

A Temporary Halt: Alabama's Executions

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Arise Citizens' Policy Project has supported efforts to suspend executions while policymakers determine whether our capital punishment system is working fairly. This fact sheet will review longstanding concerns about Alabama's use of the death penalty, along with current prospects for reform.

History lessons

Alabama has a long and tangled history with the death penalty. A Tuskegee University archive preserves grim evidence of the "lynch law" that long terrorized African Americans. The state's historic enthusiasm for legal executions, which remains strong, bears the stain of racism as well. One measure of the problem is the frequency of federal court rulings addressing Alabama's capital punishment machinery.

The "Scottsboro Boys" trials of 1931-37 kept our judicial system in the national spotlight through much of the Great Depression. Two landmark U.S. Supreme Court decisions flowed from these cases, establishing that criminal defendants are entitled to effective counsel (*Powell v. Alabama*) and that African Americans cannot be systematically excluded from criminal juries (*Norris v. Alabama*). Thirty years later, *Swain v. Alabama*

called national attention to the absence of black jurors in a capital trial in Talladega County. In 1980, *Beck v. Alabama* again brought national scrutiny, highlighting laws forbidding consideration of related but less serious offenses in capital cases.

Today, Alabama is one of 34 states that allow capital punishment. About 200 people sit on Alabama's death row. According to the Equal Justice Initiative, Alabama imposes a higher rate of death sentences per capita than any other state, partly because elected judges can disregard a jury's recommended sentence of **life without parole**. Alabama is the only state that permits elected state court judges to use **judicial override** to impose the death sentence without any meaningful limiting standard.

Each year since 2001, Sen. Hank Sanders, D-Selma, has introduced a bill that would place a three-year moratorium on executions. Since 2006, Rep. Merika Coleman, D-Birmingham, has introduced similar legislation in the House. Given Alabama's historical support for execution, attaining a moratorium will be an uphill battle, but perhaps not an unwinnable one.

An evolving standard of decency

To understand how Alabama might temporarily halt executions, it is useful to examine the national climate surrounding the death penalty. The recent history of capital punishment shows a nation divided. Executions were halted temporarily when the Supreme Court issued *Furman v. Georgia* in 1972, but they resumed after the Court ruled in *Gregg v. Georgia* four years later.

Numerous states, including Alabama, rewrote their capital punishment laws to align with the Court's dictates. In particular, the Supreme Court indicated that the death penalty cannot be applied capriciously, nor can it be a mandatory punishment that fails to take into account the particular circumstances of a defendant. Many states thus crafted post-*Gregg* schemes to comply with the Court's holdings, generally limiting **capital offenses** to intentional murders and requiring trial courts to consider each defendant's **aggravating** and **mitigating** circumstances before sentencing.

Despite the resumption of executions, the recent national trend is toward limiting, and perhaps eradicating, capital punishment. For example, in 2002, the Supreme Court held in *Atkins v. Virginia* that it was unconstitutional to execute someone with mental

Keywords

aggravate – make more severe. "Aggravating circumstances" are factors that may cause a judge or jury to increase the punishment for a crime.

capital offense – a crime punishable by death. In Alabama, this consists of intentional murder with any number of aggravating factors (such as robbery committed in connection with the murder, killing witnesses, etc.).

indigent defense – legal representation, at public expense, of accused people who can't afford to pay for a lawyer.

judicial override – the power of a judge to sentence a defendant to death after a jury has recommended life imprisonment without parole.

jurisdiction – the territory within which power can be exercised.

life without parole – a sentence of life imprisonment without the possibility of release.

mitigate – make less severe. "Mitigating circumstances" are factors that may cause a judge or jury to reduce the punishment for a crime.

moratorium – a suspension of activity; a legally authorized period of delay.

public defender – a lawyer hired by the government to represent accused people who can't afford their own lawyer. Most Alabama counties lack public defenders.

retardation. Three years later, *Roper v. Simmons* abolished the juvenile death penalty when the Supreme Court forbade executions of offenders under the age of 18.

In December 2007, New Jersey became the first state to ban the death penalty since the *Gregg* ruling. Since then, New Mexico (2009) and Illinois (2011) also have abolished their death penalty systems. Nationwide, 78 people were sentenced to death in 2011, the first time since capital punishment was reinstated in 1976 that the country has produced fewer than 100 death sentences in a year. Alabama's executions remain steady in the face of this trend.

Reasons for a moratorium

The American Bar Association has become increasingly concerned in the last 30 years that death penalty jurisdictions too often provide neither fairness nor accuracy. In 1997, the ABA called for a nationwide moratorium on executions until serious flaws in the system are identified and eliminated. The ABA has urged Alabama and other capital jurisdictions to ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and minimize the risk that innocent people may be executed.

Safeguards other states use to avoid unfair conviction or execution – such as a statewide system of indigent defense and post-conviction representation – don't exist in Alabama. According to the Equal Justice Initiative, more than half of the people sentenced to death in Alabama were represented by appointed lawyers who may have no experience in capital defense and whose payment is capped at \$1,000. Between 1973 and 2003, nineteen Alabama death penalty cases were reversed because of prosecutorial misconduct.

The role of race and disability in Alabama's administration of the death penalty has been a major focus of reform efforts. In Alabama, 80 percent of death sentences are imposed in cases with White victims, though 65 percent of murder victims are Black. Further, though the Supreme Court has barred executions of mentally retarded offenders, it left it up to states to define mental retardation. In failing to issue its own definition, Alabama places mentally retarded inmates at risk of unconstitutional execution.

Public confidence in the jury system offers another opportunity for building public support for a moratorium. More than 20 percent of Alabama's death row inmates face execution because a judge disregarded a jury's recommended sentence. As public awareness of the heavy use of judicial override increases, elected judges fearful of being labeled "soft on crime" also will have to consider political costs of ignoring juries.

A three-year moratorium on executions would allow the state to review these and other aspects of our capital justice system and make necessary changes. A commission of neutral experts could provide the broad perspective required for a fair assessment.

Alabama's prospects

Relief from federal courts does not appear to be on the horizon. While the Supreme Court in 2008 held that the death penalty must be limited to murder cases (*Kennedy v. Louisiana*), it also showed that it will not abolish some particular execution practices as being "cruel and unusual" (*Baze v. Rees*).

If the best prospects for death penalty reform rest with the Legislature, then where does the issue stand? The findings of external monitors such as the Innocence Project, the ABA, Amnesty International, Human Rights Watch – and even the United Nations in a 2007 report – thus far have failed to sway many state lawmakers. The deep-seated influence of religious tradition in Alabama has long provided an "eye for an eye" rationale for capital punishment. But a growing array of faith communities emphasize the sanctity of *all* life, a position that could stir vibrant debate on the issue.

Bottom line

Some opinion polls show that a majority of Alabamians would support a moratorium. That majority may grow in troubled economic times, as people realize the state can ill afford the lengthy and expensive capital trials required by the U.S. Constitution. Further, costs per execution are growing. If legislators remain unmoved by moral arguments and unworried by the prospect of killing an innocent person, perhaps the financial burdens of executions can shift the balance. And from another economic angle, international investors from the many countries with no death penalty might amplify the human rights appeal.

Pushing for even a temporary halt to executions in Alabama will be difficult. If the Alabama Legislature is going to follow other states and impose a death penalty moratorium, the plan will have to be based on solid policy principles. Alabama's tragic history may offer considerable reason for skepticism on that front, but the arguments in favor of at least a short stoppage of the machinery of death remain compelling.

This fact sheet was prepared by policy analyst Stephen Stetson. It may be reproduced with acknowledgment of Arise Citizens' Policy Project, Box 1188, Montgomery, AL 36101; (800) 832-9060; www.arisecitizens.org.