, noting the broad importance of racial fairness: "When the government's choice of jurors is tainted with racial bias, that 'overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial . . .'. That is, the very integrity of the courts is jeopardized when a prosecutor's discrimination 'invites cynicism respecting the jury's neutrality,' and undermines public confidence in adjudication."



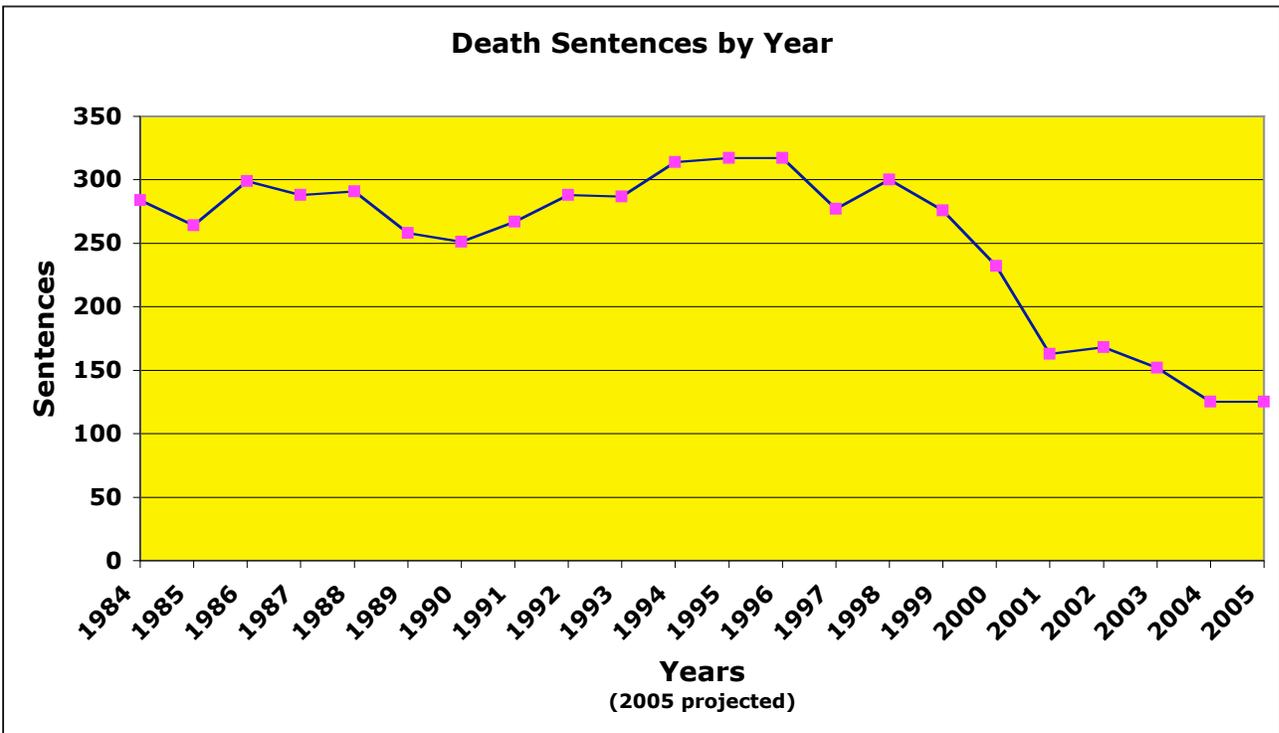
In a Pennsylvania case (*Rompilla v. Beard*), the Court underscored its insistence that capital defense attorneys fully investigate their clients' background so that they can present a proper case of mitigation at sentencing. Since 2000, the Court has found ineffective assistance of counsel in a series of capital cases, even though there had been no such findings in the previous 24 years.

This term, the Court has taken 3 cases that explore aspects of the issue of innocence. In *House v. Bell*, the Court will be asked to set standards for admitting new evidence when a defendant can demonstrate a reasonable claim of innocence. The Court will also decide whether defendants must be permitted to put on evidence of innocence in the sentencing phase of their case (*Oregon v. Guzek*), or to raise evidence of another person's guilt at their own trial (*Holmes v. South Carolina*).

As in past years in speeches outside the Court, individual Justices raised concerns about the application of the death penalty. At an American Bar Association dinner, Justice Stevens questioned the entire process in which those opposed to the death penalty are eliminated from jury service: "[B]ecause the prosecutor can challenge jurors with qualms about the death penalty, the process creates a risk that a fair cross-section of the community will not be represented on the jury."

Numerical Trends

DEATH SENTENCES: The number of new death sentences around the country is perhaps the most telling statistic reflecting changing attitudes towards the death penalty. In a period when the number of murders in the country has remained relatively constant, death sentences have dropped by close to 60%. This decline will affect the number of executions and the size of death row in the future. Unlike the trend in almost all states, however, the number of *federal* death sentences has increased in recent years, although they still represent only a small percentage of the national total.



DEATH ROW: The size of death row increased every year from 1976 until 2001. Since then, it has been in decline. The numbers have dropped partly because of the broad grant of clemency in Illinois in 2003 (167 cases), the ban on the execution of juveniles in 2005 (71 cases) and the ban on the execution of the mentally retarded in 2002. The latter decision has affected fewer cases because in many states prosecutors are resisting claims of mental retardation by those on death row. The smaller size of death row is also due to the decline in death sentences. As of October 1 of this year, there were 3,383 people on death row, down about 7% since 2001. California continues to have the largest death row, with 648 inmates. The state legislature has been asked to appropriate \$230 million to build a new death row.

EXECUTIONS: This year, Kenneth Boyd in North Carolina became the 1,000th person executed since the death penalty was reinstated in 1976. Boyd had murdered his estranged wife and father-in-law in a brief period of rage. He was a Vietnam veteran with no history of violent crime. Robin Lovitt in Virginia had been scheduled to be the 1000th person executed but Governor Warner commuted his sentence to life without parole because the state had destroyed evidence he might have used in his appeals.

Executions in 2005 were up slightly (from 59 to 60) but were still considerably less than the 98 executions in 1999. Continuing a long and disturbing trend, over 73% of those executed this year had been convicted of murdering *white* victims, even though less than 50% of murder victims in the country are white. As in 2004, no white person was executed for the murder of a black person. Seventy-two percent of the executions took place in the South.

PUBLIC OPINION: Public support for the death penalty has also declined in recent years. The high point for public support of capital punishment came in 1994 when 80% of the public endorsed the death penalty. An October 2005 Gallup Poll found only 64% in support of the death penalty. It has been 27 years since the approval was lower than the present level. As death penalty support declines, the public has turned to the sentence of life without parole. A 2005 CBS News Poll asked: "What do you think should be the penalty for persons convicted of murder--the death penalty, life in prison with no chance of parole, or a long prison sentence

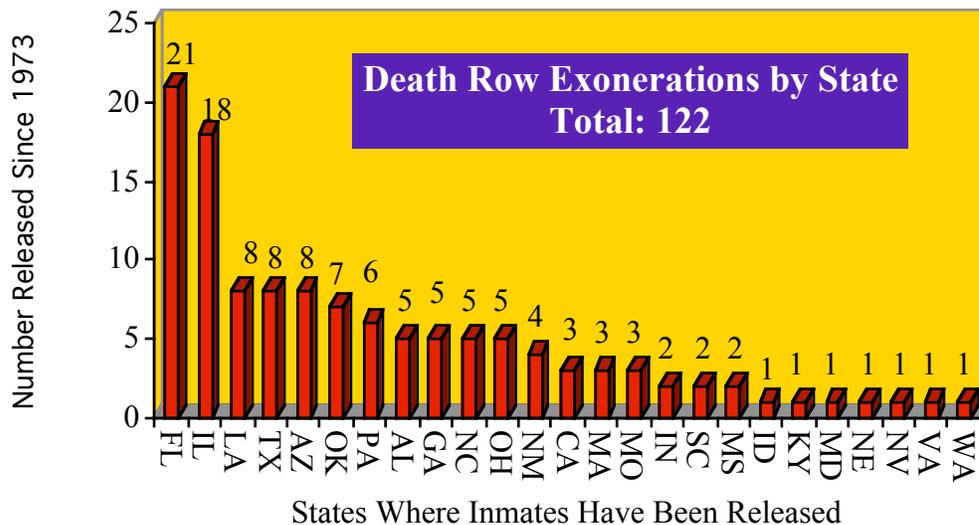
with a chance of parole?" Only 39% chose the death penalty, 39% chose life with no parole, 6% favored a long sentence with parole.

Reasons for Change

INNOCENCE, EVEN AMONG THOSE EXECUTED: Awareness of numerous serious mistakes in death penalty cases is contributing to the sharp drop in death sentences. The number of innocent people freed from death row has now reached 122, five more than recorded in DPIC's 2004 report. Even more alarming is the mounting evidence that states may have executed innocent defendants. In 2004, the *Chicago Tribune* revealed new evidence about the case of **Cameron Willingham**, who was executed that year in Texas for arson. Fire experts who have re-examined the case believe that the fire was probably accidental. This year, two more investigations have thrown significant doubt on the convictions of executed persons. Following an investigation by the NAACP Legal Defense Fund, the *St. Louis Post-Dispatch* reported that **Larry Griffin**, executed in Missouri in 2001, was likely framed by a professional informant. The prosecution has agreed that new evidence in the case merits further investigation.

In November, the *Houston Chronicle* reported on its lengthy investigation into the case of **Ruben Cantu**, a juvenile who was executed in Texas in 1993. Numerous witnesses have now changed their stories or come forward with new information exculpating Cantu, who always maintained his innocence. The jury foreman, presiding judge, defense attorney and a prosecutor familiar with the case all have expressed doubts about the reliability of the original conviction.

President Bush expressed concerns about the application of the death penalty in his 2005 State of the Union message. He called for greater availability of DNA testing to avoid the risk of executing an innocent person, and promised programs to improve the quality of representation in capital cases.



LIFE WITHOUT PAROLE SENTENCES: Faced with mounting information about the innocent people who have been freed and doubts about some of the 1,000 people who have been executed since 1976, the public has come to rely more on the sentence of life without parole. Opinion polls demonstrate that people strongly support having this alternative. Its availability was a key reason why New Yorkers were willing to abandon their ten-year experiment with the death penalty. In North Carolina, death sentences have dropped 65% since prosecutors have been able to negotiate pleas to life-without-parole sentences. Juries in federal cases, even when considering egregious crimes, have opted for life without parole

sentences in about three-quarters of the cases that proceeded to a sentencing trial. New Mexico is now the only death penalty state that does not have a sentencing option of life-without-parole, and it is considering abolishing the death penalty all together.

RELIGIOUS VIEWS: Another factor that may be contributing to the decline of the death penalty is growing religious opposition. The Catholic Church launched a campaign to end the death penalty and the U.S. Bishops overwhelmingly approved a resolution affirming their commitment to a culture of life and rejecting the death penalty. Cardinal Keeler of Baltimore visited death row inmate Wesley Baker when he was about to be executed in Maryland, and followed his visit with a call to the governor for clemency. Such actions have also caused a re-evaluation of the death penalty on the part of prominent Catholic conservatives such as Senators Rick Santorum of Pennsylvania and Sam Brownback of Kansas.

Catholics are not alone in expressing moral opposition to the death penalty. Recently, over 1,000 faith leaders from a wide variety of congregations called for an end to the death penalty as the country faced its 1,000th execution. The influential *Birmingham News* in Alabama reversed its position on the death penalty and came out strongly opposed to it, partly on the ground that opposition was consistent with the editorial board's belief in the culture of life.

COSTS: The high cost of the death penalty may also be contributing to a decline in its use. *A New Jersey Policy Perspectives* study found that the death penalty had cost taxpayers in that state \$253 million since 1983. The state has had no executions during that time. Michael Murphy, a former Morris County (NJ) prosecutor, remarked: "If you were to ask me how \$11 million a year could best protect the people of New Jersey, I would tell you by giving the law enforcement community more resources. I'm not interested in hypotheticals or abstractions, I want the tools for law enforcement to do their job, and \$11 million can buy a lot of tools." The *Los Angeles Times* estimated that the death penalty costs California \$114 million per year over the cost of keeping similar inmates in prison for life. Measured as a cost per execution, the *Times* concluded that taxpayers were paying about a *quarter of a billion dollars* for each execution.

States with executions	2005	2004
Texas	19	23
Indiana	5	0
Missouri	5	0
North Carolina	5	4
Alabama	4	2
Ohio	4	7
Oklahoma	4	6
Georgia	3	2
South Carolina	3	4
California	2	0
Arkansas	1	1
Connecticut	1	0
Delaware	1	0
Florida	1	2
Maryland	1	1
Mississippi	1	0
Nevada	0	2
Virginia	0	5
Totals	60	59

New Voices

In 2005, a growing number of local and national figures voiced their concerns about the fairness and accuracy of the death penalty. For some, capital punishment has become too uncertain and too filled with risk.

Judges:

- U.S. Supreme Court Justice John Paul Stevens** noted that the death penalty has "serious flaws." Justice Stevens remarked, "[W]ith the benefit of DNA evidence, we have learned that a substantial number of death sentences have been imposed erroneously. . . [A] significant number of defendants in capital cases have not been provided with fully competent legal representation at trial." (Associated Press, August 7, 2005).
- In a dissenting opinion filed in the capital case of *Moore v. Parker*, **federal Judge Bryce Martin** of the U.S. Court of Appeals for the Sixth Circuit wrote

that “the death penalty in this country is arbitrary, biased, and so fundamentally flawed at its very core that it is beyond repair.” (October 4, 2005).

- Retired Orange County, California Superior Court **Judge Donald A. McCartin** called for an end to the death penalty: “This may seem strange coming from a man known as ‘the hanging judge’ of Orange County, but I think it’s time to abolish the death penalty. . . . Human error, inequities, biases and person ideologies create the problems that have caused my rejection of the death penalty. Because these frailties will not magically vanish, capital punishment cannot be implemented with any sense of balance of fairness, thus it must be abolished.” (Orange County Register, June 24, 2005).
- Addressing concerns regarding the shortage of adequate counsel to represent death row inmates facing their final round of appeals, retired **Georgia Chief Justice Harold Clark** said, “It’s a very important check in the system that’s missing. There can be slips in the process along the way. When you’ve got a person sitting on death row who shouldn’t be there, I can’t think of many things more serious than that.” (Associated Press, January 18, 2005).

Legislators:

- **Bill Wiseman**, the former Oklahoma legislator who introduced lethal injection as a method of execution in the U.S. in order to make death row inmates’ deaths more humane, stated: “I’m sorry for what I did. I hope someday to offset it by helping us realize that capital punishment is wrong and self-destructive. . . . [T]he problem is that we’re killing people. That’s what’s wrong, not how we’re doing it.” (Mother Jones, September/October 2005).
- **U.S. Senator Rick Santorum**, an outspoken Catholic conservative from Pennsylvania, stated: “I felt very troubled about cases where someone may have been convicted wrongly. DNA evidence definitely should be used when possible. I agree with the pope that in the civilized world . . . the application of the death penalty should be limited. I would definitely agree with that. I would certainly suggest there probably should be some further limits on what we use it for.” (Pittsburgh Post Gazette, March 22, 2005).
- **Assemblywoman Helene E. Weinstein**, chair of Judiciary Committee of the New York Assembly and a former supporter of capital punishment, said that a series of hearings in New York had led her to change her position on the death penalty and vote to block its reinstatement. Weinstein noted, “I think it was impossible for anyone to sit through the testimony and not come away with the conclusion that you cannot draft a death penalty law that does not have the possibility of convicting someone who is innocent. It seems clear to me that from all of what we’ve heard the chance of convicting an innocent individual remains a possibility, and there’s no way to rectify that. People are seeing that the justice system is not infallible.” (New York Times, February 28, 2005).

Religious Leaders:

- **Dr. Richard Land**, President of the Ethics and Religious Liberties Commission of the Southern Baptist Convention and a strong death penalty supporter in the past, stated that support is warranted only if the death penalty is applied fairly: “If you are going to support the death penalty, then you have to be as supportive of its equitable and just application.” He noted that it would be immoral to support capital punishment otherwise. He also stated that the poor and people of color were more likely to receive the death penalty in the U.S. (The Christian Post, November 21, 2005).
- While discussing his memoir, **Reverend Carroll Pickett**, former chaplain of death row in Texas, noted, “Ninety-five times I personally walked a man who was sentenced to die to the death chamber in Texas. From the very first person executed by lethal injection,

through 16 years of walking those eight steps from the holding cell in the death house to the impeccably clean gurney in the death chamber, I led a man – some were older, some convicted in their teens, some mentally ill, some very hardened by life *and, I fully know, some who were innocent.*” (Edinburgh Evening News, July 18, 2005) (emphasis added).

Media:

- In an historic departure from its long-standing support of capital punishment, *The Birmingham News* announced that “after decades of supporting the death penalty, the editorial board no longer can do so.” The paper cited both practical and ethical reasons for the change in its stance: “[W]e have come to believe Alabama’s capital punishment system is broken. And because, first and foremost, this newspaper’s editorial board is committed to a culture of life. . . . We believe all life is sacred. And in embracing a culture of life, we cannot make distinctions between those we deem ‘innocents’ and those flawed humans who populate Death Row.” (The Birmingham News, November 6, 2005).

DEATH ROW INMATES BY STATE (Oct. 1, 2005)	
California	648
Texas	413
Florida	385
Pennsylvania	231
Ohio	196
N. Carolina	195
Alabama	186
Arizona	126
Tennessee	108
Georgia	107
Oklahoma	94
Louisiana	86
Nevada	84
S. Carolina	76
Mississippi	66
Missouri	54
Arkansas	39
Kentucky	37
U. S. Government	36
Oregon	32
Indiana	27
Virginia	23
Idaho	20
Delaware	19
New Jersey	13
Illinois	10
Utah	10
Washington	10
Maryland	9
Connecticut	8
U.S. Military	8
Kansas	7
Nebraska	7
Montana	4
South Dakota	4
Colorado	3
New Mexico	2
New York	2
Wyoming	2
Total death row	3,383

Conclusions

America has become less comfortable with the use of the death penalty and more accepting of the sentence of life without parole as an alternative to capital punishment. Legislators, jurors, judges, and victims have shown greater interest in avoiding the risks, the costs, and the unpredictability of the death penalty when many of the same objectives can be accomplished with a sentence that is already widely used.

Death penalty numbers were generally down in 2005 and some states took action to eliminate the death penalty completely. Religious organizations, judges, conservative political leaders, and editorial writers from papers around the country raised new challenges to capital punishment.

There were some counter-trends as well. On the federal level, there was an expanded use of the death penalty and efforts in Congress to restrict further the capital appeals process. Nevertheless, public support is at its lowest point in the modern era and the problems that have caused this erosion in support continue to plague the system.

Death Penalty Information Center

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion and serves as a resource to those working on this issue. Richard C. Dieter, DPIC’s Executive Director, wrote this report with assistance from the DPIC staff. Further sources for facts and quotes in this report are available upon request. The Center is funded through the generosity of individual donors and foundations, including the J. Roderick MacArthur Foundation, the Open Society Institute, and the European Community. The views expressed in this report are those of DPIC and should not be taken to reflect the official opinion of our donors.