

# Death Penalty

## BACKGROUND

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Michigan is one of only 12 states (plus the District of Columbia) that do not have the death penalty (see the exhibit), and it has not since enactment in 1846 of a statute making Michigan the first government in the English-speaking world to abolish capital punishment for murder and lesser crimes.

It was not until 1963, however, that Michigan’s prohibition was included in the state constitution, although there had been many attempts both to restore the penalty and put prohibition of it in the constitution. In the 1850 and 1867 constitutional conventions, motions to prohibit and permit a death penalty, respectively, were defeated, and in 1929 the legislature passed a death penalty bill that was vetoed. The bill was passed again in 1931, as a referendum, and defeated by a vote of the people.

Since the 1963 constitutional prohibition, there has been no successful legislative attempt to amend the constitution to institute the death penalty—this would require a two-thirds vote in both chambers and a majority affirmative vote of the people. Citizen groups have tried four times—most recently in 1986—to authorize the death penalty by referendum, but none made it to the ballot.

At this writing, the following five resolutions are before the 89th Michigan Legislature—two House Joint Resolutions (HJR) and three Senate Joint Resolutions (SJR)—to permit the death penalty to be imposed in Michigan (all remain in committee):

- HJR C and SJR D, for first-degree murder
- HJR M, for killing a state or local corrections officer
- SJR C, for murder under certain circumstances, including capital murder, as defined by law
- SJR O, for murder or criminal sexual conduct involving penetration of a victim aged younger than 16

## Court Cases

In 1967 all executions in the United States temporarily were blocked, pending a Supreme Court decision on death penalty issues. The decision came in 1972, in *Furman v. Georgia*, when the Court decided that the way in which the death penalty then was imposed constituted “cruel and unusual punishment” under the Eighth Amendment and denied “due process of law and equal protection under the law” under the Fourteenth Amendment. The death penalty itself was not ruled unconstitutional, just the manner in which it was imposed—arbi-

## GLOSSARY

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### First-degree murder

*Premeditated murder.*

### Habeas corpus

*A legal writ that may be issued to bring a party before a court or judge, having as its function the release of the party from unlawful restraint.*

## Death-Penalty States and Number of Executions, 1976–March 31, 1998



SOURCE: Death Penalty Information Center, Washington, D.C.

trarily and capriciously—with unlimited sentencing discretion given to the judge or jury.

States immediately began to rewrite their death penalty statutes to meet these stricter standards, and in 1976, in *Gregg v. Georgia*, the Supreme Court ruled that the death penalty for murder was constitutional under a new system of “guided discretion” in sentencing. The new system incorporates a two-phase trial: in the first, guilt is determined; in the second, the penalty is decided, and the jury must weigh both aggravating and mitigating circumstances.

Since 1976 there have been many additional Supreme Court decisions related to the death penalty. Among the more significant are *Coker v. Georgia* (1977), in which the Court ruled that the death penalty was unconstitutional for the rape of an adult woman because it was disproportionate to the crime, since the victim did not die. In *McCleskey v. Kemp* (1987), the Court upheld the penalty’s constitutionality but allowed for the first time evidence to be introduced showing a statistically significant racial disparity in death sentenc-

ing. The court ruled that although an overall racial bias did occur, it was not enough to prove racial discrimination in that particular case.

More recent cases—specifically *Teague v. Lane* (1989), *McCleskey v. Zant* (1989), and *Herrera v. Collins* (1993)—limit the circumstances under which a court must accept federal prisoners’ petition for a review, under *habeas corpus*, of the constitutionality of their conviction.

In 1997 prosecutors in Winston-Salem, North Carolina, sought, for the first time, the death penalty in a drunk-driving case. The defendant was found guilty of first-degree murder in the trial’s first phase, but the jury did not vote to impose the death penalty in the second.

### Federal Capital Punishment

Currently, there are 17 men on death row for committing a federal crime; no one has been executed since 1963. In 1988 the federal death penalty was expanded by a statute commonly known as the “drug

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kingpin” murder provision, which allows the penalty to be imposed for murder in the course of a drug-kingpin conspiracy. Since its enactment, six people have been sentenced to death but none executed.

The Violent Crime and Law Enforcement Act (1994) increased to 60 (from 10) the federal crimes punishable by death, including murdering certain government officials, kidnapping resulting in death, murder for hire, fatal drive-by shootings, sexual abuse crimes resulting in death, car jacking resulting in death, and certain crimes not resulting in death (including running a large-scale drug enterprise). Since 1994, 12 people have been sentenced to death under this expanded federal penalty, but none has been executed. The Anti-Terrorism and Effective Death Penalty Act (1996) further limits federal prisoners’ use of habeas corpus, by requiring federal courts to defer to previous state court decisions if the decisions are “reasonable.”

### State Capital Punishment

At this writing, 451 individuals have been executed by the states since the U.S. Supreme Court reinstated the death penalty in 1976. A full one-third (147) of the executions have been carried out in Texas, three times the number in Virginia, the state with the next most.

The number of executions per year has been climbing steadily over the last 20 years; in 1977 there was one; in 1987, 25; and in 1997, 74. In addition, the death row population has tripled since the early 1980s, to more than 3,000.

The methods of execution and the number of states permitting each are lethal injection (permitted in 32 states), electrocution (10), poisonous gas (6), hanging (2), and firing squad (2). In 1996 the U.S. Supreme Court dismissed a judgment by the U.S. Court of Appeals for the 9th Circuit upholding a lower court ruling that California’s use of the gas chamber is cruel and unusual punishment; the case has been remanded to the 9th Circuit for further consideration.

Although 10 of the 12 states that do *not* have the death penalty are among the 16 with the lowest vio-

lent crime rate in the country, in the District of Columbia, which also does not have the death penalty, the opposite is true: The District has highest violent crime rate in the nation.

## DISCUSSION

### Public Opinion

Support for the death penalty is at an all-time high since public opinion on this issue has been tracked. According to an April 1996 Gallup Organization survey, 79 percent of adults aged 18 and older in the United States favor the penalty for someone convicted of murder. This percentage has been climbing steadily since 1967, when 42 percent held this view (the all-time low). In Michigan, according to an EPIC/MRA survey of 600 registered Michigan voters in July 1997, 59 percent favor putting on the ballot a proposal to remove Michigan’s constitutional ban on capital punishment for first-degree murder.

Blacks and whites differ sharply on the death penalty. Nationally, while 74 percent of whites favor execution for those convicted of murder, this opinion is held by only 56 percent of blacks. Over the last 20 years, the percentage of blacks and whites favoring the death penalty has risen 12 and 10 percentage points, respectively.

### Support for the Death Penalty

Proponents cite three major reasons for their support.

- *Deterrence* During the 1966–76 moratorium on capital punishment, murders in the United States nearly doubled (rising from 10,920 to 20,510), and this may be attributed to criminals’ lack of fear about facing the death penalty. In addition, criminology studies conducted after executions during the 1970s and 1980s indicate that the violent crime rate drops after widely publicized executions. It may be that capital punishment’s deterrent effect would be increased if it were carried out more quickly after sentencing (the average stay of a convicted murderer on death row is 11 years and two months).
- *Appropriateness* Even if it were not a deterrent, execution is a fitting punishment for certain hei-

nous crimes. Society is obligated to show how much it values human life by requiring the only fitting restitution: the convicted murderer's life.

- *Proper use of public resources* The average annual cost of keeping a convicted murderer in prison for life is \$23,500 (\$69,000 for those aged over 55), and \$74,862 if s/he must be kept in maximum security. It is unreasonable to expect the public to pay such a price for years to support someone who has proven him/herself unfit to be a member of society.

### Opposition to the Death Penalty

Opponents of the death penalty cite many reasons for their position. Following is based in part on a summary of a paper delivered to the National Committee Against the Death Penalty in 1990 by the author of Michigan's 1963 death penalty prohibition in the state constitution and co-chairman of the Michigan Committee Against Capital Punishment.

- *Deterrence* Homicide rates fail to show it is safer to live in a state that has the death penalty than in one that does not. In 1994 (latest comparable data available), the average murder rate per 100,000 population among death-penalty states was 8.0; among states without the penalty it was 4.4.
- *Error* Innocent people have and will continue to be executed. Since 1970, 71 people have been released from death row with evidence of their innocence, and in *In Spite of Innocence* (North-eastern University Press), researchers Radelet and Bedau report having found 23 cases since 1900 of innocent people being executed.
- *Aggravation* There are documented cases in which individuals, as a form of suicide, have committed murder in order to receive the death penalty.
- *Fairness and justice* The death penalty is imposed arbitrarily and capriciously; studies find that the victim's race is a major factor; defendants convicted of murdering a white person are

four times more likely to be sentenced to death than those convicted of murdering a black. Among all murder victims, 50 percent are white; among victims of people sentenced to death, 80 percent are white.

- *Protection* Society is adequately protected by life imprisonment.
- *Law enforcement* The death penalty creates an illusion that something is being done about crime and diverts attention from developing effective ways to fight and prevent crime.
- *Victims* The death penalty (1) makes restitution for the victim impossible and (2) often makes the killer a celebrity.
- *Cost* The death penalty, because of additional litigation, costs much more than life imprisonment.
- *Morality and religion* The death penalty violates the sacredness of human life.
- *Isolation* Every Western industrialized nation except the United States has abandoned capital punishment.
- *Bungled executions* At least three bungled executions have occurred in the United States since 1988, causing disfigurement, torture, or both.

### FOR ADDITIONAL INFORMATION

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NOTE: At time of publication, there was no known group organized in support of the death penalty.